

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



# **Making Dispute Resolution More Effective – MAP Peer Review Report, Gibraltar (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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.

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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

Gibraltar only has one tax treaty. Gibraltar has no experience with resolving MAP cases, as it has not been involved in any cases. Gibraltar meets all of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Gibraltar worked to address them, which has been monitored in stage 2 of the process. In this respect, Gibraltar solved all of the identified deficiencies.

The one tax treaty of Gibraltar contains a provision relating to MAP. The treaty follows paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention (OECD, 2017) and is consistent with the requirements of the Action 14 Minimum Standard. Therefore, there is no need for modifications in relation to tax treaty elements.

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

Gibraltar 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 2019 not received any MAP requests. Furthermore, Gibraltar 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. Lastly, Gibraltar has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice.

Furthermore, Gibraltar has not been involved in any MAP cases during the period 2019-20, but it meets in principle all the requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases.

Lastly, Gibraltar in principle meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Since Gibraltar did not enter into any MAP agreements that required implementation by Gibraltar in 2019-20, 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 Gibraltar to resolve tax treaty-related disputes**

Gibraltar has entered into one tax treaty on income (and/or capital), which is in force.<sup>1</sup> This treaty is being applied to one jurisdiction. It provides for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, the treaty with the United Kingdom provides for an arbitration procedure as a final stage to the mutual agreement procedure. Reference is made to Annex A for the overview of Gibraltar’s tax treaty.

In Gibraltar, the competent authority function to conduct the mutual agreement procedure (“**MAP**”) is delegated to the Commissioner of Income Tax for Gibraltar. Gibraltar reported that there is no distinct MAP office, but the staff dealing with international tax matters in the Income Tax Office would handle MAP cases when they arise.

Gibraltar has issued guidance on the governance and administration of MAP titled “GUIDANCE ON THE MUTUAL AGREEMENT PROCEDURE” (“**MAP guidance**”) in March 2020, which is available at:

<https://www.gibraltar.gov.gi/uploads/Income%20Tax%20Office/Dispute-Resolution-Guidance-Double-Taxation/Gibraltar%20MAP%20Guidance.pdf>

### **Developments in Gibraltar since 1 January 2020**

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

The stage 1 peer review report of Gibraltar noted that it was actively seeking to conduct further tax treaty negotiations with prospective partners. Gibraltar clarified that this situation remains the same. There is no need to modify the treaty Gibraltar has entered into, since it meets the requirements under the Action 14 Minimum Standard.

In addition, it was also noted in the report that as a relatively new member of the Inclusive Framework, Gibraltar is actively considering signing up to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”). Gibraltar clarified that this remains the same and that it is likely to seek to sign the Multilateral Instrument to ensure maximum coverage of requirements and best practices under the Action 14 Minimum Standard for all treaties once Gibraltar expands its treaty network.

## Basis for the peer review process

### *Outline of the peer review process*

The peer review process entails an evaluation of Gibraltar'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 Gibraltar, 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, Gibraltar'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 28 October 2020. This report identifies the strengths and shortcomings of Gibraltar 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>2</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 Gibraltar. In this update report, Gibraltar 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 the assessed jurisdiction is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaty was taken into account. Reference is made to Annex A for the overview of Gibraltar'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 for Gibraltar was launched on 20 December 2019, with the sending of questionnaires to Gibraltar and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Gibraltar in September 2020, with the subsequent approval by the BEPS Inclusive Framework on 28 October 2020. On 28 October 2021, Gibraltar submitted its update report, which initiated stage 2 of the process.

The period for evaluating Gibraltar's implementation of the Action 14 Minimum Standard ranges from 1 January 2019 to 31 December 2019 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2020 and depicts all developments as from that date until 31 October 2021.

No peers have provided input during both stage 1 and stage 2 on Gibraltar's implementation of the Action 14 Minimum Standard. This can be explained by the fact that Gibraltar'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 Gibraltar and co-operation throughout the process*

During stage 1, Gibraltar provided extensive answers in its questionnaire, which was submitted on time. Gibraltar was very responsive in the course of the drafting of the peer review report in a timely and comprehensive manner to requests for additional information, and provided further clarity where necessary. In addition, Gibraltar provided the following information:

- MAP profile<sup>3</sup>
- MAP statistics<sup>4</sup> according to the MAP Statistics Reporting Framework (see below).

