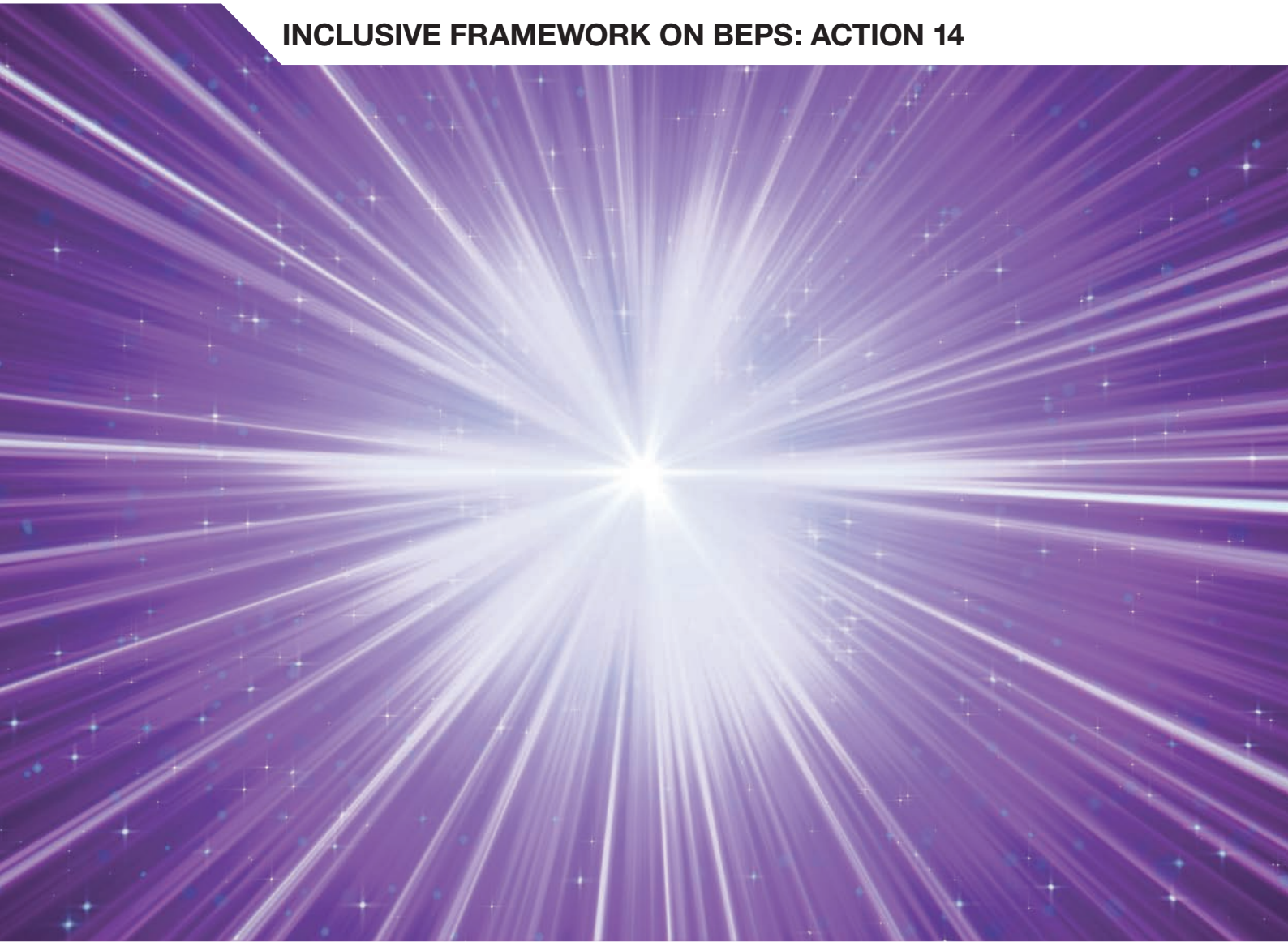


**OECD/G20 Base Erosion and Profit Shifting  
Project**



# **Making Dispute Resolution More Effective – MAP Peer Review Report, Israel (Stage 2)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**





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The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

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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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 28 October 2020 and prepared for publication by the OECD Secretariat

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*Abbreviations and acronyms*

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



## Executive summary

Israel<sup>1</sup> has a relatively large tax treaty network with over 55 tax treaties. Israel has an established MAP programme and has modest experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 17 cases pending on 31 December 2018. Of these cases, approximately 60% concern allocation/attribution cases. Overall Israel meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Israel worked to address most of them, which has been monitored in stage 2 of the process. In this respect, Israel has not yet solved any of the identified deficiencies.

All of Israel's tax treaties contain a provision relating to MAP, which 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:

- Almost a quarter 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.
- Approximately 15% of its tax treaties do not contain the equivalent of Article 25(1) to the OECD Model Tax Convention, whereby the majority of these treaties do not contain the equivalent of Article 25(1), first sentence, as it read prior to the adoption of the Action 14 final report since they do 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.
- Over 10% of its tax treaties do not contain the equivalent to 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, Israel signed and ratified the Multilateral Instrument, through which a number of its 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 this Multilateral Instrument, Israel reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. In this regard, Israel reported that for some of these treaties it already undertook some actions and bilateral negotiations

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1. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

have already been initiated, or are envisaged to be initiated. For the remaining treaties, it however reported neither having a plan in place for their bilateral modifications nor that any actions were taken in this respect. Taking this into account, for these treaties negotiations need to be initiated without further delay to ensure compliance with this part of the Action 14 Minimum Standard.

With respect to the prevention of disputes, Israel meets the relevant element of the Action 14 Minimum Standard, as Israel confirmed it is able to provide roll-backs of bilateral APAs in appropriate cases, although it did not receive any request in relation hereto as from 1 January 2016.

Israel meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases. Israel has in place a notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, which has been used in practice. However, this process is not yet documented, while Israel intends to do this in the future. Israel has issued clear guidance on the availability and the use of MAP. This guidance specifies the manner and form in which the taxpayer should submit its MAP request, but neither includes the contact details of Israel's competent authority nor addresses the relationship between MAP and audit settlements.

Concerning the average time needed to close MAP cases, the MAP statistics for Israel for the period 2016-18 are as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2018	Average time to close cases (in months) *
Attribution/allocation cases	9	10	9	10	37.08
Other cases	8	18	19	7	28.47
<b>Total</b>	17	28	28	17	31.24

\* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Israel used as the start date the date Israel received notice of the case, either from the partner country or the request from an Israeli resident to initiate MAP, and as the end date the case was either resolved (agreement reached with other CA), or otherwise closed.

The number of cases Israel closed in 2016-18 is 100% of the number of all cases started in those years. During these years, MAP cases were on average not closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 31.24 months. This both concerns the resolution of attribution/allocation cases, as the average time to close these cases is 37.08 months and other cases with an average time of 28.47 months. As the average completion time for MAP cases has decreased from 33.60 months in 2016-17 to 22.58 months in 2018 and Israel has added additional resources to its competent authority in relation to attribution/allocation cases, Israel should closely monitor whether such addition of resources will be sufficient to ensure a timely, effective and efficient resolution of MAP cases. If this would not be the case, additional resources or further actions are necessary.

Furthermore, Israel meets most of the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Its organisation is adequate and Israel does not use any inappropriate performance indicators to assess staff in charge of MAP function. However, personnel of tax administrations directly involved in the adjustment

at issue fully participates in competent authority meetings, which bears the risk that the competent authority function is not performed entirely independent from the approval or direction of such personnel concerning the resolution of MAP cases during such meetings.

Lastly, Israel also meets the requirements under the Action 14 Minimum Standard as regards the implementation of MAP agreements. Israel monitors the implementation of MAP agreements. It has implemented all MAP agreements thus far and no issues have surfaced regarding the implementation throughout the peer review process. However, Israel has a domestic statute of limitation for implementation of MAP agreements, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.



## *Introduction*

### **Available mechanisms in Israel to resolve tax treaty-related disputes**

Israel<sup>1</sup> has entered into 58 tax treaties on income (and/or capital), all of which are in force.<sup>2</sup> These 58 treaties apply to an equal number of jurisdictions. All these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty upon request by taxpayers. In addition, two of the 58 treaties provide for a voluntary arbitration procedure as a final stage to the mutual agreement procedure.<sup>3</sup>

In Israel, the competent authority function to conduct MAP is delegated to the International Tax Division of Israel's Tax Authority. The competent authority of Israel currently employs four employees, who are also engaged in other tasks and are provided with assistance from other personnel including international specialists.

Israel has issued guidance on the governance and administration of the mutual agreement procedure (“**MAP**”) in in Income Tax Order of Performance 23/2001 – the Unit of International Taxation (the first of Tevet, 5762, 16 December 2001) – (“**MAP guidance**”), which is available at (in Hebrew):

<https://www.gov.il/he/departments/policies/income-tax-inst-23-2001>

### **Developments in Israel since 1 January 2018**

#### ***Developments in relation to the tax treaty network***

In the stage 1 peer review report of Israel, it is reflected that that three of Israel's 56 tax treaties have not entered into force, which are treaties with Armenia (2017), Austria (2016) and North Macedonia (2015). Then newly signed treaty with Austria will replace the 1970 treaty that is currently in force. Since then all these treaties entered into force.

Furthermore, on 7 June 2017 Israel 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 13 September 2018, Israel deposited its instrument of ratification, following which the Multilateral Instrument has for Israel entered into force on 1 January 2019. With the depositing of the instrument of ratification, Israel also submitted its list of notifications and reservations to that instrument.<sup>4</sup> In relation to the Action 14 Minimum Standard, Israel reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) 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 state.<sup>5</sup> This reservation is in line with the requirements of the Action 14 Minimum Standard.

In addition, since 1 January 2018, Israel signed new treaties with Australia (2019) and Serbia (2018), which concerns treaties with treaty partners for which there was no treaty in force. Israel also signed an amending protocol to the treaty with the United Kingdom (2019). Both these treaties and the amending protocol have entered into force. The treaties with Australia and Serbia contain Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereas the amending protocol with the United Kingdom contains Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention as amended by the Action 14 final report.

For those tax treaties that were in the stage 1 peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Israel reported that it strives updating them through future bilateral negotiations. In the stage 1 peer review report, it is stated that Israel already initiated such negotiations for some of them and that it plans to engage first with jurisdictions where the existing treaty needs the most significant revisions. In total, 14 of Israel's tax treaties need a bilateral modification in order to be in line with the requirements under the Action 14 Minimum Standard. For one of these treaties, Israel reported that it has been informed by Mexico that it will amend its reservations/notifications under the Multilateral Instrument, following the treaty will be in line with these requirements. For the other 13 tax treaties, Israel reported that it already undertook some actions for four of them to bring these treaties in line with the requirements under the Action 14 Minimum Standard. This concerns that Israel is in negotiations with Italy, Romania and Switzerland to bring the treaty in line with the requirements under the Action 14 Minimum Standard and further that Israel has approached Sweden with propose to enter into negotiations on the amendment of the treaty *inter alia* to bring it in line with these requirements. For the remaining nine treaties, Israel reported neither having a plan in place for their bilateral modifications nor that any actions were taken in this respect.

### ***Other developments***

Israel reported that it hired one additional staff member to work part time on handling attribution/allocation cases. It further reported that it has prepared an update to its MAP guidance, which will be published shortly.

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

### ***Outline of the peer review process***

The peer review process entails an evaluation of Israel'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 the assessed jurisdiction, its peers and taxpayers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Israel's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 14 August 2018. This report identifies the strengths and shortcomings of Israel in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.<sup>6</sup> Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through



an update report by Israel. In this update report, Israel reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

### ***Outline of the treaty analysis***

For the purpose of this report and the statistics below, in assessing whether Israel 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, were taken into account, even if it concerns a replacement of an existing treaty. Reference is made to Annex A for the overview of Israel’s tax treaties regarding the mutual agreement procedure.

### ***Timing of the process and input received by peers and taxpayers***

Stage 1 of the peer review process was for Israel launched on 29 December 2017, with the sending of questionnaires to Israel and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Israel in June 2018, with the subsequent approval by the BEPS Inclusive Framework on 14 August 2018. On 8 August 2019, Israel submitted its update report, which initiated stage 2 of the process.

The period for evaluating Israel’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2017 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2018 and depicts all developments as from that date until 31 August 2019.

