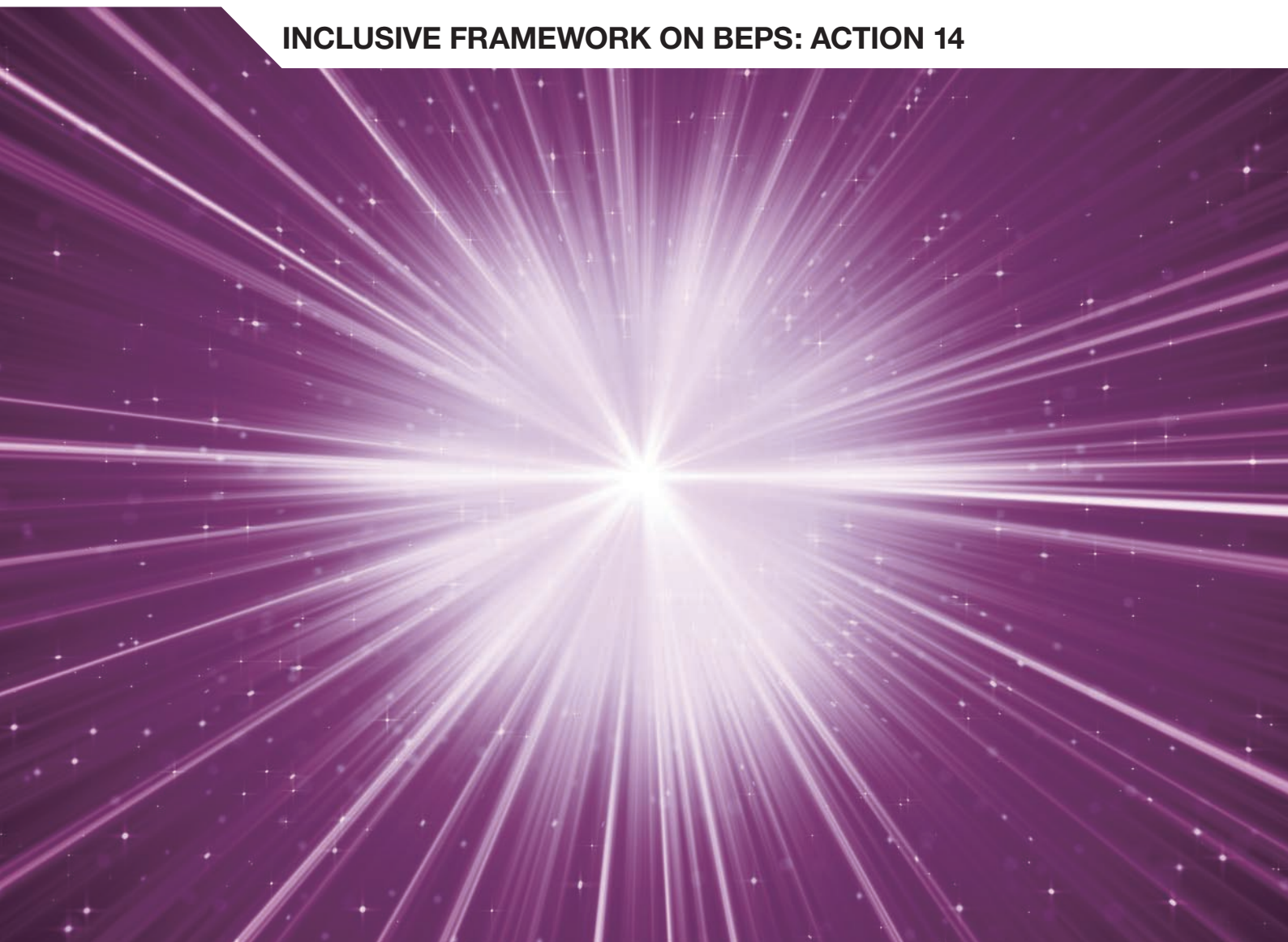


**OECD/G20 Base Erosion and Profit Shifting
Project**



Making Dispute Resolution More Effective – MAP Peer Review Report, United Kingdom (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and via treaty provisions. With the negotiation for a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the MLI on 7 June 2017, paving the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

As a result, the OECD established an Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already has more than 100 members, will monitor and peer review the implementation of the minimum standards as well as complete the work on standard setting to address BEPS issues. In addition to BEPS Members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

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Abbreviations and Acronyms

APA	Advance Pricing Arrangement
FTA	Forum on Tax Administration
HMRC	Her Majesty's Revenue and Customs
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
TIOPA 2010	Taxation of International and Other Provisions Act 2010

Executive summary

The United Kingdom has a very large tax treaty network with over 125 tax treaties and has signed and ratified the EU Arbitration Convention. The United Kingdom has an established Mutual Agreement Procedure (MAP) program and has extensive experience in resolving MAP cases. It has a large MAP inventory with a considerable number of new cases submitted each year and more than 300 cases pending on 31 December 2016, of which 65% concern allocation/attribution cases. Overall the United Kingdom meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, the United Kingdom is working to address them.

Almost all of the United Kingdom's tax treaties include a provision relating to MAP, however, 15 treaties do not include such provision. Those treaties that include a MAP provision generally follow paragraphs 1 through 3 of Article 25 of the *Model Tax Convention on Income and on Capital 2014* (OECD Model Tax Convention, OECD 2015). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- ∞ two-thirds of its tax treaties do not include a provision requiring competent authorities to consult together for the elimination of double taxation in cases not provided for in the tax treaty (as required under Article 25(3), second sentence); and
- ∞ two-thirds of its tax treaties do not include a provision stipulating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), or include 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, the United Kingdom needs to amend and update a significant portion of its tax treaties. In this respect, the United Kingdom recently signed, without any reservations on the MAP article, the Multilateral Instrument potentially covering almost all of its tax treaties. Where treaties will not be amended upon entry into force of this Multilateral Instrument, the United Kingdom reported that it will put in place a plan to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard, thereby prioritising those treaties where disputes are most likely to arise or where the deficiencies are most likely to have a practical effect. Furthermore, the United Kingdom opted for the arbitration part of the Multilateral Instrument.

The United Kingdom meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA program. This APA program also enables taxpayers to request rollbacks of bilateral APAs.

The United Kingdom also meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard, but needs to supplement its MAP guidance. It provides access to MAP in all eligible cases. It has in place a notification and consultation process for those situations in which the United Kingdom competent authority considers the objection raised by taxpayers in a MAP request as not justified. It has

comprehensive guidance on inter alia the availability of MAP and on how the MAP function in the United Kingdom is construed and applied in practice. This guidance, however, does not specify whether the United Kingdom will also grant access to MAP for cases where taxpayers and Her Majesty Revenue & Customs have entered into an audit settlement, although in practice such access is always granted. The United Kingdom indicated it will update this guidance in 2017 to include information on the elements of the Action 14 Minimum Standard and best practices.

Furthermore, the United Kingdom's competent authority operates fully independently from the audit function of the tax authorities and uses a pragmatic approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. The United Kingdom therefore meets the requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Concerning the average time needed to resolve MAP cases, the MAP statistics for the year 2016 are as follows:

2016	Opening Inventory	Cases started	Cases Closed	End inventory	Average time to resolve cases (in months)(*)
Attribution/allocation cases	183	62	38	207	25.42
Other cases	79	60	24	115	12.73
Total	262	122	62	322	20.51

(*) The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, the United Kingdom used as a start date the date when the MAP request was received and as the end date the competent authorities concerned reached a formal agreement. Where competent authorities require taxpayers to confirm their acceptance of the agreement reached, the end date is computed as the date the competent authorities have received this confirmation.

These figures point out that the number of cases the United Kingdom resolved in total is around 50% of the number of all new cases received in 2016, and its MAP inventory as per 31 December 2016 increased by approximately 25% as compared to its inventory as per 1 January 2016. Although the current available resources for the MAP function in the United Kingdom are in principle adequate, more resources may be necessary to achieve a net reduction of its MAP inventory. Furthermore, the United Kingdom competent authority resolves MAP cases on average within a timeframe of 24 months, although the average time necessary to resolve attribution/allocation was slightly longer (25.42 months).

