

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



Making Dispute Resolution More Effective – MAP Peer Review Report, Hong Kong, China (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Please cite this publication as:

OECD (2021), *Making Dispute Resolution More Effective – MAP Peer Review Report, Hong Kong, China (Stage 2): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris,
<https://doi.org/10.1787/a8bc6871-en>.

ISBN 978-92-64-81022-8 (print)

ISBN 978-92-64-92731-5 (pdf)

OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

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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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 30 August 2021 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

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

Executive summary

Hong Kong, China has a modest tax treaty network with over 40 tax treaties. Hong Kong, China has limited experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 20 cases pending on 31 December 2019. Of these cases, 35% concern allocation/attribution cases. Overall Hong Kong, China meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Hong Kong, China worked to address some of them, which has been monitored in stage 2 of the process. In this respect, Hong Kong, China has not solved any of the identified deficiencies yet.

All of Hong Kong, China's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 to 3 of Article 25 of the OECD Model Tax Convention (OECD, 2017). Its treaty network is almost entirely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Two 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 of the OECD Model Tax Convention (OECD, 2017)), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Two other tax treaties do not contain the equivalent to of 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.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Hong Kong, China needs to amend and update four tax treaties. In this respect, the provisional list of notifications and reservations under the Multilateral Instrument has been submitted in respect of tax treaties entered into by Hong Kong, China, through which the four tax treaties that are currently considered not to be in line with the Action 14 Minimum Standard will be modified to fulfil the requirements.

Hong Kong, China 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 roll-back of bilateral APAs. While some cases were requested during the period under review, these requests are still under consideration by Hong Kong, China.

Hong Kong, China 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. However, for one MAP case Hong Kong, China did not effectively communicate with the treaty partner's competent authority in order for the taxpayer to gain effective access to MAP. Furthermore, Hong Kong, China has in place a documented notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Hong Kong, China has a clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice.

Concerning the average time needed to close MAP cases, the MAP statistics for Hong Kong, China for the period 2016-19 are as follows:

2016-19	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2019	Average time to close cases (in months)*
Attribution/allocation cases	1	14	8	7	17.74
Other cases	5	11	3	13	14.72
Total	6	25	11	20	16.92

*The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Hong Kong, China used as a start date the date of receipt of the MAP request from the taxpayer, and as the end date the date when the taxpayer is informed of the outcome of the MAP.

The number of cases Hong Kong, China closed in 2016-19 is 44% of the number of all new cases started in those years. During these years, MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 16.92 months. However, one peer has experienced difficulties in resolving MAP cases in a timely, efficient and effective manner, which in particular concerns obtaining a position paper in due time and delays in holding a competent authority meeting. Furthermore, Hong Kong, China's MAP inventory has significantly increased during these years, which both regards attribution/allocation cases and other cases. In this respect, as Hong Kong, China has added new staff to its competent authority to handle MAP cases, it should closely monitor whether such increase will allow its competent authority to cope with the increase in the number of MAP cases. If this would not be the case, Hong Kong, China should hire or assign more staff to its competent authority, or further actions are necessary.

Furthermore, Hong Kong, China meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Hong Kong, China's competent authority operates fully independently from the audit function of the tax authorities. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

Lastly, Hong Kong, China in principle meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Since Hong Kong, China did not enter into any MAP agreements that required implementation by Hong Kong, China during the period under review, no problems have surfaced regarding the implementation throughout the peer review process.

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>.

Introduction

Available mechanisms in Hong Kong, China to resolve tax treaty-related disputes

Hong Kong, China has entered into 43 tax treaties on income (and/or capital), 42 of which are in force.¹ These 43 treaties are being applied to the same number of jurisdictions. All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, ten of the treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

Under the tax treaties Hong Kong, China entered into, the competent authority to conduct a mutual agreement procedure (“**MAP**”) is the Commissioner of Inland Revenue or his authorised representative, and is delegated to the Tax Treaty Section of the Inland Revenue Department (“**IRD**”). The Section currently consists of 35 professional officers and all of them are also dealing with other treaty-related tasks besides MAP cases.

Hong Kong, China has issued guidance on the governance and administration of the MAP (“**MAP guidance**”) available at:

https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf

Developments in Hong Kong, China since 1 January 2019

Developments in relation to the tax treaty network

In the stage 1 peer review report of Hong Kong, China, it is reflected that all of Hong Kong, China’s 39 tax treaties have entered into force. Since 1 January 2019, Hong Kong, China signed new treaties with Cambodia (2019), Estonia (2019), Georgia (2020) and Serbia (2020). The treaty with Georgia is pending ratification and the remaining three treaties have entered into force. The new treaty with Serbia contains 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), whereas the new treaties with Cambodia, Estonia and Georgia contain Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).

Furthermore, on 7 June 2017, the People’s Republic of China signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”) to adopt, where necessary, modifications to the MAP article under the tax treaties entered into by Hong Kong, China with a view to being compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. The People’s Republic of China submitted the provisional list of notifications and reservations under the Multilateral Instrument in respect of the tax treaties entered into by Hong Kong, China.³ In relation to the Action 14 Minimum Standard, Hong Kong, China has not made any reservations to Article 16 of the Multilateral Instrument (concerning the

mutual agreement procedure). Hong Kong, China indicated that the People's Republic of China expects the ratification process of the Multilateral Instrument to be finalised during 2021.

For the tax treaty that was in the stage 1 peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will at this stage not be modified by the Multilateral Instrument, Hong Kong, China reported that the treaty partner has informed Hong Kong, China that it will withdraw its reservation under the Multilateral Instrument, following which this treaty will be in line with the requirements under the Action 14 Minimum Standard.

Other developments

Hong Kong, China reported that since 1 January 2019, six professional officers, who are responsible for handling treaty-related tasks besides MAP cases, have joined the Tax Treaty Section.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Hong Kong, China's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Hong Kong, China, its peers and taxpayers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Hong Kong, China'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 9 August 2019. This report identifies the strengths and shortcomings of Hong Kong, China 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 Hong Kong, China. In this update report, Hong Kong, China 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 Hong Kong, China is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of Hong Kong, China's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process was for Hong Kong, China launched on 31 December 2018, with the sending of questionnaires to Hong Kong, China and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Hong Kong, China in June 2019, with the subsequent approval by the BEPS Inclusive Framework on 9 August 2019. On 9 August 2020, Hong Kong, China submitted its update report, which initiated stage 2 of the process.

The period for evaluating Hong Kong, China's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2018 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2019 and depicts all developments as from that date until 31 July 2020.

In total six peers provided input during stage 1: Austria, Japan, Korea, Liechtenstein, Switzerland and the United Kingdom. Out of these six peers, four had MAP cases with Hong Kong, China that started on or after 1 January 2016. These four peers represent about 35% of post-2015 MAP cases in Hong Kong, China's inventory that started in 2016-18. Input was also received from taxpayers. Generally, all peers indicated having limited MAP experience with Hong Kong, China, some of them emphasising good relationships and communication with the competent authority of Hong Kong, China. One peer, however, reported that it experienced difficulties in initiating a MAP case with Hong Kong, China. During stage 2, the same peers provided input, apart from Liechtenstein. In addition, Indonesia provided input during stage 2. For this stage, these peers represent approximately 48% of post-2015 MAP cases in Hong Kong, China's inventory that started in 2016-19. Generally, all peers indicated having a good relationship with Hong Kong, China's competent authority with regard to MAP. Specifically with respect to stage 2, almost all the peers that provided input reported that the update report of Hong Kong, China fully reflects the experiences these peers have had with Hong Kong, China since 1 January 2019 and/or that there was no addition to previous input given. Two peers provided additional positive input or new experiences. The input from these peers is reflected throughout this document under the elements where they have relevance.

Input by Hong Kong, China and co-operation throughout the process

During stage 1, Hong Kong, China provided extensive answers in its questionnaire, which was submitted with significant delay. Hong Kong, China was responsive in the course of the drafting of the peer review report by responding comprehensively to requests for additional information, and provided further clarity where necessary. In addition, Hong Kong, China provided the following information:

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

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

Finally, Hong Kong, China is a member of the FTA MAP Forum.

Overview of MAP caseload in Hong Kong, China

The analysis of Hong Kong, China's MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2018. For stage 2 the period ranges from 1 January 2019 to 31 December 2019. Both periods are taken into account in this

report for analysing the MAP statistics of Hong Kong, China. The analysis of Hong Kong, China’s MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2019 (“**Statistics Reporting Period**”). According to the statistics provided by Hong Kong, China, its MAP caseload during this period was as follows:

2016-19	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2019
Attribution/allocation cases	1	14	8	7
Other cases	5	11	3	13
Total	6	25	11	20

General outline of the peer review report

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

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

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

The 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 has 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 Hong Kong, China relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Hong Kong, China 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 Hong Kong, China has entered into are available at: https://www.ird.gov.hk/eng/tax/dta_inc.htm. The treaty that is signed but has not yet entered into force is with Georgia. Reference is made to Annex A for the overview of tax treaties of Hong Kong, China.
2. It concerns the treaties with Canada, Guernsey, Italy, Japan, Jersey, Liechtenstein, Luxembourg, Netherlands, Pakistan, and Switzerland. Reference is made to Annex A for the overview of Hong Kong, China's tax treaties.
3. Available at: www.oecd.org/tax/treaties/beps-mli-position-hong-kong.pdf.
4. Available at: <https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-hong-kong-china-stage-1-46034be3-en.htm>.
5. Available at: www.oecd.org/tax/dispute/Hong-Kong-Dispute-Resolution-Profile.pdf.
6. The MAP statistics of Hong Kong, China are included in Annex B and Annex C of this report.
7. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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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>.

Part A

Preventing disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017a) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of Hong Kong, China's tax treaties

2. All of Hong Kong, China's 43 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) 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.

3. Out of six peers that provided input during stage 1, one peer reported that its treaty with Hong Kong, China meets the requirement under this element A.1, which is in line with the above analysis.

Recent developments

Bilateral modifications

4. Hong Kong, China signed new treaties with four treaty partners, all of which concern a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All of them contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). Three of these newly signed treaties have already entered into force, whereas the remaining treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Peer input

5. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Hong Kong, China.

Anticipated modifications

6. Hong Kong, China reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	-	-

[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.

7. 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.

Hong Kong, China’s APA programme

8. Hong Kong, China has implemented an APA programme. The legal and administrative framework of the APA programme is Division 4 of Part 8AA of and Schedule 17H to the Inland Revenue Ordinance (“**IRO**”)² as well as the Departmental Interpretation and Practice Notes No. 48 on “Advance Pricing Arrangement” (“**DIPN 48**”), which was published in 2012 and updated in 2020.³

9. The threshold for an APA application is set by the annual amount of transactions covered by an APA in DIPN 48, and it ranges from HKD 20 million to HKD 80 million, depending on the types of transactions. DIPN 48 describes the APA process in Hong Kong, China, which consists of three stages including: (i) early engagement, (ii) APA application and (iii) monitoring and compliance. It also provides guidance on APA renewals, audits, roll-back, and other administrative issues of APA process. Hong Kong, China reported that the tentative timeframe for concluding an APA is 6 months for the early engagement stage plus 18 months for the APA application stage, and that it however would depend on the progress of negotiations with the other competent authority.