In total eight peers provided input during stage 1: Canada, China (People’s Republic of), Germany, Russia, Sweden, Switzerland, Turkey and the United States. Input was also received from one taxpayer. Out of these eight peers, six had MAP cases with Israel that started on or after 1 January 2016. These six peers represent approximately 70% of post-2015 MAP cases in Israel’s inventory that started in 2016 or 2017. During stage 2, the same peers provided input, apart from Russia. In addition, also Italy and the United Kingdom provided input during stage 2. For this stage, these peers represent approximately 60% of post-2015 MAP cases in Israel’s inventory that started in 2016, 2017 or 2018. Generally, all peers emphasised that they had very limited experience with Israel and one peer indicated that it had experienced positive and good co-operation with Israel’s competent authority. Specifically with respect to stage 2, almost all the peers that provided input reported that the update report of Israel fully reflects the experiences these peers have had with Israel since 1 January 2018 and/or that there was no addition to previous input given. Three peers provided additional positive input or new experiences. The input from these peers is reflected throughout this document under the elements where they have relevance.

### ***Input by Israel and cooperation throughout the process***

During stage 1, Israel provided extensive answers in its questionnaire, which was submitted on time. Israel 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, Israel provided the following information:

- MAP profile<sup>7</sup>
- MAP statistics<sup>8</sup> according to the MAP Statistics Reporting Framework (see below).

Concerning stage 2 of the process, Israel submitted its update report on time and the information included therein was extensive. Israel was very co-operative during stage 2 and the finalisation of the peer review process.

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

## Overview of MAP caseload in Israel

The analysis of Israel’s MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2017. For stage 2 the period ranges from 1 January 2018 to 31 December 2018. Both periods are taken into account in this report for analysing the MAP statistics of Israel. The analysis of Israel’s MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2018 (“**Statistics Reporting Period**”). According to the statistics provided by Israel, its MAP caseload during this period was as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2018
Attribution/allocation cases	9	10	9	10
Other cases	8	18	19	7
<b>Total</b>	17	28	28	17

## General outline of the peer review report

This report includes an evaluation of Israel’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>9</sup> Apart from analysing Israel’s legal framework and its administrative practice, the report also incorporates input from peers and a taxpayer and responses to such input by Israel. Furthermore, the report depicts the changes adopted and plans shared by Israel 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 basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Israel relating to the implementation of the Action 14 Minimum Standard. Where it concerns

changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Israel should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement and recommendation for this specific element

## Notes

1. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.
2. The tax treaties Israel has entered into are available at: <http://mof.gov.il/en/InternationalAffairs/InternationalTaxation/Pages/AvoidanceDoubleTaxationTreaties.aspx>. Reference is made to Annex A for the overview of Israel’s tax treaties regarding the mutual agreement procedure.
3. This concerns treaties with Ireland and Mexico.
4. Available at: [www.oecd.org/tax/treaties/beps-mli-position-israel.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-israel.pdf).
5. *Ibid.* This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Israel 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.”.
6. Available at: [www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-israel-stage-1-9789264304284-en.htm](http://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-israel-stage-1-9789264304284-en.htm).
7. Available at: [www.oecd.org/tax/dispute/Israel-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/Israel-Dispute-Resolution-Profile.pdf).
8. The MAP statistics of Israel are included in Annex B and C of this report.
9. 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 Israel's tax treaties*

2. Out of Israel's<sup>1</sup> 58 tax treaties, 54 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. Of the remaining four treaties, one does not contain any provision based on Article 25(3), first sentence of the OECD Model Tax Convention. The other three treaties contain a provision that based on Article 25(3), first sentence, but the word "interpretation" is missing in these treaties and therefore are considered not being equivalent thereof.

3. Israel reported that the absence of a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention in its tax treaties will not obstruct its competent authority to enter into MAP agreement of general nature.

#### *Peer input*

4. Of the peers that provided input during stage 1, some noted that their treaty with Israel meets the requirement under element A.1, which is consistent with the above analysis. For the four treaties identified above that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, one of the relevant peers provided input and observed that its treaty will be modified by the Multilateral Instrument, which conforms with the below analysis.

## *Recent developments*

### *Bilateral modifications*

5. Israel signed new treaties with two treaty partners and one amending protocol to an existing treaty. Both newly signed treaties are with treaty partners with which there were no treaties yet in place. Both newly signed treaties and the amending protocol contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, which was not the case for the existing treaty for which an amending protocol was entered into.

6. Both newly signed treaties and the amending protocol have already entered into force. The effects of the newly signed treaties and the amending protocol have been reflected in the analysis above where they have relevance.

### *Multilateral Instrument*

7. Israel signed the Multilateral Instrument and has deposited its instrument of ratification on 13 September 2018. The Multilateral Instrument has for Israel entered into force on 1 January 2019.

8. 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.

9. In regard of the four tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Israel listed all of them as a covered tax agreement under the Multilateral Instrument, but only for three of them did it make, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). All relevant three treaty partners are a signatory to the Multilateral Instrument and listed their treaty with Israel as a covered tax agreement under that instrument, but only two also made a notification on the basis of Article 16(6)(d)(i).

10. These treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Israel and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified two of the four tax treaties identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

### *Peer input*

11. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Israel. One of these peers concerns a treaty partner to the treaty identified above that does not contain Article 25(3), first sentence, of the OECD Model Tax Convention and which has been modified by the Multilateral Instrument. This peer, however, did not provide input in relation to element A.1.

### *Anticipated modifications*

12. For the remaining two tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, Israel has not put a specific plan in place nor has it taken any actions for the renegotiations of these tax treaties.

13. Regardless, Israel reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

### *Conclusion*

	Areas for improvement	Recommendations
[A.1]	<p>Four out of 58 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these four treaties:</p> <ul style="list-style-type: none"> <li>• Two have been modified by the Multilateral Instrument to include the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.</li> <li>• Two will not be modified by the Multilateral Instrument to include the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. For these two treaties no actions have been taken nor are any actions planned to be taken.</li> </ul>	<p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Israel should without further delay request the inclusion of the required provision in bilateral negotiations.</p>

### **[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.

14. 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.

### *Israel’s APA programme*

15. Israel reported that it has implemented an APA programme under which it is authorised to enter into bilateral APAs. While Israel has not established an APA programme in its domestic legislation or guidance, its competent authority is open to discuss bilateral APA cases under the MAP article of its tax treaties. This article also constitutes the legal basis of the bilateral APA programme as well as the authority to make rulings under its domestic legislation is to be found in the MAP article of Israel’s tax treaties.



16. Israel further reported that it has no specific APA guidance in place and no specific timeline applies to the submission of an APA request.

#### *Roll-back of bilateral APAs*

17. Israel reported that it is in theory possible to grant a roll-back of bilateral APAs, but that it can be granted for those years that are not yet barred due to its domestic statute of limitation on assessment. Pursuant to Article 145 of Income Tax Ordinance (new version) 5721-1961, Israel's domestic legislation includes a general statute of limitation of four or five years from the end of the tax year in which the tax return was filed.

#### *Recent developments*

18. There are no recent developments with respect to element A.2.

#### *Practical application of roll-back of bilateral APAs*

##### *Period 1 January 2016-31 December 2017 (stage 1)*

19. Israel reported that in the period 1 January 2016-31 December 2017, it has not received any bilateral APA requests and therefore also not any requests for a roll-back of a bilateral APA.

20. None of the peers that provided input in stage 1 reported that they had received any request for a roll-back of a bilateral APA with Israel nor experienced a roll-back relating to a bilateral APA with Israel.

##### *Period 1 January 2018-31 August 2019 (stage 2)*

21. Israel reported that since 1 January 2018 its competent authority has also not received formal requests for bilateral APAs or the roll-back of such APAs, albeit that in preliminary discussions with taxpayers it in principle endorsed the possibility of conducting a bilateral APA including roll-back.

22. All peers that provided input during stage 1, stated in stage 2 stated that the update report provided by Israel fully reflects their experience with Israel since 1 January 2018 and/or there are no additions to the previous input given. One of the peers that only provided input during stage 2, mentioned that it has not received a request for a bilateral APA or the roll-back thereof with Israel.

#### *Anticipated modifications*

23. Israel did not indicate that it anticipates any modifications in relation to element A.2.

#### *Conclusion*

	Areas for improvement	Recommendations
[A.2]	-	-



## Notes

1. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.
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.

24. 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 Israel's tax treaties***

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

25. Out of Israel's<sup>1</sup> 58 tax treaties, one contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state 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. Furthermore, 46 treaties 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, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

26. The remaining 11 treaties can be categorised as follows:

Provision	Number of tax treaties
A variation 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, whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	8
A variation 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, whereby (i) taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident, and (ii) MAP is only available in case of double taxation not in accordance with the provision of the convention.	1
A variation 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, whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1
A variation 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, whereby it is not provided that the taxpayer can submit a MAP request irrespective of domestic available remedies.	1

27. The eight treaties in the first row are considered not to contain 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, in five of those eight treaties, the non-discrimination provision only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident. In the remaining three treaties, 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 the absence of or a limited scope of the non-discrimination provision, following which these three treaties are not in line with this part of element B.1.

28. The treaty referred to in the second row of the table only provides for MAP in cases where it concerns “double taxation not in accordance with this Convention” As Article 25(1), first sentence, of the OECD Model Tax Convention only requires “taxation not in accordance with the provision of the Convention”, this treaty is considered not to be in line with element B.1.

29. For the treaty in the third row of the table above, the provision incorporated in the protocol of this treaty reads:

With reference to paragraph 1 of Article 26, the expression “irrespective of the remedies provided by the domestic laws” means that the mutual agreement procedure is not alternative to the national contentious proceeding which shall be, in any case preventively initiated, when the claim is related to an assessment of the taxes not in accordance with this Convention.

30. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though the provision contained in the MAP article 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. This treaty is therefore also considered not in line with element B.1.

31. For the treaty in the fourth row, the phrase “irrespective of domestic available remedies” is missing and for that reason it is not considered being in line with element B.1.

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

32. Out of Israel’s 58 tax treaties, 46 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.

33. The remaining 12 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	7
Filing period less than three years for a MAP request (two years)	5

*Peer input*

34. Of the peers that provided input during stage 1, four peers that provided input noted that their treaty meets the requirement under element B.1, which is consistent with the above analysis. For the eight treaties identified that do not contain the equivalent of Article 25(1), first and/or second sentence, of the OECD Model Tax Convention, one peer reported that the provision of its treaty will be modified by the Multilateral Instrument updated except for Article 25(1), first sentence, of the OECD Model Tax Convention, which conforms with the analysis below.

***Practical application***

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

35. As noted in paragraphs 30-31 above, in all but one of Israel’s tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Israel reported that taxpayers are allowed to request for MAP assistance in case where the issue under dispute is still under consideration or has already been decided via the judicial and administrative remedies provided by the domestic law of the jurisdiction. Israel also reported that its competent authority may be limited by the judicial decision, following which it may not be in a position to deviation from such a decision in MAP.

36. One peer, who only provided input during stage 2, reported that as per its understanding, taxpayers have the option of appealing an adjustment issued by Israel’s examination function before another examination team. This peer further noted that if the case is appealed further to the court, Israel may not provide access to MAP while the court case is pending. The peer stated that while the Israel courts have, to date, issued stays and allowed the MAP process to commence, there is a risk that for any particular case and at any particular point in the process that the Israel courts will may prevent access to MAP. The peer, however, noted that it has not encountered situations in which Israel has argued for the case to be denied access to MAP.

37. Israel responded to this input and noted that access to MAP would not be denied on the grounds that the taxpayer has pursued domestic remedies. Israel further clarified that

in such cases, its competent authority will give access to MAP, but usually not proceed the case unless the court case is suspended. In this regard, Israel reported that courts have the authority to decide whether to hold the court proceedings in abeyance pending MAP or to proceed with the case. Israel mentioned that, theoretically, even if the court decides not to stay proceedings, its competent authority can still decide whether to continue the MAP process in parallel or wait for the court decision although it would prefer not to have both procedures progress in parallel. In addition, Israel noted that courts have consistently showed preference to promote constructive MAP by allowing a stay of procedures to accommodate the competent authority endeavors.

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

38. Israel reported that in the absence of a filing period for MAP requests in the tax treaty, paragraph 3.3 of Income Tax Order of Performance 23/2001 holds relevance. This paragraph stipulates that a MAP request shall be submitted within a reasonable time following the date when the applicant found out for the first time about the action which leads or might lead to taxation not in accordance with the provision(s) of the tax treaty. In this respect, Israel clarified that access to MAP will be denied if the MAP request is submitted after the expiration of its domestic statute of limitation, which is four to five years after the end of the tax year of the filing of the corresponding tax return. However, Israel also explained that such would only be the case in those treaties not containing a provision allowing the implementation of MAP agreements notwithstanding any time limits in the domestic law of the contracting states.

39. In addition, Israel reported that the domestic time limits would also apply to limit the possible outcome of MAP, even where the request was made within the prescribed time period (e.g. three years) if the treaty does not include a provision allowing the implementation of MAP agreements notwithstanding any time limits in the domestic law of the contracting states. For this reason, Israel noted that taxpayers under those treaties that do not contain such provision, are encouraged to file an appeal (in court) in order to stop the period of limitation, even though they have filed for MAP in either of the contracting states.