Lastly, the United Kingdom also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. The United Kingdom monitors implementation and no issues have surfaced throughout the peer review process.

Introduction

Available mechanisms in the United Kingdom to resolve tax treaty-related disputes

The United Kingdom has entered into 129 tax treaties on income (and/or capital), of which 128 are in force.¹ These 129 treaties apply to 132 jurisdictions.² All but 15 of these 129 treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty.³ In addition, 21 of the 129 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.⁴

The United Kingdom is also a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.⁵

The legal framework for the mutual agreement procedure in the United Kingdom is governed by sections 124-125 of the Taxation of International and Other Provisions Act 2010 (**‘TIOPA 2010’**).⁶ Specifically with respect to the EU Arbitration Convention, the legislative framework is governed by sections 126-128 of the TIOPA 2010. In the United Kingdom, the competent authority function is delegated to the Commissioners for Her Majesty’s Revenue and Customs (**‘HMRC’**) or their authorised representatives. In practice, the following teams handle MAP cases:

- a) Transfer pricing and profit attribution to permanent establishments: CTIS Business International TP Team;⁷
- b) Corporate residence and withholding tax: CTIS Business International Foreign Profits Team; and
- c) Personal tax.

Within HMRC approximately 30 persons work in the CTIS Business International TP team and handle MAP cases related to transfer pricing, whereby four persons provide support functions. The CTIS Business International Foreign Profits Team consists of eight persons, whereby two persons are responsible for handling MAP cases relating to corporate residence and withholding tax. In addition, the team handling MAP cases relating to personal taxes consist of four persons.

The United Kingdom issued guidance on the governance and administration of the mutual agreement procedure in the Statement of Practice 1/2011 (**‘MAP guidance’**), which is available at:⁸

<https://www.gov.uk/government/publications/statement-of-practice-1-2011/statement-of-practice-1-2011>

Recent developments in the United Kingdom

The United Kingdom finalised treaty negotiations with Colombia (2 November 2016) and Lesotho (3 November 2016). The treaty with Colombia is a newly negotiated treaty, while the treaty with Lesotho replaces an existing treaty. Neither negotiated treaties, however, have yet entered into force.

The United Kingdom reported that it envisages updating its domestic guidance on the mutual agreement procedure in the course of 2017, which shall inter alia include its policy on: (i) audit settlements and access to MAP, (ii) availability of MAP in case of bona fide taxpayer-initiated foreign adjustments, (iii) suspension of collection procedures during the application of the MAP, (iv) charging and refunding of interest and penalties in relation to MAP and (v) the possibility of multi-year resolution of tax disputes through MAP.

Furthermore, the United Kingdom also reported that it intends to adopt the necessary amendments to the MAP article under its tax treaties, so as to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties, by signing the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“Multilateral Instrument”) and through future bilateral negotiations.

Basis for the peer review process

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

For the purpose of this report and the statistics below, in assessing whether the United Kingdom 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 replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaty with the former USSR, Yugoslavia and Czechoslovakia for those jurisdictions for which this treaty is still being applied by the United Kingdom (see above). As it concerns three tax treaties that are applicable to multiple jurisdictions, each of these treaties are only counted as three treaties for this purpose. Reference is made to Annex A for the overview of the United Kingdom’s tax treaties regarding the mutual agreement procedure.

The questionnaires for the peer review process were sent to the United Kingdom and the peers on 5 December 2016. While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, the United Kingdom opted to provide information on period starting as from 1 January 2015 (the ‘**Look back period**’) and also requested peer input relating to the Look back period. In addition to its assessment on the compliance with the Action 14 Minimum Standard, the United Kingdom also asked for peer input on best practices.

In total 22 peers provided input: Australia, Belgium, Canada, People’s Republic of China, Denmark, France, Germany, India, Ireland, Italy, Japan, Lithuania, The Netherlands, New Zealand, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland and the United States. These peers represent approximately 90% of post-2015 MAP cases in the

United Kingdom's inventory on 31 December 2016. Input was also received from taxpayers. Broadly all peers indicated having good working relationships with the United Kingdom with regard to MAP, some of them emphasising the efficiency of the United Kingdom's Competent Authority.

The United Kingdom provided extensive answers in its questionnaire, which was submitted on time. The United Kingdom was very responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and provided further clarity where necessary. In addition, the United Kingdom provided the following information:

- ∞ MAP profile;⁹ and
- ∞ MAP statistics¹⁰ according to the MAP Statistics Reporting Framework¹¹ (see below).

Finally, the United Kingdom is an active member of the FTA MAP Forum and has shown good cooperation during the peer review process. The United Kingdom provided detailed peer input and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions. The United Kingdom also provided peer input on the best practices for a number of jurisdictions that asked for it.

Overview of MAP caseload in the United Kingdom

The analysis of the United Kingdom's MAP caseload relates to the period starting on 1 January 2016 (the '**Reporting Period**'). According to the statistics provided by the United Kingdom, on 31 December 2016 its MAP inventory was 322 cases, 207 of which concern attribution/allocation cases and 115 other cases. During the Reporting Period 122 cases were initiated and 62 cases were closed.

General outline of the peer review report

This report includes an evaluation of the United Kingdom'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; and
- 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**").¹² Apart from analysing the United Kingdom's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by the United Kingdom. Furthermore, the report depicts the changes adopted and plans shared by the United Kingdom 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 objective of Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review

report includes recommendations that the United Kingdom continues 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 the United Kingdom has entered into are available at: www.gov.uk/government/collections/tax-treaties#a-b-c (accessed on 10 September 2017).
2. The United Kingdom continues to apply the 1985 treaty with the former USSR in respect of Belarus, the 1981 treaty with former Yugoslavia to Bosnia and Herzegovina, Montenegro and Serbia, and the 1991 treaty with former Czechoslovakia to the Czech Republic and the Slovak Republic.
3. This concerns treaties with Antigua, Belize, Brunei, Greece, Grenada, Israel, Jamaica, Kiribati, Malawi, Myanmar, Namibia, Sierra Leone, the Solomon Islands, Saint. Kitts and Nevis and Tuvalu.
4. This concerns treaties with Albania, Algeria, Armenia, Bahrain, Belgium, Canada, France, Germany, Iceland, Japan, Kosovo, Liechtenstein, Mexico, the Netherlands, Norway, Qatar, Spain, Sweden, Switzerland, Tajikistan and Uruguay. See for a discussion element C.6 of this report. Reference is made to Annex A for the overview of the United Kingdom's tax treaties that include an arbitration clause.
5. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.
6. Available at: www.legislation.gov.uk/ukpga/2010/8/part/2/chapter/3/data.pdf (accessed on 10 September 2017).
7. CTIS stands for CT International & Stamps Directorate.
8. This guidance is reproduced in the United Kingdom's international guidance manual, which is available at: www.gov.uk/hmrc-internal-manuals/international-manual/intm423000https://www.gov.uk/hmrc-internal-manuals/international-manual/intm423000 (accessed on 10 September 2017).
9. Available at: www.oecd.org/tax/dispute/United-Kingdom-Dispute-Resolution-Profile.pdf.
10. The MAP statistics of the United Kingdom are included in Annex B and C of this report.
11. Map Statistics Reporting Framework, in *Peer Review Documents* (OECD 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).
12. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective in *Peer Review Documents* (OECD, 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).

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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, 2015) 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 the United Kingdom's tax treaties

2. Out of the United Kingdom's 129 tax treaties, 114 contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) 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 treaty¹ The remaining 15 treaties that do not include such provision concern the treaties mentioned in the Introduction that do not provide for any MAP article at all.

Anticipated modifications

3. For those treaties that do not contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015), the United Kingdom indicated that it intends to implement element A.1 for all its existing tax treaties by signing the Multilateral Instrument. In that regard, the United Kingdom envisages not making any reservations against the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, the United Kingdom indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, the United Kingdom reported that it intends to put in place a plan to update all of its tax treaties to be compliant with element A.1, prioritising those treaties where disputes are most likely to arise or where the deficiencies are most likely to have a practical effect. In addition, the United Kingdom will seek to include Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

4. Several peers also reported that the provisions of their tax treaty with the United Kingdom do not meet all the requirements of the relevant elements of the Action 14

Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	15 out of 129 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015).	Where treaties do not include the equivalent of Article 25(3), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, the United Kingdom should request the inclusion of the required provision via bilateral negotiations. In addition, the United Kingdom should maintain its stated intention to include the required provision in all future treaties.

