

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



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

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**





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## *Foreword*

Digitalisation and globalisation have had a profound impact on economies and the lives of people around the world, and this impact has only accelerated in the 21<sup>st</sup> century. These changes have brought with them challenges to the rules for taxing international business income, which have prevailed for more than a hundred years and created 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.

In 2013, the OECD ramped up efforts to address these challenges in response to growing public and political concerns about tax avoidance by large multinationals. The OECD and G20 countries joined forces and developed an Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions aimed at 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, including those published in an interim form in 2014, were consolidated into a comprehensive package and delivered to G20 Leaders in November 2015. The BEPS package represents the first substantial renovation of the international tax rules in almost a century. As the BEPS measures are implemented, 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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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. As a result, they created 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 its subsidiary bodies. With over 140 members, the Inclusive Framework monitors and peer reviews the implementation of the minimum standards and is completing the work on standard setting to address BEPS issues. In addition to its 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.

Although implementation of the BEPS package is dramatically changing the international tax landscape and improving the fairness of tax systems, one of the key outstanding BEPS issues – to address the tax challenges arising from the digitalisation of the economy – remained unresolved. In a major step forward on 8 October 2021, over 135 Inclusive Framework members, representing more than 95% of global GDP, joined a two-pillar solution to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate and generate profits in today's

digitalised and globalised world economy. The implementation of these new rules is envisaged by 2023.

This report was approved by the Inclusive Framework on 17 March 2022 and prepared for publication by the OECD Secretariat.

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*Abbreviations and acronyms*

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



## Executive summary

Bermuda has a small tax treaty network with about ten tax treaties. Bermuda has no experience with resolving MAP cases, as it has not been involved in any cases. Bermuda reported that there are no taxes on income, profits or capital gains in Bermuda. This specific situation makes it unlikely, under its current tax system, that Bermuda takes an action that results in taxation not being in accordance with any tax treaty it has entered into. Bermuda further reported that it is however ready to resolve tax treaty-related disputes that would arise after an action being taken by its treaty partner.

Overall Bermuda meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Bermuda worked to address them, which has been monitored in stage 2 of the process. In this respect, Bermuda solved most of the identified deficiencies.

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

- One out of Bermuda's 13 tax treaties does not contain the second sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2017), which sets a three-year time limit for filing a MAP request.
- One out of Bermuda's 13 tax treaties neither contains a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Bermuda needs to amend and update two tax treaties. In this respect, Bermuda intends to sign the Multilateral Instrument, through which the tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Bermuda reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard. In that regard, for one of the treaties, negotiations for the amending Protocol have been finalised with the treaty partner and it is currently being prepared for signing. For the other treaty, Bermuda invited the treaty partner to initiate negotiations on the concerned treaty, and is awaiting a response from the treaty partner.

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

Bermuda in principle meets the requirements regarding availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible

cases, although it has since 1 January 2017 not received any MAP requests. Furthermore, Bermuda has in place a documented bilateral notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Finally, Bermuda has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice.

Bermuda has not been involved in any MAP cases during the period 2017-20, but it meets in principle all the requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases.

Lastly, Bermuda in principle meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Since Bermuda did not enter into any MAP agreements that required implementation by Bermuda in 2017-20, 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 Bermuda to resolve tax treaty-related disputes**

Bermuda has entered into 13 tax treaties on income (and/or capital), all of which are in force.<sup>1</sup> These 13 treaties are being applied to 13 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. Nine of the 13 treaties have a limited scope of application. In addition, two of the 13 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.<sup>2</sup>

Bermuda reported that there are no taxes on income, profits or capital gains in Bermuda. This specific situation makes it unlikely, under its current tax system that Bermuda takes an action that results in taxation not being in accordance with any tax treaty it has entered into. Bermuda further reported that it is however ready to resolve tax treaty-related disputes that would arise after an action being taken by its treaty partner.

In Bermuda, the competent authority function to conduct the mutual agreement procedure (“**MAP**”) is delegated to the Assistant Financial Secretary. Bermuda reported that there is no stand-alone MAP office and the current staff in its EOI unit is deemed sufficient to handle potential MAP requests, especially since it has not received any MAP requests so far.

Bermuda has issued guidance on the governance and administration of the mutual agreement procedure (“**MAP guidance**”) in February 2020, which is available at:

<https://www.gov.bm/sites/default/files/Guidelines-for-requesting-Mutual-Agreement-Procedure-Feb-2020.pdf>

### **Developments in Bermuda since 1 September 2019**

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

The stage 1 peer review report of Bermuda noted that it was not conducting any tax treaty negotiations and that it signed a new treaty with Qatar, which had not yet entered into force. Bermuda reported that since 1 September 2019 the treaty with Qatar has entered into force. Bermuda further reported that negotiations for an amending Protocol have been finalised with one treaty partner and it is currently being prepared for signing.