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

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

### Overview of MAP caseload in Gibraltar

The analysis of Gibraltar’s MAP caseload for stage 1 relates to the period starting on 1 January 2019 and ending on 31 December 2019. For stage 2 the period ranges from 1 January 2020 to 31 December 2020. Both periods are taken into account in this report for analysing the MAP statistics of Gibraltar. The analysis of Gibraltar’s MAP caseload therefore relates to the period starting on 1 January 2019 and ending 31 December 2020 (“**Statistics Reporting Period**”). According to the statistics provided by Gibraltar, as mentioned above, Gibraltar 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 Gibraltar’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>5</sup> Furthermore, the report depicts the changes adopted and plans shared by Gibraltar 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 Gibraltar 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 Gibraltar 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 one tax treaty of Gibraltar has entered into is available at: <https://www.gibraltar.gov.gi/income-tax-office>. Reference is made to Annex A for the overview of Gibraltar’s tax treaties.
2. Available at: <https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-gibraltar-stage-1-a615e55d-en.htm>.
3. Available at <https://www.oecd.org/tax/dispute/gibraltar-dispute-resolution-profile.pdf>.
4. The MAP statistics of Gibraltar are included in Annexes B and C of this report.
5. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).

## *Part A*

### Preventing disputes

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

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

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

#### *Current situation of Gibraltar's tax treaties*

2. The one tax treaty of Gibraltar contains 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. As the one tax treaty of Gibraltar contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), there is no need for modifications.

7. Gibraltar 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.

8. 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.

### ***Gibraltar’s APA programme***

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

### ***Recent developments***

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

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

#### ***Period 1 January 2019-31 December 2019 (stage 1)***

11. Gibraltar reported in the period 1 January 2019-31 December 2019 it received no requests for bilateral APAs, which is logical given that Gibraltar does not have such a programme in place.

12. No peer input was provided.

#### ***Period 1 January 2020-31 October 2021 (stage 2)***

13. Gibraltar reported that since 1 January 2020 it has also not received any bilateral APA requests, which is logical given that Gibraltar still does not have such a programme in place.

14. No peer input was provided.

*Anticipated modifications*

15. Gibraltar did not indicate that it anticipates any modifications in relation to element A.2.

*Conclusion*

	Areas for improvement	Recommendations
[A.2]	-	-

*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>.

**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).



## *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.

16. 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 Gibraltar's tax treaties***

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

17. The one tax treaty of Gibraltar contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015) and allowing taxpayers to submit a MAP request to the competent authority of either state.

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

18. The one tax treaty of Gibraltar contains 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.

##### *Peer input*

19. No peer input was provided during stage 1.

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

20. Gibraltar’s MAP profile explains that taxpayers can make a MAP request for cases that have been already settled through domestic judicial/administrative remedies. In that regard, Gibraltar reported that its competent authority may be obligated to deviate from the decision reached in such remedies subject to the requirements of the applicable tax treaties.

***Recent developments****Bilateral modifications*

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

*Peer input*

22. No peer input was provided.

***Anticipated modifications***

23. As the one tax treaty of Gibraltar contains a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017), there is no need for modifications.

24. Gibraltar 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, 2015), in all of its future tax treaties.

***Conclusion***

	Areas for improvement	Recommendations
[B.1]	-	-

**[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).

25. 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***

26. As discussed under element B.1, the one tax treaty of Gibraltar contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. Therefore, there is no need for introducing a bilateral consultation or notification process that allows the other competent authority concerned to provide its views on the case when Gibraltar's competent authority considers the objection raised in the MAP request not to be justified.

27. In that regard, Gibraltar reported that it would seek to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015) in all of its future tax treaties.

### ***Recent developments***

28. Gibraltar 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, and briefed staff in charge of MAP that they should follow the process.

### ***Practical application***

#### ***Period 1 January 2019-31 December 2019 (stage 1)***

29. Gibraltar reported that in the period 1 January 2019-31 December 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.

30. No peer input was provided.

#### ***Period 1 January 2020-31 October 2021 (stage 2)***

31. Gibraltar reported that since 1 January 2020 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.

32. No peer input was provided.

### ***Anticipated modifications***

33. Gibraltar 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.

34. 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***

35. The one tax treaty of Gibraltar contains 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.

36. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Gibraltar's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Gibraltar indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties.