40. Israel's policy as regards this subject bears the risk that taxpayers are not granted access to MAP under those treaties without a filing period for MAP request even when the request was submitted within a period of at least three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty, unless the treaty contains a provision allowing the implementation of MAP agreements notwithstanding any time limits in the domestic law of the contracting states. For the seven treaties identified that do not contain a filing period for MAP request, one does not contain such provision if the effects of the Multilateral Instrument are taken into account (see under element D.3). Consequently, there remains a tax treaty for which this risk may materialise.

41. In view of the above, Israel reported that since 1 January 2018 it has granted access to MAP for the request under those treaties that currently do not contain a filing period for such requests and that contained a provision allowing implementation of MAP agreements notwithstanding any time limits in the domestic law of the contracting states.

## *Recent developments*

### *Bilateral modifications*

42. Israel signed new treaties with two treaty partners and one amending protocol to an existing treaty. Both newly signed treaties are with treaty partners with which there were no treaties yet in place and contain a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final Report. The amending protocol contains a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention as amended by the Action 14 final Report and allowing taxpayers to file a MAP request to either competent authority.

43. Both newly signed treaties and the amending protocol have already entered into force. The effects of the newly signed treaties and the amending protocol have been reflected in the analysis above where they have relevance.

### *Multilateral Instrument*

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

44. Israel signed the Multilateral Instrument and has deposited its instrument of ratification on 13 September 2018. The Multilateral Instrument has for Israel entered into force on 1 January 2019.

45. 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.

46. With the depositing of the instrument of ratification, Israel 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. In this reservation, Israel declared to 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 to 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.

47. In view of the above, following the reservation made by Israel, those six treaties identified in paragraphs 27-31 above that are 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

48. 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.

49. In regard of the five tax treaties identified in paragraph 33 above that contain a filing period for MAP requests of less than three years, Israel listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the five relevant treaty partners, two are not a signatory to the Multilateral Instrument. The remaining three treaties partners listed their tax treaty with Israel as a covered tax agreement under that instrument and also made a notification under Article 16(6)(b)(i).

50. One of these three treaty partners has already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Israel and the treaty partner and therefore has modified the treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention. For the remaining two treaties, the instrument will, upon its entry into force for these treaties, modify them to include this equivalent.

#### *Other developments*

51. For two of the six treaties that do 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 and that will not be modified by the Multilateral Instrument, Israel reported that it is currently in negotiations with the relevant partners on the amendment of the treaty to bring it in line with the requirements under element B.1, in particular to include the equivalent of the first sentence. Furthermore, Israel also reported that it is also in contact with another of these six treaty partners on the amendment of a protocol to the treaty to make undone the requirement for taxpayers to initiate domestic remedies when submitting a MAP request.

#### *Peer input*

52. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Israel. Both peers concern a treaty partner to one of the eight treaties identified above that does not contain Article 25(1), first sentence, of the OECD Model Tax Convention, as it read prior to or as amended by the adoption of the Action 14 Final Report and which will not be modified by the Multilateral Instrument. One of these peers mentioned that it contacted Israel with a proposal to enter into a memorandum of



understanding to amend the treaty in order to make ineffective the additional requirement in the protocol to the treaty to initiate domestic remedies when filing a MAP request. The other peer noted that currently actions are being taken to bring the treaty in line with the requirements under element B.1, but did not further specify what kind of actions are being taken nor what the status of such actions is.

### *Anticipated modifications*

53. For the remaining three two tax treaties that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior the adoption of the Action 14 final report and that will not be modified by the Multilateral Instrument, Israel has not put a specific plan in place nor has it taken any actions for the renegotiations of these tax treaties. The same applies to the two remaining tax treaties that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention and that also will not be modified by the Multilateral Instrument.

54. Regardless, Israel reported it will seek 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 of its future tax treaties.

### *Conclusion*

	Areas for improvement	Recommendations
[B.1]	<p>Three out of 58 tax treaties do not contain a provision 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, or as amended by that final report. These three treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence. Of these three treaties:</p> <ul style="list-style-type: none"> <li>• For one negotiations are pending.</li> <li>• For two no actions have been taken nor are any actions planned to be taken.</li> </ul>	<p>For the three treaties that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, Israel should:</p> <ul style="list-style-type: none"> <li>• continue negotiations with the treaty partner for which negotiations are currently pending to include the required provision via bilateral negotiations</li> <li>• for two treaty partners without further delay request the inclusion of the required provision via bilateral negotiations.</li> </ul> <p>In both instances this concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> <li>a. as amended by the Action 14 final report; or</li> <li>b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.</li> </ol>
	<p>Two out of 58 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention as the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. These two treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence. For these two treaties no actions have been taken nor are any actions planned to be taken.</p>	<p>For the two treaties that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, Israel should without further delay request the inclusion of the required provision via bilateral negotiations.</p>

	Areas for improvement	Recommendations
[B.1]	<p>Three out of 58 tax treaties do not contain a provision 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, or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these three treaties:</p> <ul style="list-style-type: none"> <li>• One tax treaty has been modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, no actions have been taken nor are any actions planned to be taken.</li> <li>• The remaining two tax treaties are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, negotiations are pending for both treaties.</li> </ul>	<p>For the three treaties that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, Israel should:</p> <ul style="list-style-type: none"> <li>• continue negotiations with two treaty partners for which negotiations are currently pending to include the required provision via bilateral negotiations</li> <li>• for the remaining treaty partner without further delay request the inclusion of the required provision via bilateral negotiations.</li> </ul> <p>In both instances this concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention via bilateral negotiations either:</p> <ol style="list-style-type: none"> <li>a. as amended by the Action 14 final report; or</li> <li>b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.</li> </ol>
	<p>Where tax treaties do not contain a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>	<p>Israel should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from being granted access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</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).

55. 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:

- of either treaty partner; or, in the absence of such provision,
- 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***

56. As discussed under element B.1, one out of Israel’s 58 treaties currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, none of the remaining 57 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.

57. Israel reported that it has a notification process in place which allows the other competent authority concerned to provide its views on the case when Israel’s competent authority considers the objection raised in the MAP request not to be justified. This process, however, is not documented.

### ***Recent developments***

58. There are no recent developments with respect to element B.2.

### ***Practical application***

#### *Period 1 January 2016-31 December 2017 (stage 1)*

59. Israel reported that in the period 1 January 2016-31 December 2017, in one case, its competent authority considered that the objection raised by a taxpayer in the MAP request is not justified. Israel reported that the other competent authority concerned was notified.

60. From Israel’s 2016 and 2017 MAP statistics it follows that none of its cases were closed with the outcome “objection not justified”. The reason of this deviation is that the one case mentioned above was reported as “access denied”, whereas it should have been “objection not justified”.

61. All but one peer that provided input reported not being aware of any case that was denied access to MAP by Israel. The remaining peer reported it received a notification from Israel in December 2017 regarding several MAP cases where Israel’s competent authority considered the objection raised as not justified and whereby this peer was invited to provide its views on such cases. This peer further noted that while the circumstances of the cases and the reasons why the objection was considered not justified were described in the notification, it was not clear: (i) when the MAP request(s) was/were submitted to Israel’s competent authority, (ii) which tax years were concerned and how many taxpayers had submitted such MAP request(s) and (iii) as who the concerned taxpayers were (only the representative of these taxpayers was identified). Israel responded that neither the identity of the taxpayers nor the concerned tax years were disclosed by the applicant to Israel’s competent authority and for that reason Israel could not report such information to this peer. Israel also reported that the notification was made within two months of the receipt of the request.

#### *Period 1 January 2018-31 August 2019 (stage 2)*

62. Israel reported that since 1 January 2018 its competent authority has for one of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. Israel clarified that the reason for this decision was that the MAP request was not filed within the time limit specified in the treaty (being three years from the first

notification of the action resulting in taxation not in accordance with the provisions of the agreement). Israel further mentioned that since the exact date of first notification could be disputed, considering the nature of the case and in order to apply an interpretation that would ensure broad access to MAP, its competent authority proceeded to consider the case on its merits and reached the conclusion that it was not a case of taxation contrary to the treaty. Accordingly, Israel notified the other competent authority of this decision.

63. The 2018 MAP statistics submitted by Israel confirm that one of its MAP cases was closed with the outcome “objection not justified”.

64. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Israel fully reflects their experience with Israel since 1 January 2018 and/or there are no additions to the previous input given. One of these peers mentioned that it was notified by Israel in the case mentioned above.

### *Anticipated modifications*

65. Israel indicated that the documentation of its notification process is included in the draft MAP circular that will be published shortly. In this regard, Israel, however, indicated that it does not have internal regulations that describes the process and what steps to follow during this process and the timing of these steps. Israel further mentioned that it expects to have an automated process that will cover as much of the technical stages as possible.

### *Conclusion*

	Areas for improvement	Recommendations
[B.2]	A bilateral notification process is in place, to be applied when the taxpayer's objection raised in the MAP request is considered not to be justified, for the 57 of the 58 treaties that do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention, as amended by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. This process, however, is not documented.	Israel should follow its stated intention and without further delay document its notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these step. Furthermore, Israel should continue to apply that process in practice for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

66. 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***

67. Out of Israel's 58 tax treaties, 42 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, 12 treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention. The remaining treaties contain a provision that is based on Article 9(2), but are for the following reasons not being considered equivalents thereof:

- In two treaties the granting of corresponding adjustments is only optional, as term “may” is used instead of “shall”.
- In one treaty corresponding adjustments can be only granted on the basis of a mutual agreement between the competent authorities.
- One treaty contains additional and different wording from Article 9(2) and also the structure of the provision is different.

68. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Israel's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Israel indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments.

69. Paragraph 3.1 of Israel's MAP guidance lists transfer pricing cases as an example of double taxation cases within the scope of MAP.

### ***Recent developments***

#### ***Bilateral modifications***

70. Israel signed new treaties with two treaty partners and one amending protocol to an existing treaty. Both newly signed treaties are with treaty partners with which there were no treaties yet in place. Both newly signed treaties and the amending protocol contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention which was not the case for the existing treaty for which an amending protocol was entered into.

71. Both newly signed treaties and the amending protocol have already entered into force. The effects of the newly signed treaties and the amending protocol have been reflected in the analysis above where they have relevance.

#### ***Multilateral Instrument***

72. Israel 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, Israel signed the Multilateral Instrument and has deposited its instrument of ratification on 13 September 2018. The Multilateral Instrument has for Israel entered into force on 1 January 2019.

73. 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 for a tax treaty not take effect if one or both of the treaty partners to the tax treaty have, pursuant to Article 17(3), reserved the right to not 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 make a notification 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).

74. Israel has not, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 16 tax treaties identified in paragraph 66 above that are considered not to contain this equivalent, Israel listed 15 of them as a covered tax agreement under the Multilateral Instrument and for four of them did it make, a notification on the basis of Article 17(4), that they do not contain a provision described in Article 17(2).

75. With regard to those four treaties, two treaty partners are not a signatory to the Multilateral Instrument. The remaining two treaty partners listed their treaty with Israel as a covered tax agreement under that instrument and also made a notification on the basis of Article 17(4). One of these two treaty partners has already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Israel and the treaty partner and has replaced the provision in this treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention. For the remaining treaty, the Multilateral Instrument will, upon its entry into force for the treaty concerned, replace the provision in this treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

76. With regard to the remaining 11 treaties, two treaty partners are not a signatory to the Multilateral Instrument, whereas one has not listed its treaty with Israel as a covered tax agreement under that instrument. None of the remaining eight treaty partners has, on the basis of Article 17(3), reserved the right not to apply Article 17(2). Of these eight treaty partners, four have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Israel and these treaty partners and has superseded these treaties to include Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those four treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1) of the Multilateral Instrument. For the remaining four treaties, the Multilateral Instrument will, upon entry into force, supersede these four treaties to include Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1) of the Multilateral Instrument.



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

#### *Period 1 January 2016-31 December 2017 (stage 1)*

77. Israel reported that in the period 1 January 2016-31 December 2017, it has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

78. All peers that provided input indicated not being aware of a denial of access to MAP by Israel in the period 1 January 2016-31 December 2017 on the basis that the case concerned was a transfer pricing case.

#### *Period 1 January 2018-31 August 2019 (stage 2)*

79. Israel reported that also since 1 January 2018 it has for none of the MAP requests it received it has denied access to MAP on the basis that the case concerned was a transfer pricing case.