In addition, The stage 1 report noted that Bermuda reported its intention to sign the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Bermuda also reported if it would sign the Multilateral Instrument all of its treaties would be modified upon the entry into force of this instrument to include the equivalent of the relevant provisions of the OECD Model Tax Convention (OECD, 2017). However, Bermuda has expressed difficulties

in signing the Multilateral Instrument because of its special status as an overseas territory of the United Kingdom. It further reported that it was taking constitutional steps to seek a letter of entrustment from the United Kingdom Government for that purpose. In this respect, Bermuda reported that since 1 September 2019 the situation remains the same, and the approval of the United Kingdom has not been forthcoming.

For the two treaties that are considered not to be in line with one elements of the Action 14 Minimum Standard, Bermuda reported that it has contacted its treaty partners to discuss bilaterally the possibility of amending the relevant tax treaties and comply with the Action 14 Minimum Standard. For one of the treaties, negotiations for the amending Protocol have been finalised with the treaty partner and it is currently being prepared for signing. For the other treaty, Bermuda invited the treaty partner to initiate negotiations on the concerned treaty and is awaiting a response from the treaty partner.

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

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

The peer review process entails an evaluation of Bermuda'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 Bermuda, 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, Bermuda'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 12 May 2020. This report identifies the strengths and shortcomings of Bermuda in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.<sup>3</sup> Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Bermuda. In this update report, Bermuda 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 Bermuda is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of Bermuda'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 Bermuda launched on 30 August 2019, with the sending of questionnaires to Bermuda and its peers. The FTA MAP Forum has

approved the stage 1 peer review report of Bermuda in March 2020, with the subsequent approval by the BEPS Inclusive Framework on 12 May 2020. On 12 May 2021, Bermuda submitted its update report, which initiated stage 2 of the process.

The period for evaluating Bermuda’s implementation of the Action 14 Minimum Standard ranges from 1 January 2017 to 31 August 2019 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 September 2019 and depicts all developments as from that date until 30 April 2021.

No peers have provided input during both stage 1 and stage 2 on Bermuda’s implementation of the Action 14 Minimum Standard. This can be explained by the fact that Bermuda’s competent authority has never been involved in a MAP case as it has never received a MAP request from a taxpayer or from another competent authority.

### *Input by Bermuda and co-operation throughout the process*

During stage 1, Bermuda provided answers in its questionnaire, which was submitted on time. Bermuda was responsive in the course of the drafting of the peer review report by responding to requests for additional information, and provided further clarity where necessary. In addition, Bermuda provided the following information:

- MAP profile<sup>4</sup>
- MAP statistics<sup>5</sup> for 2017, 2019 and 2020 according to the MAP Statistics Reporting Framework (see below).

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

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

## Overview of MAP caseload in Bermuda

The analysis of the Bermuda’s MAP caseload for stage 1 relates to the period starting on 1 January 2017 and ending on 31 December 2018. For stage 2 the period ranges from 1 January 2019 to 31 December 2020. Both periods are taken into account in this report for analysing the MAP statistics of Bermuda. The analysis of Bermuda’s MAP caseload therefore relates to the period starting on 1 January 2017 and ending 31 December 2020 (“**Statistics Reporting Period**”). According to the statistics provided by Bermuda, as mentioned above, Bermuda has not been involved in any MAP cases during the Statistics Reporting Period.

## General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).<sup>6</sup> Furthermore, the report depicts the changes adopted and plans shared by Bermuda 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 Bermuda 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 Bermuda should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

## Notes

1. The tax treaties Bermuda has entered into are available in: Update on Bermuda’s Bilateral TIEAs and DTAs.pdf ([www.gov.bm](http://www.gov.bm)). Reference is made to Annex A for the overview of Bermuda’s tax treaties. Furthermore, the 13 tax treaties Bermuda has entered into include treaties with Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden. With these seven jurisdictions, Bermuda has entered into separate treaties that have a limited scope of application, one of which relates to transfer pricing and one to certain categories of income of individuals. In this situation, the number of such treaties is regarded as one for each treaty partner jurisdiction for the purpose of this peer review report and Annex A.
2. This concerns Bahrain and the Netherlands. Reference is made to Annex A for the overview of Bermuda’s tax treaties.
3. Available at: <https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-bermuda-stage-1-6f11fc95-en.htm>.
4. Available at <https://www.oecd.org/tax/dispute/Bermuda-Dispute-Resolution-Profile.pdf>.
5. The MAP statistics of Bermuda are included in Annex B and C of this report.
6. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).



## *Reference*

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



## *Part 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 Bermuda's tax treaties***

2. All of Bermuda's 13 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. No peer input was provided during stage 1.

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

##### *Bilateral modifications*

4. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element A.1.

