

**OECD/G20 Base Erosion and Profit Shifting
Project**



Making Dispute Resolution More Effective – MAP Peer Review Report, Monaco (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Foreword

The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.

Following the release of the report *Addressing Base Erosion and Profit Shifting* in February 2013, OECD and G20 countries adopted a 15-point Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions along three key pillars: introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty.

After two years of work, measures in response to the 15 actions were delivered to G20 Leaders in Antalya in November 2015. All the different outputs, including those delivered in an interim form in 2014, were consolidated into a comprehensive package. The BEPS package of measures represents the first substantial renovation of the international tax rules in almost a century. Once the new measures become applicable, it is expected that profits will be reported where the economic activities that generate them are carried out and where value is created. BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 85 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

A better understanding of how the BEPS recommendations are implemented in practice could reduce misunderstandings and disputes between governments. Greater focus on implementation and tax administration should therefore be mutually beneficial to governments and business. Proposed improvements to data and analysis will help support ongoing evaluation of the quantitative impact of BEPS, as well as evaluating the impact of the countermeasures developed under the BEPS Project.

As a result, the OECD established the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The

Inclusive Framework, which already has more than 137 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 11 December 2019 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

Monaco has a modest tax treaty network with ten tax treaties. Monaco has a newly established MAP programme and has no experience with resolving MAP cases as it has not yet been involved in any cases. Overall Monaco meets almost all the elements of the Action 14 Minimum Standard. Where it has deficiencies, Monaco is working to address them.

All but one Monaco's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention. Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- 20% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments
- 20% of its tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Monaco needs to amend and update a certain number of its tax treaties. In this respect, Monaco signed and ratified the Multilateral Instrument. Through this instrument the majority of the relevant tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of the Multilateral Instrument for the treaties concerned, Monaco reported that it would look to amend the tax treaties bilaterally, giving priority to the treaty that contains more deficiencies with respect to the Action 14 Minimum Standard, to be compliant with the requirements under such standard.

As Monaco has no bilateral APA programme in place, there were no elements to assess regarding the prevention of disputes.

Monaco meets all the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2016 not received any MAP requests. Furthermore, Monaco has in place a documented bilateral consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Finally, Monaco has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice.

Monaco has not been involved in any MAP cases during the period 2016-18 but meets in principle all the requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases.

As there was no MAP agreement reached that required implementation in 2016, 2017 or 2018, it was not yet possible to assess whether Monaco meets the Action 14 Minimum Standard as regards the implementation of MAP agreements.

Introduction

Available mechanisms in Monaco to resolve tax treaty-related disputes

Monaco has entered into ten tax treaties on income (and/or capital), nine of which are in force.¹ These ten treaties are being applied to ten jurisdictions. All but one of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, two of the 10 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

In Monaco, the competent authority function is delegated to the Minister of Finance and Economy. Monaco's competent authority currently employs approximately five employees part time, to deal with MAP cases that shall they arise in the future. These would be responsible for both attribution/allocation and other cases in addition to other non-related duties.

Monaco issued guidance on the governance and administration of the mutual agreement procedure (“**MAP**”) in May 2019, which is available in French at:

<https://www.gouv.mc/content/view/full/9135>

Recent developments in Monaco

Monaco recently signed two new conventions with Malta and Montenegro, which have not yet entered into force.

Furthermore, on 7 June 2017 Monaco signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. On 10 January 2019, Monaco deposited its instrument of ratification, following which the Multilateral Instrument has for Monaco entered into force on 1 May 2019.

With the depositing of its instrument of ratification, Monaco also submitted its list of notifications and reservations to that instrument.³ In relation to the Action 14 Minimum Standard, Monaco reserved, pursuant to Article 16(5)(a), the right not to apply Articles 16(1) and 16(2) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state⁴ and to allow the implementation of a MAP agreement notwithstanding any time limits in the domestic law of the Contracting Jurisdiction. These reservations are in line with the requirements of the Action 14 Minimum Standard.

Where treaties will not be modified by the Multilateral Instrument, Monaco reported that it strives updating them through future bilateral negotiations. Monaco further reported that it intends to contact all of its relevant treaty partners in this respect, prioritising the treaty that contains more deficiencies with respect to the Action 14 Minimum Standard.

Basis for the peer review process

The peer review process entails an evaluation of Monaco’s implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Monaco, its peers and taxpayers. The questionnaires for the peer review process were sent to Monaco and the peers on 27 March 2019.

The period for evaluating Monaco’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 March 2019 (“**Review Period**”). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Monaco’s implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether Monaco is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of Monaco’s tax treaties regarding the mutual agreement procedure.

No peers have provided input on Monaco’s implementation of the Action 14 Minimum Standard. This can be explained by the fact that Monaco’s competent authority has never been involved in a MAP case as it has never received a MAP request from a taxpayer or from another competent authority. Monaco provided its questionnaire on time. Monaco was very responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and provided further clarity where necessary. In addition, Monaco provided the following information:

- MAP profile⁵
- MAP statistics⁶ according to the MAP Statistics Reporting Framework (see below).

Finally, Monaco is a member of the FTA MAP Forum and has shown good co-operation during the peer review process.

Overview of MAP caseload in Monaco

As mentioned above, Monaco has not been involved in any MAP cases during the Review Period.