[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.

5. 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.² 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.

The United Kingdom’s APA programme

6. The United Kingdom is under its domestic legislation authorised to enter into unilateral, bilateral and multilateral APAs. It has run an APA programme since 1999. The legislation enabling the United Kingdom to enter into APAs is to be found in Sections 218-230 of TIOPA 2010. It further issued guidance on APAs in its Statement of Practice 2/2010, which was lastly updated in November 2016.³ This guidance sets out in detail what an APA is, when and by whom they can be requested, how the process for obtaining an APA in the United Kingdom functions and what information is to be included in a request for an APA. The United Kingdom does not require a specific timeline for filing of APA requests.

7. In paragraph 25 of its APA guidance it is stipulated that the United Kingdom applies APAs as from the date of entry into force as specified in the APA agreement and for a specific period of time. Typically, the term of application is three to five years. As the situation may occur that an APA agreement is only reached after the fiscal years for which the APA is requested have ended, domestic legislation of the United Kingdom – specifically section 224 TIOPA – allows the APA to be effective for those fiscal years as

well.⁴ For example, if an APA request is submitted for fiscal years 2016-2020 and is entered into in 2018, the United Kingdom applies the APA for all five years requested.

Roll-back of bilateral APAs

8. In paragraph 28 of its APA guidance it is stipulated that the agreed transfer pricing methodology in the APA may be relevant for earlier fiscal years than those covered by the APA. The United Kingdom allows for the roll-back of the APA to such earlier fiscal years if the particular facts and circumstances surrounding those years are substantially the same and if for those fiscal years the United Kingdom's legal framework allows taxpayers to amend their self-assessment. This latter implies that those fiscal years have not been finalised. If, however, tax assessments have been finalised for those fiscal years, roll-back is only possible if under United Kingdom's domestic legislation domestic time limits still permit an amendment or a MAP request to be made. In practice, the United Kingdom would for finalised fiscal years require a MAP request to be made.

Practical application of roll-back of bilateral APAs

9. Peers generally reported that they do negotiate and agree bilateral APAs with the United Kingdom. Not all peers, however, have experience with roll-back of such bilateral APAs for the years under review or in general. In total seven peers reported they have experiences with the United Kingdom regarding roll-back of bilateral APAs. Their experience point out that roll-back of bilateral APAs is possible in appropriate cases and that the United Kingdom is willing to enter into discussions hereon. These peers further reported positive working experiences with the United Kingdom in the process of effectively providing for roll-back of APAs. In addition, taxpayers also provided input entailing that the United Kingdom is willing to apply an APA not only to audited fiscal years, but also to all open fiscal years with the possibility of a roll-back.

10. The United Kingdom does not have in place a mechanism that monitors (i) the number of APA requests that concern the roll-back of an existing APA and (ii) for which of such requests a roll-back was granted. In that regard there is no data available on the number of cases for which taxpayers requested for the roll-back of an APA and in how many cases such roll-back was granted.

11. Peers reported that since 1 January 2015 taxpayers have in approximately 10-15 cases requested for roll-back of their bilateral APAs to which the United Kingdom is a signatory party. As regards those requests, in four cases a roll-back was agreed on by the competent authorities and in four cases the request is still pending. For the other reported requests no information is available on whether such roll-back was granted or will be granted.

Anticipated modifications

12. The United Kingdom did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for Improvement	Recommendations
[A.2]	-	The United Kingdom should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far. To keep a record of the number of APAs where a roll-back was and was not granted, the United Kingdom could introduce a tracking system.

Notes

1. These 114 treaties include the treaty with former USSR that is continued to be applied to Belarus, the treaty with former Czechoslovakia that is continued to be applied to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that is continued to being applied to Bosnia and Herzegovina, Montenegro and Serbia.
2. This description of an APA is based on the definition of an APA in the *OECD Transfer Pricing Guidelines* (OECD, 2017) for Multinational Enterprises and Tax Administrations.
3. Available at: www.gov.uk/government/publications/statement-of-practice-2-2010/statement-of-practice-2-2010#the-formal-apa-application (accessed on 10 September 2017). This guidance has been reproduced in Guidance INTM422000, which is available at: www.gov.uk/hmrc-internal-manuals/international-manual/intm422000 (accessed on 10 September 2017).
4. See also paragraph 26 of the United Kingdom's APA guidance.

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Part B

Availability and Access to MAP

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

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

13. 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 the United Kingdom's tax treaties

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

14. Out of the United Kingdom's 129 tax treaties, two treaties contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as changed by the *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report* (Action 14 final report, OECD 2015b), allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by the domestic law of either state. Further, 62 treaties include 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 that report.

15. The 65 remaining tax treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), either as changed by the Action 14 final report (OECD, 2015b) or as it read prior to that report can be categorised as follows:

Provision	Number of treaties
A variation to Article 25(1), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	49 ¹
No MAP provision included in the tax treaty.	15
A variation to Article 25(1), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby (i) the taxpayer can only submit a MAP request to the competent authority of the contracting state in which it is a resident and (ii) the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

16. The 49 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 49 treaties are considered to be in line with this part of element B.1:

- ∞ The relevant tax treaty does not include a non-discrimination provision and only applies to residents of one of the states (six treaties);
- ∞ The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (43 treaties); and
- ∞ The non-discrimination provision of the relevant tax treaty does not include the equivalent of Article 24(1) of the *OECD Model Tax Convention* (OECD, 2015a) relating to nationals (one treaty).

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

17. Out of the United Kingdom's 129 tax treaties, 40 contain a provision equivalent to Article 25(1), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

18. The remaining 91 treaties that do not contain such provision can be categorised as follows:

Provision	Number of treaties
No MAP provision included in the tax treaty	15
Filing period less than three years for a MAP request (two years)	1
No filing period for a MAP request ²	73

19. The large number of deviations from Article 25(1), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) can be clarified by the fact that the United Kingdom has in paragraph 97 of the Commentary to Article 25 of the *OECD Model Tax Convention* (OECD, 2015a) reserved its position on Article 25(1), second sentence, on the grounds that it conflicts with the six year time limit under its domestic legislation.

Anticipated modifications

20. For those treaties that do not contain a provision equivalent to Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a), the United Kingdom indicated that it intends to implement element B.1 for all its existing tax treaties by signing the Multilateral Instrument. In that regard, the United Kingdom envisages not making any reservations against the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, the United Kingdom indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, the United Kingdom reported that it intends to put in place a plan to update all of its tax treaties to be compliant with element B.1, prioritising those treaties where disputes are most likely to arise or where the deficiencies are most likely to have a practical effect. In addition, the United Kingdom will seek to include Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

21. The United Kingdom reported that it has applied for the withdrawal of the reservation on Article 25(1), second sentence, as mentioned under paragraph 19 above, in the coming update of the *OECD Model Tax Convention* (OECD, 2015a).

22. Several peers also reported that the provisions of their tax treaty with the United Kingdom do not meet all the requirements of the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[B.1]	<p>17 out of 129 tax treaties do not contain a provision that is equivalent to Article 25(1) of the <i>OECD Model Tax Convention</i> (OECD, 2015a). Of those 17 tax treaties:</p> <ul style="list-style-type: none"> 16 do not contain a provision that is the equivalent of Article 25(1), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report (OECD, 2015b) or as amended by that final report; and One does not contain a provision based on Article 25(1), second sentence of the <i>OECD Model Tax Convention</i> (OECD, 2015a), allowing taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. 	<p>Where treaties do not include the equivalent of Article 25(1) of the <i>OECD Model Tax Convention</i> (OECD, 2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, the United Kingdom should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> a provision that is equivalent to Article 25(1), first sentence of the <i>OECD Model Tax Convention</i> (OECD, 2015a) either: <ul style="list-style-type: none"> a) As amended in the Action 14 final report (OECD, 2015b); or b) As it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision; and a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>In addition, the United Kingdom should maintain its stated intention to include the required provision in all future treaties.</p>

[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process

Jurisdictions should ensure that either (i) their tax treaties contain a provision which provides that the taxpayer can make a request for MAP assistance to the competent authority of either Contracting Party, or (ii) where the treaty does not permit a MAP request to be made to either Contracting Party and the competent authority who received the MAP request from the taxpayer does not consider the taxpayer's objection to be justified, the competent authority should implement a bilateral consultation or notification process which allows the other competent authority to provide its views on the case (such consultation shall not be interpreted as consultation as to how to resolve the case).