##### *Peer input*

5. No peer input was provided.

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

6. Bermuda 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.<sup>1</sup> The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

***Bermuda’s APA programme***

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

***Recent developments***

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

***Practical application of roll-back of bilateral APAs******Period 1 January 2017-31 August 2019 (stage 1)***

10. Bermuda reported in the period 1 January 2017-31 August 2019 it received no requests for bilateral APAs.

11. No peer input was provided.

***Period 1 September 2019-30 April 2021 (stage 2)***

12. Bermuda reported that since 1 September 2019 it has also not received any bilateral APA requests.

13. No peer input was provided.

***Anticipated modifications***

14. Bermuda did not indicate that it anticipates any modifications in relation to element A.2.

**Conclusion**

	Areas for improvement	Recommendations
[A.2]	-	-

**Note**

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).

**References**

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

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



## *Part B*

### **Availability and access to MAP**

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

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

15. 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 Bermuda's tax treaties***

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

16. Out of Bermuda's 13 tax treaties, four contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. None of Bermuda's tax treaties contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as changed by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state.

17. The remaining nine treaties mentioned above 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 state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons all of those nine 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 states (eight treaties).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to allow only for the submission of MAP requests to the state of which the taxpayer is a resident (one treaty).

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

18. Out of Bermuda's 13 tax treaties, 12 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.

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

#### *Peer input*

20. No peer input was provided during stage 1.

### ***Practical application***

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

21. As follows from the analysis in the paragraphs above, all of Bermuda's tax treaties allow the filing of a MAP request irrespective of domestic remedies. In this respect, Bermuda indicated that nothing in its domestic tax law prevents a taxpayer from requesting MAP assistance where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of Bermuda. However, where such remedies have been concluded, Bermuda indicated that its competent authority would not be in a position to deviate from judicial rulings.

### ***Recent developments***

#### *Bilateral modifications*

22. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element B.1.

#### *Peer input*

23. No peer input was provided.



### *Anticipated modifications*

24. As mentioned in the introduction, Bermuda reported its intention to sign the Multilateral Instrument, and it further reported that the tax treaty identified in paragraph 20 would be modified by the Multilateral Instrument upon its entry into force for the treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). However, because of the difficulties encountered to sign the Multilateral Instrument, Bermuda further reported that it contacted the relevant treaty partner to initiate negotiations to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) and that it is awaiting the response.

25. Bermuda reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2017), 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 13 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. With respect to the treaty, Bermuda is awaiting a response from its treaty partner on its request on the initiation of bilateral negotiations.	For the treaty that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Bermuda should, upon receipt of a response from the relevant treaty partner agreeing to engage in the process of initiating such negotiations, work towards updating the treaty to include this provision.

## **[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).

26. 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***

27. As discussed under element B.1, out of Bermuda’s 13 treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

28. Bermuda reported that it has introduced a documented bilateral consultation or notification process that allows the other competent authority concerned to provide its views on the case when Bermuda’s competent authority considers the objection raised in the MAP request not to be justified.

***Recent developments***

29. Bermuda reported that it has introduced a documented bilateral consultation or notification process for those situations where its competent authority would consider the objection raised in a MAP request as not being justified.

***Practical application******Period 1 January 2017-31 August 2019 (stage 1)***

30. Bermuda reported that in the period 1 January 2017-31 August 2019 its competent authority has not received any MAP requests. Therefore, there were no cases where it was decided that the objection raised by taxpayers in such request was not justified.

31. No peer input was provided.

***Period 1 September 2019-30 April 2021 (stage 2)***

32. Bermuda reported that since 1 September 2019 it has also not received any MAP requests. Therefore, there were no cases where it was decided that the objection raised by taxpayers in such request was not justified.

33. No peer input was provided.

***Anticipated modifications***

34. Bermuda 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.

35. 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***

36. Out of Bermuda’s 13 tax treaties, three contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, eight do not contain such equivalent. The remaining two do not contain at all the provision on associated enterprises which is the equivalent to Article 9 of the OECD Model Tax Convention (OECD, 2017).

37. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Bermuda’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, Bermuda indicated that it will always provide access to MAP for transfer pricing cases, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties, although it further reported that it would not be in a position to give a corresponding adjustment as no income taxes are levied in Bermuda.

