

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



# **Making Dispute Resolution More Effective - MAP Peer Review Report, Macau, China (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 90 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 135 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 12 May 2020 and prepared for publication by the OECD Secretariat.

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*Abbreviations and acronyms*

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



## Executive summary

Macau, China has a small tax treaty network with five tax treaties. Macau, China 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 Macau, China meets almost all the elements of the Action 14 Minimum Standard. Where it has deficiencies, Macau, China is working to address them.

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

- One out of Macau, China's five tax treaties does not 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 since it does not allow taxpayers to submit a MAP request to the state of which it is a national, where its case comes under the non-discrimination provision.
- One out of Macau, China's five tax treaties does not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in 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, Macau, China needs to amend and update two tax treaties. Macau, China reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard, and has already started the negotiation with one of its treaty partners.

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

Macau, China meets almost all of the requirements regarding 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 request concerning transfer pricing cases, cases where anti-abuse provisions are applied or cases where there has been an audit settlement. Furthermore, Macau, China has in place a documented bilateral notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Finally, Macau, China has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice.

Macau, China has not been involved in any MAP cases during the period 2016-18, but meets almost all of 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 by Macau, China in 2016, 2017 or 2018, it was not yet possible to assess whether Macau, China meets the Action 14 Minimum Standard as regards the implementation of MAP agreements.

## *Introduction*

### **Available mechanisms in Macau, China to resolve tax treaty-related disputes**

Macau, China has entered into five tax treaties on income (and/or capital), four of which are in force.<sup>1</sup> These five treaties are being applied to five jurisdictions. All 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 Macau, China, the competent authority is the Chief Executive or his authorised representative. In practice, the competent authority function to conduct MAP is delegated to Macau, China’s Financial Services Bureau. The competent authority of Macau, China currently employs four persons to deal with MAP cases in the future, and all of them are dealing with other treaty-related tasks besides MAP cases.

Macau, China has issued guidance on the governance and administration of the mutual agreement procedure (“MAP”) available at:

[www.dsf.gov.mo/download/tax/E\\_MAPGuidelines.pdf](http://www.dsf.gov.mo/download/tax/E_MAPGuidelines.pdf)

### **Recent developments in the Macau, China**

Macau, China reported it is currently conducting tax treaty negotiations with Cambodia and Hong Kong, China, and negotiating a protocol to the treaty with Mozambique. Macau, China signed a treaty with Belgium, which has not yet entered into force.

Macau, China reported it will strive to update its tax treaties via bilateral negotiations in order to comply with the Action 14 Minimum Standard. Macau, China further reported that it has already started the renegotiation with one of its treaty partners and intends to contact another treaty partner after it concludes the current treaty negotiation.

### **Basis for the peer review process**

The peer review process entails an evaluation of Macau, China’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 (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Macau, China, its peers and taxpayers. The questionnaires for the peer review process were sent to Macau, China and the peers on 30 August 2019.

The period for evaluating Macau, China’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 August 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 Macau, China’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 Macau, China 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 Macau, China’s tax treaties regarding the mutual agreement procedure.

No peers have provided input on Macau, China’s implementation of the Action 14 Minimum Standard. This can be explained by the fact that Macau, China’s competent authorities has never been involved in a MAP case as it has never received a MAP request from a taxpayer or from another competent authority.

Macau, China provided informative answers in its questionnaire. Macau, China 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, Macau, China provided the following information:

- MAP profile<sup>2</sup>
- MAP statistics<sup>3</sup> for 2016 and 2018 according to the MAP Statistics Reporting Framework (see below).

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

## Overview of MAP caseload in Macau, China

As mentioned above, Macau, China 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 Macau, China’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**”).<sup>4</sup> Furthermore, the report depicts the changes adopted and plans shared by Macau, China 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 Macau, China 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 Macau, China has entered into are available at: [www.dsfgov.mo/](http://www.dsfgov.mo/). The treaty that is signed but has not yet entered into force is with Belgium. Reference is made to Annex A for the overview of Macau, China's tax treaties.
2. Available at: <https://www.oecd.org/tax/dispute/Macau-Dispute-Resolution-Profile.pdf>.
3. The MAP statistics of Macau are included in Annex B and C of this report.
4. 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](http://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 (OECD, 2017a) 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 Macau, China's tax treaties*

2. All of Macau, China's five tax treaties 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.<sup>1</sup>

#### *Anticipated modifications*

##### *Bilateral modifications*

3. Macau, China 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*

4. No peer input was provided.

#### **Conclusion**

	Areas for improvement	Recommendations
[A.1]	-	Macau, China 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.

