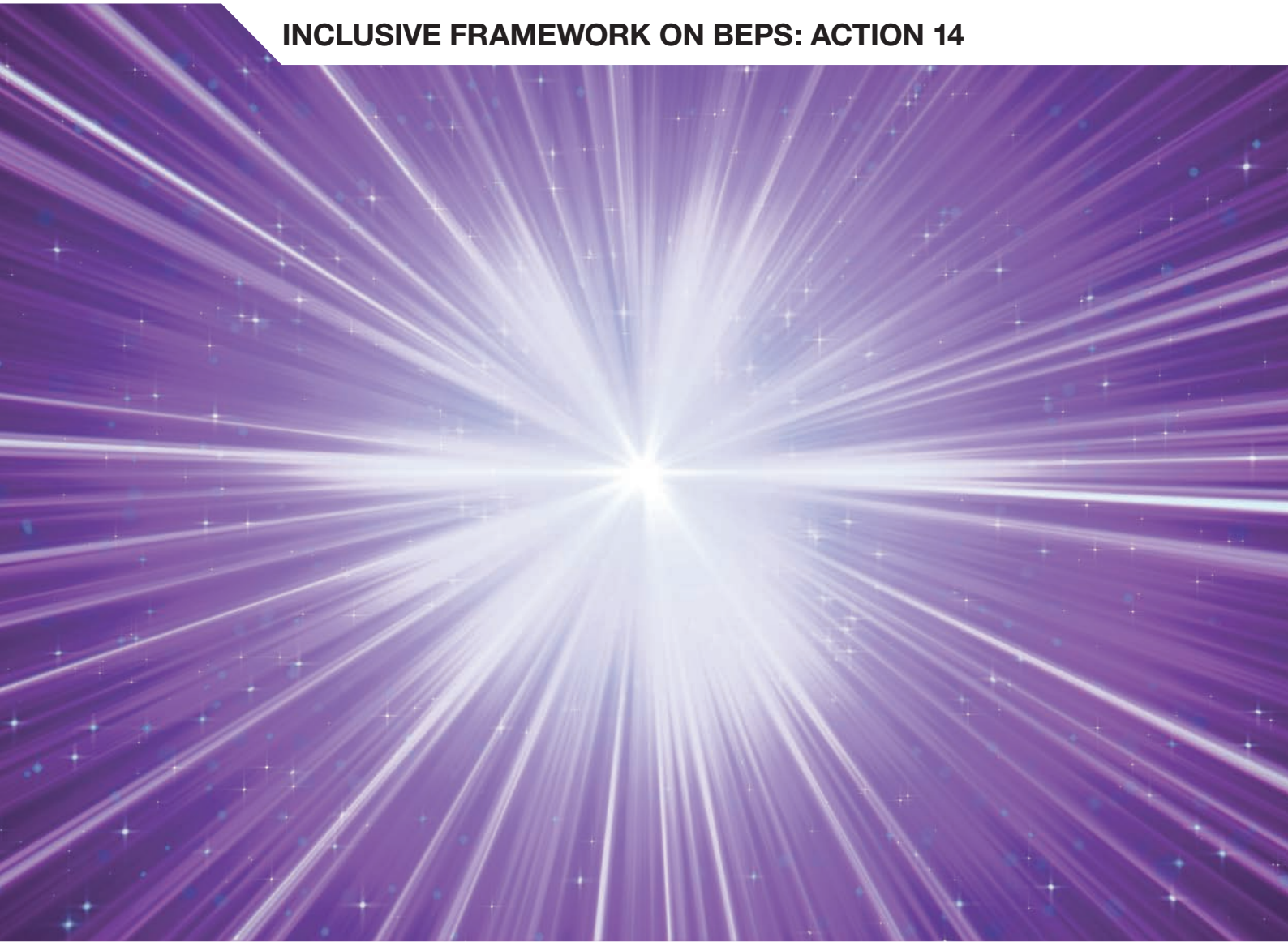


**OECD/G20 Base Erosion and Profit Shifting
Project**



Making Dispute Resolution More Effective – MAP Peer Review Report, New Zealand (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 90 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

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

Inclusive Framework, which already has more than 135 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 28 October 2020 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

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

Executive summary

New Zealand has a modest tax treaty network with over 40 tax treaties. It has an established MAP programme even though it has a small MAP inventory, with a small number of new cases submitted each year and 13 cases pending on 31 December 2018. Of these cases, approximately 46% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall New Zealand met most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, New Zealand has worked to address them, which has been monitored in stage 2 of the process. In this respect, New Zealand has solved almost all of the identified deficiencies.

All of New Zealand's tax treaties include 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 mostly consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Almost 25% 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 (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b) or the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty
- Approximately 45% of its tax treaties do not contain the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty
- Approximately 35% 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.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, New Zealand signed and ratified the Multilateral Instrument. Furthermore, New Zealand opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Through this instrument a number of its tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard in accordance with its plan. New Zealand is in contact with a few treaty partners to strive to include the required provisions via the Multilateral Instrument. Where treaties will not be modified, upon entry into force and entry into effect of the Multilateral Instrument in spite of this, New Zealand 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. Such bilateral negotiations have already been initiated, or are envisaged to be initiated for all but

three of those treaties. For these three treaties, it has planned to initiate negotiations once the other steps of its plan have been finalised.

New Zealand meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request rollbacks of bilateral APAs and such rollbacks are granted in practice.

Furthermore, New Zealand also 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 although it has since 1 January 2015 not received any MAP request concerning cases where anti-abuse provisions are applied or cases where there has been an audit settlement. It further has in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, although no such cases have surfaced since 1 January 2015. New Zealand also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice under its tax treaties.

Concerning the average time needed to close MAP cases, the MAP statistics for New Zealand for the years 2016-18 are as follows:

2016-18	Opening inventory	Cases started	Cases closed	End inventory	Average time to close cases (in months)*
Attribution/allocation cases	3	17	13	6	9.31
Other cases	5	24	22	7	10.84
Total	8	40	35	13	10.27

* The average time taken for closing MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for closing pre-2016 MAP cases, New Zealand used as a start date the date five weeks from the receipt of the MAP request, where this request has been initiated in New Zealand, otherwise the date of notification of the MAP request from the other competent authority and as the end date, the date of the letter from New Zealand's competent authority informing the taxpayer of the final outcome of the MAP request.

The number of cases New Zealand closed in 2016-18 is 68% of the number of all cases started in those years. During these years, MAP cases were on average 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 10.27 months. New Zealand's MAP inventory as on 31 December 2018 increased by 63% as compared to 1 January 2016, which both regards attribution/allocation cases (100%) as well as other cases (40%). Nevertheless, since New Zealand has managed to ensure that old cases are resolved and since it managed to further reduce its MAP inventory, the increase does not cause risks that in the future MAP cases cannot be resolved in a timely, efficient and effective manner.

Furthermore, New Zealand meets all other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. New Zealand's competent authority operates fully independently from the audit function of the tax authorities and adopts a co-operative approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

Lastly, New Zealand almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. New Zealand monitors the implementation of such agreements. However, it has a domestic statute of limitation, 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, albeit that no problems have surfaced regarding implementation throughout the peer review process.

Introduction

Available mechanisms in New Zealand to resolve tax treaty-related disputes

New Zealand has entered into 47 tax treaties on income (and/or capital), all of which are in force.¹ These 47 treaties apply to an equal number of jurisdictions. All but one of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, three of the 47 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

Under New Zealand’s tax treaties, the competent authority function is assigned to the Commissioner of Inland Revenue, which has been delegated to the International Revenue Strategy department, which is part of the Customer and Compliance Services – Business department. The competent authority of New Zealand currently employs approximately 13 full time employees, including two managers, who are authorised to handle both attribution/allocation cases and other MAP cases.

New Zealand has not issued specific guidance pertaining to the mutual agreement procedure (“MAP”), but has made information on MAP available on the website of New Zealand’s Inland Revenue, which was last updated in July 2019 and is available at:

<https://www.ird.govt.nz/international-tax/double-tax-agreements/mutual-agreement-procedure>

Developments in New Zealand since 1 January 2018

Developments in relation to the tax treaty network

The stage 1 peer review report of New Zealand noted that it was conducting tax treaty negotiations with China (People’s Republic of), Fiji, Korea, Luxembourg, Norway, Portugal, Saudi Arabia, the Slovak Republic, and the United Kingdom. New Zealand clarified that this situation remains the same apart from with China where a new treaty has been signed (see below). In addition, New Zealand reported that it is also currently conducting negotiations on amending protocols to existing tax treaties with Austria, Belgium and the Netherlands and on new tax treaties with Hungary, Iceland and Slovenia.

In this respect, New Zealand signed a new tax treaty with China (2019) which concerns a newly negotiated treaty to replace the 1986 treaty. The newly signed treaty has now entered into force and includes Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). Further, New Zealand reported that it has signed amending protocols to existing treaties with Guernsey and Switzerland, both of which have now entered into force. The amending protocol with Guernsey includes Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to file a MAP request to the competent authority of either contracting states. The amending protocol with Switzerland includes Article 9(2), Article 25(1), first

sentence and Article 25(5) of the OECD Model Tax Convention (OECD, 2017), along with both alternative provisions for Article 9(1) and Article 7(2), setting a time limit for making transfer pricing adjustments.

Furthermore, New Zealand signed on 7 June 2017 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. It further opted in for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. On 27 June 2018, New Zealand deposited its instrument of ratification, following which the Multilateral Instrument entered into force for New Zealand on 1 October 2018. With the depositing of the instrument of ratification, New Zealand also submitted its list of notifications and reservations to that instrument, whereby in relation to the Action 14 Minimum Standard updates were made in order to meet the requirements under this standard via the instrument. In relation to the Action 14 Minimum Standard, New Zealand has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).³

In addition, for those treaties that will not be modified by the Multilateral Instrument to be in line with the requirements under the Action 14 Minimum Standard, New Zealand reported that it intends to update them via bilateral negotiations. In this respect, the stage 1 peer review of New Zealand reflected that it would prioritise pending negotiations with those treaty partners with which it has actually MAP cases and that for other treaties it would address any deficiency when the opportunity arises. During stage 2, New Zealand presented a further detail of its plan, which consists of the following steps:

1. Bringing the Multilateral Instrument in force, after which it will be analysed for what treaty which bilateral actions are necessary.
2. New Zealand reported that one relevant treaty partner has been or will be contacted by New Zealand with a view to have the treaty modified by the Multilateral Instrument. Further, one treaty partner has informed New Zealand that it will withdraw its reservation under the Multilateral Instrument, following which it is expected that this treaty will be modified by the instrument to be in line with the Action 14 Minimum Standard.
3. Prioritising negotiations with those treaty partners that have approached New Zealand for this purpose.
4. New Zealand reported that it has signed amending protocols with two treaty partners that have approached New Zealand for negotiations, being Guernsey and Switzerland. Further, New Zealand clarified that four other treaty partners had approached it to start bilateral negotiations on an amending protocol and that New Zealand will start such negotiations soon. New Zealand also reported that one treaty partner had approached it to enter into a memorandum of understanding, but that New Zealand will contact it to start negotiations on an amending protocol instead.
5. Prioritising the initiation of negotiations with those treaty partners with whom New Zealand have had MAP cases.
6. New Zealand reported that none of the treaties mentioned above concern treaty partners with which New Zealand has had MAP cases.

7. Addressing deficiencies in the remaining treaties that partially concerns limited scope treaties and with which New Zealand so far has not had any MAP cases.
8. New Zealand reported that it is yet to initiate contact with the remaining three treaty partners, but will do so once the above steps have been finalised.

Other developments

Further to the above, New Zealand reported that it has made a few changes to the operation of its MAP process and that it has updated its MAP guidance. These changes can be summarised as follows:

- *Extension of domestic time-limits*: an extension of its domestic time-limits for transfer pricing cases from four years to seven years from the fiscal year 2018-19 onwards, applicable to filing MAP requests and implementation of MAP agreements where a corresponding treaty provision is absent
- *Notification/consultation process*: to the introduction and documentation of a bilateral consultation process in its internal procedures
- *MAP guidance*: an update to the webpage of the Inland Revenue containing information on MAP to outline the bilateral consultation process and the possibility of multilateral MAPs as well as a new format for the guidance on its website as part of a general redesign
- *Training programme*: continuing training on MAP for the competent authority staff. This training consisted of the organisation a Keeping Current Forum on MAP, which was run by the New Zealand competent authority to interested staff and the promotion of the Global Awareness Training Module to relevant compliance staff to improve understanding of the interaction between the compliance function and the MAP process. New Zealand also has carried out an outreach training on MAP to other pacific island countries.