38. In this respect, Bermuda’s MAP guidance, in the introduction and appendix, clarifies that Bermuda accepts a MAP request for transfer pricing cases although there can be no cases for correlative adjustments by Bermuda tax authorities because there is no domestic tax law in Bermuda. Section 4 of Bermuda’s MAP guidance describes that to provide the Bermuda person with relief from double taxation resulting from an adjustment initiated by the foreign tax administration and involves a third country, the Ministry of Finance Treaty Unit would request from the relevant third country a correlative adjustment which is an adjustment to the profits of the affected company under the terms of a treaty that Bermuda has entered into. It is noted that correlative adjustment cases may arise where a taxpayer settles a dispute unilaterally with the foreign tax administration without involving Bermuda’s competent authority. The taxpayer cannot make a claim to Bermuda for a correlative adjustment because Bermuda income tax does not exist, rather the double taxation will exist in a third country and Bermuda would further action the MAP with its treaty partner. Further, the Sections 2.7 and 4 of Bermuda’s MAP guidance note that the Ministry of Finance Treaty Unit will consider requests for correlative adjustments in accordance with the relevant treaty provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), and where the relevant treaty does not include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) the Ministry of Finance Treaty Unit regards economic double taxation as being implicitly within the scope of the treaty by virtue of the inclusion of Article 9(1) and accordingly, the Ministry of Finance Treaty Unit is willing to consider a request in such cases for MAP (or correlative adjustment where it is applicable given that Bermuda does not have domestic income tax).

### ***Recent developments***

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

39. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element B.3.

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

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

40. Bermuda reported that in the period 1 January 2017-31 August 2019, it has not received any MAP requests and therefore has not denied access to MAP on the basis that the case concerned a transfer pricing case.

41. No peer input was provided.

#### *Period 1 September 2019-30 April 2021 (stage 2)*

42. Bermuda reported that it has also received no MAP requests for transfer pricing cases since 1 September 2019.

43. No peer input was provided.

### *Anticipated modifications*

44. Bermuda 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, Bermuda intends to sign the Multilateral Instrument.

### *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.

45. 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*

46. None of Bermuda's 13 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Bermuda 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.

47. Bermuda’s MAP guidance, in the section 2.7, clarifies that Bermuda’s Ministry of Finance Treaty Unit will engage in consultation with the other competent authority for MAP requests which concern the application of treaty and/or domestic anti-abuse provisions, although the taxpayer should be aware that such case may not necessarily be resolved and any double taxation may not be eliminated.

### ***Recent developments***

48. Bermuda reported that the newly issued MAP guidance clarifies that the Ministry of Finance Treaty Unit will engage in consultation with the other competent authority for MAP requests which concern the application of treaty and/or domestic anti-abuse provisions.

### ***Practical application***

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

49. Bermuda reported that in the period 1 January 2017-31 August 2019 it has not received any MAP requests and therefore has not denied access to MAP in any cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

50. No peer input was provided.

#### *Period 1 September 2019-30 April 2021 (stage 2)*

51. Bermuda reported that since 1 September 2019 it has also not received any MAP requests from taxpayers.

52. No peer input was provided.

### ***Anticipated modifications***

53. Bermuda 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.

54. 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***

55. Bermuda reported that there is no income tax in Bermuda and therefore no audit settlement process available in Bermuda.

***Administrative or statutory dispute settlement/resolution process***

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

***Recent developments***

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

***Practical application******Period 1 January 2017-31 August 2019 (stage 1)***

58. Bermuda reported that in the period 1 January 2017-31 August 2019 it has not received any MAP requests from taxpayers.

59. No peer input was provided.

***Period 1 September 2019-30 April 2021 (stage 2)***

60. Bermuda reported that since 1 September 2019 it has also not received any MAP requests from taxpayers.

61. No peer input was provided.

***Anticipated modifications***

62. Bermuda 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.

63. 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***

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

65. Bermuda reported that it provides access to MAP in cases where taxpayers have complied with information and documentation requirements for MAP requests. Section 2.2 of Bermuda’s MAP guidance describes that while a MAP request will be regarded as presented for time limit purposes where the minimum information set out in section 2.1.2 has been provided, Bermuda will not commence the MAP process until a complete request for MAP assistance is received, for which taxpayers must provide the relevant information outlined in Appendix 2 of the MAP guidance. In addition, it is also described in Appendix 2 that responses to requests by the competent authority for additional information or documentation should be complete and submitted within the time stipulated in the request for such information or documentation.

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

66. Bermuda reported that the newly issued MAP guidance clarifies that access to MAP will be given where taxpayers have complied with information and documentation required for MAP assistance.

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

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

67. Bermuda reported that in the period 1 January 2017-31 August 2019 it has not received any MAP request from a taxpayer and therefore has not denied access to MAP for cases where taxpayers have complied with information and documentation requirements for MAP requests.

68. No peer input was provided.



*Period 1 September 2019-30 April 2021 (stage 2)*

69. Bermuda reported that since 1 September 2019 it has not received any MAP requests and therefore has also not denied access to MAP for cases where taxpayers have complied with information and documentation requirements for MAP requests.