80. All peers that provided input in stage 2 stated that the update report provided by Israel fully reflects their experience with Israel since 1 January 2018 and/or there are no additions to the previous input given. One of these peers mentioned that it has not noticed any impediments regarding the granting of access to MAP with Israel. The second peer only provided input during stage 2 and mentioned that Israel has granted access to MAP in one transfer pricing case.

### *Anticipated modifications*

81. Israel 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]	-	-

## **[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.

82. 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***

83. None of Israel's 58 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, the domestic law and/or administrative processes of Israel do not have 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.

84. Israel reported that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of the MAP. Israel's MAP guidance, however, does not specifically address whether taxpayers have access to MAP in cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse have been met or whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

### ***Recent developments***

85. There are no recent developments with respect to element B.4.

### ***Practical application***

#### *Period 1 January 2016-31 December 2017 (stage 1)*

86. Israel reported that it has in the period 1 January 2016-31 December 2017 not denied access to MAP for 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. However, no such cases in relation hereto were received in that period.

87. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Israel in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2016-31 December 2017.

#### *Period 1 January 2018-31 August 2019 (stage 2)*

88. Israel reported that since 1 January 2018 it has also not denied access to MAP in 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. However, no such cases in relation hereto were received since that date.

89. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Israel fully reflects their experience with Israel since 1 January 2018 and/or there are no additions to the previous input given. One of these peers noted that it had not noticed any impediments regarding the granting of access to MAP with Israel.



*Anticipated modifications*

90. Israel did not indicate that it anticipates any modifications in relation to element B.4.

*Conclusion*

	Areas for improvement	Recommendations
[B.4]	-	-

**[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.

91. 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*

92. Israel reported that under its domestic law it is possible that taxpayers and the tax administration enter into a settlement agreement during the course of or after an audit has ended. In practice, audit settlements can be negotiated as part of the audit process between taxpayers and assessing officers. In concluding a settlement, a written agreement is signed by them. Accordingly, an amended assessment is issued in line with the content of the agreement. Israel further reported that access to MAP will not be denied in cases of audit settlement, but the settlement and the circumstances of its negotiation may be taken into account under MAP.

*Administrative or statutory dispute settlement/resolution process*

93. Israel reported it has no 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.

*Recent developments*

94. There are no recent developments with respect to element B.5.

***Practical application******Period 1 January 2016-31 December 2017 (stage 1)***

95. Israel reported that it has in the period 1 January 2016-31 December 2017 not denied access to MAP for any case where the issue presented by the taxpayer has already been resolved through an audit settlement between the taxpayer and the tax administration. However, no such cases in relation hereto were received in that period.

96. All peers that provided input indicated not being aware of a denial of access to MAP in Israel in the period 1 January 2016-31 December 2017 in cases where there was an audit settlement between the taxpayer and the tax administration.

***Period 1 January 2018-31 August 2019 (stage 2)***

97. Israel reported that since 1 January 2018 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with an audit settlement between the taxpayer and the tax administration. Israel further reported that since 1 January 2018 one such case was received by the treaty partner, for which access to MAP was granted and which is still pending resolution.

98. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Israel fully reflects their experience with Israel since 1 January 2018 and/or there are no additions to the previous input given. One of these peers noted that it had not noticed any impediments regarding the granting of access to MAP with Israel. Another peer, who only provided input during stage 2, reported that it has been informed by taxpayers that Israel auditors increase audit adjustments where taxpayers request MAP relief, which may be considered an impediment to the MAP process. Israel responded to this input and noted that Israel does not undertake such practice and that it does not approve of such practices. Israel stressed that the assessing offices are well aware that it is forbidden to require a taxpayer to waive MAP as a remedy as part of an audit settlement. It further clarified that MAP and assessments in Israel are separate procedures and that the assessment process cannot be used as a sanction to the taxpayer for initiating MAP.

***Anticipated modifications***

99. Israel 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.

100. 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 publically available.

### ***Legal framework on access to MAP and information to be submitted***

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

102. Israel's MAP guidance provides that if a MAP request does not contain information, details and documents as required, Israel's competent authority is entitled to close the case or deny access to the case. It also provides that Israel's competent authority is entitled to require from the applicant, at any time, the disclosure of any further information, details or documents necessary to handle the request. Israel reported that in practice, a request to submit additional information will be made before the case is rejected, and that there is no formal pre-defined time limit to respond to such a request, but that in practice in general a timeframe from four to six weeks applies.

### ***Recent developments***

103. There are no recent developments with respect to element B.6.

### ***Practical application***

#### *Period 1 January 2016-31 December 2017 (stage 1)*

104. Israel 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. Israel further reported that in the period 1 January 2016-31 July 2017 its competent authority denied access to MAP in one case where the taxpayer did not comply with the information and documentation requirements as set out in Israel's MAP guidance. Israel clarified that in this case the taxpayer concerned decided to object the decision of denial before the court and the court confirmed Israel's competent authority position. Israel reported that the court also confirmed that Israel's competent authority's information and documentation requirements are reasonable and necessary.

105. All peers that provided input indicated not being aware of a limitation of access to MAP by Israel in the period 1 January 2016-31 July 2017 in situations where taxpayers complied with information and documentation requirements.

#### *Period 1 January 2018-31 August 2019 (stage 2)*

106. Israel reported that since 1 January 2018 it has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

107. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Israel fully reflects their experience with Israel since 1 January 2018 and/or there are no additions to the previous input given. One of these peers noted that it had not noticed any impediments regarding the granting of access to MAP with Israel.

### *Anticipated modifications*

108. Israel reported that it is in the process of updating its MAP guidance, which is to be published shortly. A section of this update will include a statement that taxpayers should submit additional requested information within 21 business days or at the date specified in the request. The taxpayer may be granted a longer period upon reasoned request.

### *Conclusion*

	Areas for improvement	Recommendations
[B.6]	-	-

## **[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.

109. 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 Israel's tax treaties*

110. Out of Israel's<sup>2</sup> 58 tax treaties, 51 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. Furthermore, six treaties do not contain any provision that is based on or equivalent to Article 25(3) of the OECD Model Tax Convention. The remaining tax treaty contains a provision similar to Article 25(3), second sentence, of the OECD Model Tax Convention, but this provision refers to the consultation "regarding cases not provided for in the convention", whereas the second sentence of Article 25(3) refers to the consultation "for the elimination of double taxation in cases not provided for in the convention". As the particular tax treaty provides for a scope of application that is at least as broad as the second sentence of Article 25(3), it is considered to be in line with element B.7.

### *Peer input*

111. Of the peers that provided input during stage 1, some peers commented that their treaty with Israel meets the requirement under element B.7, which is consistent with the above analysis. For the seven treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, one relevant peer reported the absence of such provision in its treaty, which is also consistent with the above analysis.

## *Recent developments*

### *Bilateral modifications*

112. Israel signed new treaties with two treaty partners and one amending protocol to an existing treaty. Both newly signed treaties are with treaty partners with which there were no treaties yet in place. Both newly signed treaties and the amending protocol contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, which was not the case for the existing treaty for which an amending protocol was entered into.

113. Both newly signed treaties and the amending protocol have already entered into force. The effects of the newly signed treaties and the amending protocol have been reflected in the analysis above where they have relevance.

### *Multilateral Instrument*

114. Israel recently signed the Multilateral Instrument and has deposited its instrument of ratification on 13 September 2018. The Multilateral Instrument has for Israel entered into force on 1 January 2019.

115. 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.

116. In regard of the six tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Israel listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant six treaty partners, two are not a signatory to the Multilateral Instrument. All remaining four treaty partners listed their tax treaty with Israel as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(d)(ii).

117. Three of these four treaty partners have already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Israel and the treaty partners. Therefore, at this stage, the Multilateral Instrument has modified the provision in three treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. For the remaining treaty, the Multilateral Instrument will, upon its entry into force for this treaty, modify it to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

*Peer input*

118. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Israel. One of these peers concerns a treaty partner to the treaty identified above that does not contain Article 25(3), second sentence, of the OECD Model Tax Convention and which will be modified by the Multilateral Instrument.

*Anticipated modifications*

119. For the remaining two tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, Israel has not put a specific plan in place nor has it taken any actions for the renegotiations of these tax treaties.

120. Regardless, Israel reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

*Conclusion*

	Areas for improvement	Recommendations
[B.7]	<p>Six out of 58 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these six treaties:</p> <ul style="list-style-type: none"> <li>• Three have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.</li> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.</li> <li>• Two will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. For these two tax treaties, no actions have been taken nor are any actions planned to be taken.</li> </ul>	<p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Israel should without further delay request the inclusion of the required provision via bilateral negotiations.</p>

**[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.

121. 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.

### ***Israel's MAP guidance***

122. Israel has issued rules, guidelines and procedures on the MAP process in Income Tax Order of Performance 23/2001 – the Unit of International Taxation (the first of Tevet, 5762, 16 December 2001). This guidance is available at (in Hebrew):

<https://www.gov.il/he/departments/policies/income-tax-inst-23-2001>

123. Israel's MAP guidance contains information on:

Name of the competent authority or the office in charge of MAP cases
The manner and form in which the taxpayer should submit its MAP request
The specific information and documentation that should be included in a MAP request (see also below)
How the MAP functions in terms of timing and the role of the competent authorities
Relationship with domestic available remedies
Access to MAP in transfer pricing cases
Suspension of tax collection during the period a MAP case is pending

124. Israel's MAP guidance contains detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance partially includes information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, namely the manner and form in which the taxpayer should submit its MAP request.<sup>3</sup> However, the contact details (mailing address or email address) of the competent authority to which a MAP request should be sent are not specified.

125. In addition, the guidance does not contain information on:

- whether MAP is available in: (i) cases concerning the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the consideration of interest and penalties in the MAP
- the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

126. Peers did not provide input on the availability of Israel's MAP guidance. Also taxpayers did not report any issues on the clarity and availability of this guidance, albeit that one taxpayer reported not being informed about the availability of MAP in Israel.

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

127. 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.<sup>4</sup> This agreed guidance is shown below. Israel'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.

128. Israel's MAP guidance further specifies that if the applicant does not include information, details and documents as required, the competent authority is entitled to close the case or deny access to MAP. It also mentions that documents in other language than Hebrew need to be filed in the original language alongside with a translation into Hebrew.

### *Recent developments*

129. There are no recent developments with respect to element B.8.

### *Anticipated modifications*

130. Israel reported that it has prepared an update to its MAP guidance, which it expects to be published shortly. The update to the MAP guidance will include the following items that are not included in the current guidance:

- contact details of Israel's competent authority
- whether MAP is available in cases of the application of anti-abuse provisions and multilateral disputes
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers.

### *Conclusion*

	Areas for improvement	Recommendations
[B.8]	Contact details of the competent authority are not included in the MAP guidance	Israel should follow its stated intention and without further delay publish the update to its MAP guidance, which should include the contact details of its competent authority.



**[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.

131. 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>5</sup>

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

132. The MAP guidance of Israel is published and can be found at (in Hebrew):

<https://www.gov.il/he/departments/policies/income-tax-inst-23-2001>

133. Israel reported that this guidance was issued in 2001 and that as regards its accessibility, it can easily be found on the website of Israel’s tax administration by searching the term “mutual agreement procedures”, “double taxation” or “tax treaty” in Hebrew on the website.

***MAP profile***

134. The MAP profile of Israel is published on the website of the OECD, which has not been updated since 1 September 2016. This MAP profile is complete and with detailed information. This profile includes external links which provide extra information and guidance where appropriate.

***Recent developments***

135. There are no recent developments with respect to element B.9.

***Anticipated modifications***

136. As mentioned under element B.8, Israel has prepared an update to its MAP guidance, which will be published shortly. Israel did not further indicate that it will update its MAP profile after the publication of the updated MAP guidance.

***Conclusion***

	Areas for improvement	Recommendations
[B.9]	-	-

**[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.

137. 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***

138. As previously discussed under element B.5, it is in Israel possible law that taxpayers and the tax administration enter into a settlement agreement during the course of or after ending of an audit. The relationship between access to MAP and audit settlements, however, is not described in its MAP guidance. Israel's MAP profile indicates that access to MAP could be granted to any issues where there is already an audit settlement between the tax authority and the taxpayer.

139. The peers that provided input raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Israel's MAP guidance.

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

140. As previously mentioned under element B.5, Israel 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 this regard, there is no need to address in Israel's MAP guidance the effects of such process with respect to MAP.

141. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Israel, which can be clarified by the fact that such process is not in place in Israel.

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

142. As Israel 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.

### ***Recent developments***

143. There are no recent developments with respect to element B.10.

### ***Anticipated modifications***

144. Israel reported that it has prepared an update to its MAP guidance, which is to be published shortly. Israel specified that this update will include a description of the relationship between MAP and audit settlements.