Basis for the peer review process

The peer review process entails an evaluation of New Zealand’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 New Zealand, its peers and taxpayers. The questionnaires for the peer review process were sent to New Zealand and the peers on 29 December 2017.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, New Zealand’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 New Zealand 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.⁴ 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 New Zealand. In this update report, New Zealand 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 New Zealand 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 New Zealand's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received from peers and taxpayers

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

While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, New Zealand opted to provide information and requested peer input on a period starting as from 1 January 2015. The period for evaluating New Zealand'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 addition to the assessment on its compliance with the Action 14 Minimum Standard New Zealand also asked for peer input on best practices.

In total nine peers provided input during stage 1: Australia, Canada, the People's Republic of China, Germany, Russia, Singapore, Switzerland, Turkey and the United States. Out of these nine peers, four had MAP cases with New Zealand that started on or after 1 January 2016. These peers represented 44% of post-2015 MAP cases in New Zealand's inventory that started in 2016 or 2017. During stage 2, the same peers, except for Russia and Singapore, provided input. In addition, Italy and the United Kingdom also provided input during stage 2. For this stage, these peers represent approximately 73% of post-2015 MAP cases in New Zealand's inventory that started in 2016, 2017 or 2018.⁵ All peers reported that their relationship with New Zealand's competent authority is positive and that New Zealand is co-operative and easy to work with when resolving MAP cases. Specifically with respect to stage 2, all peers that provided input reported that the update report of New Zealand fully reflects the experiences these peers have had with New Zealand since 1 January 2018 and/or that there was no addition to previous input given.

Input by New Zealand and cooperation throughout the process

New Zealand provided informative answers in its questionnaire, which was submitted on time. New Zealand 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, New Zealand provided the following information:

- MAP profile⁶
- MAP statistics⁷ according to the MAP Statistics Reporting Framework (see below).

Concerning stage 2 of the process, New Zealand submitted its update report on time and the information included therein was extensive. New Zealand was very cooperative during stage 2 and the finalisation of the peer review process.

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

Overview of MAP caseload in New Zealand

The analysis of New Zealand’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018 (“**Statistics Reporting Period**”). According to the statistics provided by New Zealand, 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	3	17	13	6
Other cases	5	24	22	7
Total	8	40	35	13

General outline of the peer review report

This report includes an evaluation of New Zealand’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 implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁸ Apart from analysing New Zealand’s legal framework and its administrative practice, the report also incorporates peer input during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by New Zealand 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 New Zealand 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 included 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 New Zealand 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 tax treaties New Zealand has entered into are available at <http://taxpolicy.ird.govt.nz/tax-treaties>. A treaty that has been signed but has not yet entered into force with the Marshall Islands (2010) that was included in the analysis in the stage 1 report has been excluded since New Zealand has indicated that it is unlikely that this treaty will come into force. Reference is made to Annex A for the overview of New Zealand's tax treaties regarding the mutual agreement procedure.
2. This concerns the treaties with Australia, Switzerland and Japan.
3. Available at: www.oecd.org/tax/treaties/beps-mli-position-new-zealand-instrument-deposit.pdf.
4. Available at: <https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-new-zealand-stage-1-9789264304369-en.htm>.
5. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework. All cases falling within the *de minimis* rule do not fall in this percentage.
6. Available at www.oecd.org/tax/dispute/New%20Zealand-Dispute-Resolution-Profile.pdf.
7. The MAP statistics of New Zealand are included in Annex B and C of this report.
8. 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.

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, 2017) 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 New Zealand’s tax treaties

2. Out of New Zealand’s 47 tax treaties, 38 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) 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. For the remaining nine treaties, the following analysis is made:

- Three treaties do not contain a provision that is based on or equivalent to 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).
- One treaty contains a provision that is based on 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), but does not contain the words “doubts” or “interpretation” and is therefore considered as not containing the equivalent of Article 25(3), first sentence.
- Five treaties contain a provision that is based on 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), but do not contain the word “interpretation” and relate only to the arm’s length principle and are therefore considered as not containing the equivalent of Article 25(3), first sentence.

3. New Zealand reported that irrespective of whether the applicable tax treaty contains the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), there is nothing in its domestic law, that obstructs New Zealand from entering into interpretative MAP agreements.

4. All peers that provided input indicated that their treaty with New Zealand meets the requirement under element A.1. For the nine treaties identified above that do not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peers did not provide input.

Recent developments

Bilateral modifications

5. New Zealand signed a new tax treaty with one treaty partner to replace the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), which was also the case in the treaty that was replaced. This newly signed treaty has already entered into force. Furthermore, New Zealand also signed an amending protocol to an existing treaty, adding the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) where it was previously not present. The effects of this newly signed treaty and the amending protocol have been reflected in the analysis above where it has relevance.

Multilateral Instrument

6. New Zealand signed the Multilateral Instrument and has deposited its instrument of ratification on 27 June 2018. The Multilateral Instrument has entered into force for New Zealand on 1 October 2018.

7. 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 (OECD, 2017) – 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 (OECD, 2017). 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 (OECD, 2017).

8. With regard to the nine tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand listed three as a covered tax agreement under the Multilateral Instrument and for all of them made a notification, pursuant to Article 16(6)(d)(i), that they do not contain a provision described in Article 16(4)(c)(i). All three treaty partners are a signatory to the Multilateral Instrument, listed their treaty with New Zealand as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(i). Of these three treaty partners, two already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between New Zealand and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified two treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

9. New Zealand has put a plan in place to bring those treaties that do not meet one or more of the elements of the Action 14 Minimum Standard in line with the requirements under this standard via bilateral negotiations. This also concerns the remaining six tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent. According to this plan, for four treaty partners negotiations are being initiated, while for the remaining two treaty partners such negotiations are envisaged once the to be initiated negotiations have been completed.

Peer input

10. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with New Zealand. This peer only provided input during stage 2, but does not concern a treaty partner to one of the treaties identified above that do not contain Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument.

Anticipated modifications

11. New Zealand reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	<p>Nine out of 47 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these nine treaties:</p> <ul style="list-style-type: none"> • Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). • One is expected to be modified by the Multilateral Instrument to include the include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Six will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - For four, negotiations are envisaged, scheduled or pending. - For the remaining two, no actions have been taken but are included in the plan for renegotiations. 	<p>For those six treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand should:</p> <ul style="list-style-type: none"> • For four treaties, continue (the initiation of) negotiations with the treaty partners with a view to including the required provision. • For two treaties, request via bilateral negotiations the inclusion of the required provision in accordance with its plan for renegotiations.

[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.

12. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.¹ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

New Zealand’s APA programme

13. New Zealand reported that it is authorised to enter into unilateral, bilateral and multilateral APAs. The legal basis for bilateral and multilateral APAs is the MAP provision contained in New Zealand’s tax treaties. New Zealand emphasized that its approach to each APA is tailored to the facts and circumstances involved and that it has not established a standardised formal process for the same. In addition, there are no specific timelines for the filing of an APA request in New Zealand. Typically, New Zealand applies a bilateral APA for a period of three to five years.

14. New Zealand further reported there is no formal process for obtaining an APA. Taxpayers who wish to obtain an APA are advised to contact New Zealand’s transfer pricing specialists. In this respect, New Zealand’s tax administration has a dedicated webpage that contains information on APAs, which in a general sense outlines the steps that are typically applied in practice:²

- a submission of a short written proposal by the taxpayer discussing the background of its business, the associated enterprise that is party to the transaction(s) in question and the suggested transfer pricing methodology to be applied
- a pre-application meeting with one of New Zealand’s transfer pricing principal advisors to informally discuss the submitted proposal
- a formal application for an APA.

15. New Zealand mentioned that during bilateral APA negotiations it endeavours to keep in contact with the taxpayer throughout the process to ensure that the outcome agreed by the tax authorities will also be accepted by the taxpayer.

Roll-back of bilateral APAs

16. New Zealand reported that it is possible to obtain a roll-back of bilateral APAs. Where the applicable tax treaty contains the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), enabling MAP agreements to be implemented notwithstanding domestic time limits, New Zealand clarified that it can grant roll-back without any timing restrictions. In other situations, New Zealand reported that roll-backs are available for at least four fiscal years.

17. While the webpage of New Zealand’s Inland Revenue containing information on its APA programme does not specifically address the possibility of roll-back of bilateral APAs, the webpage containing information on MAP, under the section titled “Implementation of MAP agreements”, includes specific information in this respect.

Recent developments

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

Practical application of roll-back of bilateral APAs

19. Statistics on New Zealand’s APA inventory are available on the website of the tax administration.³

Period 1 January 2015-31 December 2017 (stage 1)

20. New Zealand reported that in the period 1 January 2015-31 December 2017 it entered into five bilateral APAs. New Zealand further reported that in this period, it received one request for a roll-back, which was granted.

21. All but two peers that provided input indicated that they have not received a request for a roll-back of a bilateral APA concerning New Zealand in the period 1 January 2015-31 December 2017. One of those two peers reported that it received such a request in 2017, which in its view was dealt with effectively as a MAP for prior years and as an APA for prospective years. The second peer also reported having received such a request, but mentioned that there were no indications that the roll-back would not be accepted by New Zealand. In relation to this request, New Zealand responded that there was not yet a formal APA application received, but that it expected such application soon.

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

22. New Zealand reported that since 1 January 2018 its competent authority entered into 11 bilateral APAs. Further, New Zealand reported that in this period, it received two requests for a roll-back, which are still under consideration. One of these roll-back requests was received as part of a formal APA application in respect of the case reported by the peer in the stage 1 report.

23. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by New Zealand fully reflects their experience with New Zealand since 1 January 2018 and/or there are no additions to the previous input given. Two additional peers provided input out of which one peer provided input in relation to element A.2. This peer noted that it has received one request for a bilateral APA involving New Zealand in 2018, which includes a request for a roll-back. This peer further noted that the request and is still under negotiation. This request concerns one of the two requests mentioned above.

Anticipated modifications

24. New Zealand did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
2. Available at: <https://www.ird.govt.nz/international-tax/business/transfer-pricing/practice-issues/advance-pricing-agreements>.
3. Available at: <https://www.ird.govt.nz/international-tax/business/transfer-pricing/practice-issues/advance-pricing-agreements>.

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.

25. 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 New Zealand's tax treaties

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

26. Out of New Zealand's 47 tax treaties, two contain 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. Further, 19 of New Zealand's 47 tax 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 (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

27. The remaining 26 tax 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident	17
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident and/or citizen.	1
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request for transfer pricing adjustments, whereas the scope of the treaty also covers certain items of income concerning individuals	5
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are a resident and only where there is double taxation contrary to the principles of the agreement	1
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), 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
No MAP provision	1

28. The 17 tax treaties mentioned in the first row of the table are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), 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, for the following reasons 16 of those 17 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision (eight treaties).
- The non-discrimination provision of the relevant tax treaty 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 (eight treaties).

29. For the remaining treaty, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2017) and applies to both 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 (OECD, 2017) is therefore not clarified by a limited scope of application of the non-discrimination article, following which this treaty is considered not to be in line with this part of element B.1.

30. With respect to the one treaty in the second row of the table that only allows taxpayers to submit a MAP request to their state of residence or citizenship, since the non-discrimination clause covers citizens that are residents of the treaty partner, it is considered to be in line with this part of element B.1.

31. The five treaties in the third row of the table are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since

the scope of the MAP provision is limited to one type of disputes, whereas the treaty has a broader scope of application. These treaties are therefore considered not to be in line with this part of element B.1.

32. The treaty referred to in the fourth row of the table contains a provision that is based on Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), but taxpayers are only allowed to submit a MAP request in cases of double taxation, whereas Article 25(1) refers to taxation not in accordance with the provisions of the tax treaty. Consequently, as the MAP provision in this treaty is limited in scope as compared to Article 25(1), first sentence, it is considered not to be in line with this part of element B.1.

33. Furthermore, the one treaty included in the fifth row of the table incorporates a provision in the protocol to this tax treaty, which reads:

... the expression “notwithstanding the remedies provided by the national laws” shall not be understood to mean that the time limits prescribed by national laws shall not be observed; a claim under Article 24 shall not be entertained where the taxpayer has not taken the appropriate action under the national laws.

34. 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). This treaty is therefore considered not in line with this part of element B.1.

35. Finally, the one treaty mentioned in the last row of the table does not contain a provision based on Article 25 of the OECD Model Tax Convention (OECD, 2017) that allows taxpayers to file a MAP request and thus, this treaty is considered not to be in line with this part of element B.1.

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

36. Out of New Zealand’s 47 tax treaties, 30 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) 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.

37. The remaining 17 tax treaties that do not contain such a provision can be categorised as follows:

Provision	Number of tax treaties
No MAP provision	1
No filing period for a MAP request	5
Filing period more than 3 years for a MAP request (4 years)	1
Filing period more than 3 years for a MAP request (5 years)	2
Filing period less than 3 years for a MAP request (2 years)	3
Treaties that have a limited scope of application, whereby the MAP is restricted to transfer pricing cases and whereby the filing period is three years, however, as of the date of the first notification of a transfer pricing adjustment	5

Peer input

38. Most of the peers that provided input reported that their treaty with New Zealand meets the requirements under element B.1. For the 11 treaties identified that do not include the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), two of the relevant peers provided input. One peer indicated that its treaty with New Zealand does not formally meet the requirements under element B.1. However, this treaty is in line with the requirements under element B.1. Another peer indicated its treaty will be modified by the Multilateral Instrument to bring it in line with the requirement under element B.1., which follows from the below analysis.