General outline of the peer review report

This report includes an evaluation of Monaco’s implementation of the Action 14 Minimum Standard. The report comprises the following four sections:

- A. Preventing disputes
- B. Availability and access to MAP
- C. Resolution of MAP cases
- D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁷ Apart from analysing Monaco’s legal framework and its administrative practice, the report depicts the changes adopted and plans shared by Monaco to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that Monaco continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

Notes

1. The tax treaties Monaco has entered into are available at: <https://www.gouv.mc/content/view/full/9135>. The treaties that are signed but have not yet entered into force are with Malta and Montenegro. Reference is made to Annex A for the overview of Monaco’s tax treaties.
2. Liechtenstein and Mauritius. Reference is made to Annex A for the overview of Monaco’s tax treaties.
3. Available at: www.oecd.org/tax/treaties/beps-mli-position-monaco-instrument-deposit.pdf.
4. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Monaco reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation

process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified".

5. Available at www.oecd.org/tax/dispute/Monaco-Dispute-Resolution-Profile.pdf.
6. The MAP statistics of Monaco are included in Annex B and C of this report.
7. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Reference

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

[A.1] **Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties**

Jurisdictions should ensure that their tax treaties contain a provision which requires the competent authority of their jurisdiction to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of their tax treaties.

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of Monaco’s tax treaties

2. Out of Monaco’s ten tax treaties, nine contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. In the remaining treaty, the sentence only relates to “difficulties” arising as to the “application” of the treaty, but not to any “doubts” arising as to the “interpretation” of the treaty or as to the “application” of the treaty. For this reason, this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

3. Monaco reported that it considers itself able to enter into interpretative MAP agreements irrespective of whether the applicable treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.

Anticipated modifications

Multilateral Instrument

4. Monaco signed the Multilateral Instrument, for which it deposited its instrument of ratification on 10 January 2019. The Multilateral Instrument has for Monaco entered into force on 1 May 2019.

5. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax

Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

6. In regard of the single tax treaty identified above that is considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Monaco listed it as a covered tax agreement under the Multilateral Instrument but the relevant treaty partner is not a signatory to the Multilateral Instrument. Therefore, at this stage, the tax treaty identified above will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Bilateral modifications

7. Monaco further reported that when the tax treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention will not be modified by the Multilateral Instrument, it intends to update it via bilateral negotiations with a view to be compliant with element A.1. Monaco further reported that it intends contact all of its relevant treaty partners in this respect, and that it will contact the relevant treaty partner for this element in a second stage. In addition, Monaco reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

8. No peer input was provided.

Conclusion

	Areas for improvement	Recommendations
[A.1]	One out of ten tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.-This treaty will not be modified by the Multilateral Instrument.	As this treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention has not been modified via the Multilateral Instrument, Monaco should follow its stated intention to request the inclusion of the required provision via bilateral negotiations.
	-	In addition, Monaco should maintain its stated intention to include the required provision in all future tax treaties.

[A.2] Provide roll-back of bilateral APAs in appropriate cases

Jurisdictions with bilateral advance pricing arrangement (“APA”) programmes should provide for the roll-back of APAs in appropriate cases, subject to the applicable time limits (such as statutes of limitation for assessment) where the relevant facts and circumstances in the earlier tax years are the same and subject to the verification of these facts and circumstances on audit.

9. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto,

critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.¹ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Monaco’s APA programme

10. Monaco is not authorised to enter into (bilateral) APAs, by which there is no possibility for providing roll-back of bilateral APAs to previous years.

Practical application of roll-back of bilateral APAs

11. No peer input was provided.

Anticipated modifications

12. Monaco indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Note

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

References

OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <https://doi.org/10.1787/tpg-2017-en>.

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Part B

Availability and access to MAP

[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a MAP provision which provides that when the taxpayer considers that the actions of one or both of the Contracting Parties result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty, the taxpayer, may irrespective of the remedies provided by the domestic law of those Contracting Parties, make a request for MAP assistance, and that the taxpayer can present the request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty.

13. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties include a provision allowing taxpayers to request a mutual agreement procedure and that this procedure can be requested irrespective of the remedies provided by the domestic law of the treaty partners. In addition, to provide certainty to taxpayers and competent authorities on the availability of the mutual agreement procedure, a minimum period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, is the baseline.

Current situation of Monaco's tax treaties

Inclusion of Article 25(1), first sentence of the OECD Model Tax Convention

14. Out of Monaco's ten tax treaties, eight contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. In addition, one of Monaco's tax treaties contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as changed by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either state.

15. The remaining treaty can be categorised as follows:

Provision	Number of tax treaties
No MAP provision ¹	1

16. The treaty on the table above is considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, because it merely provides the possibility for the competent authorities to resolve taxation not in accordance with the treaty and stipulates that if the dispute is not resolved by agreement between the administrations, it shall automatically be submitted (at the request of either party but without possibility of refusal) to the Joint Tax Commission (Article 25 of the treaty). Nevertheless, this treaty does not include the required provision allowing taxpayers to submit a MAP request and is therefore considered not being in line with this part of element B.1.