Roll-back of bilateral APAs

10. Hong Kong, China reported that Section 50AAQ(4) of the IRO provides that the Commissioner of Inland Revenue may consider the roll-back of an APA to prior years subject to the statutory time limits for amending tax assessment, where the facts and circumstances in the prior years are the same as those for the APA.

11. As for the granting of roll-back, DIPN 48 prescribes that the decision on granting roll-back depends on the availability of all relevant information in respect of prior years and where there are any material changes in the applicant's circumstances in those years. In practice, roll-back will likely be sought for cases where the transfer pricing issues are considered as high risk.

Recent developments

12. Hong Kong, China reported that in July 2020, the IRD updated DIPN 48 to explain the statutory provisions and streamlined administrative process for APA from five stages (i.e. (i) pre-filing, (ii) formal application, (iii) analysis and evaluation, (iv) negotiation and agreement and (v) drafting, execution and monitoring) to three stages (i.e. (i) early engagement, (ii) APA application and (iii) monitoring and compliance).

Practical application of roll-back of bilateral APAs

Period 1 January 2016-31 December 2018 (stage 1)

13. Hong Kong, China reported that during the Review Period, it has received nine bilateral APA requests, two of which included requests for roll-back. Hong Kong, China reported that these nine APA requests are still under consideration and roll-back has not yet been granted.

14. Four peers that provided input reported that they have not received any requests of roll-back of APAs in the period 1 January 2016-31 December 2018. One of these peers added that in its past experience with Hong Kong, China, it had not encountered any difficulty in the implementation of roll-back of bilateral APAs entered into with Hong Kong, China. The latter peer further noted that it uses bilateral APAs in a constructive manner with Hong Kong, China.

Period 1 January 2019-31 July 2020 (stage 2)

15. Hong Kong, China reported that since 1 January 2019 its competent authority received three requests for bilateral APAs, one of which included a request for roll-back. Hong Kong, China further reported that the relevant APA requests were received in August 2019, May 2020 and July 2020 and are still under consideration.

16. Further to the above, Hong Kong, China also reported that for the two roll-back requests that it received in the period 1 January 2016-31 December 2018, the APA applicants were asked to provide information to support the roll-back requests and their replies are pending. In this respect, Hong Kong, China stated that the roll-back requests will be considered upon receipt of the required information.

17. All peers that provided input in stage 2 stated that the update report provided by Hong Kong, China fully reflects their experience with Hong Kong, China since 1 January 2019 and/or there are no additions to the previous input given.

Anticipated modifications

18. Hong Kong, China 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 is based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).
2. The relevant provisions were added to the IRO by the enactment of the Inland Revenue (Amendment) (No. 6) Ordinance 2018 (“Amendment Ordinance”) in July 2018. The IRO is available at: <https://www.elegislation.gov.hk/hk/cap112>.
3. DIPN 48 on “Advance Pricing Arrangement” is available at: <https://www.ird.gov.hk/eng/pdf/dipn48.pdf>.

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>.
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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.

19. 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 Hong Kong, China's tax treaties

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

20. Out of Hong Kong, China's 43 tax treaties, 36 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 jurisdiction in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either jurisdiction. In addition, five of Hong Kong, China's tax treaties 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 jurisdiction.

21. The remaining two treaties are considered not to have the full 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 jurisdiction of which they are a national where the case comes under the non-discrimination article. However, for the following reasons both 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 and only applies to residents of one of the jurisdictions (one treaty).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the jurisdictions (one treaty).

22. Therefore, it is logical under these two treaties to allow only for the submission of MAP requests to the jurisdiction of which the taxpayer is a resident.

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

23. All but one of the 43 tax treaties of Hong Kong, China 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.

24. The remaining treaty contains a two-year filing period for a MAP request.

Peer input

25. During stage 1, one peer reported that its treaty with Hong Kong, China meets the requirement under this element B.1, which is in line with the above analysis. Another peer reported that its treaty with Hong Kong, China will 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).

26. For the treaty identified that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peer did not provide input.

Practical application

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

27. As noted in paragraphs 20-22 above, in all of Hong Kong, China's tax treaties, taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Hong Kong, China reported that it would grant access to MAP even in cases where there is a pending court proceeding or if a court decision has been rendered regarding the same subject matter. Hong Kong, China also reported that its competent authority is unable to deviate from final decisions rendered by its domestic courts.

28. In this respect, one peer reported that it has been informed by a taxpayer that the competent authority of Hong Kong, China had denied access to MAP to its case, inter alia, due to the fact that an independent tribunal in Hong Kong, China (Board of Review) is responsible to resolve the dispute rather than the competent authorities in MAP. The relevant taxpayer reported that it had initiated legal proceedings in Hong Kong, China and that the competent authority of Hong Kong, China had expressed the view that these proceedings were a more appropriate forum to resolve the dispute rather than MAP.

29. Hong Kong, China responded that the taxpayer has not been denied access to MAP because of any domestic process in respect of the dispute. Hong Kong, China clarified that under the IRO, a person who is aggrieved by a tax assessment may object to the Commissioner of Inland Revenue and that the Commissioner is required to consider the objection and make a determination. Hong Kong, China further reported that if the taxpayer is not satisfied with the Commissioner's determination, it may appeal to the Board of Review, which is an independent tribunal handling tax appeals in Hong Kong, China and further to the courts. Hong Kong, China clarified that MAP provides an avenue for review of treaty-related matters in addition to such appeal process and reiterated that, as stated in paragraph 40 of its MAP guidance, a person can request MAP regardless of any objection or appeal lodged under the IRO.

Taxpayer input

30. One taxpayer provided input on the case described in the above paragraphs involving the peer who reported input and Hong Kong, China. The taxpayer reported that the dispute followed an assessment made by the tax authority of Hong Kong, China that denied the application of the withholding tax rate provided by the treaty on the grounds that the applicable treaty could not override the domestic anti-avoidance provision.

31. The taxpayer reported that in the letter received from Hong Kong, China's competent authority in November 2017, Hong Kong, China's competent authority indicated that it would not grant access to MAP for the case as:

- The taxpayer should be considered as a resident of Hong Kong, China, and not of the jurisdiction of the treaty partner to which the MAP case was submitted. This is further discussed below in paragraph 32.
- The competent authority of Hong Kong, China did not agree with the taxpayer's position in particular on several technical items relating to the nature of the payments, the beneficial owner of the intangible, the basis of calculating royalties, the amount that qualifies as royalties (if any), the tax liability of the entity in Hong Kong, China and the possibility of artificial arrangement. This will be discussed further under element B.4.
- The taxpayer initiated formal legal proceedings to the independent tribunal in Hong Kong, China and this tribunal is an appropriate forum to resolve the dispute rather than MAP. This was discussed above in paragraphs 28-29.

32. The taxpayer also noted that this letter was addressed directly to them, but not to the competent authority to which they submitted their requests. With respect to the issue addressed under the first bullet point in paragraph 31, the relevant peer mentioned that Hong Kong, China's competent authority stated that the question of residence of taxpayer should be determined before initiating the MAP case and that this preliminary issue should be resolved before MAP starts. In addition, as it will also be discussed under element C.2, this peer reported the taxpayer requested arbitration as the competent authorities could not resolve the case within two years after the presentation of the case and the peer reported having sent a draft mutual agreement to Hong Kong's competent authority for the purpose of the arbitration procedure. However, this peer noted that the letter has not been answered. This peer finally reported that it was informed at the end of 2017 by the taxpayer that Hong Kong, China's competent authority had decided to deny access to MAP and arbitration.

33. Hong Kong, China responded that the taxpayer is a multinational enterprise operating in Hong Kong, China and clarified that under the tax treaty between Hong Kong, China

and the relevant peer, a person is only allowed to present his MAP request to the competent authority of the contracting party of which he is a resident. Hong Kong, China further explained that in order to comply with the treaty its competent authority is required to ascertain the residence of the taxpayer before further processing the MAP request. Hong Kong, China further stated that its competent authority has doubts about the fact that the taxpayer concerned is actually a resident of the peer's jurisdiction as it did not carry on any substantial activities in the peer's jurisdiction. In addition, Hong Kong, China clarified that when determining the preliminary issue of residence and assessing whether the taxpayer is a resident of Hong Kong, China instead of the peer's jurisdiction, Hong Kong, China is in substance considering the merits of the MAP request as the benefits claimed by the taxpayer under the tax treaty are only available to a person who is not a resident of Hong Kong, China.

34. Hong Kong, China confirmed that the relevant MAP case has been included in its pre-2016 MAP inventory, which shows that the request is still under consideration by Hong Kong, China.

35. Finally, Hong Kong, China clarified that the letter referred to in paragraph 31 was issued to the taxpayer's representative and that the competent authority of Hong Kong, China has communicated on this MAP request with the competent authority of the relevant peer through other correspondence.

36. During stage 2, Hong Kong, China reported that the relevant MAP case is still being considered by Hong Kong, China, and the discussion with the taxpayer is at the final stage. Hong Kong, China clarified that its competent authority needs to consider the taxpayer's residence first to determine whether it can resolve the case unilaterally by allowing the treaty benefits which are only available to a person who is not a resident of Hong Kong, China. Hong Kong, China further reported that it has taken positive steps to resolve the case and has reached an in-principle agreement on the terms of settlement with the taxpayer. In this regard, Hong Kong, China anticipated that the case can soon be resolved unilaterally through domestic remedy pursuant to the agreed settlement, and therefore MAP discussion with the relevant competent authority may not be necessary. In addition, Hong Kong, China stated that since 1 January 2019 it has not denied access to MAP on the grounds that the taxpayer was not a resident of Hong Kong, China or due to the fact that domestic remedies were initiated or concluded. Hong Kong, China reiterated that it has never denied access to MAP in respect of any taxpayer that meets the requirements of Article 25(1) of the OECD Model Tax Convention (OECD, 2017), including the MAP case concerned. Further, Hong Kong, China added that it will ensure that taxpayers that meet the requirements of Article 25(1) of the OECD Model Tax Convention (OECD, 2017) can have access to MAP irrespective of their resident status.

37. Regarding the MAP case concerned, the relevant peer clarified that it was not contacted by Hong Kong, China and there were no developments since March 2018 when it was informed by Hong Kong, China that the taxpayer's request for arbitration was considered as inappropriate and that a better and more complete reply would be sent at a later point. In this respect, this peer stressed that it has not received an official letter clearly confirming that the competent authorities started the MAP procedure and are actually in MAP discussions.

38. Since Hong Kong, China's competent authority is yet to initiate discussions in this MAP case based on its view that such discussions may not be necessary, the situation remains the same in stage 2.