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

39. As noted in paragraphs 26-35 above, all but two of New Zealand’s tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. In this respect, New Zealand reported that access to MAP is available regardless of whether taxpayers also have sought to resolve the dispute via domestically available administrative and judicial remedies. This policy is confirmed on the webpage of New Zealand’s Inland Revenue containing information on MAP, in the section titled “Domestic disputes process”. However, this section also clarifies that New Zealand’s competent authority cannot derogate from a domestic court decision in MAP and therefore it will only seek to resolve the MAP case by having the treaty partner providing for correlative relief in line with the decision of its domestic court.

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

40. Where a tax treaty does not contain a filing period for a MAP request, New Zealand reported that it applies its domestic law time limits applicable to revision of tax assessments. In this respect, New Zealand’s Tax Administration Act of 1994 (“TAA”) includes a four-year time limit for increasing an amount of tax assessed (or reducing a taxpayer’s amount of net losses) as from the end of the fiscal year in which the taxpayer submitted its tax return. In practice, this filing period may be extended to five and a half years after the end of the fiscal year in which the profit accrued.¹ For transfer pricing cases, section GC13(6) of the Income Tax Act extends this time limit to seven years as from the end of the fiscal year in which the taxpayer submitted its tax return (with an option to extend to eight and a half years after the end of the fiscal year in which the profit occurred).

41. While this system generally provides for a period longer than three years, there is a risk that taxpayers are not allowed to validly present a MAP request within a period of at least three years as from the first notification of the action that results or is likely to result in taxation not in accordance with the provisions of the tax treaty.

42. New Zealand reported that since 1 April 2017 it has received no MAP requests under those treaties that do not contain a filing period for MAP request.

Recent developments

Bilateral modifications

43. New Zealand signed a new treaty with one treaty partner to replace the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), which was also the case in the treaty that was replaced. This newly signed treaty has already entered into force. Furthermore, New Zealand also signed amending protocols to two existing treaties, adding the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) to both of these treaties and the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) to one of these treaties where such provisions were previously not present. The effects of this newly signed treaty and amending protocols have been reflected in the analysis above where it has relevance.

Multilateral Instrument

44. New Zealand signed the Multilateral Instrument and has deposited its instrument of ratification on 27 June 2018. The Multilateral Instrument has entered into force for New Zealand on 1 October 2018.

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

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 (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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 its instrument of ratification, New Zealand opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is 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), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under New Zealand's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, New Zealand opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, New Zealand listed 37 of its 47 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all of them the notification that they contain a provision that

is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). One of these 37 treaties concerns the two treaties mentioned in paragraph 26 above that already allows the submission of a MAP request to either competent authority and for that reason are not taken into account in the below analysis. In other words, only 36 treaties are taken into account.

47. In total, three of the 36 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas two have not listed their treaty with New Zealand as a covered tax agreement under that instrument and 11 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. The remaining 20 treaty partners listed their treaty with New Zealand as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

48. Of these 20 treaty partners, 14 already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between New Zealand and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). For the remaining six treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

49. In view of the above and in relation to the nine treaties identified in paragraphs 27-35 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), two are part of the 20 treaties mentioned above that has been or will be modified via that instrument to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).

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

50. 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 (OECD, 2017) – 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 (OECD, 2017).

51. With regard to the nine tax treaties identified in paragraph 37 above that are considered to contain a filing period for MAP requests of less than three years, New Zealand listed three treaties as a covered tax agreement under the Multilateral Instrument and made for all, 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 three relevant treaty partners, one is not a signatory to the Multilateral Instrument. The two remaining tax treaty partners listed their tax treaty with

New Zealand as a covered tax agreement under this instrument and also made a notification pursuant to Article 16(6)(b)(i).

52. Of these two treaty partners, one already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between New Zealand and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include this equivalent.

Other developments

53. New Zealand reported that it amended section GC13(6) of the Income Tax Act to extend the time limit for transfer pricing adjustments to seven years from the end of the fiscal year in which the taxpayer submitted its tax return. This amendment has taken effect for fiscal years commencing on or after 1 July 2018.

54. Furthermore, mentioned in the Introduction, New Zealand has put a plan in place to bring those treaties that do not meet one or more of the elements of the Action 14 Minimum Standard in line with the requirements under this standard via bilateral negotiations. This also concerns the remaining tax treaties that do not contain the equivalent of Article 25(1), first and/or second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent. According to this plan, for five treaty partners negotiations are being initiated, while for the remaining three treaty partners such negotiations are envisaged once the to be initiated negotiations have been completed.

Peer input

55. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with New Zealand. This peer only provided input during stage 2 and is a treaty partner to the ten treaties identified above that do not contain Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b) and which has not or will not be modified by the Multilateral Instrument. This peer reported that it has proposed to New Zealand to enter into a memorandum of understanding to address the issue that taxpayers have to initiate domestic remedies when submitting a MAP request. New Zealand reported that it has engaged in initial discussions with this peer and expects to respond to this peer as regards the memorandum of understanding shortly.

Anticipated modifications

56. New Zealand reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
	<p>Three out of 47 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b). Of these three treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). • One will not be modified by the Multilateral Instrument to include the required provision. For this treaty, negotiations are envisaged, scheduled or pending. 	<p>For the treaty that does not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) and has not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), New Zealand should continue (the initiation of) negotiations with the treaty partner with a view to including the required provision.</p> <p>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"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
[B.1]	<p>Two out of 47 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is in these treaties shorter than three years, from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One will not be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, no actions have been taken but are included in the plan for renegotiations. 	<p>For the treaty that has not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand should request via bilateral negotiations the inclusion of the required provision in accordance with its plan for renegotiations.</p>
	<p>Six out of 47 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), 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 six treaties:</p> <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) but not as regards the first sentence. • Five will not be modified by the Multilateral Instrument to include Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017). <p>With respect to these six tax treaties:</p> <ul style="list-style-type: none"> • For four, negotiations are envisaged, scheduled or pending. • For the remaining two, no actions have been taken but are included in the plan for renegotiations. 	<p>For the six treaties that has not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand should:</p> <ul style="list-style-type: none"> • For four treaties, continue (the initiation of) negotiations with the treaty partners with a view to including the required provision. • For two treaties, request via bilateral negotiations the inclusion of the required provision in accordance with its plan for renegotiations. <p>This concerns a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.1]	Where tax treaties do not contain a time limit for submission of a MAP request, applicable rules under domestic legislation bears the risk that taxpayers cannot validly present a MAP request within a period of at least three years as from the first notification of the action that results or will result in taxation not in accordance with the provisions of the tax treaty.	New Zealand 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 access to MAP if a request thereto is made within a period of three years as from the first notification of the action that results or will result in taxation not in accordance with the provisions of the tax treaty.

[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).

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

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

Domestic bilateral consultation or notification process in place

58. As discussed under element B.1, two out of New Zealand's 47 tax treaties currently contain 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), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, 20 of the remaining 46 treaties have been or will be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

59. New Zealand reported when its competent authority considered that an objection raised in a MAP request is not justified, it had in the past, as a matter of general administrative practice, notified the taxpayer thereof and of the reason for this decision. More recently, New Zealand has also introduced a bilateral consultation process which allows the other competent authority concerned to provide its views on the case when New Zealand's competent authority considers the objection raised in the MAP request not to be justified. In this respect,

the webpage of New Zealand’s Inland Revenue containing information on MAP, under the section titled “Filing a MAP request” stipulates that in such cases, its competent authority would write to the competent authority of the treaty partner setting out the reasons why it considered the request to be invalid and invite the other competent authority to provide its views before making a final decision on whether to accept or reject the request. Further, New Zealand reported that its competent authority staff have been instructed accordingly.

Recent developments

60. In the stage 1 report, it was noted that New Zealand had not introduced a bilateral consultation/notification process to be applied when its competent authority considers the objection raised in the MAP request not to be justified. However, as noted above, New Zealand has since then introduced and documented such a process.

Practical application

Period 1 January 2015-31 December 2017 (stage 1)

61. New Zealand reported that in the period 1 January 2015-31 December 2017 its competent authority did not, for any of the MAP requests it received, consider that the objection raised by taxpayers in such request was not justified. From the 2016 and 2017 MAP statistics provided by New Zealand, show that none of its MAP cases was closed with the outcome “objection not justified”.

62. All peers that provided input indicated not being aware of any cases for which New Zealand’s competent authority denied access to MAP in the period 1 January 2015-31 December 2017. They also reported not having been consulted/notified of a case where New Zealand’s competent authority considered the objection raised in a MAP request as not justified, which can be clarified by the fact that no such instances have occurred in New Zealand during that period.

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

63. New Zealand reported that since 1 January 2018 its competent authority also has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was being not justified. The 2018 MAP statistics submitted by New Zealand show that none of its MAP cases was closed with the outcome “objection not justified” as well.

64. All but two peers that provided input during stage 1 also indicated in stage 2 that since 1 January 2018 they are not being aware of any cases for which New Zealand’s competent authority denied access to MAP. They also reported not having been consulted/notified in such cases, which can be clarified by the fact that no such instances have occurred in New Zealand since that date. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

65. New Zealand did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

[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 New Zealand's 47 tax treaties, 27 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner.² Furthermore, 18 treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Out of these 18 treaties, seven are treaties with a limited scope that do not contain a provision that is based on or equivalent to Article 9 of the OECD Model Tax Convention (OECD, 2017), but in six of these treaties, MAP is allowed to be initiated for transfer pricing cases. Both remaining treaties, contain a provision that is based on Article 9(2), but either stipulate that corresponding adjustments can only be made as a result of a mutual agreement procedure in accordance with the MAP article or that the granting of corresponding adjustments is only option, as the word "shall" is replaced by "may". For these reasons, both provisions are considered not being equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

68. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in New Zealand's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, New Zealand indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, where the scope of the treaty also covers such cases. This applies to all 47 of New Zealand's tax treaties, except the one limited scope treaty that does not contain a provision on transfer pricing and does not allow MAP in transfer pricing cases as well. The webpage of New Zealand's Inland Revenue containing information on MAP, in the section titled "Scope of MAP" specifies that MAP applies to cases that involve transfer pricing adjustments.

Recent developments

Bilateral modifications

69. New Zealand signed a new tax treaty with one treaty partner to replace the existing treaty in force. This treaty contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), which was also the case in the treaty

that was replaced. This newly signed treaty has already entered into force. Furthermore, New Zealand also signed amending protocols to two existing treaties, adding the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) to one of these treaties where it was previously not present. The effects of this newly signed treaty and the amending protocols have been reflected in the analysis above where it has relevance.

Multilateral Instrument

70. New Zealand signed the Multilateral Instrument and has deposited its instrument of ratification on 27 June 2018. The Multilateral Instrument has entered into force for New Zealand on 1 October 2018.

71. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) – 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 (OECD, 2017). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right to not apply Article 17(1) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), or not to apply Article 17(1) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). 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 (OECD, 2017)).

72. New Zealand has not reserved the right, pursuant to Article 17(3), not to apply Article 17(1) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). With regard to the 13 treaties identified in paragraph 67 above that are considered not to contain an equivalent provision (disregarding those seven treaties that do not contain Article 9 at all), New Zealand listed all of them as a covered tax agreement under the Multilateral Instrument, but only for two of them made a notification on the basis of Article 17(4) that they do contain a provision described in Article 17(2). Both treaty partners are a signatory to the Multilateral Instrument and listed their treaty with New Zealand as a covered tax agreement under that instrument, but one of them has, on the basis of Article 17(3), reserved the right not to apply Article 17(1) as it considered that its treaty with New Zealand already contains the equivalent of Article 9(2). The remaining treaty partner also made a notification on the basis of Article 17(4). This treaty partner has already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between New Zealand and this treaty partner, and therefore has replaced the relevant treaty provision to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

73. Furthermore, for the remaining 11 tax treaties for which New Zealand did not make a notification on the basis of Article 17(4), one has not listed its treaty with New Zealand under that instrument. Five of the remaining ten treaty partners have already deposited their instruments of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between New Zealand and these treaty partners, and therefore has superseded the relevant treaty provision to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provision contained in these treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1). The provision in the remaining five treaties will, upon the entry into force of the Multilateral Instrument for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provision contained in these treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Application of legal and administrative framework in practice

Period 1 January 2015-31 December 2017 (stage 1)

74. New Zealand reported that in the period 1 January 2015-31 December 2017 it has not denied access to MAP on the basis that the case concerned is a transfer pricing case.

75. All peers that provided input indicated not being aware of a denial of access to MAP by New Zealand in the period 1 January 2015-31 December 2017 on the basis that the case concerned was a transfer pricing case.