Inclusion of Article 25(1), second sentence of the OECD Model Tax Convention

17. Out of Monaco's ten tax treaties, six contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

18. The remaining four tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No MAP provision	1
Filing period less than 3 years for a MAP request (two years)	2
Filing period more than 3 years for a MAP request (five years)	1

Practical application

Article 25(1), first sentence, of the OECD Model Tax Convention

19. All but one of Monaco's tax treaties contain a provision allowing taxpayers to file a MAP request irrespective of domestic remedies. Monaco reported that submitting a MAP request does not deprive taxpayers from other remedies available under their respective domestic tax law. In this respect, Monaco reported that its competent authority cannot deviate from court decisions rendered in Monaco.

Article 25(1), second sentence, of the OECD Model Tax Convention

20. Monaco reported that if the time limit for presenting a MAP application is not specified in the relevant tax treaty, its competent authority will follow the time limits specified in Article 25 on MAP of the OECD Model Tax Convention, which is within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the convention. This is further clarified in Monaco's MAP guidance, in Part V.

Anticipated modifications

Multilateral Instrument

21. Monaco signed the Multilateral Instrument and deposited its instrument of ratification on 10 January 2019. The Multilateral Instrument for Monaco entered into force on 1 May 2019.

Article 25(1), first sentence of the OECD Model Tax Convention

22. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

23. Monaco reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.² In this reservation, Monaco declared that it would ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report. It subsequently declared it would implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction and application of such process will be further discussed under element B.2.

24. In view of the above, following the reservation made by Monaco, the treaty identified in paragraphs 14 and 15 above that is considered not including the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

Article 25(1), second sentence of the OECD Model Tax Convention

25. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

26. In regard of the two tax treaties identified in paragraph 17 above that contain a filing period for MAP requests of less than three years, Monaco listed the two treaties as a covered tax agreement under the Multilateral Instrument and for both did it make, pursuant to Article 16(6)(b)(i), a notification that it does contain a provision described in Article 16(4)(a)(ii). The two relevant treaty partners also made such notification. Therefore, at this stage, the two

tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

27. Monaco further reported that when the tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. Monaco reported that it intends to contact the relevant treaty partner to proceed with bilateral negotiations.

28. With respect to the first sentence of Article 25(1), Monaco reported that it will in those bilateral negotiations propose to include the equivalent as it read after the adoption of the Action 14 final report. In addition, Monaco reported it will seek to include Article 25(1) of the OECD Model Tax Convention, as it read after the adoption of the Action 14 final report, in all of its future tax treaties.

Peer input

29. No peer input was provided.

Conclusion

	Areas for improvement	Recommendations
[B.1]	One out of ten tax treaties does not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument.	As this treaty will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent, Monaco should follow its stated intention to request the inclusion of the required provision via bilateral negotiations, either a) As amended in the Action 14 final report; or b) As it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.
	-	In addition, Monaco should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report in all future tax treaties.

[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process

Jurisdictions should ensure that either (i) their tax treaties contain a provision which provides that the taxpayer can make a request for MAP assistance to the competent authority of either Contracting Party, or (ii) where the treaty does not permit a MAP request to be made to either Contracting Party and the competent authority who received the MAP request from the taxpayer does not consider the taxpayer's objection to be justified, the competent authority should implement a bilateral consultation or notification process which allows the other competent authority to provide its views on the case (such consultation shall not be interpreted as consultation as to how to resolve the case).

30. In order to ensure that all competent authorities concerned are aware of MAP requests submitted, for a proper consideration of the request by them and to ensure that taxpayers have effective access to MAP in eligible cases, it is essential that all tax treaties contain a provision that either allows taxpayers to submit a MAP request to the competent authority:

- i. of either treaty partner; or, in the absence of such provision,
- ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases, jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

Domestic bilateral consultation or notification process in place

31. As discussed under element B.1, out of Monaco’s ten treaties, one currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. However, as was also discussed under element B.1, none of these ten treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

32. Monaco reported that it has introduced a bilateral consultation or notification process that allows the other competent authority concerned to provide its views on the case when its competent authority considers the objection raised in the MAP request not to be justified. This process is documented in Monaco’s MAP guidance. Monaco noted they did not have any MAP requests so far, but they intend to apply this process and the best delays when notifying the other competent authority.

Practical application

33. Monaco reported that since 1 January 2016 its competent authority has not received any MAP requests. Therefore, there were no cases where it was decided that the objection raised by taxpayers in such request was not justified.

34. No peer input was provided.

Anticipated modifications

35. Monaco indicated that it does not anticipate any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	There is a documented process in place to notify the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the notification process is applied in practice because during the Review Period no such cases have occurred.	

[B.3] Provide access to MAP in transfer pricing cases

Jurisdictions should provide access to MAP in transfer pricing cases.

36. Where two or more tax administrations take different positions on what constitutes arm's length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner's transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the main objective of tax treaties. Jurisdictions should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

37. Out of Monaco's ten tax treaties, seven contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, three do not contain such equivalent.

- Two treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but the granting of a corresponding adjustment could be read as only optional as the word "shall" is replaced by "may".
- One treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but the wording deviates from it.

38. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Monaco's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Monaco indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in its tax treaties.

39. The guidance explaining the relationship between access to MAP and transfer pricing can be found in Monaco's MAP guidance, which refers to transfer pricing as a typical case of MAP.³

Application of legal and administrative framework in practice

40. Monaco reported that since 1 January 2016, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

41. No peer input was provided.

Anticipated modifications

42. Monaco reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, Monaco signed the Multilateral Instrument and deposited its instrument of ratification on 10 January 2019. The Multilateral Instrument for Monaco entered into force on 1 May 2019. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only

apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention).