Recent developments

Bilateral modifications

39. Hong Kong, China signed new treaties with four treaty partners, all of which concern a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. Three of these four treaties contain a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to file a MAP request to either competent authority. The other 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). Three of these four newly signed treaties have already entered into force, whereas the remaining treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

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

40. The provisional list of notifications and reservations under the Multilateral Instrument has been submitted by the People’s Republic of China in respect of the tax treaties entered into by Hong Kong, China on 7 June 2017. Hong Kong, China indicated that the People’s Republic of China expects the ratification process of the Multilateral Instrument to be finalised during 2021.

41. 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 jurisdiction – 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.

42. Hong Kong, China 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 jurisdiction. In other words, where under Hong Kong, China’s tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting jurisdiction of which it is a resident, Hong Kong, China opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting jurisdiction. In this respect, out of the 38 treaties that do not contain the equivalent of Article 25(1), first sentence as amended by the Action 14 final

report (OECD, 2015b), Hong Kong, China listed 35 of them as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), 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).

43. In total, 32 of 35 relevant treaty partners are a signatory to the Multilateral Instrument, and 31 have listed their treaty with Hong Kong, China as a covered tax agreement under that instrument and ten 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 allowing taxpayers to submit a MAP request to the competent authority of either contracting jurisdiction. The remaining 21 treaty partners listed their treaty with Hong Kong, China 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). Therefore, at this stage, 21 of the 38 tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(1), 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

44. 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).

45. In regard to the tax treaty identified in paragraph 24 above that contains a filing period for MAP requests of less than three years, Hong Kong, China listed this treaty as a covered tax agreement under the Multilateral Instrument and it made, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner, being a signatory to the Multilateral Instrument, listed its treaty with Hong Kong, China as a covered tax agreement under that instrument, and also made such notification. Therefore, at this stage, the tax treaty identified above will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

46. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Hong Kong, China.

Anticipated modifications

47. As the one treaty that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) will be modified by the Multilateral Instrument, no bilateral modifications are necessary. In addition, Hong Kong,

China reported it will seek to include the equivalent of Article 25(1) as amended by the Action 14 final report (OECD, 2015b) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	One out of 43 tax treaties does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty is expected to be modified by the Multilateral Instrument to include such equivalent upon entry into force for this treaty.	Hong Kong, China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in this treaty.
	No response was provided by Hong Kong, China's competent authority to the treaty partner's competent authority that received a MAP request where the taxpayer met the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017).	Hong Kong, China should ensure that, in instances where a taxpayer has met the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017), it effectively communicates with its treaty partner in order for the taxpayer to gain effective access to MAP.

[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).

48. 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

49. As discussed under element B.1, out of Hong Kong, China's 43 treaties, five 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, 21 of the remaining 38 treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

50. Hong Kong, China reported that it has introduced a bilateral consultation or notification process that allows the other competent authority concerned to provide its views on the case when Hong Kong, China's competent authority considers the objection raised in the MAP request not to be justified.

51. Hong Kong, China reported that this process is described in the internal procedures of the IRD as follows.

52. If the competent authority of Hong Kong, China determines that the MAP request should be declined on the grounds of "objection not justified", Hong Kong, China reported that its competent authority will, within four weeks from the date of such determination, notify the competent authority of the other treaty partner in writing and invite that other competent authority to provide its view on the case. When making such notification, Hong Kong, China reported that its competent authority will share the following information with the other competent authority concerned: (i) detailed account of the issues, (ii) the representations submitted by the taxpayer concerned, (iii) the relevant information or document submitted by the taxpayer concerned, and (iv) the reasons why the competent authority of Hong Kong, China considers that access to MAP should be denied or the objection raised is not justified.

Recent developments

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

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

54. Hong Kong, China reported that in the period 1 January 2016-31 December 2018 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016-18 MAP statistics submitted by Hong Kong, China show that two MAP cases that were closed in 2017 with the outcome "objection not justified", and Hong Kong, China clarified that the other competent authority made such a decision.

55. All peers that provided input indicated not being aware of any cases for which Hong Kong, China's competent authority denied access to MAP. They also reported not having been consulted/notified of a case where Hong Kong, China'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 Hong Kong, China in the period 1 January 2016-31 December 2018.

Period 1 January 2019-31 July 2020 (stage 2)

56. Hong Kong, China reported that since 1 January 2019 its competent authority has for none of the MAP requests it received decided that the objection raised by the taxpayer in its request was not justified. The 2019 MAP statistics submitted by Hong Kong, China confirm that none of its MAP cases were closed with the outcome "objection not justified".

57. All peers that provided input in stage 2 stated that the update report provided by Hong Kong, China fully reflects their experience with Hong Kong, China since 1 January 2019 and/or there are no additions to the previous input given.

Anticipated modifications

58. Hong Kong, China 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.

59. 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

60. Out of Hong Kong, China's 43 tax treaties, 41 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their jurisdiction to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. The remaining two treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviate from this provision since these treaties require a mutual agreement procedure for granting corresponding adjustments.

61. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Hong Kong, China's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Hong Kong, China indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties.

62. Sections 50AAN and 50AAO of the IRO refer to the granting of corresponding adjustments in transfer pricing cases.¹ Hong Kong, China's MAP guidance further clarifies that MAP is available for transfer pricing cases and paragraphs 52 and 53 of the Departmental Interpretation and Practice Notes No. 45 on "Relief from Double Taxation due to Transfer Pricing or Profit Reallocation Adjustments" ("**DIPN 45**") state that the MAP Article in Hong Kong, China's tax treaties enables a taxpayer to initiate the procedure where it is considered that the actions of the competent authority of one or both of the jurisdictions concerned result or will result in taxation not in accordance with the provisions of the tax treaty, including transfer pricing and profit reallocation adjustments.²

Recent developments

Bilateral modifications

63. Hong Kong, China signed new treaties with four treaty partners, all of which concern a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All of them contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Three of these newly signed treaties have already entered into force, whereas the remaining treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

64. Hong Kong, China 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 this provision in all of its future tax treaties. In that regard, the provisional list of notifications and reservations under the Multilateral Instrument has been submitted in respect of the tax treaties entered into by Hong Kong, China on 7 June 2017. Hong Kong, China indicated that the People's Republic of China expects the ratification process of the Multilateral Instrument to be finalised during 2021.

65. 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 not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (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)).

66. Hong Kong, China has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). In regard to the two tax treaties identified in paragraph 60 above that are considered not to contain this equivalent, both treaties are listed as a covered tax agreement under the Multilateral Instrument but for both of them a notification pursuant to Article 17(3) is made. Therefore, at this stage, these two tax treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

Application of legal and administrative framework in practice

Period 1 January 2016-31 December 2018 (stage 1)

67. Hong Kong, China reported that it received MAP requests relating to transfer pricing in the period 1 January 2016-31 December 2018, and that it has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

68. Peers indicated not being aware of a denial of access to MAP by Hong Kong, China on the basis that the case concerned was a transfer pricing case.

Period 1 January 2019-31 July 2020 (stage 2)

69. Hong Kong, China reported that since 1 January 2019 it received three MAP requests relating to transfer pricing, one of which was denied access to MAP by the treaty partner on the grounds that the tax treaty has not yet been effective for the fiscal year concerned.

70. All peers that provided input in stage 2 stated that the update report provided by Hong Kong, China fully reflects their experience with Hong Kong, China since 1 January 2019 and/or there are no additions to the previous input given.

Anticipated modifications

71. Hong Kong, China 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 this provision in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

72. 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

73. None of Hong Kong, China's 43 tax treaties allows competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of Hong Kong, China do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. Paragraph 10 of Hong Kong, China's MAP guidance provides that access to MAP is granted where the issue for discussion is the application of the anti-abuse provisions in a tax treaty or whether the application of the domestic anti-abuse provisions may conflict with the provisions of a tax treaty.

Recent developments

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

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

75. Hong Kong, China reported that in the period 1 January 2016-31 December 2018 it has not denied access to MAP for cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, Hong Kong, China reported that it has not received any MAP requests concerning such cases in the period 1 January 2016-31 December 2018.

76. Four peers indicated not being aware of cases that have been denied access to MAP in Hong Kong, China in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2016-31 December 2018.

77. One peer reported that it received a MAP case from a taxpayer but could not start MAP discussions with Hong Kong, China's competent authority as described in element B.1, since Hong Kong, China's competent authority expressed that cases where the treaty may have been abused should not be appropriate for MAP and raised questions about the availability of MAP for abusive cases. The relevant taxpayer also reported having received a letter from Hong Kong, China's competent authority stating that access to MAP would not be given because (among other reasons) the competent authority of Hong Kong, China did not agree with the taxpayer's position in particular on several technical items relating to the nature of the payments, the beneficial owner of the intangible, the basis of calculating royalties, the amount that qualifies as royalties (if any), the tax liability of the entity in Hong Kong, China and the possibility of artificial arrangement.

78. Hong Kong, China reiterated that its competent authority will not deny access to MAP to 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, as specified in its MAP guidance. In

the case referred to by the peer, Hong Kong, China reported that it has concerns about the taxpayer’s residence, which is further discussed under element B.1.

Period 1 January 2019-31 July 2020 (stage 2)

79. Hong Kong, China reported that since 1 January 2019 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.

80. All peers that provided input in stage 2 stated that the update report provided by Hong Kong, China fully reflects their experience with Hong Kong, China since 1 January 2019 and/or there are no additions to the previous input given.

Anticipated modifications

81. Hong Kong, China 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.

82. 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

83. Hong Kong, China reported that under its domestic law, it is possible that taxpayers and the tax administration enter into an audit settlement. An audit settlement can be requested by either the IRD or the taxpayer and can occur at any stage, even during the course of an objection or appeal. Hong Kong, China reported that the factors that the IRD takes into consideration during the course of an audit settlement include the relevant strength of the parties’ position, the cost and benefit of continuing the tax dispute, and the expected

impact on future compliance for the taxpayer and the broader taxpaying community. Hong Kong, China reported that to finalise an audit settlement, the taxpayer is required to sign a written agreement which sets out the exact terms of the settlement.

84. Paragraph 8 of Hong Kong, China's MAP guidance provides that access to MAP will not be precluded in cases where the issues in dispute have already been resolved through an audit settlement between the taxpayer and the IRD. However, it is specified that it would be difficult for the competent authority of Hong Kong, China to negotiate and agree on a position that deviates from the audit settlement which has already been accepted by the taxpayer or its associated enterprise.

Administrative or statutory dispute settlement/resolution process

85. Hong Kong, China reported that it does not have an administrative or statutory dispute settlement/resolution process that limits access to MAP in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Recent developments

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

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

87. Hong Kong, China reported that in the period 1 January 2016-31 December 2018 it has not received any MAP requests for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

88. All peers indicated not being aware of a denial of access to MAP in Hong Kong, China in the period 1 January 2016-31 December 2018 in cases where there was an audit settlement between the taxpayer and the tax administration.