23. 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 include 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

24. Out of the United Kingdom's 129 treaties, two treaties contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) 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.

25. For the 127 tax treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), the United Kingdom's competent authority in practice notifies and consults its treaty partners where access to MAP is denied or when it considers the objection raised in the MAP request not to be justified.

Practical application

26. Peers indicated not being aware or not being been consulted/ notified of a case where the competent authority of the United Kingdom considered the objection raised in a MAP request as not justified. This can be explained by the fact that the competent authority of the United Kingdom has since 1 January 2015 not considered an objection raised in a MAP request as being not justified.

Anticipated modifications

27. The United Kingdom indicated that it intends to sign the Multilateral Instrument and by doing so amend the covered tax treaties to include Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), as amended by the final report on Action 14, allowing taxpayers to submit a MAP request to the competent authorities of either contracting state. Where tax treaties will not be amended via the Multilateral Instrument, the United Kingdom intends to amend its treaties via bilateral negotiations with its treaty partners. In the meantime, the United Kingdom will continue to apply its bilateral consultation or notification process where access to MAP is denied or when it considers the objection raised in the MAP request not to be justified.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	The United Kingdom has in place a process to notify and/or consult the other competent authority in cases its competent authority considered the objection raised in a MAP request as not justified. Because for the period under review no such cases have occurred, it was not possible to assess whether the notification and/or consultation process is applied in practice.	

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

Jurisdictions should provide access to MAP in transfer pricing cases.

28. 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. Countries should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

29. Out of the United Kingdom's 129 tax treaties, 81 contain a provision that is the equivalent of Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a), requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the other treaty partner. In 19 treaties this provision is not included in Article 9, but in the article on the elimination of double taxation. With respect to these treaties, the United Kingdom indicated that this may effectively not lead to the same result as under Article 9(2), as elimination of double taxation may not always be provided for (i.e. in cases of losses). Furthermore, 4 treaties include a provision that is similar to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a), but uses additional or different wording.

30. The United Kingdom is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.

31. Notwithstanding whether the equivalent of Article 9(2) is included in the United Kingdom's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments, the United Kingdom indicated that it will always provide access to MAP for transfer pricing cases. In paragraph 3 of its MAP guidance it is addressed that the mutual agreement procedure may be used to discuss granting of corresponding adjustments in relation to transfer pricing cases.³ In paragraph 10 of this guidance it is particularly noted that:

'The UK is ready to receive the presentation of a case whether it is the state which has made a transfer pricing adjustment or whether it is the state being asked to make a corresponding adjustment for a transfer pricing adjustment made by its treaty partner'.

Practical application

32. The United Kingdom reported that it since 1 January 2015 has not denied access to MAP on the basis that the case concerned a transfer pricing case.

33. Peers indicated not being aware of a denial of access to MAP by the United Kingdom for transfer pricing cases since 1 January 2015. One peer, however, noted that in 2015 it rejected one MAP request under the treaty with the United Kingdom that concerned a transfer pricing case. This peer reported that it made such rejection (and not the competent authority of the United Kingdom) on the ground that one of the associated enterprises was not an entity resident in the United Kingdom and not on the ground that the case itself concerned a transfer pricing case.

Anticipated modifications

34. The United Kingdom reported that it envisages updating its MAP guidance by 2017 in relation to element B.3. Furthermore, for those treaties that do not contain a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a), the United Kingdom indicated that it intends signing the Multilateral Instrument and by doing so incorporate, where necessary, in all covered tax treaties the equivalent of Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a). In that regard, the United Kingdom envisages not making any reservations against the modifications made by Article 17 of the Multilateral Instrument. In addition, the United Kingdom will seek to include Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

Conclusion

	Areas for Improvement	Recommendations
[B.3]	-	As the United Kingdom has thus far granted access to the MAP in eligible transfer pricing cases, it should continue granting access for these cases.

[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.

35. 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

36. None of the United Kingdom's 129 tax treaties allows competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of the United Kingdom do not include a provision allowing its competent authority to limit access to the 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.

37. The United Kingdom reported that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of the MAP. The MAP guidance of the United Kingdom, however, does not specify whether taxpayers have access to MAP in such case or in cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met.

Practical application

38. The United Kingdom reported that it has since 1 January 2015 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.

39. Peers indicated not being aware of a denial of access to MAP by the United Kingdom in relation to the application of treaty and/or domestic anti-abuse provisions since 1 January 2015.

Anticipated modifications

40. The United Kingdom did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for Improvement	Recommendations
[B.4]	-	As the United Kingdom has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.

[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.

41. 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 independent from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

42. Audit settlements are available in the United Kingdom. The United Kingdom reported that it will not preclude access to MAP in cases where the issues presented by the taxpayer in that request have already been resolved through an audit settlement between the taxpayer and HMRC. In more detail, the United Kingdom indicated that although it is likely that there will be an audit settlement before a MAP request is submitted, access to MAP will be granted if such settlement was already entered into. In its International Manual on transfer pricing and the mutual agreement procedure, it is specifically addressed that HMRC is instructed not to agree with taxpayers on adjustments on the condition that taxpayers will not seek competent authority assistance.⁴

43. The United Kingdom has no administrative or statutory dispute settlement/resolution process in place that allows the United Kingdom to deny access to MAP for issues resolved through that process.

Practical application

44. The United Kingdom reported that it has since 1 January 2015 not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and HMRC.

45. Peers have indicated not being aware of a denial of access to MAP by the United Kingdom since 1 January 2015 in case there was already an audit settlement between the taxpayer and HMRC.

Anticipated modifications

46. The United Kingdom did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for Improvement	Recommendations
[B.5]	-	As the United Kingdom has thus far granted access to the MAP in eligible cases, even if there was an audit settlement between the taxpayer and the tax authority, it should continue granting access for these cases.

[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.

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

Legal framework on access to MAP and information to be submitted

48. The information and documentation that the United Kingdom requires taxpayers include in a request for MAP assistance are discussed under element B.8.

Practical application

49. According to the United Kingdom it provides access to MAP in all cases where taxpayers have complied with the information or documentation required by its competent authority and as set out in its MAP guidance. Since 1 January 2015 the United Kingdom has not limited access to MAP on the grounds that information in the MAP request was not the information or documentation required by its competent authority.

50. Peers have indicated not being aware of a limitation of access to MAP by the United Kingdom since 1 January 2015 in situations where taxpayers complied with information and documentation requirements set out in its MAP guidance.

Anticipated modifications

51. The United Kingdom did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for Improvement	Recommendations
[B.6]	-	As the United Kingdom has thus far not limited access to the MAP in eligible cases when taxpayers have complied with the United Kingdom's information and documentation requirements for MAP requests, it should continue this practice.

[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.

52. 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 includes the second sentence of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015a), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of the United Kingdom's tax treaties

53. Out of the United Kingdom's 129 tax treaties, 80 do not contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.⁵ 15 of these 80 treaties concern the treaties mentioned in the Introduction that do not provide for a MAP article at all.

Anticipated modifications

54. For those treaties that do not contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a), the United Kingdom indicated that it intends to implement element B.7 for all its existing tax treaties by signing the Multilateral Instrument. In that regard, the United Kingdom envisages not making any reservations against the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, the United Kingdom indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, the United Kingdom reported that it intends to put in place a plan to update all of its tax treaties to be compliant with element B.7, prioritising those treaties where disputes are most likely to arise or where the deficiencies are most likely to have a practical effect. In addition, the United Kingdom will seek to include Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

55. Several peers also reported that the provisions of their tax treaty with the United Kingdom do not meet all the requirements of the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[B.7]	80 out of 129 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a).	<p>Where treaties do not include the equivalent of Article 25(3), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, the United Kingdom should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the treaty with the former USSR that is being applied to Belarus; the treaty with former Yugoslavia that is being applied to Bosnia and Herzegovina, Montenegro and Serbia; and the treaty with former Czechoslovakia that is being applied to the Czech Republic and the Slovak Republic, the United Kingdom should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p> <p>In addition, the United Kingdom should maintain its stated intention to include the required provision in all future treaties.</p>

[B.8] Publish clear and comprehensive MAP guidance

Jurisdictions should publish clear rules, guidelines and procedures on access to and use of the MAP and include the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance.