43. Monaco has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the three treaties identified in paragraph 36 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Monaco included these in the list of treaties for which Monaco has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Therefore, at this stage, none of the three tax treaties identified above will be superseded by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

Conclusion

	Areas for improvement	Recommendations
[B.3]	Monaco reported that it will give access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP request for such cases during the Review Period. Monaco is therefore recommended to follow its policy and grant access to MAP in such cases.	

[B.4] Provide access to MAP in relation to the application of anti-abuse provisions

Jurisdictions should provide access to MAP in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty.

44. There is no general rule denying access to MAP in cases of perceived abuse. In order to protect taxpayers from arbitrary application of anti-abuse provisions in tax treaties and in order to ensure that competent authorities have a common understanding on such application, it is important that taxpayers have access to MAP if they consider the interpretation and/or application of a treaty anti-abuse provision as being incorrect. Subsequently, to avoid cases in which the application of domestic anti-abuse legislation is in conflict with the provisions of a tax treaty, it is also important that taxpayers have access to MAP in such cases.

Legal and administrative framework

45. None of Monaco's ten tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Monaco do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. As discussed under element B.8, this is also further clarified in Monaco's MAP guidance.

Practical application

46. Monaco reported that since 1 January 2016 it has not denied access to MAP in any cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

47. No peer input was provided.

Anticipated modifications

48. Monaco indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	Monaco reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Monaco is therefore recommended to follow its policy and grant access to MAP in such cases.	

[B.5] Provide access to MAP in cases of audit settlements

Jurisdictions should not deny access to MAP in cases where there is an audit settlement between tax authorities and taxpayers. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, jurisdictions may limit access to the MAP with respect to the matters resolved through that process.

49. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to the MAP in such cases, unless they were already resolved via an administrative or statutory disputes settlement/resolution process that functions independently from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

Audit settlements

50. Under Monaco’s domestic law it is not possible for taxpayers and the tax administration to enter into an audit settlement.

Administrative or statutory dispute settlement/resolution process

51. Monaco reported it does not have an administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Practical application

52. Monaco reported that since 1 January 2016 it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

53. No peer input was provided.

Anticipated modifications

54. Monaco indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

[B.6] Provide access to MAP if required information is submitted

Jurisdictions should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information based on the rules, guidelines and procedures made available to taxpayers on access to and the use of MAP.

55. To resolve cases where there is taxation not in accordance with the provisions of the tax treaty, it is important that competent authorities do not limit access to MAP when taxpayers have complied with the information and documentation requirements as provided in the jurisdiction’s guidance relating hereto. Access to MAP will be facilitated when such required information and documentation is made publicly available.

Legal framework on access to MAP and information to be submitted

56. The information and documentation Monaco requires taxpayers to include in a request for MAP assistance are discussed under element B.8.

57. Monaco included in its MAP guidance all required information/documentation to be provided by the taxpayer. Monaco further included that after an initial analysis of the MAP request, its competent authority will notify the taxpayer in case if additional information or documentation needs to be submitted and provide a deadline of two months in these

cases. Monaco highlighted in its MAP guidance that if the taxpayer does not provide the additional information requested, the MAP case will be closed with the outcome being “objection not justified”.

Practical application

58. Monaco reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that since 1 January 2016 it has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

59. No peer input was provided.

Anticipated modifications

60. Monaco indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	Monaco reported it will give access to MAP in cases where taxpayers have complied with Monaco's information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Monaco is therefore recommended to follow its policy and grant access to MAP when it receives a request that includes the required information and documentation.	

[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a provision under which competent authorities may consult together for the elimination of double taxation in cases not provided for in their tax treaties.

61. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention, enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Monaco's tax treaties

62. Out of Monaco's ten tax treaties, nine contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.

63. The remaining treaty does not contain such provision at all.

Anticipated modifications

Multilateral Instrument

64. Monaco signed the Multilateral Instrument and deposited its instrument of ratification on 10 January 2019. The Multilateral Instrument for Monaco entered into force on 1 May 2019. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence

– containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

65. In regard of the tax treaty identified above that is considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Monaco listed this treaty as a covered tax agreement under the Multilateral Instrument and for this one it did make, pursuant to Article 16(6)(d)(ii), a notification that it does not contain a provision described in Article 16(4)(c)(ii). The relevant treaty partner also made such notification. Therefore, at this stage, the tax treaty identified above will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

66. As the treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention will be modified by the Multilateral Instrument, no bilateral modifications are necessary. Regardless, Monaco reported that it will continue to seek to include Article 25(3), first sentence in all of its future tax treaties.

Peer input

67. No peer input was provided.

Conclusion

	Areas for improvement	Recommendations
[B.7]	-	Monaco should maintain its stated intention to include the required provision in all future tax treaties.

[B.8] Publish clear and comprehensive MAP guidance

Jurisdictions should publish clear rules, guidelines and procedures on access to and use of the MAP and include the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance.

68. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

Monaco’s MAP guidance

69. Monaco’s rules, guidelines and procedures are included in the Monaco’s MAP guidance and are available at:

<https://www.gouv.mc/content/view/full/9135>

70. This contains basic information on:

- a. contact information of the competent authority or the office in charge of MAP cases
- b. the manner and form in which the taxpayer should submit its MAP request
- c. the specific information and documentation that should be included in a MAP request (see also below)
- d. how the MAP functions in terms of timing and the role of the competent authorities
- e. information on availability of arbitration
- f. access to MAP in transfer pricing cases, anti-abuse provisions and multilateral disputes
- g. relationship with domestic remedies
- h. implementation of MAP agreements
- i. rights and role of taxpayers in the process
- j. suspension of tax collection
- k. interest charges, refunds and penalties.

71. The above-described MAP guidance of Monaco includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction’s MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.⁴

72. Although the information included in Monaco’s MAP guidance is detailed and comprehensive, various subjects are not specifically discussed in Monaco’s MAP guidance. This concerns information on:

- whether MAP is available in cases of: bona fide foreign-initiated self-adjustments
- Whether taxpayers can request for the multi-year resolution of recurring issues through MAP.

Information and documentation to be included in a MAP request

73. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.⁵ This agreed guidance is shown below. Monaco’s MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case

- analysis of the issue(s) requested to be resolved via MAP
 - whether the MAP request was also submitted to the competent authority of the other treaty partner
 - whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
 - whether the issue(s) involved were dealt with previously
 - a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.
74. Monaco also requests additional information on:
- the identity of other persons potentially involved and directly affected
 - the concerned fiscal authority in Monaco, including the contact person, if known.

Anticipated modifications

75. Monaco noted that it intends to keep the MAP Guidance regularly updated.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Monaco could consider including information on:</p> <ul style="list-style-type: none"> • whether MAP is available in cases of: bona fide foreign-initiated self-adjustments; and • whether taxpayers can request for the multi-year resolution of recurring issues through MAP.

[B.9] Make MAP guidance available and easily accessible and publish MAP profile

Jurisdictions should take appropriate measures to make rules, guidelines and procedures on access to and use of the MAP available and easily accessible to the public and should publish their jurisdiction MAP profiles on a shared public platform pursuant to the agreed template.

76. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.⁶

Rules, guidelines and procedures on access to and use of the MAP

77. The MAP guidance of Monaco is published and can be found at:

<https://www.gouv.mc/content/view/full/9135>

78. This guidance was published in April 2019 and last updated in May 2019. As regards its accessibility, Monaco’s MAP guidance can easily be found on the government website clicking in the tab “international taxation” then in “bilateral agreements signed by Monaco”.

MAP profile

79. The MAP profile of Monaco is published on the website of the OECD and last updated in May 2019. This MAP profile is complete and often with detailed information. This profile includes external links that provide extra information and guidance where appropriate.

Anticipated modifications

80. Monaco indicated that it does not anticipate any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Monaco should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.

[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP

Jurisdictions should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, and jurisdictions limit access to the MAP with respect to the matters resolved through that process, jurisdictions should notify their treaty partners of such administrative or statutory processes and should expressly address the effects of those processes with respect to the MAP in their public guidance on such processes and in their public MAP programme guidance.

81. As explained under element B.5, an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction’s MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other’s MAP programme and limitations thereto, particularly in relation to the previously mentioned processes.

MAP and audit settlements in the MAP guidance

82. As previously discussed under B.5, audit settlements are not possible in Monaco, and Monaco does not have an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer. In that regard, there is no need to address the effects of such process with respect to MAP in Monaco’s MAP guidance.

83. No peer input was provided.

Notification of treaty partners of existing administrative or statutory dispute settlement/resolution processes

84. As Monaco does not have an internal administrative or statutory dispute settlement/resolution process in place, there is no need for notifying treaty partners of such process.

Anticipated modifications

85. Monaco indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. The relevant treaty contains a provision which allows the competent authorities to discuss a case and reads as follows:

“For purposes of Article 9 above, the competent authorities of the two Contracting States shall come to an agreement in each particular case, each Government undertaking moreover to authorise, on the request of the administration of the other State, the continuance in its own territory of investigations undertaken in the territory of that State. The investigations in question shall be carried out under the auspices and with the co-operation of the tax administration of the State in which they take place.

In order to ensure the correct application of the French individual income tax and company tax and of the tax on profits realised in the Principality, the Contracting States agree that their tax administrations shall exchange any information available to or obtainable by them under their respective laws, the reciprocal communication of which they judge necessary for the above-mentioned purposes.

Such exchanges of information shall take place either as a matter of routine or on request. Such information and any related correspondence shall be exchanged between, on the one hand, the Directorate of Taxes of the Principality and, on the other hand, the Directorate-General of Taxes or, as appropriate, the regional tax commissioners or the directors of taxes of the departments concerned.”

2. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Monaco reserves the right for the first sentence of Article 16(1) not to apply

to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified". An overview of Monaco's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-monaco.pdf.

3. Available at: <https://www.gouv.mc/content/view/full/9135>.
4. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
5. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
6. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Part C

Resolution of MAP cases

[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a provision which requires that the competent authority who receives a MAP request from the taxpayer, shall endeavour, if the objection from the taxpayer appears to be justified and the competent authority is not itself able to arrive at a satisfactory solution, to resolve the MAP case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the tax treaty.

86. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention, which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Monaco's tax treaties

87. Out of Monaco's ten tax treaties, nine contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty. The remaining treaty provides that the contracting states or the tax administrations should exchange information with a view to ensure a correct application of the tax treaty and, specifically with respect to the application of the provision on associated enterprises, that the contracting states shall come to an agreement in each particular case. Therefore, this provision is not the equivalent of Article 25(2), first sentence.

Anticipated modifications

Multilateral Instrument

88. Monaco signed the Multilateral Instrument and deposited its instrument of ratification on 10 January 2019. The Multilateral Instrument for Monaco entered into force on 1 May 2019. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention

– will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

89. In regard of the tax treaty identified above that is considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Monaco listed such treaty as a covered tax agreement under the Multilateral Instrument and it did make, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). Therefore, at this stage, the tax treaty identified above has been modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Bilateral modifications

90. Monaco reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

91. No peer input was provided.

Conclusion

	Areas for improvement	Recommendations
[C.1]	-	Monaco should maintain its stated intention to include the required provision in all future tax treaties.

[C.2] Seek to resolve MAP cases within a 24-month average timeframe

Jurisdictions should seek to resolve MAP cases within an average time frame of 24 months. This time frame applies to both jurisdictions (i.e. the jurisdiction which receives the MAP request from the taxpayer and its treaty partner).

92. As double taxation creates uncertainties and leads to costs for both taxpayers and jurisdictions, and as the resolution of MAP cases may also avoid (potential) similar issues for future years concerning the same taxpayers, it is important that MAP cases are resolved swiftly. A period of 24 months is considered as an appropriate time period to resolve MAP cases on average.

Reporting of MAP statistics

93. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template.

Monaco submitted its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, despite not having received any MAP requests. As Monaco has not been involved in any MAP cases, it was not necessary to match its statistics with its treaty partners.

Monitoring of MAP statistics

94. As Monaco has never been involved in a MAP case, it has no system in place that communicates, monitors and manages with its treaty partners the MAP caseload.

Analysis of Monaco’s MAP caseload

95. Monaco has not been involved in any MAP cases during the Review Period.

Overview of cases closed during the Statistics Reporting Period

96. Monaco has not been involved in any MAP cases during the Review Period.

Average timeframe needed to resolve MAP cases

97. Monaco has not been involved in any MAP cases during the Review Period.

Peer input

98. No peer input was provided.

Anticipated modifications

99. Despite not having received any MAP requests, Monaco reported that any future MAP statistics will be compiled by the Minister of Finance and Economy. Monaco indicated that this unit will be responsible for monitoring MAP cases inventory, new MAP requests, the outcomes as well as the times needed to resolve MAP cases.

Conclusion

	Areas for improvement	Recommendations
[C.2]	As there were no post-2015 MAP cases to resolve it was therefore at this stage not possible to evaluate whether Monaco’s competent authority seeks to resolve MAP cases within an average time frame of 24 months.	

[C.3] Provide adequate resources to the MAP function

Jurisdictions should ensure that adequate resources are provided to the MAP function.

100. Adequate resources, including personnel, funding and training, are necessary to properly perform the competent authority function and to ensure that MAP cases are resolved in a timely, efficient and effective manner.

Description of Monaco’s competent authority

101. Under Monaco’s tax treaties, the competent authority function is assigned to the the Ministry of State. This function is performed by the Department of Finance and Economy within the Ministry, where five people would deal partly with MAP cases along with other tasks such as budget, finances and general issues of international taxation. Monaco reported that its competent authority would also be assisted by five staff with tax skills within Monaco’s Tax Services Directorate. This is further discussed under element C.4.

102. Monaco further reported that any necessary adjustments to the level of resources available in its competent authority and specific training to staff will be discussed when necessary. Given that Monaco has not yet been involved in any MAP cases, there has been no need for a monitoring mechanism to request more staff to handle MAP inventory.

Monitoring mechanism

103. As discussed under element C.2, Monaco has not been involved in any MAP cases during the Review Period, so it does not have a monitoring mechanisms of available resources at this point.

Practical application

MAP statistics

104. As discussed under element C.2, Monaco’s competent authority has not yet been involved in any MAP cases, by which there were no MAP statistics available to analyse the pursued 24-month average.

Peer input

105. No peer input was provided.

Anticipated modifications

106. Monaco indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	Monaco should monitor whether the resources available for the competent authority function remain adequate in order to resolve future MAP cases in a timely, efficient and effective manner.

[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty

Jurisdictions should ensure that the staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty, in particular without being dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty.

107. Ensuring that staff in charge of MAP can and will resolve cases, absent any approval/direction by the tax administration personnel directly involved in the adjustment and absent any policy considerations, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

108. As mentioned under element C.3, Monaco's competent authority would be assisted by Monaco's Tax Services Directorate, which is responsible for the assessment process of taxation in Monaco. Monaco further reported that the staff from which it would require assistance within the Tax Services Directorate, is independent from the staff in charge of the tax audit. Monaco clarified that its competent authority is also responsible for the treaty negotiation, general interpretation of tax treaties and policy work. Monaco further clarified that any decisions on MAP will be based on the applicable tax treaty and not influenced by any proposed future amendments to the treaty.

109. In regard of the above, Monaco reported that staff in charge of MAP in practices operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations that Monaco would like to see reflected in future amendments to the treaty.

Practical application

110. No peer input was provided.

Anticipated modifications

111. Monaco indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	Monaco should ensure that its competent authority continues to have the authority, and uses that authority in practice, to resolve such cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Monaco would like to see reflected in future amendments to the treaty.