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

76. New Zealand reported that also since 1 January 2018 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.

77. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by New Zealand fully reflects their experience with New Zealand since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

78. New Zealand reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include Article 9(2) in all of its future tax treaties. Other than this, New Zealand did not indicate that it anticipates any modifications in relation to element B.3.

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.

79. 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

80. None of New Zealand's 47 tax treaties allow competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of New Zealand do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

81. The webpage of New Zealand's Inland Revenue containing information on MAP, in the section "Scope of MAP", specifies that MAP applies to cases concerning the application of anti-abuse provisions in tax treaties or domestic anti-abuse provisions.

Recent developments

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

Practical application

Period 1 January 2015-31 December 2017 (stage 1)

83. New Zealand reported that in the period 1 January 2015-31 December 2017, it has 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 in that period.

84. All peers that provided input indicated not being aware of cases that have been denied access to MAP in New Zealand in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2015-31 December 2017.

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

85. New Zealand reported that also 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.

86. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by New Zealand fully reflects their experience with New Zealand since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

87. New Zealand 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.

88. 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***

89. New Zealand reported that under its domestic law it is possible for taxpayers and the tax administration to enter into a settlement agreement during the course of or after an audit has ended. On 22 June 2016, New Zealand's Inland Revenue issued operational guidelines on such settlements.³ These guidelines confirm that the Inland Revenue can agree to settle disputes with taxpayers prior to initiating judicial proceedings and under what circumstances this can occur. In that regard, New Zealand reported that entering into such a settlement agreement does not constitute grounds for not granting a taxpayer access to MAP.

Administrative or statutory dispute settlement/resolution process

90. New Zealand reported it has a review process in place, which is administered by the Disputes Review Unit within the Inland Revenue. The website of New Zealand's tax administration includes information on this unit and on how it operates.⁴ This webpage clarifies that the dispute resolution process at the level of the Disputes Review Unit was put in place to establish procedures to reduce the number of disputes, to encourage prompt and efficient resolution of tax disputes, to promote the early identification of disputable issues and to improve accuracy of decisions. New Zealand explained that the role of the Disputes Review Unit is to provide an impartial and objective review of unresolved disputes between taxpayers and the tax administration. The Disputes Review Unit is placed within the Office of the Chief Tax Counsel within New Zealand's tax administration. In this respect, New Zealand reported it operates independently from the audit and examination function and the process can only be accessed through a request by the taxpayer. Requesting assistance to resolve a dispute under MAP, however, is not impacted by a prior decision by the Disputes Review Unit.

91. Where a taxpayer and the tax administration are not able to come to an agreement on the taxpayer's tax position, taxpayers can request a decision from the Disputes Review Unit. The tax administration is not allowed to challenge the decision of the Disputes Review Unit when the result is in favour of the taxpayer. The taxpayer, however, is allowed to initiate judicial remedies when the Disputes Review Unit has ruled in favour of New Zealand's tax administration, including the submission of a MAP request.

92. In view of the above, the process is not considered to constitute an administrative or statutory settlement/resolution process in the sense of element B.5 that provides for a binding decision on the taxpayer to resolve a dispute and on the basis of which access to MAP can be denied.

Recent developments

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

Practical application

Period 1 January 2015-31 December 2017 (stage 1)

94. New Zealand reported that in the period 1 January 2015-31 December 2017 it has not denied access to MAP in any cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration. However, no such cases in relation hereto were received in that period.

95. All peers that provided input indicated not being aware of a denial of access to MAP in New Zealand in the period 1 January 2015-31 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)

96. New Zealand 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 in an audit settlement between the taxpayer and the tax administration. However, no such cases in relation hereto were received since that date.

97. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by New Zealand fully reflects their experience with New Zealand since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

98. New Zealand did not indicate that it anticipates 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.

99. 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

100. The information and documentation New Zealand require taxpayers to include in a request for MAP assistance are discussed under element B.8.

101. New Zealand reported that in practice it receives the necessary information and documentation when taxpayers submit a MAP request with its competent authority. When, however, a taxpayer does not include all required information or documentation in its MAP request, New Zealand noted that the competent authority will immediately after its initial review of the request liaise with the taxpayer (either by telephone or e-mail) and ask it to provide such information within one month from receipt of the initial MAP request. New Zealand further reported that it does not experience problems with receiving such additional information in practice and that it is rare to not receive such information from the taxpayer upon request.

102. Where taxpayers do not timely provide the requested information, New Zealand clarified that they are reminded by telephone, e-mail or letters. While it has never happened in practice, if taxpayers would still not provide the additionally requested information, New Zealand explained that it would terminate the case if the missing information is considered material for purposes of resolving the case. In other instances, New Zealand reported it will initiate the MAP case despite the missing information.

Recent developments

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

Practical application*Period 1 January 2015-31 December 2017 (stage 2)*

104. New Zealand reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out on the webpage containing information on MAP. It further reported that in the period 1 January 2015-31 December 2017 its competent authority has not limited access to MAP on the grounds that information in the MAP request was not the information or documentation required by its competent authority.

105. All peers that provided input indicated not being aware of a limitation of access to MAP by New Zealand in the period 1 January 2015-31 December 2017 in situations where taxpayers complied with information and documentation requirements set out in its MAP guidance.

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

106. New Zealand reported that since 1 January 2018 its competent authority has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

107. All but two peers that provided input during stage 1 stated during stage 2 that the update report provided by New Zealand fully reflects their experience with New Zealand since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

108. New Zealand did not indicate that it anticipates any modifications in relation to element B.6.

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 (OECD, 2017),

enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of New Zealand's tax treaties

110. Out of New Zealand's 47 tax treaties, 25 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.

111. None of the remaining 22 treaties contain a provision that is based on or equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Seven of these 22 treaties have a limited scope of application.⁵ This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention are not followed. As these treaties were intentionally negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, therefore, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) for those seven treaties with a limited scope of application.

112. Most of the peers that provided input confirmed that their treaty with New Zealand meets the requirement under element B.7. For the 22 treaties identified above that do not include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), three peers provided input. One peer indicated that the MAP provision in its tax treaty with New Zealand does not contain such equivalent. Two other peers also noted that their respective treaties with New Zealand do not contain this equivalent either, but that it will be modified by the Multilateral Instrument to incorporate such provision, which conforms with the below analysis.

Recent developments

Bilateral modifications

113. New Zealand signed a new tax treaty with one treaty partner to replace the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), which was also the case in the treaty that was replaced. This newly signed treaty has already entered into force. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

114. New Zealand signed the Multilateral Instrument and has deposited its instrument of ratification on 27 June 2018. The Multilateral Instrument has entered into force for New Zealand on 1 October 2018.

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 (OECD, 2017).

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 (OECD, 2017).

116. With regard to the 15 comprehensive tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand listed all of them as a covered tax agreement under the Multilateral Instrument and for all of them made a notification, pursuant to Article 16(6)(d)(ii), that they do not include a provision described in Article 16(4)(c)(ii). Of the relevant 15 treaty partners, one is not a signatory to the Multilateral Instrument. All remaining 14 treaty partners listed their treaty with New Zealand as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(ii).

117. Of the 14 treaty partners mentioned above, eight have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between New Zealand and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified eight treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining six treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

118. New Zealand has put a plan in place to bring those treaties that do not meet one or more of the elements of the Action 14 Minimum Standard in line with the requirements under this standard via bilateral negotiations. This also concerns the remaining comprehensive tax treaty that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent. According to this plan, New Zealand reported that it would encourage the concerned treaty partner to sign the Multilateral Instrument to bring this treaty in line with the requirements under the Action 14 minimum standard. New Zealand reported that the concerned treaty partner has informed New Zealand that it intends to sign the Multilateral Instrument before the end of 2020.

Peer input

119. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with New Zealand. This peer only provided input during stage 2, but its input does not relate to element B.7.

Anticipated modifications

120. New Zealand reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>22 out of 47 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Of these 22 treaties, seven concern tax treaties with a limited scope of application. With respect to the 15 remaining comprehensive treaties:</p> <ul style="list-style-type: none"> • Eight have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Six are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, the relevant treaty partner has been or will be contacted by New Zealand with a view to have the treaty modified by the Multilateral Instrument. 	<p>For the comprehensive tax treaty that has not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand should continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision.</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.

New Zealand's MAP guidance

122. New Zealand has not issued separate MAP guidance, but has made information on MAP available on the website of New Zealand's Inland Revenue. This information is available at:

<https://www.ird.govt.nz/international-tax/double-tax-agreements/mutual-agreement-procedure>

123. The information on the website includes basic information on New Zealand's tax treaties and on its competent authority, an outline of the MAP process and the envisaged completion time for MAP cases. It also explains how to file a MAP request and the specific information that should be included in such request. In more detail, the topics covered are:

a. Contact information of the office in charge of MAP cases in New Zealand
b. The manner and form in which the taxpayer should submit its MAP request
c. How the MAP functions in terms of the role of the competent authorities during MAP

d. Information on availability of arbitration
e. Relationship with domestic available remedies
f. Examples of cases for MAP is available, which includes: transfer pricing cases, cases where there is an audit settlement between the taxpayer and the tax administration, cases concerning the application of anti-abuse provisions; cases concerning bona fide taxpayer-initiated foreign adjustments, multilateral disputes and the multi-year resolution of recurring issues
g. Implementation of MAP agreements
h. Consideration of interest and penalties in MAP.

124. The above-described online information on MAP that New Zealand has published includes basic information on the availability and the use of MAP and how its competent authority conducts that procedure in practice. This also includes the information that the FTA MAP Forum agreed should be included in a jurisdiction’s MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.⁶

125. Although the information included in the webpage of New Zealand’s tax administration includes the relevant information on the MAP process, some subjects are not specifically discussed. This concerns information on:

- the possibility of suspension of tax collection during the period a MAP case is pending
- 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).

Information and documentation to be included in a MAP request

126. New Zealand included in the webpage containing information on MAP a list of information that taxpayers should include in a MAP request. In this regard, in the section “Filing of a MAP request”, it notes that New Zealand is of the view that a pre-filing conference is a useful process to produce a well-informed understanding by all stakeholders on the substantive and procedural issues that could arise in relation to a MAP case. In New Zealand’s experience this will lead to a more focused approach, a reduction in the information to be provided by taxpayers in a MAP request and may also impact the time necessary to resolve the MAP case.

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 its request for MAP assistance.⁷ This agreed guidance is shown below. The website of New Zealand’s Inland Revenue containing information on MAP 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, and if so a copy of that submission

- ☑ whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes, and if so, a copy of that submission (including all related documents), unless the content of both MAP submissions are exactly the same
- ☑ 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. Further to the above list, New Zealand also requires taxpayers to specify whether the request concerns a protective MAP request.

129. One peer provided input and noted that New Zealand provides guidance on MAP, which includes the contact point within the Inland Revenue, the information that needs to be included in a MAP requests and various other information regarding the implementation of MAP agreements.

Recent developments

130. New Zealand reported that after 1 January 2018 (lastly as of July 2019) it updated its MAP guidance to reflect the following:

- a statement concerning New Zealand’s bilateral notification/consultation process when its competent authority is of the view that the objection raised in a MAP request is not justified
- a statement that access to MAP will be granted for multilateral disputes.

Anticipated modifications

131. New Zealand did not indicate that it anticipates any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

[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.

132. 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.⁸

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

133. The webpage of New Zealand’s Inland Revenue containing information on MAP can be found at:

<https://www.ird.govt.nz/international-tax/double-tax-agreements/mutual-agreement-procedure>

134. This webpage was last updated in July 2019. As regards its accessibility, the information on MAP is grouped within the sub-section for “Double tax agreements (DTAs)” in the section titled “International” on the website of New Zealand’s Tax Administration (www.ird.govt.nz) and as such is easily accessible. It can also easily be found on that website by searching for “mutual agreement procedure”.

MAP profile

135. The MAP profile of New Zealand is published on the website of the OECD, which was last updated in July 2019.⁹ This MAP profile is complete, with detailed information in some sections and includes external links which provide extra information and guidance in all sections where they have relevance.

Recent developments

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

Anticipated modifications

137. New Zealand did not indicate that it anticipates any modifications in relation to element B.9.

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.

138. 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

139. As previously discussed under element B.5, it is under New Zealand's domestic law possible that taxpayers and the tax administration enter into audit settlements during the course of or after an audit has ended. The webpage of New Zealand's Inland Revenue containing information on MAP, under the section "Domestic disputes process" explicitly confirms that taxpayers can submit a MAP request even if an audit settlement has been agreed domestically.

140. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in the publically available guidance on MAP in New Zealand.

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

141. As previously discussed under element B.5, New Zealand has a review process in place that is administered by the Disputes Review Unit, which, however, is not considered as an administrative or statutory dispute settlement/resolution process that operates independently from the audit and examination functioning and can only be accessed through a request by the taxpayer. Regardless, the webpage of New Zealand's Inland Revenue containing information on MAP, under the section "Domestic disputes process" also explicitly notes that access to MAP will not be limited for those matters that were resolved through the process at the level of the Disputes Review Unit.