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

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

37. 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 2019-31 December 2019 (stage 1)***

38. Gibraltar reported that it has received no MAP requests for transfer pricing cases in the period 1 January 2019-31 December 2019.

39. No peer input was provided.

##### ***Period 1 January 2020-31 October 2021 (stage 2)***

40. Gibraltar reported that since 1 January 2020, it has also not denied access to MAP on the basis that the case concerned a transfer pricing case. However, no such cases in relation hereto were received since that date.

41. No peer input was provided.

*Anticipated modifications*

42. Gibraltar reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

*Conclusion*

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

43. 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*

44. The one tax treaty of Gibraltar does not 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 Gibraltar 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.

45. Gibraltar's MAP guidance states that its competent authority would not seek to automatically and unilaterally prevent taxpayer's access to MAP, and it will consult with the other contracting state and bring to this bilateral process any relevant knowledge that there may be an instance of avoidance which should be considered by both parties in determining in conjunction whether the MAP process proceeds. In this respect, Gibraltar reported that it will give access to MAP and discuss whether the objection is justified with the other competent authority.

*Recent developments*

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

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

47. Gibraltar reported that in the period 1 January 2019-31 December 2019 it has not received any MAP requests from taxpayers 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.

48. No peer input was provided.

*Period 1 January 2020-31 October 2021 (stage 2)*

49. Gibraltar reported that since 1 January 2020 it has also not received any MAP requests from taxpayers and therefore has not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

50. No peer input was provided.

***Anticipated modifications***

51. Gibraltar 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.

52. 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*

53. Gibraltar reported that there is no audit settlement process available in Gibraltar.

*Administrative or statutory dispute settlement/resolution process*

54. Gibraltar reported it 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*

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

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

56. Gibraltar reported that in the period 1 January 2019-31 December 2019 it has not received any MAP requests from taxpayers and therefore has not denied access to MAP in any cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration, which is explained by the fact that such settlements are not possible in Gibraltar.

57. No peer input was provided.

*Period 1 January 2020-31 October 2021 (stage 2)*

58. Gibraltar reported that since 1 January 2020 it has also not received any MAP requests from taxpayers and therefore has not denied access to MAP in any cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration, which is explained by the fact that such settlements are still not possible in Gibraltar.

59. No peer input was provided.

*Anticipated modifications*

60. Gibraltar 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.

61. 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***

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

63. Gibraltar’s MAP guidance describes that when its competent authority receives a MAP request that does not include all the information and documentation required to be submitted pursuant to this guidance, the competent authority may, on a case by case basis, permit a taxpayer more time to submit the additional information provided that there are valid grounds for the extension and that this is agreed in advance. It is noted in the guidance that a MAP request will not be regarded as made until all the information required has been provided by the taxpayer, and that in cases where a taxpayer has been notified that the required information has not been provided and this is not forthcoming, the competent authority reserves the right to consider that the taxpayer has withdrawn the request.

64. Gibraltar reported that it will provide access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance.

***Recent developments***

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

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

66. Gibraltar reported that in the period 1 January 2019-31 December 2019 it has not received any MAP requests from a taxpayer and therefore has not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

67. No peer input was provided.

***Period 1 January 2020-31 October 2021 (stage 2)***

68. Gibraltar reported that since 1 January 2020 it has also not received any MAP requests and therefore has not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

69. No peer input was provided.

***Anticipated modifications***

70. Gibraltar 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.

71. 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 Gibraltar's tax treaties*

72. The one tax treaty of Gibraltar contains 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.

73. No peer input was provided during stage 1.

### *Recent developments*

#### *Bilateral modifications*

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

#### *Peer input*

75. No peer input was provided.

### *Anticipated modifications*

76. As the one tax treaty of Gibraltar contains a provision equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017), there is no need for modifications.

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

### *Conclusion*

	Areas for improvement	Recommendations
[B.7]	-	-

## [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.

78. 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.