### ***Conclusion***

	<b>Areas for improvement</b>	<b>Recommendations</b>
[B.10]	MAP guidance does not include information on the relationship between MAP and audit settlements	Israel should follow its stated intention and without further delay update its MAP guidance to clarify that taxpayers have access to MAP in cases of audit settlements.

## **Notes**

1. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.
2. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.
3. 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).
4. 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).
5. 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).

## *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 (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), “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.

145. 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 Israel's tax treaties***

146. Out of Israel's<sup>1</sup> 58 tax treaties, 55 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 three treaties contain a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention, but are for the following reasons not being considered equivalent thereof: (i) the scope of the provision is limited to cases of “double taxation”, and not to cases of “taxation that is not in accordance with the provision of the treaty” and (ii) the phrase “if it is not itself able to arrive at a satisfactory solution” is not included.

#### ***Peer input***

147. Of the peers that provided input during stage 1, four peers commented that their treaty with Israel meets the requirement under element C.1, which is consistent with the above analysis. For the four treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, two relevant peers provided input. One of them indicated that its treaty does not contain the first sentence of Article 25(2) of the OECD Model Tax Convention, while the peer expects its treaty to be modified by the Multilateral Instrument, which conforms with the analysis below.

## *Recent developments*

### *Bilateral modifications*

148. Israel signed new treaties with two treaty partners and one amending protocol to an existing treaty. Both newly signed treaties are with treaty partners with which there were no treaties yet in place. Both newly signed treaties and the amending protocol contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, which was not the case for the existing treaty for which an amending protocol was entered into.

149. Both newly signed treaties and the amending protocol have already entered into force. The effects of the newly signed treaties and the amending protocol have been reflected in the analysis above where they have relevance.

### *Multilateral Instrument*

150. Israel signed the Multilateral Instrument and has deposited its instrument of ratification on 13 September 2018. The Multilateral Instrument has for Israel entered into force on 1 January 2019.

151. 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.

152. In regard of the three tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Israel listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), a notification that they do not contain a provision described in Article 16(4)(b)(i). Of the relevant three treaty partners, one is not a signatory to the Multilateral Instrument. The remaining two treaty partners listed their tax treaty with Israel as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(c)(i).

153. These two treaty partners have already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Israel and the treaty partners and has modified two of the three tax treaties identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

### *Peer input*

154. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Israel. None of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument.

### *Anticipated modifications*

155. For the tax treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention that will not be modified by the Multilateral Instrument, Israel has not put a specific plan in place nor has it taken any actions for the renegotiations of these tax treaties.

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

### *Conclusion*

	Areas for improvement	Recommendations
[C.1]	<p>Three out of 56 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these three tax treaties:</p> <ul style="list-style-type: none"> <li>• Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.</li> <li>• One will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. For the tax treaty no actions have been taken nor are any actions planned to be taken.</li> </ul>	<p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Israel should without further delay request the inclusion of the required provision via bilateral negotiations.</p>

## [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).

157. 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*

158. Statistics regarding all tax treaty related disputes concerning Israel are published on the website of the OECD as of 2010.<sup>2</sup>

159. 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. Israel provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Israel and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively<sup>3</sup> and should be considered jointly for an understanding of the MAP caseload of Israel.

160. With respect to post-2015 cases, Israel reported that for the years 2016-18 it has reached out to all its MAP partners with a view to have their MAP statistics matching. In that regard, Israel reported that it could match its statistics with all but one treaty partner.

161. Two peers provided input on the matching of MAP statistics with Israel. One peer mentioned that its competent authority reached out to Israel to match the statistics at the beginning of 2019, but did not record a response from Israel. The peer, however, also mentioned that the relevant statistical data was always agreed upon the closing of cases. In this respect, Israel confirmed the practice of matching and clarified it could match the 2018 MAP statistics with this peer. The other peer noted that statistics were successfully matched.

### *Monitoring of MAP statistics*

162. Israel has a system in place whereby it communicates, monitors and manages with its treaty partners the MAP caseload. Israel closely monitors every case and analyses the cause for any delay in closing cases.

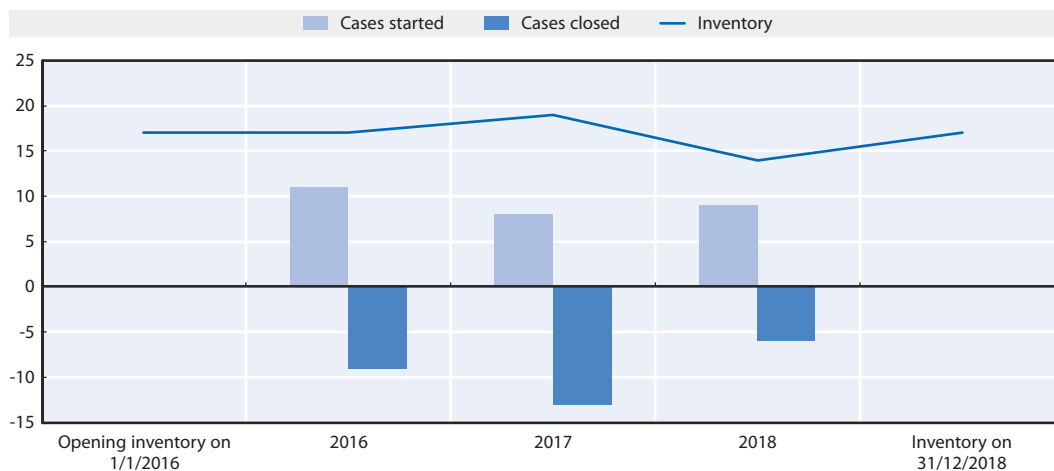
### *Analysis of Israel's MAP caseload*

#### *Global overview*

163. The analysis of Israel's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018.<sup>4</sup>

164. Figure C.1. shows the evolution of Israel's MAP caseload over the Statistics Reporting Period.

Figure C.1. Evolution of Israel's MAP caseload

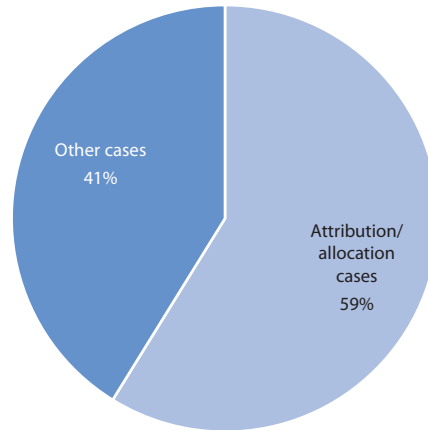


165. At the beginning of the Statistics Reporting Period Israel had 17 pending MAP cases, of which nine were attribution/allocation cases and eight other MAP cases.<sup>5</sup> At the end of the Statistics Reporting Period, Israel had also 17 MAP cases in its inventory, of which ten are attribution/allocation cases and seven are other MAP cases. Accordingly Israel's MAP caseload has on an overall level not changed during the Statistics Reporting Period, albeit that the number of attribution/allocation cases in inventory increased with one case while the number of other cases decreased with one case.



166. The breakdown of the end inventory can be shown as in Figure C.2.

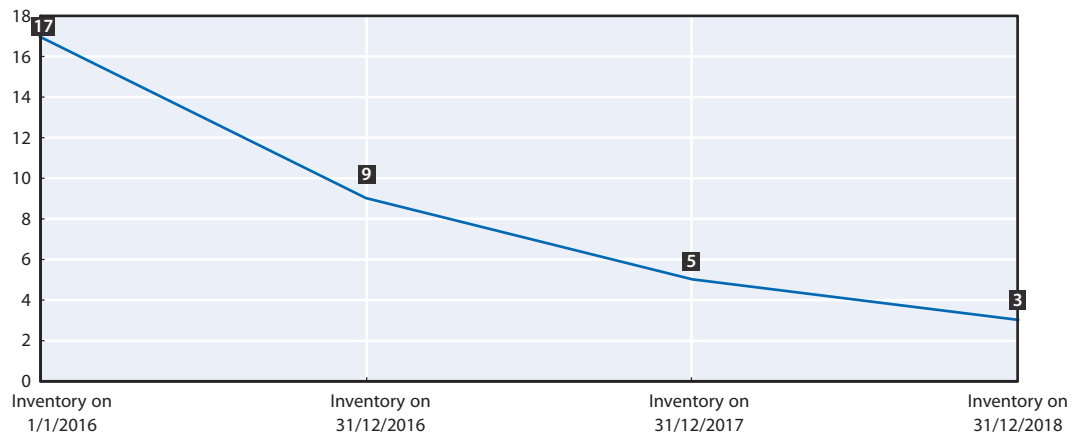
Figure C.2. End inventory on 31 December 2018 (17 cases)



#### *Pre-2016 cases*

167. Figure C.3 shows the evolution of Israel's pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Israel's MAP inventory  
Pre-2016 cases



168. At the beginning of the Statistics Reporting Period, Israel's MAP inventory of pre-2016 MAP cases consisted of 17 cases, of which were nine attribution/allocation cases and eight other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to three cases, consisting of two attribution/allocation case and one other case. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	-56%	-50%	(no case closed)	-78%
Other cases	-38%	-40%	-67%	-88%

### Post-2015 cases

169. Figure C.4 shows the evolution of Israel's post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of Israel's MAP inventory

Post-2015 cases



170. In total, 28 MAP cases started during the Statistics Reporting Period, ten of which concerned attribution/allocation cases and 18 other cases. At the end of this period the total number of post-2015 cases in the inventory was 14 cases, consisting of eight attribution/allocation cases and six other cases. Accordingly, Israel closed 14 post-2015 cases during the Statistics Reporting Period, two of which concerned attribution/allocation cases and 12 other cases. The total number of closed cases represents half of the total number of post-2015 cases that started during the Statistics Reporting Period.

171. The number of post-2015 cases closed as compared to the number of post-2015 cases started during the Statistics Reporting Period is shown in the table below.

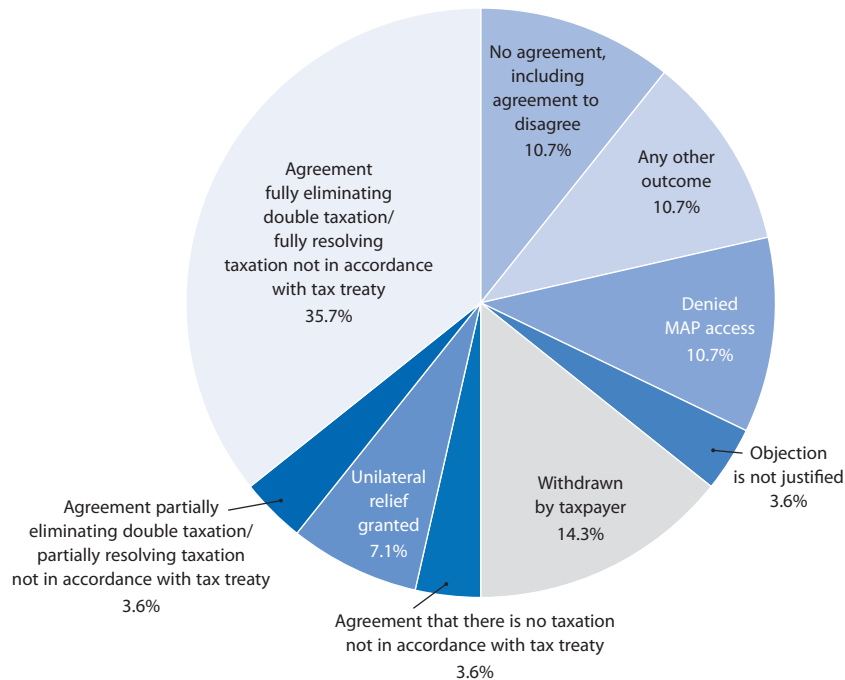
Post-2015 cases	% of cases closed compared to cases started in 2016	% of cases closed compared to cases started in 2017	% of cases closed compared to cases started in 2018	Cumulative percentage of cases closed compared to cases started over the three years (2016-18)
Attribution/allocation cases	0%	50%	25%	20%
Other cases	14%	133%	60%	67%

## Overview of cases closed during the Statistics Reporting Period

### Reported outcomes

172. During the Statistics Reporting Period in total Israel closed 28 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed in 2016, 2017 or 2018 (28 cases)



173. Figure C.5 shows that during the Statistics Reporting Period, ten out of 28 cases were closed through an agreement fully eliminated double taxation or fully resolved taxation not in accordance with tax treaty.