Period 1 January 2019-31 July 2020 (stage 2)

89. Hong Kong, China reported that since 1 January 2019 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.

90. All peers that provided input in stage 2 stated that the update report provided by Hong Kong, China fully reflects their experience with Hong Kong, China since 1 January 2019 and/or there are no additions to the previous input given.

Anticipated modifications

91. Hong Kong, China 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.

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

Legal framework on access to MAP and information to be submitted

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

94. Hong Kong, China reported that if a taxpayer does not provide the required information, or additional information that is considered necessary, the IRD will ask the taxpayer to submit the information within two months. In the case where the taxpayer fails to reply within the time limit, the IRD will issue a reminder to the taxpayer. If there is still no reply within one month, the taxpayer will be contacted to find out the reason for non-submission of the required information. A further extension may be allowed to the taxpayer where appropriate. In any event, Hong Kong, China reported that the taxpayer will not be denied access to MAP on the grounds that insufficient information is provided or merely because of a delay in providing the relevant information. However, if the taxpayer fails to provide the relevant information despite repeated requests, the competent authority of Hong Kong, China may consider the objection raised in the request as not justified, after consulting the competent authority of the treaty partner.

Recent developments

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

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

96. Hong Kong, China reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in paragraphs 15 and 16 of Hong Kong, China’s MAP guidance. It further reported that in the period 1 January 2016-31 December 2018 it has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

97. All peers that provided input indicated not being aware of a limitation of access to MAP by Hong Kong, China in the period 1 January 2016-31 December 2018 in situations where taxpayers complied with information and documentation requirements.

Period 1 January 2019-31 July 2020 (stage 2)

98. Hong Kong, China reported that since 1 January 2019 it has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

99. All peers that provided input in stage 2 stated that the update report provided by Hong Kong, China fully reflects their experience with Hong Kong, China since 1 January 2019 and/or there are no additions to the previous input given.

Anticipated modifications

100. Hong Kong, China did not indicate that it anticipates any modification 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.

101. 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 Hong Kong, China's tax treaties

102. Out of Hong Kong, China's 43 tax treaties, 41 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. The remaining two treaties do not contain such a provision at all.

103. During stage 1, one peer reported that its treaty with Hong Kong, China meets the requirement under this element, which is in line with the above analysis.

104. For the two treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peers did not provide input.

Recent developments

Bilateral modifications

105. Hong Kong, China signed new treaties with four treaty partners, all of which concern a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All of them contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Three of these newly signed treaties have already entered into force, whereas the remaining treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

106. The provisional list of notifications and reservations under the Multilateral Instrument has been submitted in respect of the tax treaties entered into by Hong Kong, China on 7 June 2017. Hong Kong, China indicated that the People’s Republic of China expects the ratification process of the Multilateral Instrument to be finalised during 2021.

107. 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 (OECD, 2017) – 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).

108. In regard to the two 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), Hong Kong, China listed both of them as a covered tax agreement under the Multilateral Instrument and for both did it make, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). The relevant two treaty partners, being a signatory to the Multilateral Instrument, listed their treaty with Hong Kong, China as a covered tax agreement, and made such notification. Therefore, at this stage, both tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

109. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Hong Kong, China.

Anticipated modifications

110. As the two treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) will be modified by the Multilateral Instrument, no bilateral modifications are necessary. In addition, Hong Kong, China reported that 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]	Two out of 43 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). These two treaties are expected to be modified by the Multilateral Instrument.	Hong Kong, China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.

[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.

111. 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.

Hong Kong, China's MAP guidance

112. Hong Kong, China's MAP guidance was published in February 2019 and is available at:

https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf

113. This MAP guidance consists of six chapters and sets out in detail how taxpayers can access the mutual agreement procedure and what rules apply during that procedure under tax treaties entered into by Hong Kong, China. More specifically, it contains information on:

1. Mutual Agreement Procedure as Dispute Resolution Mechanism	<ul style="list-style-type: none"> • overview • DTA jurisdiction residents can apply for MAP • time limit for making MAP request.
2. Access to MAP	<ul style="list-style-type: none"> • transfer pricing • tax audit settlement • bona-fide taxpayer-initiated foreign self-assessment • MAP and anti-abuse provisions.
3. MAP Process	<ul style="list-style-type: none"> • two-stage process • stage One (Submission of a MAP request; Information required for MAP request; determining whether the MAP request is justified; and Unilateral solution) • stage Two (Duty to negotiate and endeavour for resolution; Competent authority communications; Competent authority agreement reached and accepted; No competent authority agreement reached or accepted; and Arbitration).

4. Timeframe for Resolution	<ul style="list-style-type: none"> • target time for resolving a MAP case • no time limit for implementing MAP solution.
5. MAP and Domestic Remedial Process	<ul style="list-style-type: none"> • interaction between MAP and objection process under the IRO (Concurrent avenues to MAP and objection; Objection undetermined when competent authority agreement reached; Objection determined before competent authority agreement reached) • interaction between MAP and domestic remedial process in the other DTA jurisdiction.
6. Miscellaneous Matters	<ul style="list-style-type: none"> • multilateral and multi-year application • payment of tax during MAP process • penalties • advance pricing arrangement • MAP profile • contact information.

114. Hong Kong, China also published rules, guidelines and procedures on MAP for attribution/allocation cases, which were set out in DIPN 45, available at:

<https://www.ird.gov.hk/eng/pdf/dipn45.pdf>

115. The above-described MAP guidance includes detailed information on the availability and the use of MAP and how the competent authority of Hong Kong, China conducts the procedure in practice. This document 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.³

Taxpayer input

116. The taxpayer that provided input on the case discussed under element B.1, commented that the guidance published in 2009, being DIPN 45, is limited to transfer pricing or profit reallocation adjustments, and does not cover other treaty-related disputes, including potential treaty abuse transactions. The taxpayer also observed that DIPN 45 focuses on the practices in handling MAP cases presented by taxpayers of Hong Kong, China to the IRD, but it lacks clarity on how the IRD handles MAP cases presented by non-resident taxpayers to other competent authorities seeking relief in Hong Kong, China and it increases uncertainty on the effectiveness of a MAP request. Finally, the taxpayer expressed concerns about the fact that DIPN 45 is outdated because provisions relating to MAP were added to the IRO in July 2018 and expect new guidance to be issued by Hong Kong, China.

117. Hong Kong, China responded that its MAP guidance which is applicable to all types of MAP cases was released recently as it was published in February 2019. Hong Kong, China further clarified that its MAP guidance took into consideration abovementioned legislative amendments and the Action 14 Minimum Standard and that it covers MAP cases presented by resident taxpayers and non-resident taxpayers.

Information and documentation to be included in a MAP request

118. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.⁴ This agreed guidance is shown below. Hong Kong, China's MAP guidance, DIPN 45 and MAP

application form (IR1454) enumerate which items must be included in a request for MAP assistance, and these are checked in the following list:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case
- analysis of the issue(s) requested to be resolved via MAP
- whether the MAP request was also submitted to the competent authority of the other treaty partner
- whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
- whether the issue(s) involved were dealt with previously
- a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

119. Paragraph 17 of Hong Kong, China's MAP guidance and paragraph 59 of DIPN 45 state that where a non-resident taxpayer presents a case to the competent authority of a treaty partner in anticipation of Hong Kong, China's provision of relief from double taxation, a copy of the case presented should be provided at the same time to the Commissioner of Inland Revenue.⁵ Hong Kong, China indicated that this statement serves for facilitating the timely processing of the MAP request.

Recent developments

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

Anticipated modifications

121. Hong Kong, China 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.

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

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

123. The MAP guidance of Hong Kong, China is published and can be found at:

https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf

124. Hong Kong, China’s MAP guidance was published in February 2019. As regards its accessibility, Hong Kong, China’s MAP guidance can easily be found on the IRD’s website by searching the term mutual agreement procedure.

MAP profile

125. The MAP profile of Hong Kong, China is published on the website of the OECD and was last updated in August 2020. This MAP profile is complete and often with detailed information. This profile includes external links that provide extra information and guidance where appropriate.

Recent developments

126. Hong Kong, China reported that its MAP profile has been updated in August 2020 to reflect the streamlined administrative process for APA promulgated in DIPN 48.

Anticipated modifications

127. Hong Kong, China 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.

128. 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

129. As previously discussed under element B.5, under Hong Kong, China’s domestic law, it is possible that taxpayers and the tax administration enter into audit settlements. The relationship between access to MAP and audit settlements is not described in paragraph 8 of Hong Kong, China’s MAP guidance. This paragraph clarifies that Hong Kong, China will not preclude access to MAP in cases where the issues in dispute have already been resolved through an audit settlement between the taxpayer and the IRD. It also specifies that it would be difficult for the competent authorities of Hong Kong, China and the other jurisdiction to discuss and come to an agreement on a position that deviates from the audit settlement which has already been accepted by the taxpayer or its associated enterprise.

130. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Hong Kong, China’s MAP guidance.

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

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

132. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process that limits access to MAP in Hong Kong, China.

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

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

Recent developments

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

Anticipated modifications

135. Hong Kong, China did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. The relevant provisions were added to the IRO by the enactment of the Amendment Ordinance in July 2018.
2. DIPN 45 is available at: <https://www.ird.gov.hk/eng/pdf/dipn45.pdf>.
3. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
4. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
5. DIPN 45 is available at: <https://www.ird.gov.hk/eng/pdf/dipn45.pdf>.
6. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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- 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>.
- 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 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.

136. 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 Hong Kong, China's tax treaties

137. All of Hong Kong, China's 43 tax treaties 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.

138. During stage 1, one peer reported that its treaty with Hong Kong, China meets the requirement under this element C.1, which is in line with the above analysis.

Recent developments

Bilateral modifications

139. Hong Kong, China signed new treaties with four treaty partners, all of which concern a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All of them contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). Three of these newly signed treaties have already entered into force, whereas the remaining treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Peer input

140. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Hong Kong, China.

Anticipated modifications

141. Hong Kong, China reported that 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]	-	-

[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).

142. 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

143. Statistics regarding all tax treaty related disputes concerning Hong Kong, China are published on the website of the OECD as of 2016.¹

144. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Hong Kong, China provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Hong Kong, China and of which its competent authority was aware.² The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and Annex C respectively³ and should be considered jointly to understand the MAP caseload of Hong Kong, China.