5. 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.<sup>2</sup> 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.

***Macau, China’s APA programme***

6. Macau, China does not have an APA programme, by which there is no possibility for providing roll-back of bilateral APAs to previous years.

7. No peer input was provided.

***Anticipated modifications***

8. Macau, China indicated that it does not anticipate any modifications in relation to element A.2.

***Conclusion***

	Areas for improvement	Recommendations
[A.2]	-	-

**Notes**

1. The treaty that is signed but has not yet entered into force is with Belgium.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).

***References***

- OECD (2017a), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.
- OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*. <https://dx.doi.org/10.1787/tpg-2017-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.

9. 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 Macau, China's tax treaties***

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

10. Out of Macau, China's five tax treaties, three contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), 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, None of Macau, China's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as changed by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either state.

11. The remaining two treaties are considered not to have the full 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, since taxpayers are not allowed to submit a MAP

request in the state of which they are a national where the case comes under the non-discrimination article. However, since the non-discrimination provision of one of these two tax treaties only covers nationals that are resident of one of the contracting states, one of those two treaties is considered to be in line with this part of element B.1.

12. For the remaining treaty, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention is therefore not clarified by a limited scope of the non-discrimination provision, following which the treaty is not in line with this part of element B.1.

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

13. All of Macau, China's five tax treaties 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.

### ***Practical application***

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

14. As follows from the analysis in the paragraphs above, all of Macau, China's tax treaties allow the filing of a MAP request irrespective of domestic remedies. In this respect, Macau, China indicated that nothing in its domestic tax law prevents a taxpayer from requesting MAP assistance where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of Macau, China. However, where such remedies have been concluded, Macau, China indicated that its competent authority will be bound by the conclusion thereof.

### ***Anticipated modifications***

#### *Bilateral modifications*

15. Macau, China reported that when tax treaties 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, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. Macau, China also reported that it has already contacted the relevant treaty partner and initiated bilateral negotiations in order to include the equivalent of Article 25(1) of the OECD Model Tax Convention in their tax treaty.

16. With respect to the first sentence of Article 25(1), Macau, China 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, Macau, China 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*

17. No peer input was provided.

## Conclusion

	Areas for improvement	Recommendations
[B.1]	One out of five tax treaties does not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention.	<p>For the treaty that does not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, Macau, China should follow up on its request for the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ul style="list-style-type: none"> <li>a. as amended in the Action 14 final report; or</li> <li>b. as it read prior to the adoption of Action 14 final report</li> </ul> <p>In addition, Macau, China should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.</p>

### [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).

18. 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*

19. As discussed under element B.1, out of Macau, China's five treaties, none 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.

20. Macau, China 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 Macau, China's competent authority considers the objection raised in the MAP request not to be justified.

21. In this regard, Macau, China’s MAP guidance clarifies that within 30 days from the date of receipt of a MAP request (even if the request is not accepted or remains pending), Macau, China’s competent authority will inform the competent authority of the Contracting Party to which the case may concern, providing a copy of the request and of all the documents attached hereto. Macau, China’s internal guidelines also outline the process, referring to paragraph 9 of the MAP Statistics Reporting Framework, that irrespective of the assessment of eligibility of a MAP request, the competent authority that receives the MAP request from the taxpayer should notify the other competent authority of the request within a target time frame of 4 weeks (30 days in the case of Macao SAR) from the receipt of the taxpayer’s MAP request. Further, the template for notification of filed MAP requests is attached as annex to the guidelines.

### *Practical application*

22. Macau, China 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.

23. No peer input was provided.

### *Anticipated modifications*

24. Macau, China 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.

25. 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*

26. All of Macau, China’s five tax treaties 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.

27. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Macau, China’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, Macau, China indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments.

### *Application of legal and administrative framework in practice*

28. Macau, China reported that since 1 January 2016, it did not receive any MAP request on the basis that the case concerned a transfer pricing case during the review period and therefore has not denied access to MAP.

### *Anticipated modifications*

29. Macau, China 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.

### *Conclusion*

	Areas for improvement	Recommendations
[B.3]	Macau, China reported that it will provide access to MAP in transfer pricing cases. Its competent authority, however did not receive any MAP request for such cases during the Review Period. Macau, China 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.

30. 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*

31. None of Macau, China's five tax treaties allows 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, the domestic law and/or administrative processes of Macau, China 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.