70. No peer input was provided.

***Anticipated modifications***

71. Bermuda did not indicate that it anticipates any modifications in relation to element B.6.

***Conclusion***

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

72. 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 Bermuda's tax treaties***

73. Out of Bermuda's 13 tax treaties, five 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 eight tax treaties do not contain a provision that is based on or the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

74. For these remaining eight tax treaties this can be clarified by the fact that they have a limited scope of application. This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention (OECD, 2017) are not followed. As these treaties were intentionally negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) for those eight treaties with a limited scope of application.



75. No peer input was provided during stage 1.

### ***Recent developments***

#### *Bilateral modifications*

76. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element B.7.

#### *Peer input*

77. No peer input was provided.

### ***Anticipated modifications***

78. Bermuda reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties, unless the treaties concerned are limited in scope, such that there is justification for them not to contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

### ***Conclusion***

	Areas for improvement	Recommendations
[B.7]	-	-

## **[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.

79. 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.

### ***Bermuda's MAP guidance***

80. Bermuda has issued rules, guidelines and procedures relating to the MAP processes in February 2020, which is available at:

<https://www.gov.bm/sites/default/files/Guidelines-for-requesting-Mutual-Agreement-Procedure-Feb-2020.pdf>

81. The MAP guidance sets out in detail how taxpayers can access the mutual agreement procedure and what rules apply during that procedure under tax treaties Bermuda entered into, and is divided into four sections titled as follows:

1. Introduction	1.1 Legal basis for a MAP request
2. Making a MAP request	2.1 Valid MAP request (Time limit for making a MAP request, Minimum information required to be a valid MAP request) 2.2 Complete MAP request (Start date/initiation of a MAP request, Analysis of a MAP request and taxpayer role) 2.3 Confidentiality 2.4 Factors to be considered in determining whether to accept a MAP request 2.5 Stages of the MAP Process (First stage – unilateral, Second stage – bilateral) 2.6 Interaction with domestic remedies 2.7 Other relevant guidance (Relief from collections, interest and penalties, Taxpayer-initiated foreign adjustments, Treaty/domestic anti-abuse provisions, Audit settlement, Multiple years, Multilateral MAPs, Absence of Article 9(2) in a DTA, Items not covered by MAP (Interest and penalties, Secondary/repatriation of profits adjustments))
3. Resolution of a MAP request	3.1 Competent Authority agreement has been reached (Implementing agreement) 3.2 Competent Authority agreement has not been reached (Arbitration) 3.3 MAP request withdrawn by the taxpayer
4. Correlative adjustments	-
Appendix 1	Contact details for a MAP request (Transfer pricing and attribution of profits to a permanent establishment MAP requests/Non-transfer pricing MAP requests)
Appendix 2	Information and documentation required to be submitted with a request for MAP assistance
Appendix 3	Information and documentation required to be submitted with a request for a correlative adjustment

82. The above-described MAP guidance of Bermuda includes detailed and comprehensive information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.<sup>1</sup>

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

83. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.<sup>2</sup> Bermuda's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case
- analysis of the issue(s) requested to be resolved via MAP
- whether the MAP request was also submitted to the competent authority of the other treaty partner
- whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
- whether the issue(s) involved were dealt with previously

- a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

### *Recent developments*

84. Bermuda reported that it has issued its MAP guidance in February 2020.

### *Anticipated modifications*

85. Bermuda 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.

86. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.<sup>3</sup>

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

87. The MAP guidance of Bermuda is published and can be found at:

<https://www.gov.bm/sites/default/files/Guidelines-for-requesting-Mutual-Agreement-Procedure-Feb-2020.pdf>

88. As regards its accessibility, Bermuda’s MAP guidance can easily be found on the website of the Ministry of Finance (<https://www.gov.bm/ministry/finance>) under the section “Resources”. It can also be easily found by searching in a search engine for “Bermuda mutual agreement procedure”.

### *MAP profile*

89. The MAP profile of Bermuda is published on the website of the OECD and was last updated in June 2021. 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***

90. Bermuda reported that it has updated its MAP profile in June 2021 according to its MAP guidance that has been introduced in 2020.

***Anticipated modifications***

91. Bermuda 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.

92. 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***

93. As previously discussed under B.5, audit settlements between tax authorities and taxpayers are not possible in Bermuda. Bermuda's MAP guidance nevertheless describes that such settlements do not preclude access to MAP.

94. No peer input was provided.

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

95. As previously mentioned under element B.5, Bermuda 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 Bermuda's MAP guidance.

96. No peer input was provided.

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

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

***Recent developments***

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

***Anticipated modifications***

99. Bermuda did not indicate that it anticipates any modifications in relation to element B.10.

***Conclusion***

	Areas for improvement	Recommendations
[B.10]	-	-

## Notes

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

## References

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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.

100. 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 Bermuda’s tax treaties***

101. All of Bermuda’s 13 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.

102. No peer input was provided during stage 1.

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

##### *Bilateral modifications*

103. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element C.1.