### Reported outcomes for attribution/allocation cases

174. In total, nine attribution/allocation cases were closed during the Statistics Reporting Period. The reported outcomes for these cases are:

- denied MAP access (33%)
- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (33%)
- withdrawn by taxpayer (22%)
- unilateral relief granted (11%)

*Reported outcomes for other cases*

175. In total, 19 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (37%)
- no agreement including agreement to disagree (16%)
- any other outcome (16%)
- withdrawn by taxpayer (11%)

*Average timeframe needed to resolve MAP cases**All cases closed during the Statistics Reporting Period*

176. The average time needed to close MAP cases during the Statistics Reporting Period was 31.24 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	9	37.08
Other cases	19	28.47
All cases	28	31.24

*Pre-2016 cases*

177. For pre-2016 cases Israel reported that on average it needed 43.35 months to close seven attribution/allocation cases and 58.49 months to close seven other cases. This resulted in an average time needed of 50.92 months to close 14 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Israel reported that it uses the following:

- *Start date*: the date Israel received notice of the case, either from the partner country or the request from an Israeli resident to initiate MAP
- *End date*: the day the case was either resolved (agreement reached with the other competent authority), or otherwise closed.

*Post-2015 cases*

178. For post-2015 cases Israel reported that on average it needed 15.11 months to close two attribution/allocation cases and 10.96 months to close 12 other cases. This resulted in an average time needed of 11.55 months to close 14 post-2015 cases.

*Peer input*

## Period 1 January 2016-31 December 2017 (stage 1)

179. Generally, all peers that provided input emphasised that in the period 1 January 2016-31 December 2017 they had very limited experience with Israel in handling and resolving MAP cases. Their input is further discussed under element C.3.

Period 1 January 2018-31 August 2019 (stage 2)

180. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Israel fully reflects their experience with Israel since 1 January 2018 and/or there are no additions to the previous input given. One peer only provided input during stage 2, which will be discussed under element C.3 below.

### *Recent developments*

181. Israel was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 48% of its post-2015 MAP cases that were pending on 31 December 2017 within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

182. With respect to this recommendation, Israel has not reported any specific actions taken. It, however, reported that while a number of complicated cases are still pending, its competent authority has made an effort to resolve open MAP cases as soon as possible by engaging the local taxpayers at an early stage.

### *Anticipated modifications*

183. Israel did not indicate that it anticipates any modifications in relation to element C.2.

### *Conclusion*

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

184. 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 Israel's competent authority*

185. Under the tax treaties Israel entered into, the competent authority function is assigned to the Minister of Finance, which it has delegated to the International Tax Division of Israel's tax administration. This division functions under the supervision of the Senior Deputy Director for Professional Affairs. In this respect, Israel reported that two staff members within the division partially deal with handling MAP cases along with other tasks, whereby priority is given to MAP tasks. Israel further reported that these persons are provided administrative assistance from other personnel within the division and technical assistance from an ad-hoc group of professional experts, including transfer pricing experts, economists, international and legal advisors.

186. Further to the above, Israel reported that staff of its competent authority receives training in combination with the training given to other international specialists of the division. Israel added that budget for travel and translation is allocated under the annual work plan and that unexpected expenses are covered where necessary as well.

### *Monitoring mechanism*

187. Israel reported that it monitors its MAP caseload based on the OECD statistics reporting framework and additional internal information. Israel further reported that resources are assessed on a continuous basis and that the annual budget takes into account the forecast of the MAP inventory.

### *Recent developments*

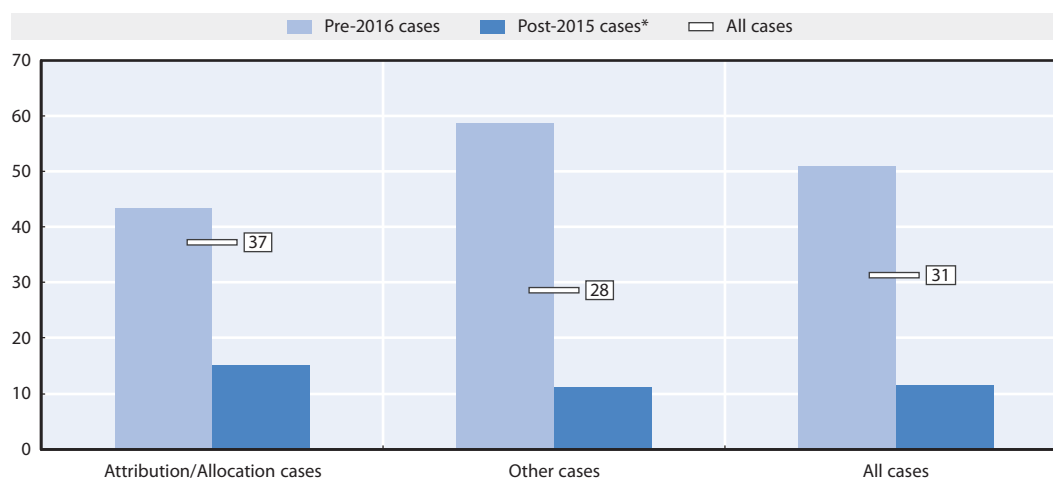
188. Israel reported that the competent authority hired an additional staff member with transfer pricing experience, who will be part of its time handling attribution/allocation MAP cases. Furthermore, as discussed under element C.2, Israel reported that its competent authority has made an effort to resolve open MAP cases as soon as possible by engaging the local taxpayers at an early stage while a number of complicated cases are pending.

### *Practical application*

#### *MAP statistics*

189. As discussed under element C.2, Israel did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average. While the average time taken to close attribution/allocation cases is higher than the average time needed for other cases, for both type of cases the average is above 24 months. This can be illustrated by Figure C.6.

Figure C.6. Average time (in months) to close cases in 2016-2018



\* Note that these post-2015 cases only concern cases started and closed during 2016-18.

190. Based on these figures, it follows that on average it took Israel 31.24 months to close 28 MAP cases, which is above the pursued average of 24 months. It took Israel 37.08 months to close attribution/allocation cases, and 28.47 months for other cases.

191. The stage 1 peer review report of Israel analysed the 2016 and 2017 MAP statistics and showed an average of 33.60 months, which was above the pursued average of 24 months to close MAP cases. This both regards attribution/allocation cases (38.48 months) and other cases (30.80 months). In this respect, Israel provided the median time taken to close MAP cases, which was 22.19 months. On that basis Israel was recommended to continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are

resolved in a timely, efficient and effective manner. In addition, in particular for attribution/allocation cases, Israel was suggested to monitor if the procedures in place to follow up on the information/documentation requested from the taxpayers are appropriate with a view to accelerate the resolution of these cases.

192. For stage 2, the 2018 MAP statistics are also taken into account. The average time to close MAP cases for this year are:

	2018
Attribution/Allocation cases	25.81
Other cases	21.93
All cases	22.58

193. The 2018 statistics of Israel show that the average completion time of MAP cases decreased from 33.60 months to 22.58 months, whereby the average for attribution/allocation cases decreased from 38.48 months to 25.81 months, albeit that it is still slightly above the pursued average of 24 months. For other cases the average decreased from 30.80 months to 21.93 months.

194. Furthermore – as analysed in element C.2 – the MAP inventory of Israel has not changed since 1 January 2016. This can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2018	Increase in %
Attribution/allocation cases	9	10	9	10	11%
Other cases	8	18	19	7	-13%
<b>Total</b>	17	28	28	17	0%

### *Clarifications by Israel*

195. During stage 1 Israel provided the following clarification for why MAP cases were not closed within the 24-month average time period:

- Significant delays resulted from taxpayers' non-provision of documentation and information.
- Some cases are complex attribution/allocation cases or other cases required a few clarifications and extensive translations.

196. For stage 2, Israel did not provide a further clarification why MAP cases were not closed within the 24-month average time period. Israel, however, clarified that the average time taken to close pre-2016 cases in 2018 has decreased from the average in 2016-17, because in 2016-17 it addressed cases that were inactive for a long time while in 2018 it gave MAP a high prioritisation and had better communication with treaty partners.

### *Peer input*

Period 1 January 2016-31 December 2017 (stage 1)

197. Several peers that provided input reported that in the period 1 January 2016-31 December 2017, they had very limited experience with Israel, mentioning that they were not in a position to provide relevant peer input. Three peers, however, had sufficient

experience and provided input with respect to their relationship with Israel's competent authority. One of these peers reported that Israel's competent authority is competent, efficient and easy to get in contact with. Another peer viewed its co-operation and communication as good and prospering. It also mentioned that it did not observe any impediments which led to unnecessary delays in finding a solution for a MAP case. The third peer observed that Israel's competent authority makes principled arguments and also considers alternative principled perspectives to resolve MAP cases.

198. One taxpayer also provided input and reported having experienced difficulties in accessing the MAP process in Israel. This taxpayer indicated having been informed late (by Israel's treaty partner) about the availability of MAP in its case. He further reported that it submitted a MAP request in Israel in 2017 and that it never received any acknowledgement of receipt. In response, Israel reported that the MAP request concerned was submitted to the competent authority of another jurisdiction and that Israel's competent authority received a notification from the other competent authority only in 2018. Israel reported that in the meantime it acknowledged receipt of such a notification and that the case is under consideration.

#### Period 1 January 2018-31 August 2019 (stage 2)

199. All peers that provided input during stage 1 stated in stage 2 stated that the update report provided by Israel fully reflects their experience with Israel since 1 January 2018 and/or there are no additions to the previous input given. One of these peers provided additional input and mentioned that its experience in resolving one MAP case with Israel is positive and that its competent authority is easy to get in contact with and solution orientated. One peer, who only provided input during stage 2, mentioned that it had one MAP case with Israel, which was successfully resolved. The peer noted that it took 26 months to resolve, but that this was largely as a result of a delay in the taxpayer providing further information to support the MAP request.

#### *Anticipated modifications*

200. Israel indicated that its competent authority has requested additional resources and that this request is being under consideration.

#### *Conclusion*

	Areas for improvement	Recommendations
[C.3]	While Israel has reduced the average completion time of MAP cases in 2018 as compared to 2016-17, resulting in an average for 2018 to be below 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), there is still a risk that post-2015 cases are not resolved within the average of 24 months. This regards both attribution/allocation cases and other cases, for which the average timeframe is 37.08 months and 28.47 months respectively, and which may indicate that the competent authority is not adequately resourced.	As since 1 January 2018 Israel has added additional resources to its competent authority in relation to attribution/allocation cases and since the average completion time for MAP cases has decreased from 33.60 months in 2016-17 to 22.58 months in 2018, it should closely monitor whether the addition of resources recently provided will be sufficient to ensure a timely, effective and efficient resolution of MAP cases, in particular whether this will lead to a further reduction of the average completion time of attribution/allocation cases.  If this would not be the case, Israel should hire or assign more staff to its competent authority, or take further actions to ensure a timely resolution of these MAP cases, which both regards attribution/allocation cases and other cases.



#### **[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.

201. 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***

202. Israel reported that there is no formal requirement for staff within its competent authority to consult or involve any tax administration personnel outside its office on MAP cases. Offices in charge of tax assessments are notified of the MAP procedure and its process. Israel clarified that those offices are only requested to provide the competent authority staff with all relevant information and materials on the case under review. It also mentioned that the legal department of the tax administration provides legal advice in appropriate cases and that professional experts are consulted or involved, but they do not have any authority to approve or reject any aspect of MAP.

203. Israel also reported that the organisational framework of its tax administration allows extensive consultation with international specialists during the ordinary assessment operation. Israel believes that such consultation may contribute to limit treaty-related disputes and that its competent authority remains independent in resolving MAP cases.

204. In view of the above, Israel reported that staff in charge of MAP in practice 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.

##### ***Recent developments***

205. There are no recent developments with respect to element C.4.

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

###### ***Period 1 January 2016-31 December 2017 (stage 1)***

206. All peers that provided input reported not being aware of any impediments in Israel to perform its MAP function in the absence of approval or the direction of the tax administration personnel directly involved in the adjustments at issue or being influenced by considerations of the policy in the period 1 January 2016-31 December 2017.

*Period 1 January 2018-31 August 2019 (stage 2)*

207. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Israel fully reflects their experience with Israel since 1 January 2018 and/or there are no additions to the previous input given. In addition, one peer that only provided input during stage 2 mentioned that the update report is consistent with its experience with Israel. Another peer that also only provided during stage 2 reported that due to insufficient resources within Israel's MAP function, the personnel in the Israel's Tax Administration, who have expertise on specific cases and provide assistance to exam teams, fully participate in competent authority meetings, noting that it detracts from the objectivity in MAP discussions and creates challenges to resolving cases. The peer also reported that since Israel's domestic law does not allow for extension of statutes, Israel's exam function may make an adjustment without adequately developing the case, and it may enter MAP.