145. With respect to post-2015 cases, Hong Kong, China reported having reached out to all of its MAP partners with a view to having their MAP statistics matched. In that regard, Hong Kong, China reported that it could match its post-2015 MAP statistics with all of its treaty partners. Based on the information provided by Hong Kong, China’s MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

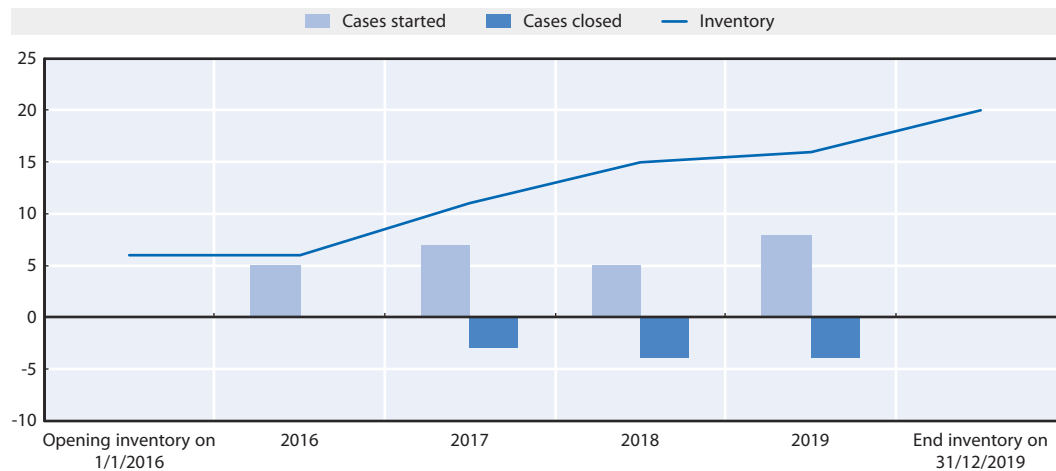
146. Hong Kong, China reported that it maintains a dedicated MAP register to record the details of all MAP cases processed, including the date of receipt, the nature of the issue, the actions taken, the date on which the MAP solution is arrived at and the date on which the solution is implemented. Such details will be entered into the register in the course of processing the MAP cases. A monthly report (with an aging analysis) will be generated to monitor all the cases received, completed or in progress during the month. The report will be submitted to the Head of Tax Treaty Section for monitoring the MAP case inventory, new MAP requests, the outcomes of the MAP cases completed and the time taken for resolving the completed cases. Paragraph 36 of Hong Kong’s MAP guidance states that Hong Kong, China aims at resolving each MAP case within 24 months from receiving the complete request until the implementation of the MAP agreement.

Analysis of Hong Kong, China’s MAP caseload

147. The analysis of Hong Kong, China’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2019.

148. Figure C.1 shows the evolution of Hong Kong, China’s MAP caseload over the Statistics Reporting Period.

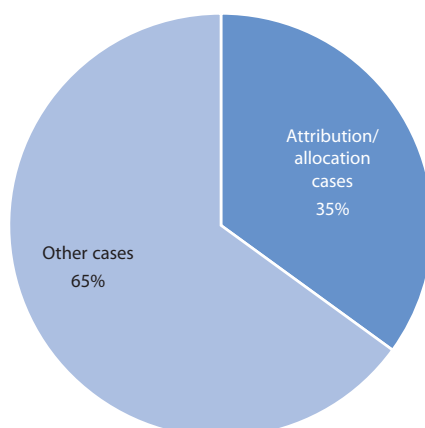
Figure C.1. Evolution of Hong Kong, China’s MAP caseload



149. At the beginning of the Statistics Reporting Period Hong Kong, China had six pending MAP cases, of which one was an attribution/allocation case and five other cases.⁴ At the end of the Statistics Reporting Period, Hong Kong, China had 20 MAP cases in its inventory, of which seven are attribution/allocation cases and 13 are other MAP cases. Hong Kong, China’s MAP caseload increased by 233% during the Statistics Reporting Period, and most of the increase concerns attribution/allocation cases.

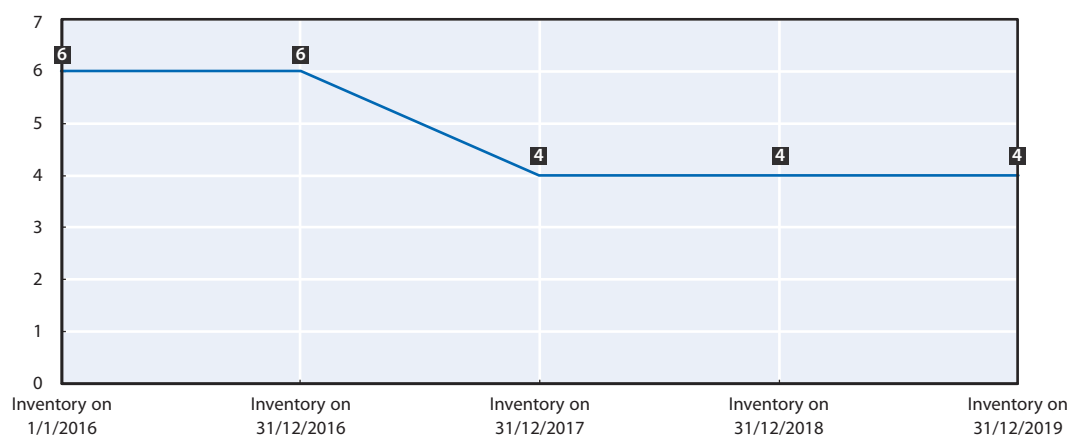
150. The breakdown of the end inventory can be shown as in Figure C.2.

Figure C.2. End inventory on 31 December 2019 (20 cases)

*Pre-2016 cases*

151. Figure C.3 shows the evolution of Hong Kong, China's pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Hong Kong, China's MAP inventory – Pre-2016 cases



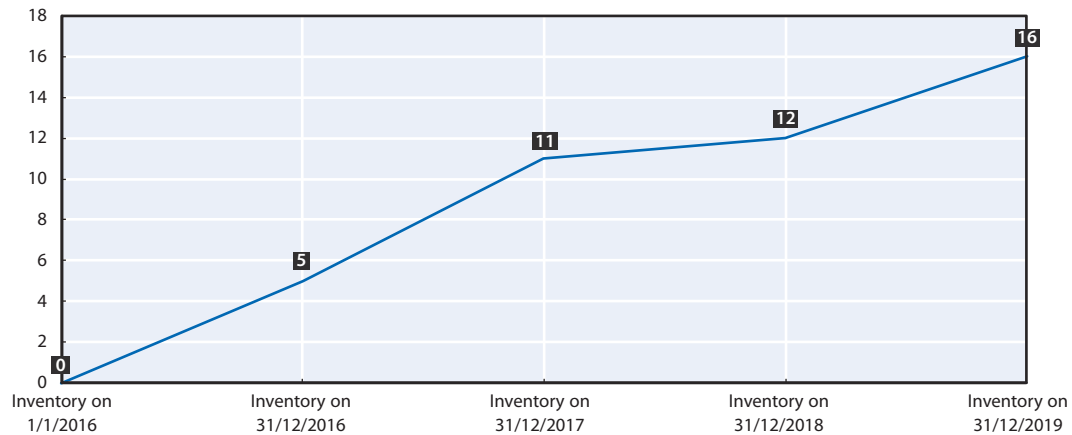
152. At the beginning of the Statistics Reporting Period, Hong Kong, China's MAP inventory of pre-2016 MAP cases consisted of six cases, one out of which was an attribution/allocation case and five were other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases decreased to four cases, consisting of one attribution/allocation case and three other 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	Evolution of total MAP caseload in 2019	Cumulative evolution of total MAP caseload over the four years (2016-19)
Attribution/allocation cases	(no case closed)	(no case closed)	(no case closed)	(no case closed)	(no case closed)
Other cases	(no case closed)	-40%	(no case closed)	(no case closed)	-40%

Post-2015 cases

153. Figure C.4 shows the evolution of Hong Kong, China's post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of Hong Kong, China's MAP inventory – Post-2015 cases



154. In total, 25 MAP cases started during the Statistics Reporting Period, 14 of which concerned attribution/allocation cases and 11 other cases. At the end of this period the total number of post-2015 cases in the inventory was 16 cases, consisting of six attribution/allocation cases and ten other cases. Conclusively, Hong Kong, China closed nine post-2015 cases during the Statistics Reporting Period, eight of them being attribution/allocation cases and one of them being an other case. The total number of closed cases represents 36% of the total number of post-2015 cases that started during the Statistics Reporting Period.

155. 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 compared to cases started in 2016	% of cases closed compared to cases started in 2017	% of cases closed compared to cases started in 2018	% of cases closed compared to cases started in 2019	Cumulative percentage of cases closed compared to cases started over the three years (2016-19)
Attribution/allocation cases	0%	14%	100%	400%	57%
Other cases	0%	(no case started)	50%	0%	9%

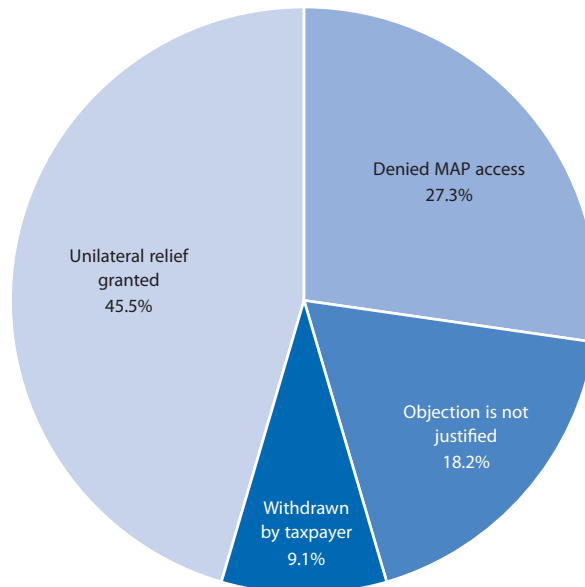
Overview of cases closed during the Statistics Reporting Period

Reported outcomes

156. During the Statistics Reporting Period Hong Kong, China in total closed 11 MAP cases for which the outcomes in Figure C.5 were reported.

157. Figure C.5 shows that during the Statistics Reporting Period, no cases were resolved at the bilateral stage.

Figure C.5. Cases closed in 2016, 2017, 2018 or 2019 (11 cases)



Reported outcomes for attribution/allocation cases

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

- unilateral relief granted (50%)
- denied MAP access (38%)
- withdrawn by taxpayer (12%).

Reported outcomes for other cases

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

- objection is not justified (67%)
- unilateral relief granted (33%).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

160. The average time needed to close MAP cases during the Statistics Reporting Period was 16.92 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	8	17.74
Other cases	3	14.72
All cases	11	16.92

Pre-2016 cases

161. For pre-2016 cases Hong Kong, China reported that on average it needed 20.32 months to close two other cases. No attribution/allocation cases were closed. For the purpose of computing the average time needed to resolve pre-2016 cases, the assessed jurisdiction reported that it uses the following dates:

- *Start date*: the date of receipt of the MAP request from the taxpayer
- *End date*: the date when the taxpayer is informed of the outcome of the MAP.

Post-2015 cases

162. For post-2015 cases Hong Kong, China reported that on average it needed 17.74 months to close eight attribution/allocation cases and 3.52 months to close one other case. This resulted in an average time needed of 16.16 months to close nine post-2015 cases.