##### *Peer input*

104. No peer input was provided.

*Anticipated modifications*

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

*Conclusion*

	Areas for improvement	Recommendations
[C.1]	-	-

**[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).

106. 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*

107. 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. Bermuda joined in the Inclusive Framework in 2017. For this reason the statistics referred to are pre-2017 cases for cases that were pending on 31 December 2016, and post-2016 cases for cases that started on or after 1 January 2017. Bermuda provided its MAP statistics for 2017 and 2019-20 pursuant to the MAP Statistics Reporting Framework within the given deadline. The statistics discussed below include both pre-2017 and post-2016 cases and they are attached to this report as Annex B and Annex C respectively, showing that Bermuda has not been involved in any MAP cases since 1 January 2017.

*Monitoring of MAP statistics*

108. As Bermuda has not received a MAP request, there was no need to have a system in place that communicates, monitors and manages with its treaty partners the MAP caseload.

*Analysis of Bermuda’s MAP caseload*

109. The analysis of Bermuda’s MAP caseload relates to the period starting on 1 January 2017 and ending on 31 December 2020.

110. Bermuda has not been involved in any MAP cases during the Statistics Reporting Period.



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

111. Bermuda has not been involved in any MAP cases during the Statistics Reporting Period.

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

112. Bermuda has not been involved in any MAP cases during the Statistics Reporting Period.

***Peer input***

113. No peer input was provided during stage 1.

***Recent developments***

114. Bermuda was in the stage 1 peer review report under element C.2 recommended to report its MAP statistics in accordance with the MAP Statistics Reporting Framework since MAP statistics for 2018 were not submitted. In this respect, Bermuda submitted its 2019 and 2020 MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline.

115. No peer input was provided during stage 2.

***Anticipated modifications***

116. Bermuda 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.

117. 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 Bermuda's competent authority***

118. Under Bermuda's tax treaties, the competent authority function is assigned to the Ministry of Finance. Within the Ministry of Finance, the Assistant Financial Secretary is responsible for handling MAP cases. Bermuda reported that to date it considers the resources available to the competent authority to be sufficient given the fact that it did not receive any MAP requests from taxpayers or other competent authorities.

***Monitoring mechanism***

119. As discussed under element C.2, Bermuda’s competent authority has not yet been involved in any MAP cases, by which there were no MAP statistics available to analyse the pursued 24-month average. Bermuda reported that it constantly monitors whether the resources available for the competent authority function remain adequate.

***Recent developments***

120. There are no recent developments with respect to element C.3.

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

121. As discussed under element C.2, Bermuda’s competent authority has not yet been involved in any MAP cases, by which there were no MAP statistics available to analyse the pursued 24-month average. In this respect, Section 3 of Bermuda’s MAP guidance describes that the Ministry of Finance Treaty Unit is committed to seeking to resolve MAP cases within an average timeframe of 24 months of receipt of the complete MAP request, although it depends on a number of factors such as the complexity of the case, the co-operation of the taxpayer and the number of rounds of negotiations required.

***Peer input***

122. No peer input was provided during stage 1 (1 January 2017-31 August 2019) and stage 2 (1 September 2019-30 April 2021).

***Anticipated modifications***

123. Bermuda did not indicate that it anticipates any modifications in relation to element C.3.

***Conclusion***

	Areas for improvement	Recommendations
[C.3]	-	-

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

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

124. 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***

125. As discussed under element C.3, Bermuda reported that MAP cases would be handled by the Assistant Financial Secretary of the Ministry of Finance. Bermuda clarified that its competent authority will take into consideration the actual terms of a tax treaty as applicable for the relevant year and that it is committed not to be influenced by policy considerations that Bermuda would like to see reflected in future amendments to the treaty.

126. In regard of the above, Bermuda reported that the staff in charge of MAP in Bermuda would have the necessary authority to resolve MAP cases as it is not dependent on the approval/direction of outside personnel and there are no impediments in Bermuda's abilities to perform its MAP functions.

***Recent developments***

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

***Practical application***

128. No peer input was provided during stage 1 (1 January 2017-31 August 2019) and stage 2 (1 September 2019-30 April 2021).

***Anticipated modifications***

129. Bermuda 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.

130. 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 Bermuda***

131. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are:

- 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).

132. In view of these examples, as Bermuda has not been involved in any MAP cases thus far, it did not report using any of these performance indicators to assess staff in charge of MAP cases.

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

### ***Recent developments***

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

### ***Practical application***

135. No peer input was provided during stage 1 (1 January 2017-31 August 2019) and stage 2 (1 September 2019-30 April 2021).

### ***Anticipated modifications***

136. Bermuda reported that it will apply the performance indicators mentioned in the Action 14 final report (OECD, 2015b) when it receives MAP requests.