56. 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.

The United Kingdom's MAP guidance

57. The United Kingdom's rules, guidelines and procedures relating to the MAP function are included in Statement of Practice 1/2011. This document sets out the availability and practical application of the MAP under the tax treaties the United Kingdom entered into and the EU Arbitration Convention. It also describes the approach of the United Kingdom on using arbitration where MAP does not lead to the elimination of double taxation within a certain timeframe. More specific, the MAP guidance contains information on:

- (a) General outline of the MAP function under tax treaties in general and the availability of MAP under the tax treaties the United Kingdom entered into, including the EU Arbitration Convention;
- (b) Performance of the competent authority function in the United Kingdom and contact information of the competent authority/office in charge of MAP cases;
- (c) Initiation of the MAP by taxpayers, including the manner and form in which taxpayers should submit their MAP request;
- (d) Relationship with domestic available remedies;
- (e) How the MAP functions in terms of timing, the role of the competent authorities and the rights and role of taxpayers;
- (f) Time limits for filing of a MAP request;
- (g) Application of OECD guidance in relation to MAP (the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017 (OECD Transfer Pricing Guideline, OECD 2017) for Multinational Enterprises and Tax Administrations, Report on the attribution of profits to permanent establishments and the Commentary to the *OECD Model Tax Convention* (OECD, 2015a));
- (h) Information on availability of arbitration (including the EU Arbitration Convention);
- (i) The process for implementing MAP agreements, including the methods of granting relief and the right for taxpayers to accept or reject these agreements; and
- (j) Availability of MAP to secondary adjustments.

58. The above-described MAP guidance of the United Kingdom includes detailed information on the availability and the use of the MAP and how its competent authority conducts the procedure in practice. This guidance includes the information the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.⁶ Although this information is comprehensive, some subjects are not specifically discussed in the United Kingdom's MAP guidance. This concerns whether MAP is available in cases of (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments; (iv) whether taxpayers can request for the multi-year resolution of recurring issues through MAP; (v) the possibility of suspension of tax collection during the course of the MAP; (vi) the consideration of interest and penalties and the MAP; and (vii) the process how MAP agreements are implemented in terms of steps to be taken and timing of these steps, including any actions to be taken by taxpayers (if any).

Information and documentation to be included in a MAP request

59. The United Kingdom's MAP guidance enumerates in paragraph 12 that there is no specific requirement in what format taxpayers should submit a MAP request, other than that the request should be in writing and directed to the required person. In paragraph 13 it is specified what information taxpayers as a minimum should include in their MAP request.

60. 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.⁷ In light of this list, the requirements in the United Kingdom on what information and documentation should be included in a MAP request are checked below:

- ☒ Identity of the taxpayer(s) covered in the MAP request;
- ☒ The basis for the request (the nature of the action giving rise to, or expected to give rise to, taxation not in accordance with the convention);
- ☒ 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; and
- ☐ 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.

61. The United Kingdom indicated that the above listed information is the minimum information required for considering a MAP request. However, for a proper determination of the validity of the objection raised by the taxpayer in its MAP request this minimum information needs to be supplemented with additional information. According to the United Kingdom the additional information required is normally discussed and agreed on with the taxpayer concerned.

62. The United Kingdom's MAP guidance further sets forth that specific treaties may require certain information to be provided before a case is considered as presented for having the deadline for initiating an arbitration procedure commence. In this regard, the United Kingdom has entered into a mutual agreement with Germany and the Netherlands and a protocol with Canada on what information should be included in a MAP request.⁸

63. One peer provided input on element B.8. It considered that the United Kingdom's MAP guidance includes clear and informative guidance on how it conducts the mutual agreement procedure. This peer used this guidance when conducting MAPs with the United Kingdom. In addition, taxpayers also indicated that the guidance issued by the United Kingdom is clear, particularly the information and documentation to be included in a MAP request.

Anticipated modifications

64. The United Kingdom indicated that its MAP guidance is under review and anticipates on updating this guidance in 2017.

Conclusion

	Areas for Improvement	Recommendations
[B.8]	MAP guidance is comprehensive and available, but some further clarity could be provided.	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of clarity of its MAP guidance, the United Kingdom, when updating this guidance, could consider including information on:</p> <ul style="list-style-type: none"> ○ Whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments; ○ Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; ○ The possibility of suspension of tax collection during the course of a MAP; ○ The consideration of interest and penalties in the MAP; and ○ The process how MAP agreements are implemented in terms of steps to be taken and timing of these steps, including any actions to be taken by taxpayers (if any). <p>Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.</p>
	Guidance on what information taxpayers should include in a MAP request is available, but the information required is limited.	The United Kingdom could include in its MAP guidance more information on what taxpayers should include in a MAP request, for example the guidance the FTA MAP Forum agreed on.

[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.

65. 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.⁹

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

66. As discussed in the Introduction, the MAP guidance of the United Kingdom is published and can be found at:

<https://www.gov.uk/government/publications/statement-of-practice-1-2011/statement-of-practice-1-2011>.¹⁰

67. As regards its accessibility, the United Kingdom's MAP guidance is easily found on the government website of the United Kingdom. For example, a search for 'double taxation' on this website is directed towards the relevant webpage, where the public guidance on the MAP and arbitration can be found.

MAP profile

68. The MAP profile of the United Kingdom is published on the website of the OECD.¹¹ This MAP profile is complete and often with detailed information. This profile includes external links which provide extra information and guidance.

Anticipated modifications

69. The United Kingdom did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	-	The United Kingdom should ensure that future updates of its MAP guidance are made publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.

[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.

70. 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 previous mentioned processes.

MAP and audit settlements in the MAP guidance

71. As previously discussed under B.5, the United Kingdom's International Manual on transfer pricing and the mutual agreement procedure addresses that HMRC is instructed not to agree with taxpayers on adjustments on the condition that taxpayers will not seek competent authority assistance. The United Kingdom's MAP guidance, however, does not include information on whether in case of an audit settlement between HMRC and taxpayers the latter are precluded access to MAP.

72. Peers indicated not being aware that audit settlements may preclude access to MAP in the United Kingdom.

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

73. As previously mentioned under element B.5, the United Kingdom does not have an administrative or statutory dispute settlement/resolution process available.

74. Peers indicated no issues regarding element B.10 in relation to administrative or statutory dispute settlement or resolution processes.

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

75. As the United Kingdom does not have an internal administrative or statutory dispute settlement/ resolution process available, there is no need for notifying treaty partners of such process.

Anticipated modifications

76. The United Kingdom indicated that it envisages updating its MAP guidance in relation to access to MAP in case of audit settlements.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	MAP guidance does not include information on the relationship between MAP and audit settlements, particularly on whether entering into an audit settlement will or will not preclude access to MAP.	The United Kingdom should ensure that it introduces in its MAP guidance information on the relationship between audit settlements and MAP, specifically whether entering into an audit settlement will or will not preclude access to MAP.

Notes

- These 50 treaties include the treaty with former USSR that is continued to be applied to Belarus, the treaty with former Czechoslovakia that is continued to be applied to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that is continued to being applied to Bosnia and Herzegovina, Montenegro and Serbia.
- These 75 treaties include the treaty with former USSR that is continued to be applied to Belarus, the treaty with former Czechoslovakia that is continued to be applied to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that is continued to being applied to Bosnia and Herzegovina, Montenegro and Serbia.
- Paragraphs 16-18 of the United Kingdom's MAP guidance also discusses how in practice the MAP is applied to transfer pricing cases.
- www.gov.uk/hmrc-internal-manuals/international-manual/intm423020 (accessed on 10 September 2017).
- These 80 treaties include the treaty with former USSR that is continued to be applied to Belarus, the treaty with former Czechoslovakia that is continued to be applied to the

- Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that is continued to being applied to Bosnia and Herzegovina, Montenegro and Serbia.
6. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf
 7. Ibid.
 8. The mutual agreement with Germany is available at: www.gov.uk/government/publications/germany-tax-treaties (accessed on 10 September 2017).
 9. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm
 10. The MAP guidance is reproduced in the International Manual (INTM-423000), which is available at: www.gov.uk/hmrc-internal-manuals/international-manual/intm423000 (accessed on 10 September 2017).
 11. Available at: www.oecd.org/tax/dispute/United-Kingdom-Dispute-Resolution-Profile.pdf

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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.

77. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include a provision the first sentence of Article 25(2) of the *OECD Model Tax Convention* (OECD, 2015a), 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 the United Kingdom's tax treaties

78. Out of the United Kingdom's 129 tax treaties, 114 contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) 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.¹ The remaining 15 treaties that do not include such provision concern the treaties mentioned in the Introduction that do not provide for a MAP article at all.

Anticipated modifications

79. For those treaties that do not contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), the United Kingdom indicated that it intends to implement element C.1 for all its existing tax treaties by signing the Multilateral Instrument. In that regard, the United Kingdom envisages not making any reservations against the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, the United Kingdom indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, the United Kingdom reported that it intends to put in place a plan to update all of its tax treaties to be compliant with element C.1, prioritising those treaties where disputes are most likely to arise or where the deficiencies are most likely to

have a practical effect. In addition, the United Kingdom will seek to include Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

80. Several peers also reported that the provisions of their tax treaty with the United Kingdom do not meet all the requirements of the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[C.1]	15 out of 129 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a).	Where treaties do not include the equivalent of Article 25(2), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, the United Kingdom should request the inclusion of the required provision via bilateral negotiations. In addition, the United Kingdom should maintain its stated intention to include the required provision in all future treaties.

[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).

81. 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

82. Statistics regarding all tax treaty related disputes concerning the United Kingdom are published on the website of the OECD as of 2007.² The United Kingdom publishes MAP statistics regarding transfer pricing disputes on its government website and transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.³

83. 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. The United Kingdom provided their MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving the United Kingdom and of which its competent authority was aware. The statistics discussed below include both post-2015 and pre-2016 cases and the full statistics are attached to this report as Annex B and C respectively and should be considered jointly for an understanding of the MAP caseload of the United Kingdom.⁴ With respect to post-2015 cases, the United Kingdom reported having reached out to all its MAP partners with a view to have their

MAP statistics matching. The United Kingdom that it could match its statistics with most of its MAP partners, but nine of them did not respond to its outreach.

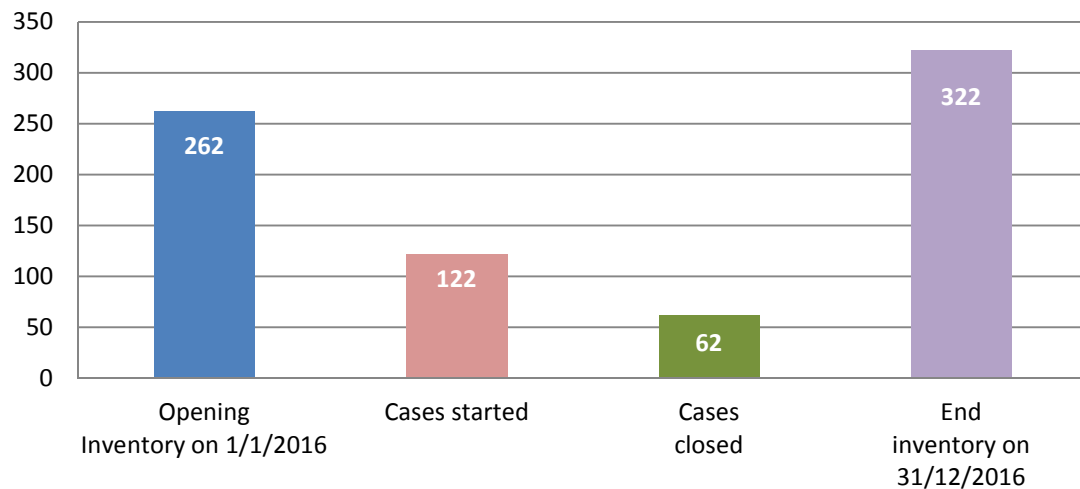
Monitoring of MAP statistics

84. The United Kingdom reported that it has in place to monitor and manage the MAP caseload with its main MAP partners a mechanism. Such mechanism is not in place regarding treaty partners with which there is a limited MAP caseload.

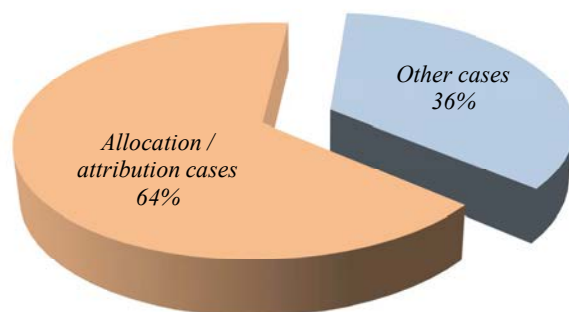
Analysis of the United Kingdom's MAP caseload

85. The analysis of the United Kingdom's MAP caseload relates to the Reporting Period starting on 1 January 2016. The following graph shows the evolution of the United Kingdom's MAP caseload over the Reporting Period.

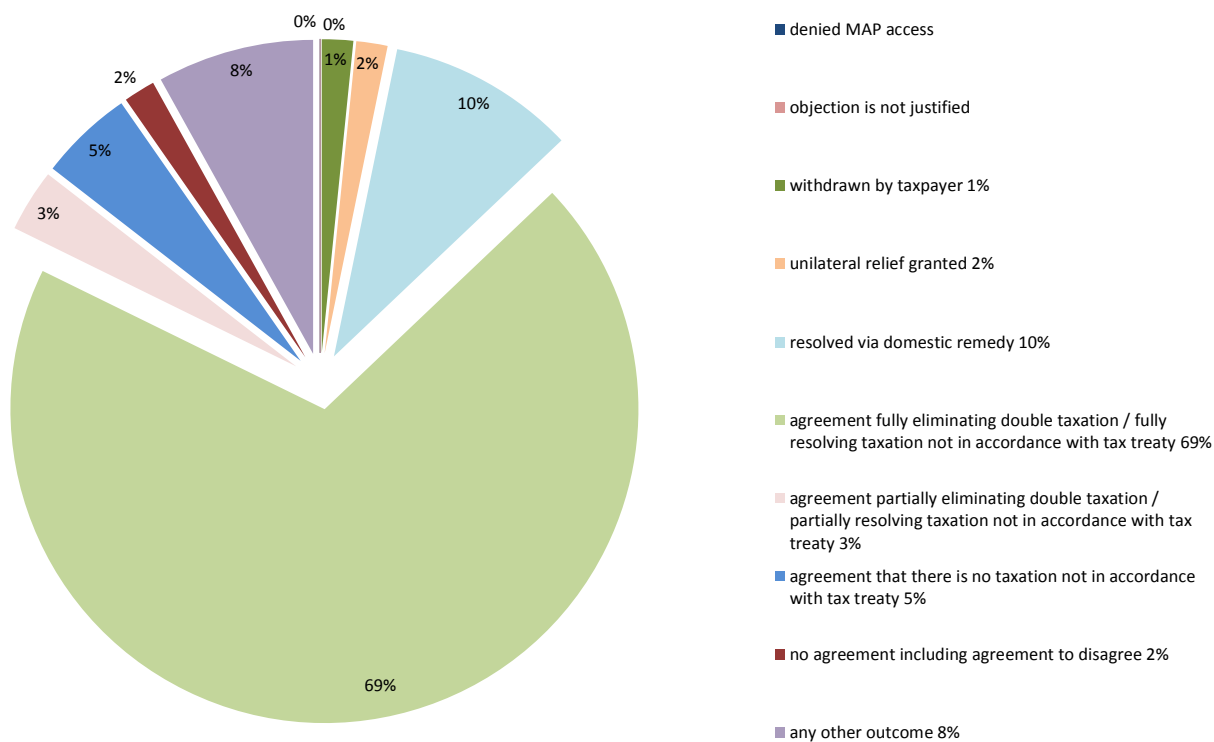
Figure C.1 United Kingdom's MAP inventory