208. Israel responded this input and mentioned that considering the MAP caseload in Israel, allocation of resources does not allow for an expert to be employed within the MAP function. Such experts from a department at the headquarter level just provide advice on specific cases to both assessment teams and to the MAP team. In this respect, Israel clarified that such experts only actively participate in competent authority meetings for discussion on the economic points, especially in discussions with economists from the other competent authority, and do not have authority to decide the case or any of its issues. Israel stressed that in its view the competent authority should have the option to have the most professional party to provide assistance in MAP discussions in order to optimise resource allocation. Lastly, Israel noted that it is not possible to extend statute under the current legislation and that extensions may be problematic in cases that involve numerous issues, not all under the purview of MAP.

209. With respect to the independency of the competent authority from tax administration personnel who made the adjustment at issue, it should be ensured that when such personnel are present during competent authority meetings it is for the purposes of fact-checking and providing other background analysis to assist the understanding of the cases in question by the competent authorities, so that the objectivity and aim of such meetings is maintained. In this respect, Israel's practice that such personnel fully participates in competent authority meetings does not ensure such entire independency and therefore it is not considered to be in line with this part of element C.4.

***Anticipated modifications***

210. Israel indicated that it does not anticipate any modifications in relation to element C.4.

***Conclusion***

	<b>Areas for improvement</b>	<b>Recommendations</b>
[C.4]	Personnel of tax administrations directly involved in the adjustment at issue fully participates in competent authority meetings. This bears the risk that the competent authority function is not performed entirely independent from the approval or direction of the tax administration personnel directly involved in the adjustment at issue concerning the resolution of MAP cases during such meetings.	Israel should ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the personnel of the tax administrations directly involved in the adjustments at issue when they attend competent authority meetings.

## [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.

211. 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 Israel*

212. Israel reported that staff in charge of MAP is evaluated bi-annually on the basis of targets set for and developments by the department in the tax authority. Targets are set with regard to meeting deadlines for some projects including issuance of guidance or digitalisation, but not in terms of resolution of MAP cases. As such, no performance indicators related to MAP case resolution are used.

213. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below. None of the below items is specifically used by Israel.

- 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).

214. Further to the above, Israel 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.

### *Recent developments*

215. There are no recent developments with respect to element C.5.

### *Practical application*

#### *Period 1 January 2016-31 December 2017 (stage 1)*

216. All peers that provided input provided no specific input relating to this element of the Action 14 Minimum Standard.

*Period 1 January 2018-31 August 2019 (stage 2)*

217. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Israel fully reflects their experience with Israel since 1 January 2018 and/or there are no additions to the previous input given.

***Anticipated modifications***

218. Israel did not indicate that it anticipates any modifications in relation to element C.5.

***Conclusion***

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

219. 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***

220. Israel reported that it has some limitations to include MAP arbitration in its tax treaties. Its tax treaty policy therefore is not to include an arbitration provision in its tax treaties. While Israel was a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument, with the depositing of its instrument of ratification did not opt in for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision. Israel also made a reservation not to include Article 25(5) of the OECD Model Tax Convention in its tax treaties.

***Recent developments***

221. There are no recent developments with respect to element C.6.

***Practical application***

222. Israel has incorporated an arbitration clause in two of its 58 treaties as a final stage to the MAP, which provide for a voluntary arbitration procedure to be applied when both competent authorities and the taxpayer agree so.

223. Furthermore, Israel has included a most-favoured nation clause on arbitration on another treaty. This clause stipulates that when an arbitration provision in the treaty between that state and a third state becomes effective, the arbitration provision with Israel also becomes effective. According to that treaty partner, the arbitration provision became effective once part VI of the Multilateral Instrument took effect for any of the treaty

partner’s tax treaties as the treaty partner ratified the Multilateral Instrument and opted for arbitration in that instrument. In this respect, Israel indicated that it considers the arbitration provision in the treaty is in force.

### *Anticipated modifications*

224. Israel did not indicate any anticipated modifications in relation to element C.6.

### *Conclusion*

	Areas for improvement	Recommendations
[C.6]	-	-

## Notes

1. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.
2. Available at: [www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm](http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm). These statistics are up to and include fiscal year 2019.
3. For post-2015 cases, if the number of MAP cases in Israel’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Israel reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
4. Israel’s 2016-18 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016-18. See further explanations in Annex B and C.
5. For pre-2016 and post-2015 Israel follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.

## 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 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.

225. 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***

226. Israel<sup>1</sup> reported that any MAP agreement shall be implemented notwithstanding any time limits in its domestic law provided that the tax treaty concerned contains a provision based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). In the absence of such provision, Israel reported that its domestic statute of limitation applies. Articles 145, 147, 152 and 160 of Income Tax Ordinance (new version) 5721-1961 stipulates that this statute of limitation is four years after the end of the tax year in which the tax return was filed. An additional year may apply in special cases: (i) where an investigation is initiated by the general director of Israel's tax authority or (ii) to correct any error made in the calculation of deductions, credits or exemptions in the above determination. Israel further reported that if the taxpayer objects to a tax assessment, the statute of limitation can be extended by one year after. Israel also specified that if the case relates to the amount of tax credits that should be amended further to a change in the amount of tax payable in Israel or abroad, the statute of limitation can be extended by two years after the related adjustment was made in Israel or other jurisdiction.

227. Concerning the process for implementing MAP agreements, Israel reported that when such agreement is reached, its competent authority will send it to the relevant assessing office within the tax administration and to the taxpayer. The taxpayer is also informed that it can object to the MAP agreement or request its implementation and submit any forms, applications or reports in support thereof if necessary.

228. Israel further reported that its competent authority does not follow up the implementation of MAP agreements actively but that the assessing offices regularly consult its competent authority with respect to implementation.

#### ***Recent developments***

229. There are no recent developments with respect to element D.1.

### ***Practical application***

#### *Period 1 January 2016-31 December 2017 (stage 1)*

230. Israel reported that in the period 1 January 2016-31 December 2017 it has reached seven MAP agreements (two in 2016 and five in 2017). All but one required an implementation by Israel, for which it reported that all of them six, once accepted by taxpayers, were implemented.

231. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2016-31 December 2017 that was not implemented by Israel.

#### *Period 1 January 2017-31 August 2019 (stage 2)*

232. Israel reported that since 1 January 2018 its competent authority has entered into four MAP agreements, all of which required implementation in Israel. Israel clarified that all of these four agreements, once accepted by taxpayers, have been implemented. In this regard, Israel also reported that for none of these agreements the implementation has been obstructed by its domestic statute of limitation in Israel's domestic law.

233. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Israel fully reflects their experience with Israel since 1 January 2018 and/or there are no additions to the previous input given. In addition, one peer that only provided input during stage 2 reported that the update report is consistent with its experience with Israel.

### ***Anticipated modifications***

234. Israel reported that to-be-published guidance includes a requirement that the assessing office has to report to the competent authority regarding the implementation of MAP agreements.

### ***Conclusion***

	<b>Areas for improvement</b>	<b>Recommendations</b>
[D.1]	As will be discussed under element D.3 not all of Israel's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the time limits of four or five years in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in an assessed jurisdiction's relevant tax treaty, prevent the implementation of a MAP agreement, Israel should put appropriate procedures in place to ensure that such an agreement is implemented and follow its stated intention to inform taxpayers in order to mitigate the risk that an agreement cannot be implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Israel should for clarity and transparency purposes notify the treaty partner thereof without delay.



**[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.

235. 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***

236. Israel reported that it has in its domestic legislation and/or administrative framework no defined timeframe for implementation of MAP agreements. Furthermore, Israel's MAP guidance also does not contain information in relation to the process of implementation of MAP agreements, such in terms of steps to be taken and timing of these steps. Israel clarified that in practice, there is no pre-determined timeframe for the taxpayer to give consent on the MAP, but Israel reported that it is generally within a few weeks to three months.

***Recent developments***

237. There are no recent developments with respect to element D.2.

***Practical application******Period 1 January 2016-31 December 2017 (stage 1)***

238. As discussed under element D.1, in the period 1 January 2016-31 December 2017, Israel entered into six MAP agreements that required implementation by Israel. In this respect, Israel reported that all of these MAP agreements, once accepted by taxpayers, were timely implemented and that no cases of noticeable delays have occurred.

239. All peers that provided input indicated not being aware of MAP agreements that were reached in the period 1 January 2016-31 December 2017 that were not implemented by Israel on a timely basis.

***Period 1 January 2018-31 August 2019 (stage 2)***

240. As discussed under element D.1, since 1 January 2018, Israel has entered into four MAP agreements, all of which required implementation in Israel. Israel reported that all of the four MAP agreements, once accepted by taxpayers, have been implemented and it has not experienced any delays in the implementation process.

241. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Israel fully reflects their experience with Israel since 1 January 2018 and/or there are no additions to the previous input given. Of these peers mentioned that since 1 January 2018 the MAP agreement reached was implemented swiftly in Israel and that it observed no impediments. In addition, one peer that only provided input during stage 2 reported that the update report is consistent with its experience with Israel.

*Anticipated modifications*

242. Israel did not indicate that it anticipates any modifications in relation to element D.2.

*Conclusion*

	Areas for improvement	Recommendations
[D.2]	-	-

**[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.

243. 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 Israel's tax treaties*

244. As discussed under element D.1, Israel's domestic legislation includes a general statute of limitations of four or five years for implementing MAP agreements, unless overridden by tax treaties.

245. Out of Israel's 58 tax treaties, 46 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention whereby any agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law of the contracting states. Furthermore, one treaty does not contain the second sentence but has a provision in the MAP article that limits the time during which a contracting state can make adjustments. This provision is considered equivalent to the treaty provisions setting a time limit during which a contracting party can make adjustments pursuant to Article 9(1) or Article 7(2).

246. Of the remaining 11 treaties, nine treaties do not contain a provision that is based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. The other two treaties contain a provision stipulating that MAP agreements can be implemented within the domestic time limits. As this may limit the implementation of such agreements through irrespective of such time limits, they are considered not being equivalent to the second sentence of Article 25(2).

*Peer input*

247. Of the peers that provided input during stage 1, four peers reported that their treaty with Israel meets the requirements under element D.3, which is consistent with the above analysis.

248. For the 11 treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or both alternative provisions, two relevant peers noted such absence, and another foresees its treaty to be modified by the Multilateral Instrument, which conforms with the below analysis.

### ***Recent developments***

#### *Bilateral modifications*

249. Israel signed new treaties with two treaty partners and one amending protocol to an existing treaty. Both newly signed treaties are with treaty partners with which there were no treaties yet in place. Both newly signed treaties and the amending protocol contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, which was not the case for the existing treaty for which an amending protocol was entered into.

250. Both newly signed treaties and the amending protocol have already entered into force. The effects of the newly signed treaties and the amending protocol have been reflected in the analysis above where they have relevance.

#### *Multilateral Instrument*

251. Israel recently signed the Multilateral Instrument and has deposited its instrument of ratification on 13 September 2018. The Multilateral Instrument has for Israel entered into force on 1 January 2019.

252. 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.

253. In regard of the 11 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Israel listed ten as covered tax agreements under the Multilateral Instrument, but only for nine did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant nine treaty partners, two are not a signatory to the Multilateral Instrument, whereas one did not list their treaty with Israel as a covered tax agreement and one made a reservation on the basis of Article 16(5)(c) not

to apply the second sentence of Article 16(2). All remaining five treaty partners also made a notification on the basis of Article 16(6)(c)(ii).

254. Of these five treaty partners, three have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Israel and these treaty partners. Therefore, at this stage the Multilateral Instrument has modified these three treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. For the remaining two treaties, the instrument will, upon entry into force for the treaties concerned, modify them to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

#### *Other developments*

255. Israel reported for one of the six treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, the relevant treaty partner has informed Israel that it will withdraw its reservation under the Multilateral Instrument, following which it is expected that the treaty with that treaty partner will be modified by the instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention.

256. Israel 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. In this respect, Israel reported that it is in negotiation with one treaty partner whose treaty is not in line with element D.3.

#### *Peer input*

257. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Israel. None of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument.

#### *Anticipated modifications*

258. For the remaining four treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, Israel has not put a specific plan in place nor has it taken any actions for the renegotiations of these tax treaties.