142. All peers that provided input indicated not being aware of the existence of an administrative or statutory disputes settlement/resolution process in New Zealand that may limit access to MAP, which is logical given the fact that such a process is not in place in New Zealand.

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

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

Recent developments

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

Anticipated modifications

145. New Zealand did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. If the taxpayer filed a fraudulent tax return, or if the return is wilfully misleading or omits income, then there is no time limit for amending a tax assessment.
2. In the stage 1 peer review report, it was described that in total 27 of New Zealand’s tax treaties contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Following the peer review process of other assessed jurisdictions, however, one additional treaty were identified that does not contain such equivalent. Due to the signing of an amending protocol to an existing treaty that also contains Article 9(2) of the OECD Model Tax Convention (OECD, 2017), the number of treaties not containing such equivalent remains the same.
3. Available at: <https://www.classic.ird.govt.nz/resources/6/d/6d596555-f40c-4dc2-8bbe-c0461377b2d6/settlement-guidelines-s6a-settlements.pdf>.
4. Available at : <https://www.classic.ird.govt.nz/technical-tax/general-articles/ga-adjudication-unit.html>.
5. These seven treaties concern treaties with the British Virgin Islands, the Cayman Islands, Cook Islands, Guernsey, Isle of Man, Jersey and St. Kitts and Nevis.
6. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
7. Ibid.
8. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
9. <https://www.oecd.org/tax/dispute/New-Zealand-Dispute-Resolution-Profile.pdf>.

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- 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.

146. 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 New Zealand's tax treaties

147. Out of New Zealand's 47 tax treaties, 38 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) 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. Furthermore, of the remaining nine treaties, eight do not contain a provision that is based on or equivalent to Article 25(2), first sentence of the OECD Model Tax Convention (OECD, 2017). The remaining tax treaty contains a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention, but it also includes additional language that sets a condition for the provision to apply. This condition consists of a notification from the competent authority that received the MAP request within a time limit of four and a half years from the due date or the date of filing the return in the treaty partner's jurisdiction, whichever is later. Such an obligation may prevent that cases are effectively dealt with in MAP and therefore the provision is considered not being the equivalent of Article 25(2), first sentence.

148. All peers that provided input mentioned that their treaty with New Zealand meets the requirement under element C.1. For the nine treaties identified that do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peers did not provide input.

Recent developments

Bilateral modifications

149. New Zealand signed a new tax treaty with one treaty partner to replace the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), which was also the case in the treaty that was replaced. This newly signed treaty has already entered into force. Furthermore, New Zealand also signed an amending protocol to an existing treaty, adding the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) to this treaty where it was previously not present. The effects of this newly signed treaty and the amending protocol have been reflected in the analysis above where it has relevance.

Multilateral Instrument

150. New Zealand signed the Multilateral Instrument and has deposited its instrument of ratification on 27 June 2018. The Multilateral Instrument has entered into force for New Zealand on 1 October 2018.

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 (OECD, 2017) – 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 (OECD, 2017). 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 (OECD, 2017).

152. With regard to the nine tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand listed three treaties as a covered tax agreement under the Multilateral Instrument and for all of them made a notification, pursuant to Article 16(6)(c)(i), that they do not contain a provision described in Article 16(4)(b)(i). All of the relevant treaty partners are a signatory to the Multilateral Instrument, listed their treaty with New Zealand as a covered tax agreement under this instrument and also made a notification on the basis of Article 16(6)(c)(i).

153. Of the three treaty partners mentioned above, one has already deposited its instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between New Zealand and this treaty partner. Therefore, at this stage, the Multilateral Instrument has modified one treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining two treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

154. New Zealand has put a plan in place to bring those treaties that do not meet one or more of the elements of the Action 14 Minimum Standard in line with the requirements under this standard via bilateral negotiations. This also concerns the remaining six tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral

Instrument to include such equivalent. According to this plan, for four treaty partners negotiations are being initiated, while for the remaining two treaty partners such negotiations are envisaged once the to be initiated negotiations have been completed.

Peer input

155. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with New Zealand. This peer only provided input during stage 2, but its input does not relate to element C.1.

Anticipated modifications

156. New Zealand reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[C.1]	<p>Nine out of 47 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these nine treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Two are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Six will not be modified by the Multilateral Instrument to include the required provision. With respect to these six treaties: <ul style="list-style-type: none"> - For four, negotiations are envisaged, scheduled or pending. - For the remaining two, no actions have been taken but are included in the plan for renegotiations. 	<p>For the six treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand should:</p> <ul style="list-style-type: none"> • For four treaties, continue (the initiation of) negotiations with the treaty partners with a view to including the required provision. • For two treaties, request via bilateral negotiations the inclusion of the required provision in accordance with its plan for renegotiations.

[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 New Zealand are published on the website of the OECD as from 2007.¹

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 January 1, 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. New Zealand provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving New Zealand 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 Annexes B and C respectively and should be considered jointly for an understanding of the MAP caseload of New Zealand.²

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

161. No peer input was received in respect of the matching of MAP statistics with New Zealand.

162. Based on the information provided by New Zealand’s MAP partners, its post-2015 MAP statistics for the years 2016-18 actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

163. New Zealand reported that it has a system in place that registers and monitors its MAP cases as to their progress.

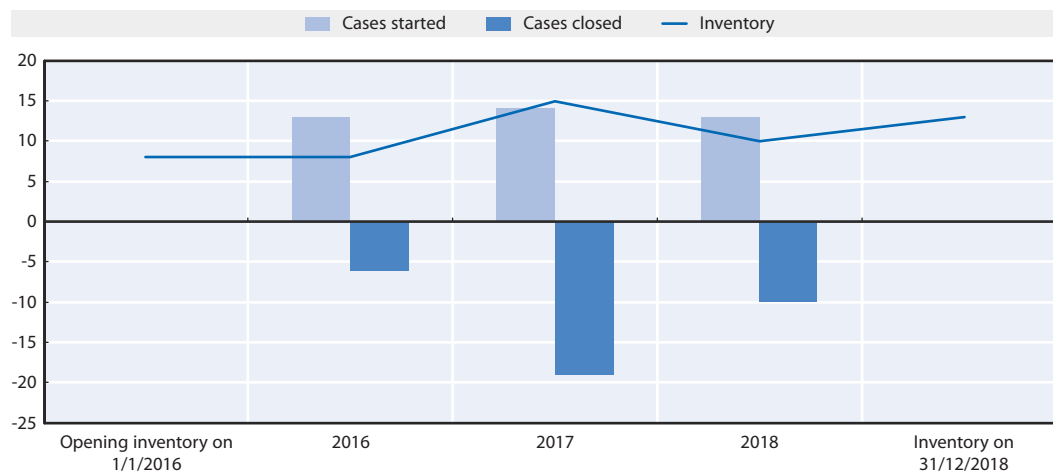
Analysis of New Zealand’s MAP caseload

Global overview

164. The analysis of New Zealand’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018.

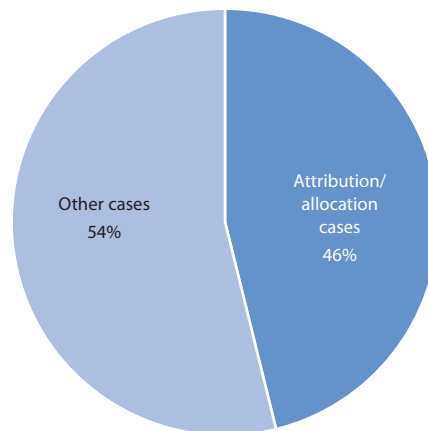
165. Figure C.1 shows the evolution of New Zealand’s MAP caseload over the Statistics Reporting Period.

Figure C.1. Evolution of New Zealand’s MAP caseload



166. At the beginning of the Statistics Reporting Period, New Zealand had eight pending MAP cases, of which three were attribution/allocation cases and five other MAP cases.³ At the end of the Statistics Reporting Period, New Zealand had 13 MAP cases in its inventory, of which six are attribution/allocation cases and seven are other MAP cases. Consequently, New Zealand’s pending MAP inventory has increased by approximately 63% during the Statistics Reporting Period. This concerns an increase of 100% in the number of attribution/allocation cases and increase of 40% in the number of other cases. The breakdown of the end inventory can be shown as in Figure C.2.

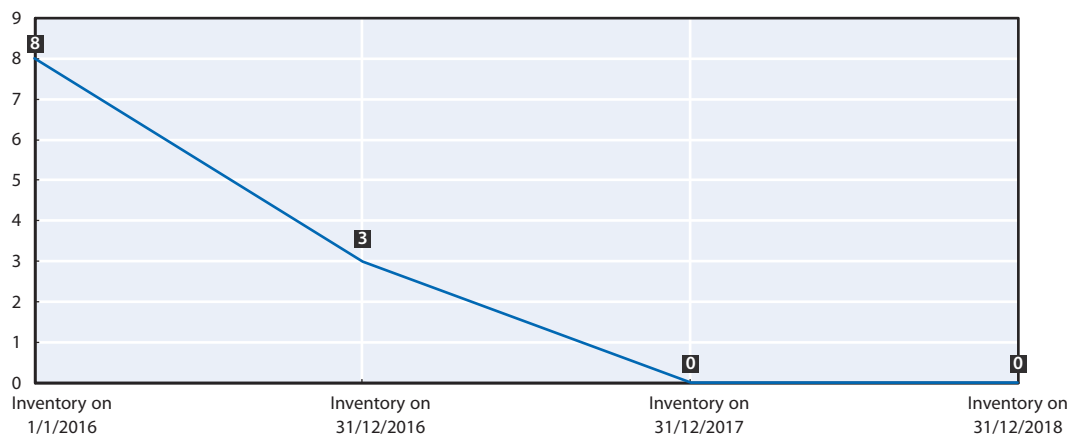
Figure C.2. End inventory on 31 December 2018 (13 cases)



Pre-2016 cases

167. Figure C.3 shows the evolution of New Zealand’s pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of New Zealand’s MAP inventory
Pre-2016 cases



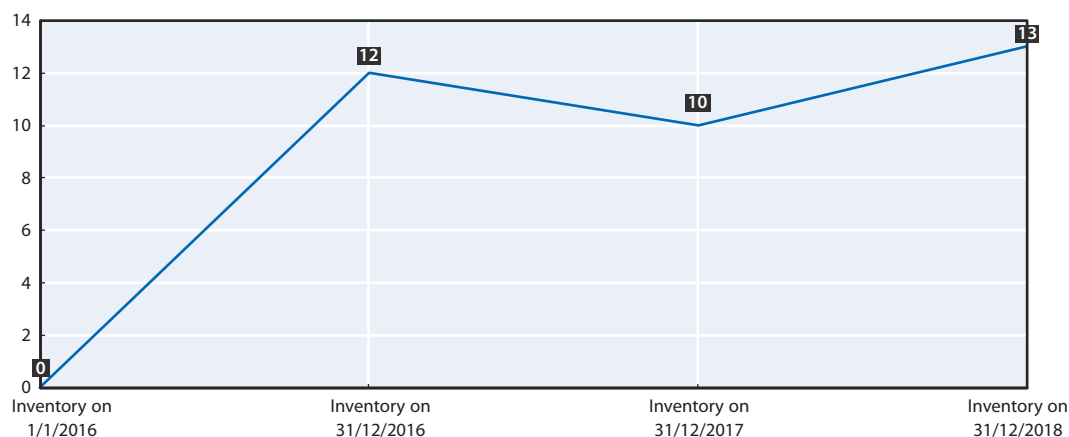
168. At the beginning of the Statistics Reporting Period, New Zealand’s MAP inventory of pre-2016 MAP cases consisted of eight cases, of which were three attribution/allocation cases and five other cases. As New Zealand resolved all of its pre-2016 cases by the end of 2017, the total inventory of pre-2016 cases had decreased to nil cases. 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	-33%	-100%	n.a.	-100%
Other cases	-80%	-100%	n.a.	-100%

Post-2015 cases

169. Figure C.4 shows the evolution of New Zealand’s post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of New Zealand’s MAP inventory
Post-2015 cases



170. In total, 40 MAP cases started during the Statistics Reporting Period, 16 of which concerned attribution/allocation cases and 24 other cases. At the end of this period the total number of post-2015 cases in the inventory was 13 cases, consisting of six attribution/allocation cases and seven other cases. Conclusively, New Zealand closed 27 post-2015 cases during the Statistics Reporting Period, ten of them being attribution/allocation cases and 17 of them of them being other cases. The total number of closed cases represents 68% 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.