86. At the beginning of the Reporting Period the United Kingdom had 262 pending MAP cases, of which 183 are attribution/allocation cases and 79 other MAP cases.⁵ At the end of the Reporting Period, the United Kingdom had 322 MAP cases in its inventory, of which 207 are attribution/allocation cases and 115 other MAP cases. The breakdown of the end inventory can be illustrated as follows:

Figure C.2 End inventory on 31 December 2106 (322 cases)

87. During the Reporting Period the United Kingdom in total resolved 62 MAP cases for which the following outcomes were reported:

Figure C.3 Cases resolved during the Reporting Period (62 cases)

88. This chart points out that during the Reporting Period, 43 out of 62 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Managing of the MAP caseload

Pre-2016 cases

89. At the beginning of the Reporting Period, the United Kingdom's MAP inventory of pre-2016 consisted of 262 cases, of which were 183 attribution/allocation cases and 79 other cases. At the end of the reporting period the total inventory had decreased to 217 cases, consisting of 149 attribution/allocation cases and 68 other cases. This decrease concerns 18% of the total pre-2016 MAP inventory, which mostly concerned a reduction in attribution/allocation cases.

Post-2015 cases

90. In total 122 MAP cases were initiated on or after 1 January 2016, 62 of which are attribution/allocation cases and 60 other cases. At the end of the reporting period the total post-2015 inventory had decreased to 105 cases, consisting of 58 attribution/allocation cases and 47 other cases. Conclusively, the United Kingdom resolved 17 cases, which reflects 13.93% of the total post-2015 cases. In 16 of the 17 cases the outcome was an agreement that fully eliminated double taxation /fully resolving taxation not in accordance with the convention and in one case it was resolved via domestic remedies.

Average timeframe needed to resolve MAP cases

Pre-2016 cases

91. For pre-2016 cases the United Kingdom reported that on average it needed 27.59 months to resolve 34 attribution/allocation cases and 23.62 months to resolve 11 other cases. This resulted in an average time needed of 26.62 months to close pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, the United Kingdom used:

- ∞ *Start date*: the date when the MAP request was received; and
- ∞ *End date*: the date the competent authorities concerned reached a formal agreement. Where competent authorities require taxpayers to confirm their acceptance of the agreement reached, the end date is computed as the date the competent authorities have received this confirmation.

Post-2015 cases

92. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 12 months.

93. During the Reporting Period the United Kingdom resolved 17 cases, 4 of which concerned attribution/allocation cases and 13 of which concerned other cases. These resolved cases represent 13.93% of new received post-2015 cases during the Reporting Period. The attribution/allocation cases were on average closed within 6.93 months, all of which lead to an agreement that fully eliminated double taxation or fully resolving the taxation not in accordance with the provisions of the applicable tax treaty. The other MAP cases were on average closed within 3.52 months, with an outcome similar as for attribution/allocation cases, except for one case that was resolved via domestic remedies. The total average for resolving post-2015 cases is 4.32 months.

All cases resolved during Reporting Period

94. The average time needed to resolve MAP cases during the Reporting Period was 21 months, which can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution / Allocation cases	38	25.42
Other cases	24	12.73
All cases	62	20.51

Peer input

95. All peers that provided input on the United Kingdom's compliance with the minimum standard report a good working relationship with the competent authority of the United Kingdom, which is further discussed under element C.3 below. This concerns both jurisdictions that have a large MAP inventory with the United Kingdom as also jurisdictions with a relatively modest MAP caseload with the United Kingdom. Peers reported that contacts with the competent authority of the United Kingdom are easy and that it is solution-oriented. Peers further indicated that cases are generally resolved within a reasonable period, although not all cases are resolved within the targeted 24-month period, particularly due to the nature of the case, for example relating to the oil and gas sector.

Anticipated modifications

96. As will be further discussed under element C.6, the United Kingdom's tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties to provide that treaty-related disputes will be resolved within a specified timeframe and which should globally improve the time needed to settle MAP cases. Apart from that the United Kingdom did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for Improvement	Recommendations
[C.2]	The United Kingdom submitted timely comprehensive MAP statistics and indicated they have been matched with their MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether the United Kingdom's MAP statistics match those of its treaty partners as reported by the latter.	
	Within the context of the state of play outlined above and in relation to the MAP statistics provided by the United Kingdom, it resolved during the Reporting Period 13.93% (17 out of 122 cases) of its post-2015 cases in 4.32 months on average. In that regard, the United Kingdom is recommended to seek to resolve the remaining 86.07% of the post-2015 cases pending on 31 December 2016 (105 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

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

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

97. 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 the United Kingdom's competent authority

98. As described in the Introduction, the United Kingdom's MAP function is performed by Commissioners for HMRC or their authorised representatives. Different teams are responsible for handling MAP cases.⁶ These are:

- ∞ Transfer pricing and profit attribution to permanent establishments: CTIS Business International TP Team;
- ∞ Corporate residence and withholding tax: CTIS Business International Foreign Profits Team; and
- ∞ Personal tax.

99. The functioning of each team can be explained as follows:

Team	Description
Transfer pricing and profit attribution to permanent establishments	This team is responsible for handling MAP cases concerning transfer pricing and profit attribution to permanent establishments and consists of approximately 30 people within HMRC, of which four provide support functions. Next to conducting mutual agreement procedures this team also handles APA requests. People working in the team are not fully dedicated to handling MAP cases. Other activities include: (i) developing and maintaining policy relating to transfer pricing and profit attribution to permanent establishments, (ii) conducting policy and governance of the diverted profit tax, (iii) maintaining policy for offshore property developers tax, (iv) providing advice training to international specialists that hold responsibilities for transfer pricing enquiries at the level of taxpayers and (v) participating in the work of the OECD and the EU as well as contributing to the OECD outreach programmes.
Corporate residence and withholding tax	The corporate residence and withholding tax team consists of eight people, which generally holds responsibility for developing and maintaining policy regarding corporate residence and overseas withholding taxes, as also rendering advice to international specialists that handle corporate residence questions and requests for relief of withholding taxes. Two persons of this team are responsible for handling MAP cases relating to corporate residence and withholding taxes.
Personal taxes	In total four people work in this team. Next to handling MAP cases relating to individuals, the team also holds responsibility for development and maintaining policy regarding double taxation of individuals. They also provide advice on the operation of legislation (e.g. advising audit and providing practical evidence of the operation of the rules to policy) to international specialists dealing with questions on the taxation of non-UK residents receiving source income from the United Kingdom or UK-residents receiving foreign source income.

100. Next to these three teams, the United Kingdom also has a team that holds responsibility for handling MAP cases relating to the general interpretation or application of tax treaty provisions. This team employs 13 people and operates in the tax treaty negotiation division of HMRC. This team is also responsible for maintaining policy

regarding tax treaties, rendering advice and providing training on tax treaties, contributing to the OECD outreach programmes and participating in the work of the OECD and the EU.

101. Personnel working in the United Kingdom competent authority generally have long experience in dealing with international tax issues. For example, becoming a member of the team that deals with transfer pricing issues requires a proven record of experience with this subject, such as being an auditor. Furthermore, also persons that have less experience with international tax issues can work in the competent authority and these persons all follow an internal training program. In addition, new personnel are supervised and trained by experienced colleagues within the United Kingdom competent authority.

102. In terms of funding of its competent authority, other than staff in charge of MAP, the United Kingdom reported that there is sufficient budget available for travelling and conducting face-to-face meetings.

Monitoring mechanism

103. The United Kingdom reported that its competent authority monitors the MAP caseload, which is an element in requesting for additional resources. Allocating budget to the competent authority function, however, is a matter of policy and providing more resources to the MAP function is not a matter to be decided by the United Kingdom's competent authority.