259. Regardless, Israel 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.

## Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>11 out of 58 tax treaties do 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). Of these 11 tax treaties:</p> <ul style="list-style-type: none"> <li>• Three have been modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention.</li> <li>• Two are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention.</li> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has amended its notifications.</li> <li>• Five will not be modified by the Multilateral Instrument to include the required provision. With respect to these five treaties: <ul style="list-style-type: none"> <li>- for one negotiations are pending.</li> <li>- for four no actions have been taken nor are any actions planned to be taken.</li> </ul> </li> </ul>	<p>For the remaining five treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Israel should:</p> <ul style="list-style-type: none"> <li>• continue negotiations with the treaty partner for which negotiations are currently pending to include the required provision via bilateral negotiations or be willing to accept both alternative provisions</li> <li>• for four treaty partners without further delay request the inclusion of the required provision via the bilateral negotiations or be willing to accept both alternative provisions.</li> </ul>

## Note

1. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

## 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]	<p>Four out of 58 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these four treaties:</p> <ul style="list-style-type: none"> <li>• Two have been modified by the Multilateral Instrument to include the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.</li> <li>• Two will not be modified by the Multilateral Instrument to include the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. For these two treaties no actions have been taken nor are any actions planned to be taken.</li> </ul>	<p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Israel should without further delay request the inclusion of the required provision in bilateral negotiations.</p>
[A.2]	-	-
<b>Part B: Availability and access to MAP</b>		
[B.1]	<p>Three out of 58 tax treaties do not contain a provision 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, or as amended by that final report. These three treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence. Of these three treaties:</p> <ul style="list-style-type: none"> <li>• For one negotiations are pending.</li> <li>• For two no actions have been taken nor are any actions planned to be taken.</li> </ul>	<p>For the three treaties that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, Israel should:</p> <ul style="list-style-type: none"> <li>• continue negotiations with the treaty partner for which negotiations are currently pending to include the required provision via bilateral negotiations</li> <li>• for two treaty partners without further delay request the inclusion of the required provision via bilateral negotiations.</li> </ul> <p>In both instances this concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> <li>a. as amended by the Action 14 final report; or</li> <li>b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.</li> </ol>
	<p>Two out of 58 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention as the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. These two treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence. For these two treaties no actions have been taken nor are any actions planned to be taken.</p>	<p>For the two treaties that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, Israel should without further delay request the inclusion of the required provision via bilateral negotiations.</p>

	Areas for improvement	Recommendations
[B.1]	<p>Three out of 58 tax treaties do not contain a provision 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, or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these three treaties:</p> <ul style="list-style-type: none"> <li>• One tax treaty has been modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, no actions have been taken nor are any actions planned to be taken.</li> <li>• The remaining two tax treaties are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, negotiations are pending for both treaties.</li> </ul>	<p>For the three treaties that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, Israel should:</p> <ul style="list-style-type: none"> <li>• continue negotiations with two treaty partners for which negotiations are currently pending to include the required provision via bilateral negotiations</li> <li>• for the remaining treaty partner without further delay request the inclusion of the required provision via bilateral negotiations.</li> </ul> <p>In both instances this concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention via bilateral negotiations either:</p> <ol 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, thereby including the full sentence of such provision.</li> </ol>
	<p>Where tax treaties do not contain a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>	<p>Israel should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from being granted access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>
[B.2]	<p>A bilateral notification process is in place, to be applied when the taxpayer's objection raised in the MAP request is considered not to be justified, for the 57 of the 58 treaties that do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention, as amended by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. This process, however, is not documented.</p>	<p>Israel should follow its stated intention and without further delay document its notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps.</p> <p>Furthermore, Israel should continue to apply that process in practice for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.</p>
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-



	Areas for improvement	Recommendations
[B.7]	<p>Six out of 58 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these six treaties:</p> <ul style="list-style-type: none"> <li>• Three have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.</li> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.</li> <li>• Two will not be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. For these two tax treaties, no actions have been taken nor are any actions planned to be taken.</li> </ul>	<p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Israel should without further delay request the inclusion of the required provision via bilateral negotiations.</p>
[B.8]	Contact details of the competent authority are not included in the MAP guidance	Israel should follow its stated intention and without further delay publish the update to its MAP guidance, which should include the contact details of its competent authority.
[B.9]	-	-
[B.10]	MAP guidance does not include information on the relationship between MAP and audit settlements	Israel should follow its stated intention and without further delay update its MAP guidance to clarify that taxpayers have access to MAP in cases of audit settlements.
<b>Part C: Resolution of MAP cases</b>		
[C.1]	<p>Three out of 56 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these three tax treaties:</p> <ul style="list-style-type: none"> <li>• Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.</li> <li>• One will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. For the tax treaty no actions have been taken nor are any actions planned to be taken.</li> </ul>	<p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Israel should without further delay request the inclusion of the required provision via bilateral negotiations.</p>
[C.2]	-	-
[C.3]	<p>While Israel has reduced the average completion time of MAP cases in 2018 as compared to 2016-17, resulting in an average for 2018 to be below 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), there is still a risk that post-2015 cases are not resolved within the average of 24 months. This regards both attribution/allocation cases and other cases, for which the average timeframe is 37.08 months and 28.47 months respectively, and which may indicate that the competent authority is not adequately resourced.</p>	<p>As since 1 January 2018 Israel has added additional resources to its competent authority in relation to attribution/allocation cases and since the average completion time for MAP cases has decreased from 33.60 months in 2016-17 to 22.58 months in 2018, it should closely monitor whether the addition of resources recently provided will be sufficient to ensure a timely, effective and efficient resolution of MAP cases, in particular whether this will lead to a further reduction of the average completion time of attribution/allocation cases.</p> <p>If this would not be the case, Israel should hire or assign more staff to its competent authority, or take further actions to ensure a timely resolution of these MAP cases, which both regards attribution/allocation cases and other cases.</p>

	Areas for improvement	Recommendations
[C.4]	Personnel of tax administrations directly involved in the adjustment at issue fully participates in competent authority meetings. This bears the risk that the competent authority function is not performed entirely independent from the approval or direction of the tax administration personnel directly involved in the adjustment at issue concerning the resolution of MAP cases during such meetings.	Israel should ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent of approval or direction from the personnel of the tax administrations directly involved in the adjustments at issue when they attend competent authority meetings.
[C.5]	-	-
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	As will be discussed under element D.3 not all of Israel's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the time limits of four or five years in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in an assessed jurisdiction's relevant tax treaty, prevent the implementation of a MAP agreement, Israel should put appropriate procedures in place to ensure that such an agreement is implemented and follow its stated intention to inform taxpayers in order to mitigate the risk that an agreement cannot be implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Israel should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	-	-
[D.3]	<p>11 out of 58 tax treaties do 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). Of these 11 tax treaties:</p> <ul style="list-style-type: none"> <li>• Three have been modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention.</li> <li>• Two are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention.</li> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has amended its notifications.</li> <li>• Five will not be modified by the Multilateral Instrument to include the required provision. With respect to these five treaties: <ul style="list-style-type: none"> <li>- for one negotiations are pending.</li> <li>- for four no actions have been taken nor are any actions planned to be taken.</li> </ul> </li> </ul>	<p>For the remaining five treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Israel should:</p> <ul style="list-style-type: none"> <li>• continue negotiations with the treaty partner for which negotiations are currently pending to include the required provision via bilateral negotiations or be willing to accept both alternative provisions</li> <li>• for four treaty partners without further delay request the inclusion of the required provision via the bilateral negotiations or be willing to accept both alternative provisions.</li> </ul>

## Annex A

### Tax treaty network of Israel

		Action 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	
Armenia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N
Australia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N
Austria	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N
Azerbaijan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N
Belarus	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N

		Action 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?
Belgium	Y	N/A	N	Y*	2-years	i***	i	Y*	Y*	Y*	Y*	N
Brazil	Y	N/A	N	i	N/A	i	i	Y	N	Y	N	N
Bulgaria	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Canada	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
China (People's Republic of)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Croatia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Czech Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Denmark	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Estonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Ethiopia	Y	N/A	O	ii	2-years	i	i	Y	N	Y	Y	N
Finland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
France	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Georgia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Germany	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Greece	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N

		Action 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?
Hungary	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
India	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Ireland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y
Italy	Y	N/A	N	ii*	2-years	i*	i	Y	N*	Y	N*	N
Jamaica	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Japan	Y	N/A	O	Y	N/A	Y*	i	Y	Y	Y	Y	N
Korea	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Lithuania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Malta	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Mexico	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	Y
Moldova	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Netherlands	Y	N/A	N	i	N/A	i***	i	Y	Y*	Y	Y	N
North Macedonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Norway	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N

	Action 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?
Panama	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Philippines	Y	N/A	O	ii	2-years	Y	i	Y	iii	Y	Y	N
Poland	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y*	N
Romania	Y	N/A	N	ii*	2-years	i**	i	Y	Y	Y	Y	N
Russia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Serbia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Singapore	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Slovak Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Slovenia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
South Africa	Y	N/A	O	i	N/A	i**	i	Y	N*	N	Y	N
Spain	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Sweden	Y	N/A	N	i	N/A	i***	i	Y*	Y*	Y*	Y*	N
Switzerland	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N
Chinese Taipei	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Thailand	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N

		Action 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?	
Turkey	Y	N/A	O	i	N/A	Y	i	Y	Y	Y	Y	N
Ukraine	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
United Kingdom	Y	N/A	E	Y	N/A	Y	i	Y	Y	Y	Y	N
United States	Y	N/A	O	i	N/A	i	i	N	Y	N	N	N
Uzbekistan	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

*Note:* The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

**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.
- O\*\*/E\*\*\* 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 or has been superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

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***/ii***	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 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 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	9	3	0	2	0	0	0	0	0	0	0	4	39.34
Others	8	0	0	0	0	0	1	1	0	0	1	5	57.56
<b>Total</b>	<b>17</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>9</b>	<b>46.17</b>

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	4	0	0	0	0	0	2	0	0	0	0	2	53.38
Others	5	0	0	0	0	0	1	0	0	0	1	3	85.00
<b>Total</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>5</b>	<b>69.19</b>

*Notes:* There is a discrepancy between the number of pre-2016 MAP cases in Spain's inventory as per 31 December 2016 and 1 January 2017.

- The reported number of MAP cases pending on 31 December 2016 was 208, which consists of 148 attribution/allocation cases and 60 other cases.
- The reported number of MAP cases pending on 1 January 2017 was 203, which consists of 143 attribution/allocation cases and 60 other cases.

In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of pre-2016 cases pending on per 1 January 2016 was corrected.

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	2	0	0	0	0	0	0	0	0	0	0	2	n.a.
Others	3	0	0	0	1	0	1	0	0	0	0	1	33.37
Total	5	0	0	0	1	0	1	0	0	0	0	3	33.37

*Notes:* There is a discrepancy between the number of pre-2016 MAP cases in Spain's inventory as per 31 December 2017 and 1 January 2018.

- The reported number of MAP cases pending on 31 December 2017 was 125, which consists of 79 attribution/allocation cases and 47 other cases.
- The reported number of MAP cases pending on 1 January 2018 was 125, which consists of 79 attribution/allocation cases and 46 other cases.

In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of pre-2016 cases pending on per 1 January 2016 was corrected.

## Annex C

### MAP Statistics Reporting for the 2016, 2017 and 2017 Reporting Periods (1 January 2016 to 31 December 2018) for Post-2015 Cases

2016 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	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 2016	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	4	0	0	0	0	0	0	0	0	0	0	4	n.a.
Others	0	7	0	0	0	0	0	0	0	0	0	1	6	3.62
Total	0	11	0	0	0	0	0	0	0	0	0	1	10	3.62

2017 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	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 2017	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	4	2	0	0	0	1	0	0	0	0	0	0	5	4.41
Others	6	6	0	0	2	0	0	2	0	1	3	0	4	10.62
Total	10	8	0	0	2	1	0	2	0	1	3	0	9	9.93

Notes: There is a discrepancy between the number of post-2015 MAP cases in Spain's inventory as per 31 December 2016 and 1 January 2017.

- The reported number of MAP cases pending on 31 December 2016 was 79, which consists of 55 attribution/allocation cases and 24 other cases.
- The reported number of MAP cases pending on 1 January 2017 was 77, which consists of 53 attribution/allocation cases and 24 other cases.

In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of post-2015 cases received in 2016 was corrected.

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	5	4	0	0	0	0	0	1	0	0	0	0	8	16.63
Others	4	5	0	1	0	0	0	2	0	0	0	0	6	14.30
Total	9	9	0	1	0	0	0	3	0	0	0	0	14	17.18

*Notes:* There is a discrepancy between the number of post-2015 MAP cases in Spain's inventory as per 31 December 2017 and 1 January 2018.

- The reported number of MAP cases pending on 31 December 2017 was 149, which consists of 92 attribution/allocation cases and 57 other cases.
- The reported number of MAP cases pending on 1 January 2018 was 154, which consists of 96 attribution/allocation cases and 58 other cases.

In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of post-2015 cases received in 2017 was corrected.

## *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>	Income Tax Order of Performance 23/2001 – the Unit of International Taxation (the first of Tevet, 5762, 16 December 2001)
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<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>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2017 and 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, Israel (Stage 2)**

### **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 2 peer monitoring of the implementation of the Action 14 Minimum Standard by Israel.



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