Peer input

163. Two peers indicated that they did not experience any impediment to the timeliness of the resolution of MAP cases with Hong Kong, China. One of them reported that Hong Kong, China has accepted well-founded arguments leading to the withdrawal of the adjustments made by Hong Kong, China, and that the cases were settled quickly.

164. One peer reported having experienced difficulties in communicating with Hong Kong, China's competent authority in respect of the case discussed under element B.1. This peer reported that it received a MAP request from a taxpayer and informed Hong Kong, China's competent authority of this request in 2015. This peer further reported that it received a request for information from Hong Kong, China's competent authority under the exchange of information provision of the relevant treaty. This peer reported having answered this request in August 2017. This peer reported that during the whole process, it has not received from Hong Kong, China any official response on the merits of the case, with respect to the eligibility of the MAP case. In addition, this peer reported the taxpayer requested arbitration in 2017 as the competent authorities could not resolve the case within two years after the presentation of the case and the peer reported having sent a draft mutual agreement to Hong Kong's competent authority for the purpose of the arbitration procedure. However, this peer noted that the letter has not been answered. This peer finally reported that it was informed at the end of 2017 by the taxpayer that Hong Kong, China's competent authority had decided to deny access to MAP and arbitration.

165. The taxpayer having provided input on the case referred to under element B.1 questioned whether paragraph 74 of the DIPN 45 (stating that “the Commissioner of the IRD will endeavour to ensure that communications between competent authorities are undertaken on a timely basis to facilitate resolution of cases as quickly as possible”) is applied by Hong Kong, China's competent authority as the dispute remained unresolved more than two years after the submission of the MAP request to provide its response.

166. Hong Kong, China responded that it has communicated its concerns about the eligibility of the taxpayer's MAP request and expressed its views on the merits of the request by way of letters and verbal exchanges with the peer's competent authority and the taxpayer (through its advisers) and that it has also taken steps to obtain additional information related to the MAP request from the peer and the taxpayer. Hong Kong, China also stated that given the complexity of the issues involved and the divergent views held by the parties concerned, the MAP case could not be initiated yet and that it intends to

further engage with the peer and the taxpayer in order to resolve the issue in an efficient and appropriate manner.

Recent developments

167. Hong Kong, China was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 71% of its post-2015 MAP cases that were pending on 31 December 2018 (12 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

168. With respect to this recommendation, Hong Kong, China reported that in order to expedite settlement of the MAP cases, its competent authority has discussed the MAP cases with the competent authorities of its MAP partners through face-to-face meetings or teleconference, and also exchanged views and positions with them through correspondence. In this respect, Hong Kong, China stated that out of the 12 post-2015 MAP cases pending on 31 December 2018, seven cases have been resolved since 1 January 2019.

169. From the statistics discussed above, it follows that Hong Kong, China in the period 2016-19 has closed its MAP cases within the pursued average of 24 months. For these years, the number of post-2015 cases closed as compared to the cases that started in these years was 36%. Furthermore, its MAP inventory has increased by 233% since 1 January 2016. Element C.3 will further consider these numbers in light of the adequacy of resources.

170. Of the peers that provided input during stage 2, two provided input in relation to their experience with Hong Kong, China as to handling and resolving MAP cases. Their input is further discussed under element C.3. One peer that only provided input during stage 2 mentioned that Hong Kong, China's competent authority is easy to approach via email and mails and that informal communication could expedite discussion on MAP cases.

Anticipated modifications

171. Hong Kong, China 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.

172. 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 Hong Kong, China’s competent authority

173. Under Hong Kong, China’s tax treaties, the competent authority function is assigned to the Commissioner of Inland Revenue and his authorised representative. Hong Kong, China reported that the competent authority function is further delegated to its Tax Treaty Section.

174. Hong Kong, China reported that the Tax Treaty Section is headed by two chief assessors and supervised by the Deputy Commissioner of Inland Revenue (Technical). Hong Kong, China further reported that the Section consists of nine teams, two of which consist of one senior assessor, two assessors and one assistant assessor; three of which consist of one senior assessor, one assessor and one assistant assessor; and four of which consist of one senior assessor, one assessor and two assistant assessors. Overall, Hong Kong, China reported that 35 professional officers are working with its competent authority, including two chief assessors.

175. Hong Kong, China reported that the nine teams are in charge of MAP cases, in addition to other tasks. Hong Kong, China further reported that apart from two chief assessors, three teams (i.e. 12 professional officers) are specifically dealing with APA and MAP cases involving transfer pricing, while the other six teams (i.e. 21 professional officers) are handling other types of MAP cases, along with other treaty-related tasks. Hong Kong, China stated that all the officers of the Tax Treaty Section who are in charge of MAP cases have prior experience in tax assessment and/or audits. This will be further discussed under element C.4.

176. Hong Kong, China reported that the budget available to the MAP function is assessed on an annual basis. Hong Kong, China reported that based on the expected inflow of MAP requests and the progress of the outstanding cases in the year concerned, the IRD will provide for adequate funding (including that for conducting face-to-face meetings with the other competent authorities) to ensure that all MAP cases can be processed in a timely, efficient and effective manner.

177. Hong Kong, China stated that it has arranged some training courses and experience sharing sessions to keep its staff aware of the latest OECD’s standards and the IRD’s internal policies and procedures for MAP. Hong Kong, China further reported that in order to strengthen their practical skills in conducting MAP cases, a number of officers of the Tax Treaty Section attended MAP training courses organised by the OECD and external academics. Finally, Hong Kong, China reported that for the purposes of capacity building and reducing MAP cases in the first instance, all international tax examiners of the IRD have studied, as part of their training requirements, the slide pack on “Businesses with cross-border transactions” under the Global Awareness Training Module prepared by the FTA MAP Forum.

178. Hong Kong, China reported that its competent authority is required to follow the internal procedures for processing MAP cases. For instance, upon receipt of a taxpayer’s MAP request, the competent authority of Hong Kong, China will, within four weeks from the date of receipt of the request, notify the competent authority of the other treaty partner in writing together with the following information: (i) the identity of the taxpayer concerned, (ii) the tax years covered, (iii) brief issues, (iv) the date of receipt of the MAP request; and (v) the contact details of the official handling the MAP request.

Monitoring mechanism

179. As also described under element C.2, Hong Kong, China reported that it monitors the MAP statistics on an on-going basis. The monitoring mechanism provides Hong Kong, China with an indication regarding whether or not target timeframes are being effectively managed and whether existing resources are sufficient or need to be increased. Hong Kong, China emphasised that the Tax Treaty Section has recently hired more personnel to cope with the increased workload relating to international taxation (including MAP). Hong Kong, China considers that the resources allocated to its competent authority are sufficient and adequate to perform the MAP function.

Recent development

180. As discussed under element C.2, Hong Kong, China's competent authority has discussed MAP cases with the competent authorities of its MAP partners through face-to-face meetings or teleconference, and also exchanged views and positions with them through correspondence in order to expedite settlement of the MAP cases.

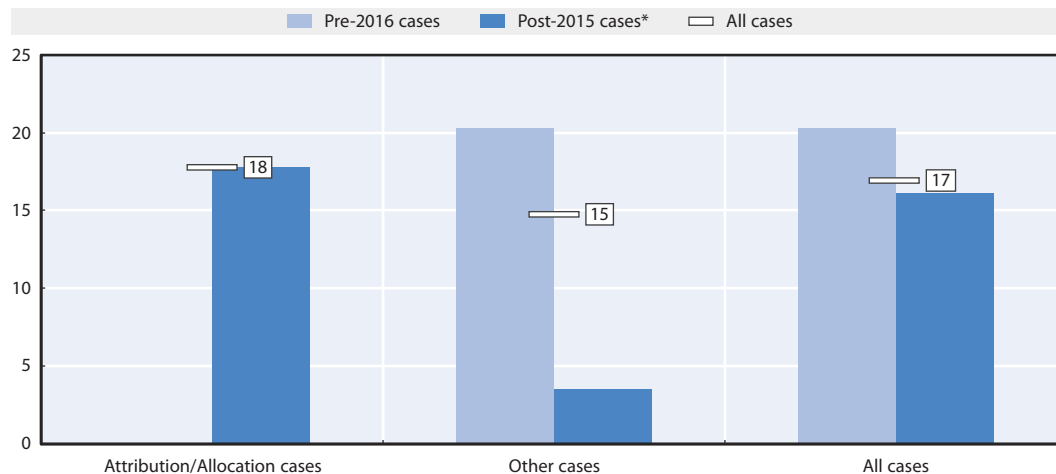
181. Furthermore, Hong Kong, China reported that since 1 January 2019 six professional officers (i.e. two assessors and four assistant assessors) have joined the Tax Treaty Section. This has been reflected above in the description of Hong Kong, China's competent authority.

Practical application

MAP statistics

182. As discussed under element C.2, Hong Kong, China closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. The breakdown of the average times to close cases can be illustrated by Figure C.6.

Figure C.6. Average time (in months) to close cases in 2016-19



*Note that post-2015 cases only concern cases started and closed during 2016-19.

183. Based on these figures, it follows that on average it took Hong Kong, China 16.92 months to close MAP cases during the Statistics Reporting Period. The average time for attribution/allocation cases was 17.74 months and for other cases it was 14.72 months.

184. The stage 1 peer review report of Hong Kong, China analysed the 2016-18 statistics and showed an average of 14.33 months. However, as during this period Hong Kong, China's MAP inventory has increased significantly, it was concluded that this might indicate that Hong Kong, China's competent authority is not adequately resourced to resolve such cases. On that basis Hong Kong, China was recommended to closely monitor whether the recent increase in resources available for the competent authority function will ensure that MAP cases are resolved in a timely, efficient and effective manner, and especially attribution/allocation cases.

185. For stage 2, the 2019 MAP statistics are also taken into account. The average time to close MAP cases for this year is:

	2019
Attribution/Allocation cases	21.44
Other cases	n.a.
All cases	21.44

186. The 2019 statistics of Hong Kong, China show that the average completion time of MAP cases increased from 14.33 months to 21.44 months. The average for attribution/allocation cases increased from 14.05 months to 21.44 months, whereas no other cases were closed in 2019.

187. Furthermore – as analysed in element C.2 – the MAP inventory of Hong Kong, China significantly increased since 1 January 2016. This can be shown as follows:

	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Evolution of total MAP caseload in 2019	Cumulative evolution of total MAP caseload over the four years (2016-19)
Attribution/allocation cases	300%	150%	0%	-30%	600%
Other cases	40%	-29%	20%	117%	160%
Total	83%	36%	7%	25%	233%

Clarifications by Hong Kong, China

188. During stage 2 Hong Kong, China provided the following clarification for why four pre-2016 MAP cases remained pending in 2019. Out of the four cases,

- one case was resolved in 2020
- for another case, it is necessary for the competent authority to determine the residence of the taxpayer as the benefits claimed by the taxpayer under the tax treaty are only available to a person who is not a resident of Hong Kong, China. In order to determine whether Hong Kong, China can resolve the case unilaterally by allowing the benefits sought, the preliminary issue as to the taxpayer's residence has to be dealt with at the outset. Hong Kong, China anticipates that the case will be resolved unilaterally through domestic remedy pursuant to the agreed settlement

- for the remaining two cases, the competent authority of Hong Kong, China is waiting for the position paper or feedbacks on the views of Hong Kong, China from the competent authority of its MAP partner.