32. Section 2 of Macau, China’s MAP guidance clarifies that there is no restriction on a taxpayer’s access to MAP for cases where the taxpayer and the tax authorities that have made an adjustment do not agree as to whether the conditions of the application of an anti-abuse provision of a tax treaty have been met and whether the application of anti-abuse provision of an internal law is in conflict with the provision of a tax treaty.

### *Practical application*

33. Macau, China reported that it has received no MAP requests for transfer pricing cases since 1 January 2016.

34. No peer input was provided.

### *Anticipated modifications*

35. Macau, China indicated that it does not anticipate any modifications in relation to element B.4.

### *Conclusion*

	Areas for improvement	Recommendations
[B.4]	Macau, China 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. Macau, China 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.

36. 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*

37. Macau, China reported that there is no audit settlement process available in Macau, China.



*Administrative or statutory dispute settlement/resolution process*

38. Macau, China reported it does not have an administrative or statutory dispute settlement/resolution process that limits access to MAP 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*

39. Macau, China reported that since 1 January 2016 it has not received any MAP requests for cases where the issue presented by the taxpayer had already been resolved through an audit settlement between the taxpayer and the tax administration since audit settlements are not available in Macau, China.

40. No peer input was provided.

*Anticipated modifications*

41. Macau, China 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.

42. 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*

43. The information and documentation Macau, China requires taxpayers to include in a request for MAP assistance are discussed under element B.8.

44. Macau, China reported that when its competent authority receives a MAP request that does not include all the information and documentation required to be submitted pursuant to Macau, China's MAP guidance, the taxpayers have to submit additional information requested within 30 days. It further reported that it may provide for an additional 30 days to allow to submit the missing additional information.

***Practical application***

45. Macau, China 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.

46. No peer input was provided.

***Anticipated modifications***

47. Macau, China indicated that it does not anticipate any modifications in relation to element B.6.

***Conclusion***

	Areas for improvement	Recommendations
[B.6]	Macau, China reported it will give access to MAP in cases where taxpayers have complied with Macau, China's information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Macau, China 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.

48. 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 Macau, China's tax treaties***

49. Out of Macau, China's five tax treaties, four 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. The remaining treaty does not contain such a provision at all.

***Anticipated modifications******Bilateral modifications***

50. For the treaty, which does not contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, Macau, China reported that it will strive to update the treaty via bilateral negotiations to be compliant with element B.7 and it intends to contact the treaty partner to include such provision in the treaty after it concludes the negotiations that are underway with another treaty partner. In addition, Macau, China reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

*Peer input*

51. No peer input was provided.

**Conclusion**

	Areas for improvement	Recommendations
[B.7]	One out of five tax treaties does not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.	For the treaty that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax, Macau, China should follow its stated intention to request the inclusion of the required provision via bilateral negotiations.

**[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.

52. 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.

**Macau, China's MAP guidance**

53. Macau, China's rules, guidelines and procedures are included in its guidance titled "Mutual Agreement Procedure Guidelines," which is available at:

[www.dsf.gov.mo/download/tax/E\\_MAPGuidelines.pdf](http://www.dsf.gov.mo/download/tax/E_MAPGuidelines.pdf)

54. This contains 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. relationship with domestic available remedies
  - f. access to MAP in transfer pricing cases, anti-abuse provisions and bona fide foreign-initiated self-adjustments
  - g. implementation of MAP agreements (including the steps of the process and the timing of such steps for the implementation of MAP agreements, and any actions to be taken by taxpayers)
  - h. rights and role of taxpayers in the process
  - i. interest charges and penalties.

55. The above-described MAP guidance of Macau, China 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.<sup>1</sup>

56. Although the information included in Macau, China's MAP guidance is detailed and comprehensive, various subjects are not specifically discussed in Macau, China's MAP guidance. This concerns information on:

- whether MAP is available in cases of multilateral disputes
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the possibility of suspension of tax collection during the course of a MAP.

### ***Information and documentation to be included in a MAP request***

57. 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 a request for MAP assistance.<sup>2</sup> This agreed guidance is shown below. Macau, China's MAP guidance enumerating which items must be included in a request for MAP assistance 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.