[C.5] Use appropriate performance indicators for the MAP function

Jurisdictions should not use performance indicators for their competent authority functions and staff in charge of MAP processes based on the amount of sustained audit adjustments or maintaining tax revenue.

112. For ensuring that each case is considered on its individual merits and will be resolved in a principled and consistent manner, it is essential that any performance indicators for the competent authority function and for the staff in charge of MAP processes are appropriate and not based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue.

Performance indicators used by Monaco

113. As Monaco has not yet received a MAP request, it reported that at the time of review performance indicators have not yet been set for the MAP office.

114. The Action 14 final report includes examples of performance indicators that are considered appropriate. These indicators are shown below in bullet form:

- number of MAP cases resolved
- consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers)
- time taken to resolve a MAP case (recognising that the time taken to resolve a MAP case may vary according to its complexity and that matters not under the control of a competent authority may have a significant impact on the time needed to resolve a case).

115. Although Monaco does not use any of these performance indicators, it reported that it does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue. In other words, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions.

Practical application

116. No peer input was provided.

Anticipated modifications

117. Monaco indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	Monaco could consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes.

[C.6] Provide transparency with respect to the position on MAP arbitration

Jurisdictions should provide transparency with respect to their positions on MAP arbitration.

118. The inclusion of an arbitration provision in tax treaties may help ensure that MAP cases are resolved within a certain timeframe, which provides certainty to both taxpayers and competent authorities. In order to have full clarity on whether arbitration as a final stage in the MAP process can and will be available in jurisdictions it is important that jurisdictions are transparent on their position on MAP arbitration.

Position on MAP arbitration

119. Monaco's MAP profile clearly states that it has no domestic law limitations for including MAP arbitration in its tax treaties. The MAP guidance further clarify that MAP arbitration would be available for the cases under the tax treaties which have an arbitration clause.

Practical application

120. Up to date, Monaco has incorporated an arbitration clause in two of its ten treaties as a final stage to the MAP. These clauses can be specified as follows:

- Equivalent of Article 25(5) of the OECD Model Tax Convention: one treaty
- Mandatory and binding arbitration: one treaty

Anticipated modifications

121. Monaco indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

Jurisdictions should implement any agreement reached in MAP discussions, including by making appropriate adjustments to the tax assessed in transfer pricing cases.

122. In order to provide full certainty to taxpayers and the jurisdictions, it is essential that all MAP agreements are implemented by the competent authorities concerned.

Legal framework to implement MAP agreements

123. Monaco reported that taxpayers may be assessed within the year of assessment or within three years after the expiration thereof. In practice, Monaco indicated that all MAP agreements will be implemented notwithstanding these time limits in its domestic laws, even in the absence of the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention in the relevant tax treaty.

124. Monaco further reported that when a MAP agreement is reached, its competent authority will inform the taxpayer in writing of the outcome within one month of reaching agreement. Upon receipt of the letter, the taxpayer will have to decide and then inform Monaco's competent authority in writing that it accepts the agreement. Monaco further noted that if any interest or penalties were imposed on a jurisdiction in connection with the taxation that is the subject of the MAP, such agreement may address whether any refund of such interest or penalties might be appropriate. Monaco stated that if the taxpayer accepts the agreement, then its competent authority will work with the other competent authority to finalise the implementation of the agreement in accordance with the applicable tax treaty. Monaco further reported that any MAP agreement will be implemented irrespective of domestic time limits, and that this applies even in the absence of Article 25(2), second sentence in the OECD Model Tax Convention.

125. Monaco's MAP guidance describes the above information in its Part VIII, section 5.

Practical application

126. As Monaco has not been involved in any MAP case during the Review Period, it also did not reach any mutual agreements during that period.

127. No peer input was provided.

Anticipated modifications

128. Monaco indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Monaco would have implemented all MAP agreements thus far.	

[D.2] Implement all MAP agreements on a timely basis

Agreements reached by competent authorities through the MAP process should be implemented on a timely basis.

129. Delays in implementing MAP agreements may lead to adverse financial consequences for both taxpayers and competent authorities. To avoid this and to increase certainty for all parties involved, it is important that the implementation of any MAP agreement is not obstructed by procedural and/or statutory delays in the jurisdictions concerned.

Theoretical timeframe for implementing mutual agreements

130. As discussed under element D.1., Monaco reported that it notifies the taxpayer of a MAP agreement within one month of a MAP agreement being reached. Monaco did not report any other applicable timeframes regarding the implementation process.

Practical application

131. As discussed under element D.1, Monaco has not been involved in any MAP case during the Review Period, it also did not reach any mutual agreements during that period.

132. No peer input was provided.

Anticipated modifications

133. Monaco indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented in Monaco, it was not yet possible to assess whether Monaco would have implemented all MAP agreements on a timely basis thus far.	

[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties or alternative provisions in Article 9(1) and Article 7(2)

Jurisdictions should either (i) provide in their tax treaties that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law, or (ii) be willing to accept alternative treaty provisions that limit the time during which a Contracting Party may make an adjustment pursuant to Article 9(1) or Article 7(2), in order to avoid late adjustments with respect to which MAP relief will not be available.

134. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

Legal framework and current situation of Monaco's tax treaties

135. As discussed under element D.1, Monaco's domestic legislation includes a statute of limitations of three years for implementing MAP agreements, unless overridden by tax treaties. In practice, however, Monaco indicated that all MAP cases will be implemented notwithstanding any time limits in its domestic laws even in the absence of a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in the relevant tax treaty.

136. Out of Monaco's ten tax treaties, eight contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Additionally, two do not contain such equivalent or the alternative provisions.

Anticipated modifications

Multilateral Instrument

137. Monaco signed the Multilateral Instrument and deposited its instrument of ratification on 10 January 2019. The Multilateral Instrument for Monaco entered into force on 1 July 2019. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14

Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

138. Monaco has, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, of the Multilateral Instrument. Therefore, at this stage, the Multilateral Instrument will not modify the two treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

139. Monaco further reported that when tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. Monaco reported that it intends to contact these two treaty partners to proceed with bilateral negotiations, prioritising the one with which the treaty has more deficiencies with respect to the Action 14 Minimum Standard. In addition, Monaco reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives in all of its future tax treaties.

140. No peer input was provided.

Conclusion

	Areas for improvement	Recommendations
[D.3]	Two out of ten tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7 (2). Out of these two treaties, none of them will be modified by the Multilateral Instrument to include the required provision.	As the two treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternative provisions will not be modified via the Multilateral Instrument, Monaco should follow its stated intention to request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.
	-	In addition, Monaco should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Reference

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	One out of ten tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.-This treaty will not be modified by the Multilateral Instrument.	As this treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention has not been modified via the Multilateral Instrument, Monaco should follow its stated intention to request the inclusion of the required provision via bilateral negotiations.
	-	In addition, Monaco should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	One out of ten tax treaties does not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument.	As this treaty will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent, Monaco should follow its stated intention to request the inclusion of the required provision via bilateral negotiations, either a)As amended in the Action 14 final report; or b)As it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.
	-	In addition, Monaco should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report in all future tax treaties.
[B.2]	There is a documented process in place to notify the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the notification process is applied in practice because during the Review Period no such cases have occurred.	
[B.3]	Monaco reported that it will give access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP request for such cases during the Review Period. Monaco is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.4]	Monaco reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Monaco is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	-	-
[B.6]	Monaco reported it will give access to MAP in cases where taxpayers have complied with Monaco's information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Monaco is therefore recommended to follow its policy and grant access to MAP when it receives a request that includes the required information and documentation.	

	Areas for improvement	Recommendations
[B.7]	-	Monaco should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Monaco could consider including information on: <ul style="list-style-type: none"> • whether MAP is available in cases of: bona fide foreign-initiated self-adjustments; and • whether taxpayers can request for the multi-year resolution of recurring issues through MAP.
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Monaco should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]		
Part C: Resolution of MAP cases		
[C.1]	-	Monaco should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	As there were no post-2015 MAP cases to resolve it was therefore at this stage not possible to evaluate whether Monaco's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	
[C.3]	-	Monaco should monitor whether the resources available for the competent authority function remain adequate in order to resolve future MAP cases in a timely, efficient and effective manner.
[C.4]	-	Monaco should ensure that its competent authority continues to have the authority, and uses that authority in practice, to resolve such cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Monaco would like to see reflected in future amendments to the treaty.
[C.5]	-	Monaco could consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes.
[C.6]		
Part D: Implementation of MAP agreements		
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Monaco would have implemented all MAP agreements thus far.	
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented in Monaco, it was not yet possible to assess whether Monaco would have implemented all MAP agreements on a timely basis thus far.	

	Areas for improvement	Recommendations
[D.3]	Two out of ten tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7 (2). Out of these two treaties, none of them will be modified by the Multilateral Instrument to include the required provision.	As the two treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternative provisions will not be modified via the Multilateral Instrument, Monaco should follow its stated intention to request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.
	-	In addition, Monaco should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Annex A

Tax treaty network of Monaco

Column 1	Column 2	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
	Y = yes N = signed pending ratification	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no
France	Y	N/A	N	iv	No MAP provision	i	i	Y*	N	Y
Guernsey	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y
Liechtenstein	Y	N/A	E	Y	N/A	Y	i	Y	Y	Y
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y
Mali	Y	N/A	O	Y	N/A	Y	i	Y	Y	N

Column 1	Column 2	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
Malta	N	01-10-2018	O	Y	N/A	Y	i	Y	Y	Y
Mauritius	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y
Qatar	Y	N/A	O	ii*	2 years	i	i	Y	N	Y
Seychelles	Y	N/A	O	ii*	2 years	i	i	Y	Y	Y
St. Kitts and Nevis	Y	N/A	O	ii	5 years	Y	i	Y	Y	Y

Legend

- E*** The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
- E**** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
- O*** The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
- Y*** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.
- Y**** The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.
- Y***** The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
- i*/ii*/iv*/N*** The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.

- i**/iv**/N** The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
- i*** The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B

MAP statistics reporting for pre-2016 cases

2016 MAP statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2017 MAP statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2018 MAP statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2018 MAP statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2016 and ended on 31 March 2019
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Monaco (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The minimum standard is complemented by a set of best practices. The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 1 peer review of the implementation of the Action 14 Minimum Standard by Monaco.

Consult this publication on line at <https://doi.org/10.1787/fe9a7529-en>.

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