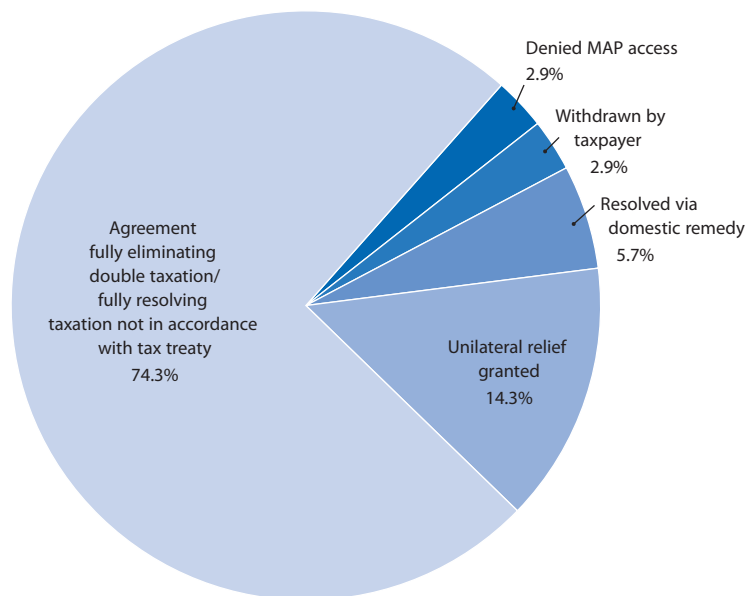
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	0%	67%	86%	63%
Other cases	10%	150%	67%	71%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

172. During the Statistics Reporting Period, New Zealand in total closed 35 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed in 2016, 2017 or 2018 (35 cases)



173. Figure C.5 shows that during the Statistics Reporting Period, 26 out of 35 cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

174. In total, 13 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation or fully resolving double taxation not in accordance with a tax treaty (62%)
- unilateral relief granted (31%).

Reported outcomes for other cases

175. In total, 22 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation or fully resolving taxation not in accordance with a tax treaty (82%)
- resolved via domestic remedy (5%)
- unilateral relief granted (5%)
- withdrawn by taxpayer (5%).

*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 10.27 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	13	9.31
Other cases	22	10.84
All cases	35	10.27

Pre-2016 cases

177. For pre-2016 cases New Zealand, reported that on average it needed 22.13 months to close three attribution/allocation cases and 20.78 months to close five other cases. This resulted in an average time needed of 21.29 months to close eight pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, New Zealand reported that it uses the following dates:

- *Start date*: five weeks from the receipt of the MAP request, where this request has been initiated in New Zealand, otherwise the date of notification of the MAP request from the other competent authority
- *End date*: the date of the letter from New Zealand’s competent authority informing the taxpayer of the final outcome of the MAP request.

Post-2015 cases

178. For post-2015 cases New Zealand, reported that on average it needed 5.46 months to close ten attribution/allocation cases and 7.91 months to close 17 other cases. This resulted in an average time needed of 7.00 months to close 27 post-2015 cases.

Peer input

179. As will be discussed in more detail under element C.3, all peers that provided input reported having a good working relationship with New Zealand’s competent authority and the resolution of MAP cases. Three peers particularly noted that either New Zealand’s competent authority endeavours to resolve MAP cases in a reasonable timeframe, or that their experience is that MAP agreements are arrived at in a timely manner.

Recent developments

180. New Zealand was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 37% of its post-2015 MAP cases that were pending on 31 December 2016 (25 cases), within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

181. With respect to this recommendation, New Zealand reported that since 1 January 2018 it has not taken any special actions, but that it continued to close MAP cases in a timely manner. As follows from the statistical analysis above, although New Zealand’s MAP inventory has increased during the Statistics Reporting Period, it has closed all of its pre-2016 cases by the end of 2017 and 68% of all cases started during the Statistics Reporting Period. Further, New Zealand has closed MAP cases in all three years within an average timeframe of 24 months, which concerns both attribution/allocation as well as other MAP cases.

182. All but two peers that provided input during stage 1 confirmed that this input holds equally relevance for the period starting on 1 January 2018.

Anticipated modifications

183. New Zealand 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 New Zealand’s competent authority

185. Under New Zealand’s tax treaties the competent authority function is assigned to the Commissioner of the Inland Revenue which has been delegated to the International Revenue Strategy department, which is a sub-department of the Customer and Compliance Services – Business department. New Zealand reported that in February 2018 a restructuring has taken place within the Inland Revenue, following which the International Revenue Strategy department is placed within the department on Customer and Compliance Services for businesses.

186. The International Revenue Strategy department comprises 13 full time employees, including two managers. While any of these employees may be involved in handling MAP cases, New Zealand reported that in practice four employees are working on MAPs among other tasks. These employees are authorised to handle both attribution/allocation cases and other MAP cases.

187. Concerning the training of employees involved in handling MAP cases, New Zealand noted that such training is conducted largely in a one-on-one setting using practical cases that are closely supervised by the head manager and supplemented by written training materials.

188. New Zealand reported that, if necessary, funding is made available for travel to enable face-to-face meetings with other competent authorities and that it considers the current resources available for the MAP function as sufficient. Where more funding or resources are necessary, assistance may be sought from other departments within Inland Revenue, such as the Investigations & Advice or the Policy & Strategy departments. If resources for the MAP function were to become insufficient to handle inventory, New Zealand reported that in the short term, qualified staff would be hired from other departments within Inland Revenue and in the medium term would hire permanent staff should the number of MAP cases continue to increase.

Monitoring mechanism

189. New Zealand reported that the Inland Revenue closely monitors the work flow of its employees, including that of the staff within the competent authority and also tracks progress of pending MAP cases.

Recent developments

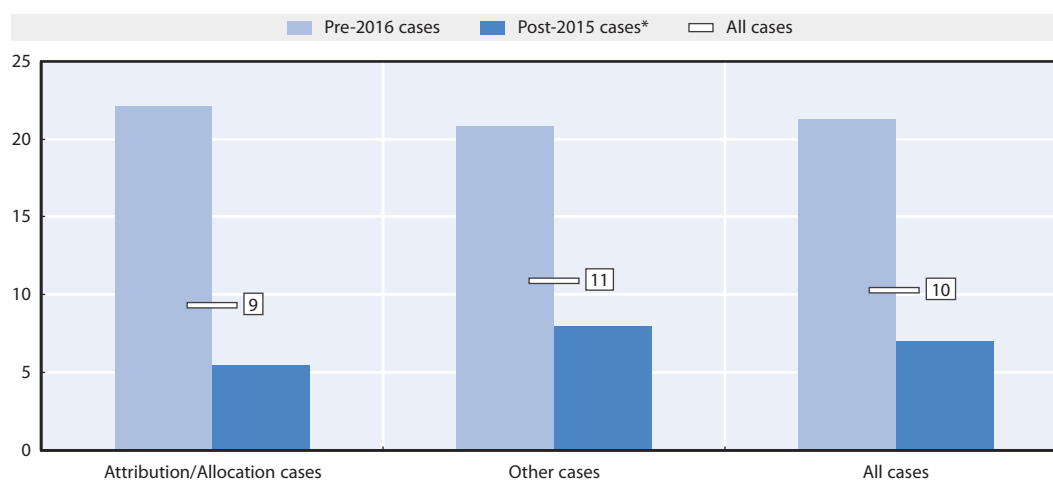
190. There are no recent developments with respect to element C.3, other than the reorganisation that was mentioned above. New Zealand also reported that it also has organised continuing training programmes on MAP for the competent authority staff, its competent authority has run a Keeping Current Forum on MAP to improve understanding with the compliance function and that its competent authority has provided outreach training for other pacific island countries.

Practical application

MAP statistics

191. As discussed under element C.2, New Zealand closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. This can be illustrated by Figure C.6.

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



* Note that post-2015 cases only concern cases started and closed during 2016, 2017 or 2018.

192. Based on these figures, it follows that on average it took New Zealand 10.27 months to close MAP cases during the Statistics Reporting Period. The average time needed to resolve attribution/allocation cases is 9.31 months, while the average time required to resolve other cases is 10.84 months.

193. The stage 1 peer review report of New Zealand analysed the 2016-17 MAP statistics and showed an average of 11.79 months, which concerns an average of 14.48 months for attribution/allocation cases and 10.75 months for other cases. It was on that basis concluded that as the overall average was below the pursued average of 24 months, New Zealand was considered to be adequately resourced.

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

	2018
Attribution/Allocation cases	3.28
Other cases	11.22
All cases	6.45

195. The 2018 statistics of New Zealand show that the average completion time of MAP cases decreased substantially from 11.79 to 6.45 months, to be further below the pursued average of 24 months.

196. However – as analysed in element C.2 – the MAP inventory of New Zealand increased substantially since 1 January 2016, which regards both type of cases. 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	3	16	13	6	100%
Other cases	5	24	22	7	40%
Total	8	40	35	13	63%

197. In spite of such increase, the figures in the above table show that the number of closed cases is around 68% of all cases started in the period 2016-18. In view of the available resources for the MAP function, the fact that New Zealand has managed to ensure that old cases are resolved (e.g. all pending pre-2016 cases) and the fact that it managed to further reduce its MAP inventory, the increase does not cause risks that in the future MAP cases cannot be resolved in a timely, efficient and effective manner. Like is concluded in its stage 1 peer review report, also during stage 2 New Zealand is considered to be adequately resourced.

Peer input

Period 1 January 2015-31 December 2017 (stage 1)

198. Of the nine peers that provided input, seven reported having experience with New Zealand in handling and resolving MAP cases. For six of these seven peers, the number of MAP cases with New Zealand, however, is limited. Nevertheless, they all noted their relationship was positive and appreciated the easiness of contact with New Zealand's

competent authority. One of these peers noted it had an excellent working relationship with New Zealand’s competent authority as regards the administration and execution of the MAP programme. Another peer reported its co-operative and productive MAP relationship with New Zealand. A third peer stated that the contacts with New Zealand’s competent authority are easy and takes place via email while another of these peers stated that communication is efficient and effective. Lastly, a fourth peer reported that it also has a co-operative relationship with New Zealand’s competent authority, for which it considers the communication to be efficient and effective, despite the limited MAP inventory. This peer further stated that in its experience both competent authorities were able to resolve non-attribution/allocation cases in a timely and principled manner. It also mentioned it expects this positive relationship to continue.

199. The seventh peer reported having more experience with New Zealand in handling and resolving MAP cases. Like the peers mentioned above, this peer also reported having a positive, efficient and open relationship with New Zealand’s competent authority. It also highlighted that it considers New Zealand’s competent authority as being co-operative and professional.

200. Concerning the resolution of cases, all peers reported not being aware of any impediments to the MAP process. Furthermore, one peer particularly pointed out that it found New Zealand’s competent authority very active in resolving MAP cases in a reasonable timeframe. In this respect, most peers specified no suggestions for improvement, although one suggested developing best practice papers/memorandum of understanding that this peer has with other jurisdictions. This peer noted that such documents have largely been a mechanism to manage communication and timeframes, which could be seen as having a positive step towards achieving improvements. Another peer made no specific suggestion for improvement, but expressed its belief that continuing periodic e-mail and telephone communications would help facilitate their MAP relationship.

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

201. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by New Zealand fully reflects their experience with New Zealand since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

202. New Zealand did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	-

[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.

203. 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

204. New Zealand reported that its competent authority has full autonomy to enter into MAP agreements. New Zealand further reported that the final decision on entering such agreements is made by the Manager of International Revenue Strategy department, which, as mentioned previously, is the division where the competent authority function is placed. In this respect, New Zealand noted that its competent authority operates independent from Inland Revenue's audit function. In practice, it is possible that the competent authority seeks assistance from other departments within the Inland Revenue when there are questions in relation to an individual MAP case. For example, the Investigations & Advice department may be consulted to ensure that the facts of a case are described and interpreted correctly. The Policy & Strategy department may also be consulted for the interpretation of tax treaties in non-routine cases to ensure that the relevant tax treaty is applied correctly.

205. With regard to the above, New Zealand 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

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

Practical application

Period 1 January 2015-31 December 2017 (Stage 1)

207. All peers that provided input reported not being aware of any impediments in New Zealand 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 2015-31 December 2017. One peer specifically mentioned that it is not being aware that staff in charge of the MAP in New Zealand is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

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

208. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by New Zealand fully reflects their experience with New Zealand since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

209. New Zealand did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

[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.

210. 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 New Zealand

211. New Zealand reported that it endeavours to complete MAP cases within 12 months of receiving a request for assistance. In that regard, for each calendar year the International Revenue Strategy department reports the number of cases that have been resolved and the average cycle time to completion. The webpage of New Zealand's Inland Revenue containing information on MAP also stipulates that the overall aim of New Zealand is to complete MAP cases within 12 months.

212. As a matter of general policy, New Zealand further reported that one of its competent authority's objectives is to endeavour to resolve MAP cases as expeditiously as possible, thereby taking into account the complexity of the case at hand and the level of co-operation by the other competent authority concerned in that specific case. Furthermore, while not using specific targets for staff handling MAP cases, New Zealand mentioned that staff within its competent authority is expected to follow the OECD Transfer Pricing Guidelines for transfer pricing cases and to endeavour to ensure that cases are resolved in a principled and timely manner.