### ***Anticipated modifications***

58. Macau, China indicated that it does not anticipate any modifications in relation to element B.8.

## 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 Macau, China could consider including information on:</p> <ul style="list-style-type: none"> <li>• whether MAP is available in cases of multilateral disputes</li> <li>• whether taxpayers can request for the multi-year resolution of recurring issues through MAP</li> <li>• the possibility of suspension of tax collection during the course of a MAP.</li> </ul>

### [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.

59. 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.<sup>3</sup>

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

60. The MAP guidance of Macau, China is published and can be found at:

[www.dsf.gov.mo/download/tax/E\\_MAPGuidelines.pdf](http://www.dsf.gov.mo/download/tax/E_MAPGuidelines.pdf)

61. This guidance was lastly updated in May 2019. As regards its accessibility, Macau, China’s MAP guidance can easily be found on the website of the Financial Services Bureau website.

#### *MAP profile*

62. The MAP profile of Macau, China is published on the website of the OECD and was lastly updated in September 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*

63. Macau, China 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, Macau, China 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.

64. 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*

65. As previously discussed under B.5, audit settlements are not possible in Macau, China. The relationship between access to MAP and audit settlements made between taxpayers and another jurisdiction is described in Section 7 of Macau, China's MAP guidance.<sup>4</sup>

66. No peer input was provided.

#### *MAP and other administrative or statutory dispute settlement/resolution processes in available guidance*

67. As previously mentioned under element B.5, Macau, China does not have an administrative or statutory dispute settlement/resolution process that limits access to MAP 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 Macau, China's MAP guidance.

68. No peer input was provided.

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

69. As Macau, China does not have an internal administrative or statutory dispute settlement/resolution process that limits access to MAP in place, there is no need for notifying treaty partners of such process.

### ***Anticipated modifications***

70. Macau, China indicated that it does not anticipate any modifications in relation to element B.10.

### ***Conclusion***

	Areas for improvement	Recommendations
[B.10]	-	-

## **Notes**

1. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
2. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
3. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).
4. Available at: [www.dsf.gov.mo/download/tax/E\\_MAPGuidelines.pdf](http://www.dsf.gov.mo/download/tax/E_MAPGuidelines.pdf).

## **References**

- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.
- OECD (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-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.

71. 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 (OECD, 2017), 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 Macau, China’s tax treaties***

72. All of Macau, China’s five tax treaties 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.

#### ***Anticipated modifications***

##### *Bilateral modifications*

73. Macau, China 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*

74. No peer input was provided.

### *Conclusion*

	Areas for improvement	Recommendations
[C.1]	-	Macau, China 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).

75. 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*

76. 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. Macau, China provided its 2016 and 2018 MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline. The statistics discussed below include both pre-2016 and post-2015 cases and they are attached to this report as Annex B and Annex C respectively, showing that Macau, China has not been involved in any MAP cases since 1 January 2017.

#### *Monitoring of MAP statistics*

77. Macau, China does not have a system in place with its treaty partners that communicates, monitors and manages the MAP caseload, which can be explained by the fact that Macau, China was never involved in a MAP case.

#### *Analysis of Macau, China’s MAP caseload*

78. Macau, China was not involved in any MAP cases during the Review Period.

#### *Overview of cases closed during the Statistics Reporting Period*

79. Macau, China was not involved in any MAP cases during the Review Period.

#### *Average timeframe needed to resolve MAP cases*

80. Macau, China was not involved in any MAP cases during the Review Period.

**Peer input**

81. No peer input was provided.

**Anticipated modifications**

82. Macau, China indicated that it does not anticipate any modifications in relation to element C.2.

**Conclusion**

	Areas for improvement	Recommendations
[C.2]	MAP statistics for 2017 were not submitted.	Macau, China should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.
	As there were no post-2015 MAP cases to resolve it was at this stage not possible to evaluate whether Macau, China'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.

83. 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 Macau, China's competent authority**

84. Under Macau, China's tax treaties, the competent authority function is assigned to the Chief Executive or his authorised representative. Macau, China reported that this function has been delegated to the Director of the Financial Services Bureau. Macau, China reported that its competent authority employs four people to deal with MAP cases when they arise, who are currently in charge of treaty negotiations.

85. Macau, China also reported that the competent authority functions are allocated to staff that is not responsible for audits and assessment.

86. Macau, China further reported that to date it considers the resources available to the competent authority to be sufficient given the fact that it did not receive any MAP requests from taxpayers or other competent authorities.

**Monitoring mechanism**

87. Macau, China reported that there would be ongoing monitoring to guarantee that the Financial Services Bureau has sufficient human, financial and other resources to meet its obligations under the tax treaties and make sure that Macau, China has an effective MAP programme, while it considers that the resources allocated are sufficient given the amount of upcoming MAP requests expected.