### ***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.

137. 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***

138. Bermuda reported that it has no domestic law limitations for including MAP arbitration in its tax treaties and its MAP profile clearly states that arbitration is available two of Bermuda's tax treaties.

***Recent developments***

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

***Practical application***

140. Up to date, Bermuda has incorporated an arbitration clause in two of its 13 treaties as a final stage to the MAP. These two treaties contain an arbitration provision that is based on Article 25(5) of the OECD Model Tax Convention (OECD, 2017).

***Anticipated modifications***

141. Bermuda did not indicate that it anticipates any modifications in relation to element C.6.

***Conclusion***

	Areas for improvement	Recommendations
[C.6]	-	-

***References***

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>.

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



## *Part D*

### **Implementation of MAP agreements**

#### **[D.1] Implement all MAP agreements**

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

142. 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***

143. Bermuda reported that it is unlikely that it would need to implement a MAP agreement as there are no taxes on income or capital gains in Bermuda. Bermuda further clarified that no domestic time limits would apply because of the absence of taxes.

144. Nevertheless, Section 3.1 of Bermuda’s MAP guidance includes information on the process for implementing MAP agreements. Once competent authorities reach a MAP agreement, the Ministry of Finance Treaty Unit will notify the taxpayer in writing of the agreed outcome, where possible within 30 days of the competent authority meeting. The Ministry of Finance Treaty Unit will request that the taxpayer confirm in writing whether it accepts the MAP agreement within 30 days of receipt of the letter from the Ministry of Finance Treaty Unit. If the taxpayer confirms in writing its acceptance of the agreement, the Ministry of Finance Treaty Unit will give effect to the agreement and seek to ensure its implementation without delay. In cases where a refund is due to the taxpayer (which can only be a refund due from a third country given that Bermuda has no domestic income tax), the taxpayer should contact its local tax District to begin the process of obtaining the refund and submit revised tax computations for the affected accounting periods to the Ministry of Finance Treaty Unit. If the taxpayer rejects the MAP agreement, it can withdraw from the MAP process and pursue any available domestic remedies.

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

145. Bermuda reported that the newly issued MAP guidance includes information on the process for implementing MAP agreements.

***Practical application****Period 1 January 2017-31 August 2019 (stage 1)*

146. As Bermuda was not involved in any MAP cases in the period 1 January 2017-31 August 2019, it was not possible to assess the implementation of MAP agreements by Bermuda.

147. No peer input was provided.

*Period 1 September 2019-30 April 2021 (stage 2)*

148. Bermuda was also not involved in any MAP cases since 1 September 2019.

149. No peer input was provided.

***Anticipated modifications***

150. Bermuda 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.

151. 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***

152. As discussed under element D.1, Bermuda reported that it is unlikely that it would need to implement a MAP agreement as there are no taxes on income or capital gains in Bermuda.

153. Nevertheless, as discussed under element D.1, Section 3.1 of Bermuda's MAP guidance describes that once the taxpayer confirms its acceptance of the MAP agreement, the Ministry of Finance Treaty Unit will give effect to the agreement and seek to ensure its implementation without delay. Further, it is noted that in cases where a refund is due to the taxpayer (which can only be a refund due from a third country given that Bermuda has no domestic income tax) to the extent that the Ministry of Finance Treaty Unit has not received from the third country a refund of tax arising from the agreement within 93 days of the receipt from a taxpayer of a valid claim for repayment of tax, the Ministry of Finance Treaty Unit will follow up with the third country and seek to obtain the refund that was agreed.



***Recent developments***

154. As discussed under element D.1, the newly issued MAP guidance includes information on the process for implementing MAP agreements.

***Practical application******Period 1 January 2017-31 August 2019 (stage 1)***

155. As Bermuda was not involved in any MAP cases in the period 1 January 2017-31 August 2019, it was not possible to assess the timely implementation of MAP agreements by Bermuda.

156. No peer input was provided.

***Period 1 September 2019-30 April 2021 (stage 2)***

157. Bermuda was also not involved in any MAP cases since 1 September 2019.

158. No peer input was provided.

***Anticipated modifications***

159. Bermuda did not indicate that it anticipates any modifications in relation to element D.2.

***Conclusion***

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

160. 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 Bermuda's tax treaties***

161. As discussed under element D.1, Bermuda reported that it is unlikely that it would need to implement a MAP agreement as there are no taxes on income or capital gains in Bermuda.

162. Out of Bermuda’s 13 tax treaties, 12 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. Furthermore, one does not contain such equivalent or the alternative provisions.

163. No peer input was provided during stage 1.

### ***Recent developments***

#### *Bilateral modifications*

164. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element D.3.