### *Gibraltar's MAP guidance*

79. Gibraltar has issued guidance on the MAP process and how it will apply that process in practice. This guidance was published in March 2020 on the website of Gibraltar's Income Tax Office and is available at:

<https://www.gibraltar.gov.gi/uploads/Income%20Tax%20Office/Dispute-Resolution-Guidance-Double-Taxation/Gibraltar%20MAP%20Guidance.pdf>

80. Gibraltar's MAP guidance consists of ten chapters and sets out in detail how taxpayers can access the mutual agreement procedure and what rules apply during that procedure under tax treaties entered into by Gibraltar. More specifically, it contains information on:

<b>1. Introduction</b>	<ol style="list-style-type: none"> <li>1. What is a Double Taxation Agreement ("DTA")?</li> <li>2. What is the purpose of a DTA?</li> <li>3. What is meant by double taxation?</li> </ol>
<b>2. What is the Mutual Agreement Procedure ("MAP")?</b>	
<b>3. When do you make a MAP request?</b>	
<b>4. Who can make MAP requests in Gibraltar?</b>	
<b>5. By when do you need to make a MAP request?</b>	
<b>6. The MAP</b>	<ol style="list-style-type: none"> <li>1. Synopsis</li> <li>2. How do you submit a MAP request?</li> <li>3. What do I need to provide for a MAP request?</li> <li>4. How are MAP requests accepted or denied?</li> <li>5. How long will a MAP request last?</li> <li>6. How can your MAP request end?</li> </ol>
<b>7. Other matters</b>	<ol style="list-style-type: none"> <li>1. Interaction with resolution and appeal process including domestic remedies</li> <li>2. Suspension of tax due and payment of additional tax</li> <li>3. Audit settlements</li> <li>4. Interaction with anti-abuse provisions</li> <li>5. Access to MAP transfer pricing cases</li> <li>6. Multiple Year MAP requests</li> <li>7. Multilateral MAP requests</li> <li>8. MAP requests in relation to Advance Pricing Agreements/Arrangements</li> <li>9. Access to MAP in bona fide foreign initiated self-adjustments</li> <li>10. Late payment surcharges and penalties</li> </ol>



**8. How confidential are MAP requests?****9. What you can expect from us?****10. Who do I contact for MAP requests**

81. The above-described MAP guidance of Gibraltar includes detailed information on the availability and the use of MAP and how its competent authority will conduct 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.

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

82. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.<sup>1</sup> This agreed guidance is shown below. Gibraltar'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.

83. In addition to the above shown minimum information to be provided agreed by the FTA MAP Forum, Gibraltar requires, in cases where the MAP request is being submitted by a professional advisor, an authorisation from the taxpayer setting out the advisor's ability to act on behalf of the taxpayer; unless an existing form of authority is already in place as well as contact details of the representative that will be handling the MAP request.

***Recent developments***

84. Gibraltar has published its MAP guidance in March 2020 as reflected above.

***Anticipated modifications***

85. Gibraltar 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>2</sup>

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

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

<https://www.gibraltar.gov.gi/uploads/Income%20Tax%20Office/Dispute-Resolution-Guidance-Double-Taxation/Gibraltar%20MAP%20Guidance.pdf>

88. As regards its accessibility, Gibraltar’s MAP guidance can easily be found on the website of the Income Tax Office by searching for “MAP” or “MAP guidance” in the search box.

**MAP profile**

89. The MAP profile of Gibraltar is published on the website of the OECD and was last updated in October 2021. This MAP profile is complete and with some detailed information. This profile includes external links that provide extra information and guidance where appropriate.

**Recent developments**

90. As discussed under element B.8, Gibraltar published its MAP guidance in March 2020, which is easily accessible as reflected above. Further, following the MAP guidance published, Gibraltar has updated its MAP profile in October 2021. Therefore, the recommendation made in the stage 1 report has been addressed.

**Anticipated modifications**

91. Gibraltar 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 are not possible in Gibraltar. In this regard, Section 7.3 of Gibraltar's MAP guidance explains that Gibraltar can consider a MAP request where an audit settlement is made between a taxpayer and another jurisdiction.

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, Gibraltar 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 Gibraltar's MAP guidance.

96. No peer input was provided.

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

97. As Gibraltar does not have an internal administrative or statutory dispute settlement or 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. Gibraltar did not indicate that it anticipates any modifications in relation to element B.10.

*Conclusion*

	Areas for improvement	Recommendations
[B.10]	-	-

*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>.

**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. 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).

## *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 Gibraltar’s tax treaties***

101. The one tax treaty of Gibraltar contains 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. As the one tax treaty of Gibraltar contains a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), there is no need for modifications.