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

- number of MAP cases resolved

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

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

Recent developments

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

Practical application

Period 1 January 2015-31 December 2017 (Stage 1)

216. All peers that provided input indicated not being aware that New Zealand uses performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue.

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

217. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by New Zealand fully reflects their experience with New Zealand since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

218. New Zealand 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. New Zealand reported that it has no domestic law limitations for including MAP arbitration in its tax treaties and that its tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties. New Zealand's position on MAP arbitration is included in its MAP profile published on the OECD website.

Recent developments

221. New Zealand signed the Multilateral Instrument and has deposited its instrument of ratification on 27 June 2018. The Multilateral Instrument has entered into force for New Zealand on 1 October 2018. With the depositing of the instrument of ratification, New Zealand also opted in for part VI, which includes a mandatory and binding arbitration provision. The effects of this opting in is also further described below.

Practical application

222. To date, New Zealand has incorporated an arbitration clause in three of its 47 tax treaties as a final stage to the MAP. All three of these arbitration clauses are based on Article 25(5) of the OECD Model Tax Convention (OECD, 2017), albeit that in one of these treaties that the arbitration procedure can only be initiated after three years instead of two years of the mutual agreement procedure and further that in this treaty and another treaty the scope of the arbitration procedure is limited to certain cases only or exclude certain cases.

223. In addition, with respect to the effect of part VI of the Multilateral Instrument on New Zealand's tax treaties, there are next to New Zealand in total 29 signatories to this instrument that also opted in for part VI. Concerning these 29 signatories, New Zealand listed 19 as a covered tax agreement under the Multilateral Instrument and 17 of these 19 treaty partners also listed their treaty with New Zealand under that instrument. With respect to these 17 treaty partners, New Zealand already included an arbitration provision in two of the relevant tax treaties. For one of these treaties, the treaty partner opted, pursuant to Article 26(4) of the Multilateral Instrument, not to apply part VI. In the other treaty, New Zealand listed this treaty under Article 26(1) with a view to replacing the arbitration provision contained in that treaty with part VI. With respect to this treaty, the relevant treaty partner also made a notification under Article 26(1). As both New Zealand and this treaty partner have already deposited their instrument of ratification of the Multilateral Instrument, part VI has replaced the arbitration provision contained in this treaty.⁴

224. With respect to the other 15 treaty partners, ten treaty partners have already deposited their instrument of ratification. In this respect, part VI will apply to these ten treaties and introduce the arbitration provision of the Multilateral Instrument in these treaties. For the remaining five treaties for which the treaty partner has not yet ratified the Multilateral Instrument, New Zealand reported it expects that part VI will introduce a mandatory and binding arbitration procedure in all five treaties.

Anticipated modifications

225. New Zealand did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2018.
2. For post-2015 cases, if the number of MAP cases in New Zealand’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, New Zealand reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
3. For pre-2016 cases and post-2015 cases New Zealand 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”.
4. Annex A reflects the effect of part VI of the Multilateral Instrument for this treaty.

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>.

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.

226. 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

227. New Zealand reported that section BH(1)(4) of the Income Tax Act of 2007 states that tax treaty provisions override domestic law. With regard to MAP agreements, New Zealand noted that when its tax treaty includes a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, this provision overrides the relevant section of its domestic law, thus ensuring that there are no time limits for implementing MAP agreements.

228. In the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in a tax treaty, New Zealand, however, reported that the Tax Administration Act applies, which includes a statute of limitation of four years as from the end of the fiscal year in which the taxpayer submitted its tax return for increasing an amount of tax assessed (or reducing a taxpayer's amount of net losses).¹ In practice, this filing period may be extended to five and a half years after the end of the fiscal year in which the profit accrued.² This time period can also be extended to a maximum of six years if the Commissioner of Inland Revenue exercises her discretion under section 78B of the Tax Administration Act of 1994 in cases concerning tax credits for foreign income taxes or attributed controlled foreign corporation income. For transfer pricing cases, section GC13(6) of the Income Tax Act extends this time limit to seven years as from the end of the fiscal year in which the taxpayer submitted its tax return (with an option to extend to eight and a half years after the end of the fiscal year in which the profit occurred).

229. New Zealand further reported that under the Tax Administration Act no time limit applies for decreasing an amount of tax assessed (or for increasing a taxpayer's amount of net losses). In this respect, New Zealand clarified that because it operates a self-assessment system, taxpayers generally request an amendment of its tax position with New Zealand's Inland Revenue, whereby the commissioner of the Inland Revenue has the discretion to follow-up this request. Specifically concerning transfer pricing cases and cases concerning the attribution of profits to permanent establishments, New Zealand reported that where a MAP agreement results in a reduced tax liability in New Zealand, it is common practice to

exercise the discretion to implement the MAP agreement regardless of when the original tax assessment was issued. Nevertheless, this system of discretion bears the risk that not all MAP agreements will be implemented where the tax treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention.

230. Concerning the process of implementing MAP agreements, New Zealand reported that when its competent authority enters into a MAP agreement, it will inform the taxpayer, but the taxpayer's consent is not a prerequisite for implementation. New Zealand further clarified that the competent authority will liaise with the relevant department within the Inland Revenue, which is subsequently responsible for implementing the agreement. It also noted that its competent authority is in close contact with the department within the Inland Revenue that implements a MAP agreement and, where necessary, refund taxes, to ensure that the MAP agreement is fully implemented. In more detail, the department within the Inland Revenue that has to implement the MAP agreement has to confirm completion with New Zealand's competent authority. When such confirmation is not given, the competent authority personnel will verify the implementation in the central computer system. The competent authority also follows-up with taxpayers to ensure that the MAP agreement is fully implemented at the level of the treaty partner as well.

231. The webpage of New Zealand's Inland Revenue containing information on MAP, in the section "Implementation of MAP agreements" clarifies that downward adjustments would only be made after notifying the competent authority of the treaty partner.

Recent developments

232. New Zealand reported that it amended section GC13(6) of the Income Tax Act to extend the time limit for transfer pricing adjustments from four years to seven years from the end of the fiscal year in which the taxpayer submitted its tax return (with an option to extend to eight and a half years after the end of the fiscal year in which the profit occurred). This amendment has taken effect for fiscal years commencing on or after 1 July 2018.

Practical application

Period 1 January 2015-31 December 2017 (Stage 1)

233. New Zealand reported that in the period 1 January 2015-31 December 2017 it has reached the following number of MAP agreements:

Year	MAP agreements
2015	18
2016	6
2017	17

234. New Zealand clarified that all of these MAP agreements required an implementation by New Zealand and that all of them have been implemented.

235. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2015-31 December 2017 that was not implemented by New Zealand.

Period 1 January 2018-31 August 2019 (Stage 1)

236. New Zealand reported that all MAP agreements that were reached on or after 1 January 2018 also have been implemented.

237. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by New Zealand fully reflects their experience with New Zealand since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

238. New Zealand did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of New Zealand's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented in cases where the agreement requires a downward adjustment, as this is subject to the discretion of the commissioner of the Inland Revenue.	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 (OECD, 2017) in New Zealand's relevant tax treaty, prevent the implementation of a MAP agreement when the adjustment is made at the level of the treaty partner, New Zealand should put appropriate procedures in place to ensure that such an agreement is 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, New Zealand should for clarity and transparency purposes continue its practice to notify the treaty partner thereof without delay.

[D2] Implement all MAP agreements on a timely basis

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

239. 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

240. New Zealand reported that once a MAP agreement is reached, its policy is to implement the agreement as quickly as possible. Both for cases where the agreement entails that New Zealand can levy additional taxes or need to refund taxes already levied, the aim is to implement MAP agreements within one month after conclusion. The webpage of New Zealand's Inland Revenue containing information on MAP, in the section "Implementation of MAP agreements" confirms this policy.

241. As mentioned under element D.1, New Zealand's competent authority monitors its internal systems to ensure domestic assessment and/or refund are timely effectuated and also checks with taxpayers to ensure other tax authorities have proceeded with the

necessary assessment and/or refund action so that MAP agreements are fully and timely implemented.

Recent developments

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

Practical application

Period 1 January 2015-31 December 2017 (stage 1)

243. New Zealand reported that all MAP agreements that were reached in the period 1 January 2015-31 December 2017 have been or will be implemented on a timely basis. In that regard it emphasised that no cases of noticeable delays have occurred, although during this period its competent authority had to correspond several times with two tax authorities that were considered to be slow in implementing MAP agreements in those cases where the agreement entailed granting of relief by the treaty partner to taxpayers in New Zealand.

244. All peers that provided input have not indicated experiencing any problems with New Zealand in the period 1 January 2015-31 December 2017 regarding the implementation of MAP agreements reached on a timely basis.

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

245. New Zealand reported that all MAP agreements that were reached on or after 1 January 2018 have been implemented on a timely basis.

246. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by New Zealand fully reflects their experience with New Zealand since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

247. New Zealand 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.

248. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the

jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

Current situation of New Zealand's tax treaties

249. As discussed under element D.1, New Zealand's domestic legislation includes a statute of limitations of four years from the year of assessment for implementing MAP agreements, unless overridden by tax treaties.

250. Out of New Zealand's 47 tax treaties, 29 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) requiring that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in its domestic law. One of these tax treaties contains such an equivalent, but an obligation is included for taxpayers to ask for a refund of taxes within a certain period after the MAP agreement has been notified to them. While this puts an additional obligation on taxpayers, the provision itself does not obstruct the implementation of MAP agreements notwithstanding domestic time limits. This treaty is, therefore, considered to contain the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). In addition, one tax treaty does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but contains provisions equivalent to both alternative provisions in Article 9(1) and Article 7(2) of the OECD Model Tax Convention (OECD, 2017).

251. For the remaining 17 treaties the following analysis is made:

- 14 tax treaties do not contain a provision equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) nor the alternative provisions in Article 9(1) and Article 7(2) setting a time limit for making transfer pricing adjustments.
- One tax treaty does not contain a provision that is based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but contains only the alternative provision in Article 9(1).
- One tax treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), but includes a provision that stipulates that a MAP agreement may be implemented within a period of six years from the presentation of the case. While this time period does not constitute a limitation of the implementation of MAP agreements, the wording used in the provision could nevertheless in practice obstruct such implementation and therefore this provision is considered not being the equivalent of Article 25(2), second sentence.
- One tax treaty allows for a MAP agreement to be implemented only when a submitted MAP request has been notified in due time to the competent authority of the other contracting state and where it concerns the other contracting jurisdiction, within ten years as from the due date of the filing of a tax return or, if later, the time period under the other contracting jurisdiction's domestic law. As this provision may cause that MAP agreements cannot be implemented when the other competent authority was not notified in a timely manner and since it does not state that MAP agreements shall be implemented notwithstanding domestic time limits, this tax treaty is considered not to contain the equivalent of Article 25(2) second sentence of the OECD Model Tax Convention (OECD, 2017).

252. For the 17 tax treaties identified above that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternatives in Articles 9(1) and 7(2), one of the relevant treaty partners provided peer input and noted that its tax treaty with New Zealand is not in line element D.3.

Recent developments

Bilateral modifications

253. New Zealand signed a new tax treaty with one treaty partner to replace the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), which was also the case in the treaty that was replaced. This newly signed treaty has already entered into force. Furthermore, New Zealand also signed amending protocols to two existing treaties, adding the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) to one of these treaties and both alternative provisions for Articles 9(1) and Article 7(2) of the OECD Model Tax Convention (OECD, 2017) to the other. In both treaties such provisions were previously not present. The effects of this newly signed treaty and the amending protocols have been reflected in the analysis above where it has relevance.

Multilateral Instrument

254. New Zealand signed the Multilateral Instrument and has deposited its instrument of ratification on 27 June 2018. The Multilateral Instrument has entered into force for New Zealand on 1 October 2018.

255. 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 (OECD, 2017) – 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 (OECD, 2017). 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 include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Article 16(4)(b)(ii) of the Multilateral Instrument does 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) of the OECD Model Tax Convention (OECD, 2017) concerning the introduction of a time limit for making transfer pricing profit adjustments.

256. With regard to the 17 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand listed 11 as covered tax agreements under the Multilateral Instrument and for all of them made a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 11 treaty partners, one is not a signatory to the Multilateral Instrument, whereas one reserved the

right on the basis of Article 16(5)(c), not to apply the second sentence of Article 16(2) of the Multilateral Instrument to its tax treaty with New Zealand. All remaining nine treaty partners have also made a notification on the basis of Article 16(6)(c)(ii).

257. Of the nine treaty partners mentioned above, five have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between New Zealand and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these five treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining four 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 (OECD, 2017).

Other developments

258. New Zealand reported that for one of the eight 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 (OECD, 2017), the relevant treaty partner has informed New Zealand 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 (OECD, 2017).