***Practical application****MAP statistics*

88. As discussed under element C.2, Macau, China has not yet received any MAP requests, by which there were no MAP statistics available to analyse the pursued 24-month average.

*Peer input*

89. No peer input was provided.

***Anticipated modifications***

90. Macau, China indicated that it does not anticipate any modifications in relation to element C.3.

***Conclusion***

	Areas for improvement	Recommendations
[C.3]	-	Macau, China 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.

91. 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***

92. Macau, China reported that the MAP functions are allocated to staff that is in charge of tax negotiations but is not responsible for tax audits and assessments in order to ensure the effectiveness and independence of the MAP programme. Macau, China also reported that staff in charge of MAP cases will take into consideration the actual terms of a tax treaty as applicable for the relevant year and that it is committed not to be influenced by policy considerations that Macau, China would like to see reflected in future amendments to the treaty.

93. In regard of the above, Macau, China considers that staff in charge of MAP has the necessary authority to resolve MAP cases and are not dependent on the approval/direction of outside personnel and that there are no impediments in Macau, China's abilities to perform its MAP functions.

***Practical application***

94. No peer input was provided.

***Anticipated modifications***

95. Macau, China indicated that it does not anticipate any modifications in relation to element C.4.

***Conclusion***

	Areas for improvement	Recommendations
[C.4]	-	Macau, China should ensure that its competent authority continues to have the authority, and uses that authority in practice, to resolve MAP 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 Macau, China 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.

96. 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 Macau, China***

97. Macau, China reported that there are standardised performance evaluation criteria for civil servants: effectiveness; sense of responsibility; continuous improvement in work; adaptability and flexibility; human relationship in work; punctuality; time management; initiation and autonomy; innovation and creativity; teamwork; relation with public; resources management. In addition, the target Macau, China sets is to meet timelines set by the internal guideline to ensure there is no undue delay caused by the MAP Office.

98. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist:

- 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).

99. Further to the above, Macau, China also 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***

100. No peer input was provided.

### ***Anticipated modifications***

101. Macau, China indicated that it does not anticipate any modifications in relation to element C.5.

### ***Conclusion***

	Areas for improvement	Recommendations
[C.5]	-	Macau, China should continue to use appropriate performance indicators.

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

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

102. 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***

103. Macau, China reported that it has no domestic law limitations for including MAP arbitration in its tax treaties but that MAP arbitration is not currently available for the resolution of tax treaty related disputes in any of its tax treaties. This is clarified in Macau, China's MAP profile.

### ***Practical application***

104. Macau, China has not incorporated an arbitration clause in any of its five tax treaties as a final stage to the MAP.

105. No peer input was provided.

### ***Anticipated modifications***

106. Macau, China indicated that it does not anticipate any modifications in relation to element C.6.

### ***Conclusion***

	Areas for improvement	Recommendations
[C.6]	-	-

## *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.

107. 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***

108. Macau, China reported that the Complementary Tax Regulation (1978) stipulates that the time limit for tax assessment is five years, which applies to upward adjustments, while there is no time limit for downward adjustment. Macau, China also reported that internal law limitations will not jeopardise or preclude the application and implementation of a MAP outcome, and any agreement reached under a MAP shall be implemented notwithstanding any time limits in the internal laws of Macau, China in accordance with the applicable treaty. In that regard, as will be discussed under element D.3, all of Macau, China's treaties contain a provision equivalent to Article 25(2) second sentence, stating that all MAP agreements shall be implemented notwithstanding any domestic time limits, following which the domestic statute of limitation would not be applicable.

109. Section 6 of Macau, China's MAP guidance describes the procedure after a MAP agreement is reached.<sup>1</sup> As mentioned in the guidance, Macau, China's competent authority will notify the taxpayer the terms and conditions of the agreement. If the taxpayer confirms its acceptance of the agreement within 30 days, where such acceptance obliges the taxpayer to withdraw any pending cases in the judicial or administrative instances, Macau, China reported that its tax authority will confirm the agreement in writing with the competent authority of the other party. On the other hand, Macau, China's MAP guidance further describes if the taxpayer does not accept the terms and conditions of such agreement within 30 days, the competent authority send the competent authority of the other party a proposal to close the MAP case without agreement.

#### ***Practical application***

110. As Macau, China was not involved in any MAP case for the period under review, it was not possible to assess the implementation of MAP agreements by Macau, China.

111. No peer input was provided.

*Anticipated modifications*

112. Macau, China 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 Macau, China 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.