106. Gibraltar 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).

107. 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*

108. 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. Gibraltar joined in the Inclusive Framework in 2019. For this reason the statistics referred to are pre-2019 cases for cases that were pending on 31 December 2018, and post-2018 cases for cases that started on or after 1 January 2019. Gibraltar provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline. The statistics discussed below include both pre-2019 and post-2018 cases and they are attached to this report as Annex B and Annex C respectively, showing that Gibraltar has not been involved in any MAP cases since 1 January 2019.

*Monitoring of MAP statistics*

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

*Analysis of Gibraltar’s MAP caseload*

110. The analysis of Gibraltar’s MAP caseload relates to the period starting on 1 January 2019 and ending on 31 December 2020.

111. Gibraltar has not been involved in any MAP case during the Statistics Reporting Period.

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

112. Gibraltar has not been involved in any MAP case during the Statistics Reporting Period.

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

113. Gibraltar has not been involved in any MAP case during the Statistics Reporting Period.

***Peer input***

114. No peer input was provided during stage 1.

***Recent developments***

115. There are no recent developments with respect to element C.2 since Gibraltar has not been involved in any MAP cases during the Statistics Reporting Period. Nevertheless, Gibraltar’s newly published MAP guidance stipulates that Gibraltar will endeavour to resolve MAP cases as quickly as possible and within an average timeframe of two years from the date all required information is submitted.

116. No peer input was provided during stage 2.

***Anticipated modifications***

117. Gibraltar 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.

118. 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 Gibraltar’s competent authority***

119. Under Gibraltar’s tax treaties, the competent authority function is assigned to the Commissioner of Income Tax or their authorised representative. Gibraltar reported that there is no distinct MAP office in Gibraltar and MAP cases would be handled by officers dealing with international tax matters under the supervision of its Head of International Tax under the authority of the Commissioner of Income Tax in the capacity as the competent authority for such matters. It further reported that the Gibraltar Income Tax Office is seeking a restructure and expansion of its organisational structure towards a more functional-based orientation.

120. Concerning the process to handle MAP cases, Gibraltar’s MAP guidance, under the heading “6.1 Synopsis” and “6.4 How are MAP requests accepted or denied?” stipulates that the competent authority will acknowledge receipt of a MAP request as soon as reasonably practicable from the date all necessary information is received. Following preliminary review, the competent authority will inform the taxpayer whether the request has been accepted or denied and, if denied, with the reasons. Where a MAP access is granted, the competent authority will assess whether a unilateral solution is possible, and if not, the bilateral phase of the MAP process will be initiated.

### ***Monitoring mechanism***

121. As discussed under element C.2, Gibraltar’s competent authority has not yet been involved in any MAP cases, as a result of which there were no MAP statistics available to analyse the requisite 24-month average.

### ***Recent developments***

122. There are no recent developments with respect to element C.3 since Gibraltar has not been involved in any MAP cases during the Statistics Reporting Period. Nevertheless, Gibraltar reported that while it considers the current competent authority function can cope with the potential MAP requests, it remains committed to investing resources to ensure an efficient, effective and timely resolution of MAP cases when necessary.

### ***Practical application***

#### ***MAP statistics***

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

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

124. No peer input was provided during stage 1 (1 January 2019-31 December 2019) and stage 2 (1 January 2020-31 October 2021).

### ***Anticipated modifications***

125. Gibraltar 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.

126. 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*

127. Gibraltar reported that the Income Tax Office team members that would be involved in the tax assessment/adjustment would not be involved in the decision making process in resolving a MAP case, which results from the segregation of duties and responsibilities within the Income Tax Office in respective functional areas.

128. In regard of the above, Gibraltar reported that staff in charge of MAP in practice would operate independently and have the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations that Gibraltar would like to see reflected in future amendments to the treaty.

##### *Recent developments*

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

##### *Practical application*

130. No peer input was provided during stage 1 (1 January 2019-31 December 2019) and stage 2 (1 January 2020-31 October 2021).

##### *Anticipated modifications*

131. Gibraltar 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.

132. 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 Gibraltar*

133. As Gibraltar has not received any MAP requests, it reported that at the time of review performance indicators have not yet been set for staff in charge of MAP.

134. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below in bullet form:

- 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).

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

#### *Recent developments*

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

#### *Practical application*

137. No Peer input was provided during stage 1 (1 January 2019-31 December 2019) and stage 2 (1 January 2020-31 October 2021).