Peer input

Period 1 January 2016-31 December 2018 (stage 1)

189. With regard to working relationships with the competent authority of Hong Kong, China, out of six peers that provide input, five peers noted that they have no or limited experiences in dealing with MAP cases with it. The remaining peer simply stated that Hong Kong, China is a significant MAP partner since it constantly receives MAP requests

190. One peer reported that regardless of its limited experience with Hong Kong, China, it has a very good relationship with the competent authority of Hong Kong, China which it considers to be proactive and endeavouring to establish good communication with its counterparts. This peer reported that for a pending case, Hong Kong, China's competent authority has informed this peer's competent authority of the fact that the taxpayer wanted to put the MAP process on hold until the court decision is rendered in the peer's jurisdiction.

191. Another peer reported that communication has worked well and that discussions and settlements took place by letter, emphasising that the engagement with Hong Kong, China was successful.

192. In terms of communications with the competent authority of Hong Kong, China, one peer reported its concerns relating to one case, which is described under element C.2.

Period 1 January 2019-31 July 2020 (stage 2)

193. Almost all peers that provided input in stage 1 stated in stage 2 that the update report provided by Hong Kong, China fully reflects their experience with Hong Kong, China since 1 January 2019 and/or there are no additions to the previous input given. Of the peers that provided input, two provided input in relation to their experience in resolving MAP cases since 1 January 2019.

194. One peer expressed a concern that Hong Kong, China's competent authority is not adequately resourced since the peer found some delays in setting a competent authority meeting and receiving a position paper from Hong Kong, China, noting that other factors such as COVID-19 pandemic might also had an impact. Hong Kong, China responded to this input and mentioned that while the time taken on the relevant MAP case was longer than expected, it was wholly attributable to some exceptional circumstances and it has no correlation with the adequacy of resources within the Tax Treaty Section of the IRD. It clarified that as the case concerned multiple years back to 2012, it had spent considerable time and efforts in gathering information from the Hong Kong, China's taxpayer, and reviewing whether the primary adjustment was justified both in principle and as regards the amount. It also clarified that a physical competent authority meeting could not be arranged because of various unexpected circumstances including the COVID-19 pandemic. Instead, a teleconference was held and the case was resolved within the timeframe of 24 months.

195. Furthermore, as discussed under element C.2, one peer that only provided input during stage 2, mentioned that the competent authorities were able to continue discussion and resolve a pre-2016 MAP case in 2020 by utilising emails and mails as effective communication tools instead of face-to-face meetings. This peer also noted that informal communication on a personal level could facilitate co-ordination and expedite the discussion on MAP cases.

Anticipated modifications

196. Hong Kong, China did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	<p>While MAP cases were on average resolved in 16.92 months, which is below 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), one peer has experienced difficulties in resolving a MAP case in a timely, efficient and effective manner, which in particular concerns obtaining a position paper in due time and delays in holding a competent authority meeting. This may indicate that the competent authority is not adequately resourced.</p> <p>Furthermore, the MAP caseload has significantly increased since 1 January 2016, which both regards attribution/allocation cases and other cases. This may also indicate that the competent authority is not adequately resourced to cope with this increase.</p>	<p>As Hong Kong, China has added new staff to its competent authority to handle MAP cases, it should closely monitor whether the recent increase in resources available for the competent authority function will allow them to cope with the increase in the number of MAP cases, which both regards attribution/allocation cases and other cases.</p> <p>If this would not be the case, Hong Kong, China should hire or assign more staff to its competent authority, or take further actions to be able to cope with the increase in the number of MAP cases, which both regards attribution/allocation cases and other cases. Such addition of resources should also enable Hong Kong, China to submit positions papers in due time and timely hold competent authority meetings.</p>

[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.

197. 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

198. Hong Kong, China reported that the decision making process relating to the resolution of MAP cases involves the Tax Treaty Section and the Deputy Commissioner of Inland Revenue (Technical), who ultimately approves the positions of the competent authority. Hong Kong, China noted that its competent authority needs to take into account the proper application of the relevant treaty when resolving MAP cases, and that they should endeavour to resolve MAP cases in an equitable and impartial manner and in accordance with the relevant treaty, the IRO and the OECD's guidance.

199. Hong Kong, China further reported that its competent authority works independently from the audit personnel who made the adjustment at issue and who belong to a different unit within the IRD and that its competent authority has the authority to resolve MAP cases. Hong Kong, China further stated that there is no system in place requiring them to ask tax administration officers directly involved in the adjustment at issue for approval of any MAP agreements. As mentioned under element C.3, the staff of Hong Kong, China's

competent authority may have prior experience in tax assessment and/or audits. Hong Kong, China added that in order to maintain the independence between the staff in charge of MAP processes and the tax administration personnel who made the adjustments at issue, MAP cases are not assigned to the officer who was previously involved in the audit of the case if such a situation occurs.

200. Hong Kong, China further clarified that although the Tax Treaty Section takes part in treaty negotiations, the treaty policy is decided by the Financial Service and the Treasury Bureau which oversees, among others, the policy matters concerning taxation. Hong Kong, China added that in processing MAP cases, the Tax Treaty Section works independently and is not required to consult or seek approval from the Bureau. It follows that the whole MAP process is not influenced by policy considerations that Hong Kong, China would like to see reflected in its future treaties.

Recent developments

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

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

202. Peers reported no impediments in Hong Kong, China to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy.

203. The taxpayer having provided input on the case described under element B.1 reported that Hong Kong, China's competent authority seemed to have relied on the judgment made by the tax administration personnel who made the adjustment at issue to reject the MAP request.

204. Hong Kong, China responded that in processing the MAP request, the MAP officer has gathered information from the tax administration personnel who made the adjustment at issue, the taxpayer and the relevant treaty partner. Hong Kong, China clarified that the MAP officer considered all the information before forming its own view on the MAP, without relying on the judgment made by the tax administration personnel who made the adjustment at issue to determine the merits of the MAP request.

Period 1 January 2019-31 July 2020 (stage 2)

205. All peers that provided input in stage 2 stated that the update report provided by Hong Kong, China fully reflects their experience with Hong Kong, China since 1 January 2019 and/or there are no additions to the previous input given.

Anticipated modifications

206. Hong Kong, China 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.

207. 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 Hong Kong, China

208. Hong Kong, China reported that it evaluates the performance of staff in charge of MAP process through an analysis of the quality of the work undertaken, such as the proper application of the provisions of the treaty in a MAP case and the building of relationships with other competent authorities. As for the time taken in resolving a MAP case, the target for the relevant staff is to resolve a MAP case within 24 months.

209. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist (and checked when they are used by Hong Kong, China):

- 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).

210. Hong Kong, China added that it does not evaluate the performance of its competent authority and staff in charge of MAP processes based on criteria such as the amount of sustained audit adjustment or the maintenance of tax revenue.

Recent developments

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

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

212. Peers provided no specific input relating to this element.

Period 1 January 2019-31 July 2020 (stage 2)

213. All peers that provided input in stage 2 stated that the update report provided by Hong Kong, China fully reflects their experience with Hong Kong, China since 1 January 2019 and/or there are no additions to the previous input given.

Anticipated modifications

214. Hong Kong, China 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.

215. 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

216. Hong Kong, China reported that its tax treaty policy is not to include a mandatory and binding arbitration provision in its bilateral tax treaties.

217. In this regard, Hong Kong, China reported that it did not opt for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.⁵

218. In addition, Hong Kong, China has expressed its position on Article 25(5) of the OECD Model Tax Convention (OECD, 2017) stating that Hong Kong, China reserves its right not to include paragraph 5 (of Article 25) in its agreements.

Recent developments

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

Practical application

220. Up to date, Hong Kong, China has incorporated an arbitration clause in ten of 43 treaties as a final stage to the MAP. These clauses can be specified as follows:

- equivalent of Article 25(5) of the OECD Model Tax Convention (OECD, 2017): six treaties
- voluntary and binding arbitration: four treaties.

221. The basic guidance on arbitration is provided in paragraphs 34 and 35 of Hong Kong, China's MAP guidance.

Anticipated modifications

222. Hong Kong, China 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 year 2019.
2. Hong Kong, China’s 2016 and 2017 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for those years. See further explanations in Annex B and Annex C.
3. For post-2015 cases, if the number of MAP cases in Hong Kong, China’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, Hong Kong, China reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
4. For pre-2016 and post-2015 cases, Hong Kong, China 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”.
5. An overview of Hong Kong, China’s position on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-hong-kong.pdf.

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

223. 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

224. Hong Kong, China reported that Section 60 of the IRO generally empowers an assessor to raise an assessment or additional assessment on a taxpayer within six years after the end of the year of the assessment concerned. Hong Kong, China further clarified that under Section 79 of the IRO, a taxpayer is entitled to claim a refund of any tax excessively paid within six years of the end of the year of assessment concerned or within six months after the date of the relevant notice of assessment, whichever is the later.¹ However, with regard to the implementation of MAP agreements, Hong Kong, China reported that Section 50AAB(6) of the IRO enables the Commissioner of Inland Revenue to implement any MAP agreement irrespective of domestic time limits, and Hong Kong, China reported that this applies even in the absence of Article 25(2), second sentence in the OECD Model Tax Convention (OECD, 2017). Paragraph 37 of Hong Kong, China's MAP guidance also clarifies that its domestic time limits will not prevent the implementation of any MAP agreement.²

225. Hong Kong, China also reported that where a MAP agreement is reached, the competent authority of Hong Kong, China will inform the taxpayer of the terms of the agreement within one month, and the taxpayer will have another month to decide whether the agreement is accepted as the final resolution. Hong Kong, China further reported that if the taxpayer accepts the agreement, its competent authority will exchange confirmation letters with the competent authority of its treaty partner and implement the agreement by amending the relevant tax assessment(s).

226. Hong Kong, China noted that if no reply is received after the one-month period, the taxpayer will be contacted to find out the reasons why he did not reply. Hong Kong, China explained that further extension may be allowed to the taxpayer where appropriate. However, Hong Kong, China clarified that if the taxpayer still fails to reply, its competent authority will consider closing the case without implementing the agreement, after consulting the other competent authority.

Recent developments

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

Practical application***Period 1 January 2016-31 December 2018 (stage 1)***

228. Hong Kong, China reported that it had not reached any MAP agreements that required implementation in Hong Kong, China in the period 1 January 2016-31 December 2018.

229. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2016-31 December 2018 that was not implemented by Hong Kong, China.