#### *Peer input*

165. No peer input was provided.

### ***Anticipated modifications***

166. As mentioned in the introduction, Bermuda reported its intention to sign the Multilateral Instrument, and it further reported that the tax treaty identified above would be modified by the Multilateral Instrument upon its entry into force for the treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). However, because of the difficulties encountered to sign the Multilateral Instrument, Bermuda contacted the relevant treaty partner to discuss bilaterally the possibility of amending the treaty to comply with the Action 14 Minimum Standard. In this respect, Bermuda reported that negotiations for the amending Protocol have been finalised and it is currently being prepared for signing.

167. In addition, Bermuda 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***

	<b>Areas for improvement</b>	<b>Recommendations</b>
[D.3]	One out of 13 tax treaties contains neither 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). With respect to the treaty, negotiations on the amending protocol have been finalised.	For the treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternative provisions, Bermuda should sign the amending protocol as soon as possible with the treaty partner to include the required provision.

## *Reference*

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

## Summary

	Areas for improvement	Recommendations
<b>Part A: Preventing disputes</b>		
[A.1]	-	-
[A.2]	-	-
<b>Part B: Availability and access to MAP</b>		
[B.1]	One out of 13 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. With respect to the treaty, Bermuda is awaiting a response from its treaty partner on its request on the initiation of bilateral negotiations.	For the treaty that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Bermuda should, upon receipt of a response from the relevant treaty partner agreeing to engage in the process of initiating such negotiations, work towards updating the treaty to include this provision.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	-	-
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
<b>Part C: Resolution of MAP cases</b>		
[C.1]	-	-
[C.2]	-	-
[C.3]	-	-
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	-	-
[D.2]	-	-

	Areas for improvement	Recommendations
[D.3]	One out of 13 tax treaties contains neither 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). With respect to the treaty, negotiations on the amending protocol have been finalised.	For the treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternative provisions, Bermuda should sign the amending protocol as soon as possible with the treaty partner to include the required provision.

Annex A

Tax treaty network of Bermuda

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Arbitration
	Y = yes N = signed pending ratification	If N, date of signing	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1)	Article 9(2) of the OECD MTC B.3	Anti-abuse B.4	Article 25(2) of the OECD MTC		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)	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	
								B.1	B.2										
Bahrain	Y	N/A		E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	if ii, specify period	N/A	Y	Y	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 N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	
Denmark	Y	N/A		O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y
Faroe Islands	Y	N/A		O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y
Finland	Y	N/A		O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y
Greenland	Y	N/A		O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y
Iceland	Y	N/A		O	Y	N/A	Y	Y	Y	i	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")	B.1	B.1	Article 9(2) of the OECD MTC	B.3	B.4	Article 25(2) of the OECD MTC	C.1	D.3	A.1	B.7	C.6	Arbitration							
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)	Inclusion arbitration provision?										
Japan	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N	N								
Netherlands	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y								
Norway	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N	N								
Qatar	Y	O	Y	N/A	i	Y	N	Y	Y	Y	Y	N								
Seychelles	Y	O	ii	2 years	i	Y	Y	Y	Y	Y	Y	N								
Sweden	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N	N								
United Arab Emirates	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	N								

## Annex B

## MAP Statistics Reporting for pre-2017 cases (1 January 2017 to 31 December 2020)

2017 MAP Statistics													
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2017	Number of pre-2017 cases closed during the reporting period by outcome										No. of pre-2017 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2017 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 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2018 MAP Statistics													
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2018	Number of pre-2017 cases closed during the reporting period by outcome										No. of pre-2017 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2017 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 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2019 MAP Statistics														
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2019	Number of pre-2017 cases closed during the reporting period by outcome										No. of pre-2017 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing pre-2017 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
		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			
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2020 MAP Statistics														
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2020	Number of pre-2017 cases closed during the reporting period by outcome										No. of pre-2017 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing pre-2017 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
		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			
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A



## Annex C

## MAP Statistics Reporting for post-2016 cases (1 January 2017 to 31 December 2020)

2017 MAP Statistics															
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2017	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome								No. of post-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2016 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2018 MAP Statistics															
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2018	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome								No. of post-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2016 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2019 MAP Statistics															
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2019	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome							No. of post-2016 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-2016 cases during the reporting period				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2020 MAP Statistics															
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2020	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome							No. of post-2016 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing post-2016 cases during the reporting period				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>MAP guidance</b>	Guidelines for requesting Mutual Agreement Procedure (“MAP”) assistance in Bermuda
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
<b>OECD Transfer Pricing Guidelines</b>	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
<b>Pre-2017 cases</b>	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2016
<b>Post-2016 cases</b>	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2017
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2017 and ended on 31 December 2020
<b>Terms of Reference</b>	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective



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

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

### **INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**

Under BEPS Action 14, members of the OECD/G20 Inclusive Framework on BEPS 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 BEPS 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 BEPS Action 14 Minimum Standard by Bermuda.



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