#### *Anticipated modifications*

138. Gibraltar indicated that it intends to monitor response times and efficiency of dispute resolution outcomes by considering and analysing the timeframes involved when MAP cases arise.

#### *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.

139. 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*

140. Gibraltar 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 in the one tax treaty of Gibraltar.

### *Recent developments*

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

### *Practical application*

142. Gibraltar has incorporated an arbitration clause in the one tax treaty of Gibraltar as a final stage to the MAP. This clause can be specified as mandatory and binding arbitration.

### *Anticipated modifications*

143. Gibraltar 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.

144. 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***

145. Gibraltar reported that the section 31A of the Income Tax Act 2010 stipulates that the statute of limitation with regard to the making of tax assessments is six years, which applies to both upward and downward adjustments. In that regard, as will be discussed under element D.3, the one tax treaty of Gibraltar contains a provision equivalent to Article 25(2) second sentence, stating that all MAP agreements shall be implemented notwithstanding any domestic time limits, following which the domestic statute of limitation would not be applicable. In addition, Gibraltar reported that it would seek to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

146. There is no clear timeframe for implementation of MAP agreements in Gibraltar. Gibraltar's MAP guidance only describes that Gibraltar will notify the taxpayer of an agreement reached as soon as practicably possible and that it will ensure that this agreement is implemented on a timely basis including the making of appropriate adjustments to the tax assessed.

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

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

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

##### *Period 1 January 2019-31 December 2019 (stage 1)*

148. As Gibraltar was not involved in any MAP case in the period 1 January 2019-31 December 2019, it was not possible to assess the implementation of MAP agreements by Gibraltar.

149. No peer input was provided.

*Period 1 January 2020-31 October 2021 (stage 2)*

150. Gibraltar was also not involved in any MAP cases since 1 January 2020.

151. No peer input was provided.

***Anticipated modifications***

152. Gibraltar 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.

153. 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***

154. As discussed under element D.1, Gibraltar reported that there is no theoretical timeframe for implementation of mutual agreements reached and Gibraltar's MAP guidance describes that Gibraltar will ensure that this agreement is implemented on a timely basis including the making of appropriate adjustments to the tax assessed.

***Recent developments***

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

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

156. As Gibraltar was not involved in any MAP cases for the period under review, it was not possible to assess the timely implementation of MAP agreements by Gibraltar.

157. No peer input was provided.

*Period 1 January 2020-31 October 2021 (stage 2)*

158. Gibraltar was also not involved in any MAP cases since 1 January 2020.

159. No peer input was provided.

***Anticipated modifications***

160. Gibraltar 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.

161. 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 Gibraltar's tax treaties***

162. The one tax treaty of Gibraltar contains 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.

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 the one tax treaty of Gibraltar contains a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), there is no need for modifications.

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

***Conclusion***

	Areas for improvement	Recommendations
[D.3]	-	-

***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]	-	-
[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]	-	-
[D.3]	-	-



## Annex A

## Tax treaty network of Gibraltar

Treaty partner	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	Article 9(2) of the OECD MTC	B.3	Anti-abuse	B.4	Article 25(2) of the OECD MTC	C.1	D.3	A.1	B.7	Arbitration	C.6										
United Kingdom	Y = yes N = signed pending ratification	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9

## Annex B

### MAP Statistics Reporting for pre-2019 cases (1 January 2019 to 31 December 2020)

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

2020 MAP Statistics													
Category of cases	No. of pre-2019 cases in MAP inventory on 1 January 2020	Number of pre-2019 cases closed during the reporting period by outcome										No. of pre-2019 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing pre-2019 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

## Annex C

## MAP Statistics Reporting for post-2018 cases (1 January 2019 to 31 December 2020)

2019 MAP Statistics														
Category of cases	No. of post-2018 cases in MAP inventory on 1 January 2019	Number of post-2018 cases closed during the reporting period by outcome										No. of post-2018 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-2018 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	Column 13	Column 14	Column 15
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2020 MAP Statistics														
Category of cases	No. of post-2018 cases in MAP inventory on 1 January 2020	Number of post-2018 cases closed during the reporting period by outcome										No. of post-2018 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing post-2018 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	Column 13	Column 14	Column 15
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A



## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>MAP guidance</b>	Guidance on the Mutual Agreement Procedure
<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-2019 cases</b>	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2018
<b>Post-2018 cases</b>	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2019
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2019 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, Gibraltar (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 Gibraltar.



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