Period 1 January 2019-31 July 2020 (stage 2)

230. Hong Kong, China reported that in the period 1 January 2019-31 July 2020 its competent authority did not enter into any MAP agreements that required implementation by Hong Kong, China.

231. All peers that provided input in stage 2 stated that the update report provided by Hong Kong, China fully reflects their experience with Hong Kong, China since 1 January 2019 and/or there are no additions to the previous input given.

Anticipated modifications

232. Hong Kong, China did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

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

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

233. 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

234. Hong Kong, China reported that after a MAP agreement is accepted by the taxpayer, the Tax Treaty Section will inform the assessing section to amend the taxpayer's assessment within one week. Hong Kong, China further reported that the case will then be followed up after 14 days, and the Tax Treaty Section will then check the database to

ensure the relevant amendment has been made. Paragraph 38 of Hong Kong, China’s MAP guidance provides a theoretical timeframe for implementing MAP agreements, which is either:

- about six weeks after the date of issue of the assessment in cases of additional taxes to be paid by the taxpayer; or
- within ten working days after the date of issue of the revised assessment, in cases of refund to be provided to the taxpayer.

235. Hong Kong, China added that the time taken to implement MAP agreements is monitored as part of the monitoring mechanism referred to in element C.2. Hong Kong, China further reported that any MAP agreement that has not been implemented for more than two months after the date on which it was reached, would be reviewed by the Head of the Tax Treaty Section.

Recent developments

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

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

237. Hong Kong, China reported that it had not reached any MAP agreements in the period 1 January 2016-31 December 2018 that needed to be implemented by Hong Kong, China.

238. All peers that provided input have not indicated experiencing any problems with Hong Kong, China regarding the implementation of MAP agreements reached on a timely basis.

Period 1 January 2019-31 July 2020 (stage 2)

239. As discussed under element D.1, in the period 1 January 2019-31 July 2020, Hong Kong, China did not enter into any MAP agreements that required implementation by Hong Kong, China.

240. All peers that provided input during stage 1, stated in stage 2 that the update report provided by Hong Kong, China fully reflects their experience with Hong Kong, China since 1 January 2019 and/or there are no additions to the previous input given.

Anticipated modifications

241. Hong Kong, China did not indicate that it anticipates any modification 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.

242. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

Legal framework and current situation of Hong Kong, China's tax treaties

243. As discussed under element D.1, Hong Kong, China will give effect to MAP agreements despite any time limits provided under its domestic legislation, even in the absence of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) in the relevant treaty.

244. Out of Hong Kong, China's 43 tax treaties, 41 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. The remaining two treaties do not contain such equivalent or the alternative provisions.

245. During stage 1, one peer reported that its treaty with Hong Kong, China meets the requirement under this element, which is in line with the above analysis.

246. For the two treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives, the relevant peers did not provide input.

Recent developments

Bilateral modifications

247. Hong Kong, China signed new treaties with four treaty partners, all of which concern a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All of them contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Three of these newly signed treaties have already entered into force, whereas the remaining treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

248. The provisional list of notifications and reservations under the Multilateral Instrument has been submitted in respect of the tax treaties entered into by Hong Kong, China on 7 June 2017. Hong Kong, China indicated that the People’s Republic of China expects the ratification process of the Multilateral Instrument to be finalised during 2021.

249. 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 contain 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 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 jurisdictions, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

250. In regard to the two 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) or the alternative provisions for Articles 9(1) and 7(2), Hong Kong, China listed both treaties as covered tax agreements under the Multilateral Instrument and for both of them Hong Kong, China made, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). The relevant two treaty partners, being a signatory to the Multilateral Instrument, listed their treaty with Hong Kong, China as a covered tax agreement, but one of them made such notification. Therefore, at this stage, one of the two tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

251. Hong Kong, China reported that for the tax treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives provided for in Articles 9(1) and 7(2) and which will not be modified by the Multilateral Instrument, it has been informed by one relevant treaty partner 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 that instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017).

Peer input

252. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Hong Kong, China.

Anticipated modifications

253. Hong Kong, China reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>Two out of 43 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), nor both alternative provisions provided for in Article 9(1) and Article 7(2). One of these two treaties is expected to be modified by the Multilateral Instrument. Of these two tax treaties:</p> <ul style="list-style-type: none"> • 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). • 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. 	<p>Hong Kong, China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for one of the two treaties concerned and once one treaty partner has amended its notifications under that instrument.</p>

Notes

1. The IRO is available at: <https://www.elegislation.gov.hk/hk/cap112>.
2. Hong Kong, China's MAP guidance is available at: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	-
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	One out of 43 tax treaties does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty is expected to be modified by the Multilateral Instrument to include such equivalent upon entry into force for this treaty.	Hong Kong, China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in this treaty.
	No response was provided by Hong Kong, China's competent authority to the treaty partner's competent authority that received a MAP request where the taxpayer met the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017).	Hong Kong, China should ensure that, in instances where a taxpayer has met the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017), it effectively communicates with its treaty partner in order for the taxpayer to gain effective access to MAP.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	Two out of 43 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). These two treaties are expected to be modified by the Multilateral Instrument.	Hong Kong, China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	-	-
[C.2]	-	-

	Areas for improvement	Recommendations
[C.3]	<p>While MAP cases were on average resolved in 16.92 months, which is below 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), one peer has experienced difficulties in resolving a MAP case in a timely, efficient and effective manner, which in particular concerns obtaining a position paper in due time and delays in holding a competent authority meeting. This may indicate that the competent authority is not adequately resourced.</p> <p>Furthermore, the MAP caseload has significantly increased since 1 January 2016, which both regards attribution/allocation cases and other cases. This may also indicate that the competent authority is not adequately resourced to cope with this increase.</p>	<p>As Hong Kong, China has added new staff to its competent authority to handle MAP cases, it should closely monitor whether the recent increase in resources available for the competent authority function will allow them to cope with the increase in the number of MAP cases, which both regards attribution/allocation cases and other cases.</p> <p>If this would not be the case, Hong Kong, China should hire or assign more staff to its competent authority, or take further actions to be able to cope with the increase in the number of MAP cases, which both regards attribution/allocation cases and other cases. Such addition of resources should also enable Hong Kong, China to submit positions papers in due time and timely hold competent authority meetings.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-
[D.3]	<p>Two out of 43 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), nor both alternative provisions provided for in Article 9(1) and Article 7(2). One of these two treaties is expected to be modified by the Multilateral Instrument. Of these two tax treaties:</p> <ul style="list-style-type: none"> • 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). • 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. 	<p>Hong Kong, China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for one of the two treaties concerned and once one treaty partner has amended its notifications under that instrument.</p>

Annex A
Tax treaty network of Hong Kong, China

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

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration								
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6										
Estonia	Y	N/A	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Finland	Y	N/A	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
France	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Georgia	N	10/5/2020	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Guernsey	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Hungary	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
India	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Indonesia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ireland	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Italy	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Japan	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Jersey	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Korea	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kuwait	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Liechtenstein	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Luxembourg	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Malaysia	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Malta	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Mexico	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Netherlands	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 25(1) of the OECD MTC		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration								
	B.1	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6											
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)												
New Zealand	Y	N/A	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Pakistan	Y	N/A	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Portugal	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Qatar	Y	N/A	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Romania	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Russia	Y	N/A	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Saudi Arabia	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Serbia	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
South Africa	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Spain	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Switzerland	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Thailand	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
United Arab Emirates	Y	N/A	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
United Kingdom	Y	N/A	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Viet Nam	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

Legend

E* The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.

E** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.

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

Annex B

MAP Statistics Reporting for the 2016, 2017, 2018 and 2019 Reporting Periods (1 January 2016 to 31 December 2019) for pre-2016 cases

2016 MAP Statistics															
category of cases	no. of pre-2016 cases in MAP inventory on 1 January 2016	number of pre-2016 cases closed during the reporting period by outcome:										no. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	average time taken (in months) for closing pre-2016 cases during the reporting period		
		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	1	0	0	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	5	0	0	0	0	0	0	0	0	0	0	0	0	5	n.a.
Total	6	0	0	0	0	0	0	0	0	0	0	0	0	6	n.a.

Notes: The numbers of attribution/allocation cases in the inventory are different from those in Hong Kong, China's published 2016 MAP statistics. This results from the fact that Hong Kong, China was notified of one case from other treaty partner in 2018.

2017 MAP Statistics															
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period		
		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	1	0	0	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	5	0	2	0	0	0	0	0	0	0	0	0	0	3	20.32
Total	6	0	2	0	0	0	0	0	0	0	0	0	0	4	20.32

Notes: The numbers of attribution/allocation cases in the inventory are different from those in Hong Kong, China's published 2017 MAP statistics. This results from the fact that Hong Kong, China was notified of one case from other treaty partner in 2018.

2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome								No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period		
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12
	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	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	3	0	0	0	0	0	0	0	0	0	0	3	n.a.
Total	4	0	0	0	0	0	0	0	0	0	0	4	n.a.

2019 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2019	Number of pre-2016 cases closed during the reporting period by outcome								No. of pre-2016 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing pre-2016 cases during the reporting period		
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12
	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	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	3	0	0	0	0	0	0	0	0	0	0	3	n.a.
Total	4	0	0	0	0	0	0	0	0	0	0	4	n.a.

Annex C

MAP Statistics Reporting for the 2016, 2017, 2018 and 2019 Reporting Periods (1 January 2016 to 31 December 2019) 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	3	n.a.
Others	0	2	0	0	0	0	0	0	0	0	0	0	2	n.a.
Total	0	5	0	0	0	0	0	0	0	0	0	0	5	n.a.

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	7	1	0	0	0	0	0	0	0	0	0	9	6.41
Others	2	0	0	0	0	0	0	0	0	0	0	0	2	n.a.
Total	5	7	1	0	0	0	0	0	0	0	0	0	11	6.41

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	9	3	1	0	0	2	0	0	0	0	0	0	0	9	16.59
Others	2	2	0	0	0	1	0	0	0	0	0	0	0	3	3.52
Total	11	5	1	0	0	3	0	0	0	0	0	0	0	12	13.32

2019 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2019	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 2019	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	9	1	1	0	1	2	0	0	0	0	0	0	0	6	21.44
Others	3	7	0	0	0	0	0	0	0	0	0	0	0	10	n.a.
Total	12	8	1	0	1	2	0	0	0	0	0	0	0	16	21.44

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
DIPN 45	Departmental Interpretation and Practice Notes No. 45 on “Relief from Double Taxation Due to Transfer Pricing and Profit Reallocation Adjustment”
DIPN 48	Departmental Interpretation and Practice Notes No. 48 on “Advance Pricing Arrangement”
MAP guidance	Guidance on Mutual Agreement Procedure published by the Inland Revenue Department in February 2019
IRD	Inland Revenue Department
IRO	Inland Revenue Ordinance
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 that ended on 31 December 2019
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, Hong Kong, China (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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



PRINT ISBN 978-92-64-81022-8

PDF ISBN 978-92-64-92731-5



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