113. Delay of implementation of 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*

114. As discussed under element D.1, Macau, China reported that there is no theoretical timeframe for implementing mutual agreements, but Macau, China expects that a MAP will be implemented in less than 30 days. In addition, Macau, China's MAP guidance describes that the Financial Services Bureau will promote the swift implementation of the Agreements reached with the competent authorities of the other Contracting Parties under a MAP.

*Practical application*

115. As Macau, China was not involved in any MAP cases for the period under review, it was not possible to assess the implementation of MAP agreements by Macau, China.

116. No peer input was provided.

*Anticipated modifications*

117. Macau, China 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 Macau, China, it was not yet possible to assess whether Macau, China 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.

118. 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 (OECD, 2017) 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 Macau, China's tax treaties*

119. All of Macau, China's five tax treaties 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.

#### *Anticipated modifications*

##### *Bilateral modifications*

120. Macau, China 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.

##### *Peer input*

121. No peer input was provided.

#### *Conclusion*

	Areas for improvement	Recommendations
[D.3]	-	Macau, China 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.

## Notes

1. Macau, China's MAP guidance is available at: [www.dsfgov.mo/download/tax/E\\_MAPGuidelines.pdf](http://www.dsfgov.mo/download/tax/E_MAPGuidelines.pdf).

## Reference

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

## Summary

	Areas for improvement	Recommendations
<b>Part A. Preventing disputes</b>		
[A.1]	-	Macau, China should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	-	-
<b>Part B. Availability and access to MAP</b>		
[B.1]	One out of five tax treaties does not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention.	For the treaty that does not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, Macau, China should follow up on its request for the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ul style="list-style-type: none"> <li>a. as amended in the Action 14 final report; or</li> <li>b. as it read prior to the adoption of Action 14 final report</li> </ul> In addition, Macau, China should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in 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]	Macau, China reported that it will provide access to MAP in transfer pricing cases. Its competent authority, however did not receive any MAP request for such cases during the Review Period. Macau, China is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.4]	Macau, China 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. Macau, China is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	-	-
[B.6]	Macau, China reported it will give access to MAP in cases where taxpayers have complied with Macau, China's information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Macau, China 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]	One out of five tax treaties does not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.	For the treaty that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax, Macau, China should follow its stated intention to request the inclusion of the required provision via bilateral negotiations.

	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 Macau, China could consider including information on:</p> <ul style="list-style-type: none"> <li>• whether MAP is available in cases of multilateral disputes</li> <li>• whether taxpayers can request for the multi-year resolution of recurring issues through MAP</li> <li>• the possibility of suspension of tax collection during the course of a MAP</li> </ul>
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Macau, China 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]	-	-
<b>Part C. Resolution of MAP cases</b>		
[C.1]	-	Macau, China should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	MAP statistics for 2017 were not submitted.	Macau, China should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.
	As there were no post-2015 MAP cases to resolve it was at this stage not possible to evaluate whether Macau, China's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	
[C.3]	-	Macau, China 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]	-	Macau, China should ensure that its competent authority continues to have the authority, and uses that authority in practice, to resolve MAP 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 Macau, China would like to see reflected in future amendments to the treaty.
[C.5]	-	Macau, China should continue to use appropriate performance indicators.
[C.6]	-	-
<b>Part D. Implementation of MAP agreements</b>		
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Macau, China 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 Macau, China, it was not yet possible to assess whether Macau, China would have implemented all MAP agreements on a timely basis thus far.	
[D.3]	-	Macau, China 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 Macau, China

		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? (Note 1)  If no, please state reasons	Inclusion Art. 9(2) (Note 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? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)  If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?		
	Y = yes N = signed pending ratification	If N, date of signing	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	if ii, specify period	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
Belgium	N	6/19/2006	O	Y	N/A	Y	i	Y	Y	Y	N	N
Cape Verde	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Mozambique	Y	N/A	N	Y	N/A	Y	i	Y	Y	Y	Y	N
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Viet Nam	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N

## Annex B

### MAP statistics reporting for the 2016, 2017 and 2018 Reporting Periods (1 January 2016 to 31 December 2018) 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*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>MAP Guidance</b>	Mutual Agreement Procedure Guidelines
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
<b>OECD Transfer Pricing Guidelines</b>	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
<b>Pre-2016 cases</b>	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
<b>Post-2015 cases</b>	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
<b>Review Period</b>	Period for the peer review process that started on 1 January 2016 and ended on 31 August 2019
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2018
<b>Terms of Reference</b>	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, Macau, China (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 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 Macau, China.



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