Other developments

259. New Zealand has put a plan in place to bring those treaties that do not meet one or more of the elements of the Action 14 Minimum Standard in line with the requirements under this standard via bilateral negotiations. This also concerns the remaining seven tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent. According to this plan, for four treaty partners negotiations are being initiated, while for the remaining three treaty partners such negotiations are envisaged once the to be initiated negotiations have been completed.

Peer input

260. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with New Zealand. This peer only provided input during stage 2, but its input does not relate to element D.3.

Anticipated modifications

261. New Zealand reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>17 out of 47 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), nor, the alternative provisions to Article 9(1) and Article 7(2). Of these 17 treaties:</p> <ul style="list-style-type: none"> • Five have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Four are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • 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 (OECD, 2017) once the treaty partner has amended its notifications. • Seven will not be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these seven treaties: <ul style="list-style-type: none"> - For four, negotiations are envisaged, scheduled or pending. - For the remaining three, no actions have been taken but are included in the plan for renegotiations. 	<p>For the seven treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand should:</p> <ul style="list-style-type: none"> • For four treaties, continue (the initiation of) negotiations with the treaty partners with a view to including the required provision or be willing to accept the inclusion of both alternatives. • For three treaties, request via bilateral negotiations the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions in accordance with its plan for renegotiations.

Notes

1. The website of New Zealand's Inland Revenue includes a specific webpage with information on the time limits for adjustments and refunds. Available at: www.ird.govt.nz/technical-tax/legislation/2013/2013-52/2013-52-refunds-ita/leg-2013-52-refund-ita.html.
2. If the taxpayer filed a fraudulent tax return, or if the return is wilfully misleading or omits income, then there is no time limit for amending a tax assessment.

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
Part A: Preventing disputes		
[A.1]	<p>Nine out of 47 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these nine treaties:</p> <ul style="list-style-type: none"> • Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Six will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - For four, negotiations are envisaged, scheduled or pending. - For the remaining two, no actions have been taken but are included in the plan for renegotiations. 	<p>For those six treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand should:</p> <ul style="list-style-type: none"> • For four treaties, continue (the initiation of) negotiations with the treaty partners with a view to including the required provision. • For two treaties, request via bilateral negotiations the inclusion of the required provision in accordance with its plan for renegotiations.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	<p>Three out of 47 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b). Of these three treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). • One will not be modified by the Multilateral Instrument to include the required provision. For this treaty, negotiations are envisaged, scheduled or pending. 	<p>For the treaty that does not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) and has not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), New Zealand should continue (the initiation of) negotiations with the treaty partner with a view to including the required provision.</p> <p>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"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
	<p>Two out of 47 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is in these treaties shorter than three years, from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One will not be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, no actions have been taken but are included in the plan for renegotiations. 	<p>For the treaty that has not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand should request via bilateral negotiations the inclusion of the required provision in accordance with its plan for renegotiations.</p>
[B.1]	<p>Six out of 47 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), 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 six treaties:</p> <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) but not as regards the first sentence. • Five will not be modified by the Multilateral Instrument to include Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017). <p>With respect to these six tax treaties:</p> <ul style="list-style-type: none"> • For four, negotiations are envisaged, scheduled or pending. • For the remaining two, no actions have been taken but are included in the plan for renegotiations. 	<p>For the six treaties that has not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand should:</p> <ul style="list-style-type: none"> • For four treaties, continue (the initiation of) negotiations with the treaty partners with a view to including the required provision. • For two treaties, request via bilateral negotiations the inclusion of the required provision in accordance with its plan for renegotiations. <p>This concerns a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	<p>Where tax treaties do not contain a time limit for submission of a MAP request, applicable rules under domestic legislation bears the risk that taxpayers cannot validly present a MAP request within a period of at least three years as from the first notification of the action that results or will result in taxation not in accordance with the provisions of the tax treaty.</p>	<p>New Zealand 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 access to MAP if a request thereto is made within a period of three years as from the first notification of the action that results or will result in taxation not in accordance with the provisions of the tax treaty.</p>
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-

	Areas for improvement	Recommendations
[B.7]	<p>22 out of 47 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Of these 22 treaties, seven concern tax treaties with a limited scope of application. With respect to the 15 remaining comprehensive treaties:</p> <ul style="list-style-type: none"> • Eight have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Six are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, the relevant treaty partner has been or will be contacted by New Zealand with a view to have the treaty modified by the Multilateral Instrument. 	<p>For the comprehensive tax treaty that has not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand should continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision.</p>
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	<p>Nine out of 47 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these nine treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Two are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Six will not be modified by the Multilateral Instrument to include the required provision. With respect to these six treaties: <ul style="list-style-type: none"> - For four, negotiations are envisaged, scheduled or pending. - For the remaining two, no actions have been taken but are included in the plan for renegotiations. 	<p>For the six treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand should:</p> <ul style="list-style-type: none"> • For four treaties, continue (the initiation of) negotiations with the treaty partners with a view to including the required provision. • For two treaties, request via bilateral negotiations the inclusion of the required provision in accordance with its plan for renegotiations.
[C.2]	-	-
[C.3]	-	-
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-

	Areas for improvement	Recommendations
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of New Zealand's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented in cases where the agreement requires a downward adjustment, as this is subject to the discretion of the commissioner of the Inland Revenue.	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 (OECD, 2017) in New Zealand's relevant tax treaty, prevent the implementation of a MAP agreement when the adjustment is made at the level of the treaty partner, New Zealand should put appropriate procedures in place to ensure that such an agreement is 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, New Zealand should for clarity and transparency purposes continue its practice to notify the treaty partner thereof without delay.
[D.2]	-	-
[D.3]	<p>17 out of 47 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), nor, the alternative provisions to Article 9(1) and Article 7(2). Of these 17 treaties:</p> <ul style="list-style-type: none"> • Five have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Four are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • 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 (OECD, 2017) once the treaty partner has amended its notifications. • Seven will not be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these seven treaties: <ul style="list-style-type: none"> - For four, negotiations are envisaged, scheduled or pending. - For the remaining three, no actions have been taken but are included in the plan for renegotiations. 	<p>For the seven treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), New Zealand should:</p> <ul style="list-style-type: none"> • For four treaties, continue (the initiation of) negotiations with the treaty partners with a view to including the required provision or be willing to accept the inclusion of both alternatives. • For three treaties, request via bilateral negotiations the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions in accordance with its plan for renegotiations.

Annex A

Tax treaty network of New Zealand

Treaty partner	Article 25(1) of the OECD Model Tax Convention ("MTC")		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 4		Column 5			Column 6		Column 7		Column 8		Column 9		Column 10		Column 11			
	Inclusion Art. 25(1) second sentence?		Inclusion Art. 9(2)?		Existence of a 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?		Inclusion Art. 25(2) first sentence?		Inclusion Art. 25(3) first sentence?		Inclusion Art. 25(3) second sentence?		Inclusion arbitration provision?						
	Y = yes N = signed pending ratification	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	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 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	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no					
Australia	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y**				
Austria	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Belgium	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y*	Y***				
British Virgin Islands	Y	N	i	N/A	N/A	i	N	N	N	N	N	N	N	N	N	N	N	N	N
Canada	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***

Column 1	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 25(2) of the OECD MTC				Article 25(3) of the OECD MTC		Arbitration	
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9		Column 10
Treaty partner	DTC in force?	Inclusion Art. 25(1)?	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
Cayman Islands	Y	N	iv N/A	i	i	N	N	N	N	N
Chile	Y	O	Y N/A	Y	i	Y	N*	Y	N*	N
China (People's Republic of)	Y	O	Y N/A	Y	i	Y	Y	Y	Y	N
Cook Islands	Y	N	iv N/A	i	i	N	N	N	N	N
Czech Republic	Y	E*	Y N/A	Y	i	Y	Y	Y	Y*	N
Denmark	Y	E*	Y N/A	Y	i	Y	Y*	Y	Y	Y***
Fiji	Y	N*	i N/A	i**	i	N*	N*	N*	N*	N
Finland	Y	E*	Y N/A	i***	i	Y	Y	Y	Y	Y***
France	Y	E*	Y N/A	i***	i	Y	Y	Y*	Y	Y***
Germany	Y	O	i N/A	i**	i	Y	N*	Y	N*	N
Guernsey	Y	E	Y N/A	i	Y	Y	Y	Y	Y	N
Hong Kong (China)	Y	O*	Y N/A	Y	i	Y	Y	Y	N*	N
India	Y	O	Y N/A	Y	i	Y	Y	Y	Y	N
Indonesia	Y	O	Y* N/A	i***	i	Y	Y*	Y	Y	N
Ireland	Y	E*	Y N/A	Y	i	Y	Y*	Y	Y	Y***

Treaty partner	Article 25(1) of the OECD Model Tax Convention ("MTC")		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		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
	DTC in force?	Inclusion Art. 25(1)?	Inclusion Art. 25(1) second sentence?	Inclusion Art. 9(2)?	Existence of a 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?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
Isle of Man	Y	N	iv	i	i	N	N	N	N	N
Italy	Y	N	ii*	i**	i	Y	Y	Y	N*	N
Japan	Y	E*	Y	Y	i	Y	Y	Y	Y	Y
Jersey	Y	N	iv	i	i	N	N	N	N	N
Korea	Y	E*	Y	i***	i	Y	Y	Y	Y	N
Malaysia	Y	O*	i	i**	i	Y	N*	Y	Y	N
Mexico	Y	O*	ii	i	i	N*	N	Y	Y	N
Netherlands	Y	E*	ii	Y	i	Y	Y	Y	Y	Y***
Norway	Y	O	Y	i	i	Y	Y	Y	Y	N
Papua New Guinea	Y	O*	Y	Y	i	Y	Y	Y	Y	N
Philippines	Y	O	ii	Y	i	Y	ii	Y	Y	N
Poland	Y	O	Y	Y	i	Y	Y	Y	Y*	N
Russia	Y	E*	Y	Y	i	Y	Y	Y	Y*	N
Saint Kitts and Nevis	Y	N	iv	i	i	N	N	N	N	N
Samoa	Y	O	Y	Y	i	Y	Y	Y	Y	N
Singapore	Y	O	Y	Y	i	Y	Y	Y	Y*	Y***
South Africa	Y	O	Y	Y	i	Y	Y	Y	N*	N

Column 1	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 25(2) of the OECD MTC				Article 25(3) of the OECD MTC		Arbitration	
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9		Column 10
Treaty partner	DTC in force?	Inclusion Art. 25(1)?	Inclusion Art. 25(1) second sentence?	Inclusion Art. 9(2)?	Existence of a 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?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
		If yes, submission to either competent authority	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC?			
Spain	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Sweden	Y	E*	i	N/A	i***	Y*	Y*	Y*	Y*	Y***
Switzerland	Y	E	Y	N/A	i	Y	iii	Y	Y	Y
Chinese Taipei	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Thailand	Y	O	Y	N/A	i	Y	Y	Y	N	N
Turkey	Y	O*	ii	5-years	i	Y	Y	Y	Y	N
United Arab Emirates	Y	E*	Y	N/A	i	Y	Y	Y	Y*	N
United Kingdom	Y	E*	i	N/A	i	Y	Y*	Y	Y*	Y***
United States	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Viet Nam	Y	O	Y	N/A	i	Y	Y	Y	Y	N

Legend

- E* The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
- E** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
- O* The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
- Y* The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.

Y**	The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.
Y***	The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
i*/ii*/iv*/N*	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
i**/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 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 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 tax 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	3	0	0	0	0	0	1	0	0	0	0	2	22
Others	5	0	0	0	0	0	4	0	0	0	0	1	19
Total	8	0	0	0	0	0	5	0	0	0	0	3	19.6

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 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 tax 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	2	0	0	0	0	0	22.19
Others	1	0	0	0	0	0	1	0	0	0	0	0	27.9
Total	3	0	0	0	0	0	3	0	0	0	0	0	24.09

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 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 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.

Annex C

MAP Statistics Reporting for the 2016, 2017 and 2018 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	3	0	0	0	0	0	0	0	0	0	0	0	3	n.a.
Others	0	10	0	0	0	0	0	1	0	0	0	0	0	9	6.7
Total	0	13	0	0	0	0	0	1	0	0	0	0	0	12	6.7

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	3	6	0	0	0	1	0	3	0	0	0	0	0	5	8.74
Others	9	8	1	0	0	0	0	11	0	0	0	0	0	5	6.91
Total	12	14	1	0	0	1	0	14	0	0	0	0	0	10	7.37

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	7	0	0	0	3	1	2	0	0	0	0	0	6	3.28
Others	5	6	0	0	1	1	1	1	0	0	0	0	0	7	11.22
Total	10	13	0	0	1	4	2	3	0	0	0	0	0	13	6.45

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2018
TAA	Tax Administration Act of 1994
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, New Zealand (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 of New Zealand, which is accompanied by a document addressing the implementation of best practices.



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