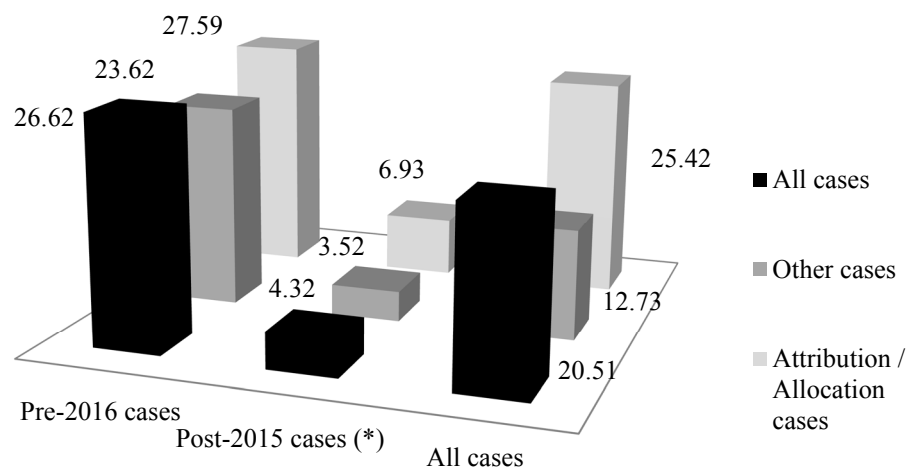
Practical application

General

104. The United Kingdom has entered into a competent authority arrangement with the United States specifically relating to the mutual agreement procedure.⁷ This arrangement set out certain principles and practices to be followed in presenting and discussing MAP cases.

MAP statistics

105. As discussed under element C.2, the United Kingdom resolved its MAP cases during the Reporting Period within the pursued 24-month average. However, a discrepancy exists between the average time taken to solve attribution / allocation cases and other cases. This can be illustrated by the following graph:

Figure C.4 Average time (in months)

(*) Note that post-2015 cases only concern cases opened and closed during 2016.

106. Based on these figures, it follows that on average it took the United Kingdom 20.51 months to resolve MAP cases. However, it took the United Kingdom 25.42 months to resolve attribution / allocation cases, which may indicate that additional resources specifically dedicated to these cases may be necessary to accelerate their resolution.

Peer and taxpayer input

107. As mentioned under element C.2, all peers that provided input on the United Kingdom's compliance with the Action 14 Minimum Standard report a good working relationship with its competent authority. This concerns both peers that have a large MAP inventory with the United Kingdom as also peers with a relatively modest MAP caseload with the United Kingdom. Furthermore, all peers indicated that the contacts with the United Kingdom's competent authority are frequent and via different channels, such as written correspondence, telephone and e-mail. Its competent authority is considered easily accessible and no problems were reported as regards contacting the United Kingdom's competent authority. Generally, all available methods of communication are used to resolve MAP cases and the United Kingdom's competent authority is responsive to communication. Two peers particularly noted that it is easy to identify the officers responsible for handling MAP cases and to find their contact details. In this regard it is noted that the United Kingdom's competent authority periodically provides contact details to the competent authorities of its treaty partners. The relevant contact details are also made available in the United Kingdom's MAP guidance and on its general government website.⁸

108. On the material side of handling MAP cases, all peers reported that the United Kingdom's competent authority is cooperative, constructive and solution-oriented, and also has the intent to resolve cases in a timely, effective and principled manner. This even when from a formal or material perspective differences of views exist on how to resolve a MAP case. Two peers particularly noted that it considers that the United Kingdom has deployed adequate resources to the MAP function, although one peer experienced a postponement of a competent authority meeting due to budget constraints. The United Kingdom responded to this input and mentioned that such meeting was not cancelled due to budget constraints.

The United Kingdom reported that its competent authority organises at regular occasions face-to-face meetings with other competent authorities for settling disputes. The frequency of these meetings is dependent on the MAP caseload with the relevant treaty partner. Apart from that specific criterion, there appears not to be a different attitude towards handling MAP cases for different treaty partners in relation to organising face-to-face meetings.

109. Furthermore, one peer indicated that the personnel dealing with MAP in the United Kingdom is well-trained to handle MAP cases. It was also reported that the United Kingdom is willing to discuss cases under the equivalent of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015a) to solve disputes of a general nature or to avoid disputes from arising. Another positive element mentioned by peers is that HMRC is (domestically) promoting the use of alternative dispute resolution mechanisms, such as mediation, to achieve that there is a better understanding between taxpayers and HMRC during the audit process. This peer noted that such practice may also be helpful to avoid disputes from arising.

110. Peers generally reported no items for improvement regarding providing adequate resources for the MAP function. One peer, however, suggested that there could be an increased communication on the state of play of the MAP caseload generally to enhance the ability of the competent authorities to monitor and manage their MAP caseload. Another peer suggested that for non-attribution/allocation cases it may be helpful to utilise electronic means of communication, instead of written communication in the form of letters, for more routinely types of communication such as notifications. This peer also suggested that time frames for some cases could be more closely monitored and controlled. In relation to available resources in the United Kingdom's competent authority, this peer in addition suggested to keep as much as stability in the key staff, as there in this peer's view appears to be a frequent movement of personnel, which may in some cases cause delay.

111. Taxpayers reported that the United Kingdom encouraged them to participate in the process, such as substantiating positions with facts and figures as well as providing views on how the case should be resolved.⁹ Taxpayers also reported that the United Kingdom promotes open relationships with them prior to and during the MAP process. Similarly to peers taxpayers also noted that resources in the United Kingdom are generally adequate to perform the MAP function.

Anticipated modifications

112. The United Kingdom did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for Improvement	Recommendations
[C.3]	-	The United Kingdom should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.

[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.

113. Ensuring that staff in charge of MAP can and will resolve cases, absent of any approval/direction by the tax administration personnel directly involved in the adjustment at issue and of any policy consideration, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

114. Following the description included in paragraph 99 on the organisation and tasks of the teams that within HMRC are responsible for handling MAP cases, the operation of these teams specifically relating to MAP is as follows:

Assignment of MAP cases to staff
In the United Kingdom a MAP request is assigned to a member of the relevant team, depending on the items included in the request. For straightforward cases, MAP cases can be handled by a member of the team that is not a delegated competent authority, but this is always under the supervision of the delegated competent authority. More complex cases are always handled only by the delegated competent authority, possibly with support from other team members.
Handling of MAP cases
If the MAP request is to be dealt with in the bilateral phase of the mutual agreement procedure, it is only the delegated competent authority that holds responsibility for preparing and exchanging position papers as well as engaging in negotiations with the other involved competent authority for reaching an agreement.
Resolution of MAP cases
<p>The manner in which negotiated MAP agreements are authorised deviates per the specific team handling MAP cases. This concerns:</p> <ul style="list-style-type: none"> a) Transfer pricing and profit attribution to permanent establishments <p>All potential MAP agreements reached are referred to a second person for authorisation, based on a summary of the case and a settlement proposal.</p> b) Corporate residence and withholding tax <p>Persons handling MAP cases, not specifically the delegated competent authority, have autonomy to enter into MAP agreements. The head of this team is the delegated competent authority, which for larger/complex cases authorises MAP agreements and is informed on other MAP agreements that concern straightforward/less complex cases.</p> c) Personal taxes <p>Straightforward cases may be handled by members of the team, not specifically the delegated competent authority. However, any MAP agreement reached is only negotiated and agreed by the delegated competent authority. Other team members may assist the delegated competent authority, but the latter always make the decision on entering into MAP agreements. For more complex cases additional governance rules are introduced. The delegated competent authority assigns these cases to a senior colleague working in the team, which holds responsibility to ensure consistency in handling MAP cases that concern cases relating to individuals. Also here it is the delegated competent authority that negotiates cases and enters into MAP agreements.</p>

115. In the United Kingdom there is no legal framework or guidance on the functioning of its competent authority. This functioning directly follows from tax treaties that assign

competence to the competent authority for handling MAP cases. The analysis of element C.3 points out that personnel that are the designated competent authority are part of teams that, next to handling MAP cases and requests for APAs, also are responsible for developing and maintaining policy relating to international tax issues.

116. In practice, the competent authority in the United Kingdom operates independently and has full authority to resolve MAP cases. There is neither a (formal) system in place requiring the competent authority to ask tax administration personnel directly involved in the adjustment at issue for approval of any MAP agreements nor is the process for negotiating MAP agreements influenced by policy considerations. All three teams responsible for handling MAP cases have a proper system in place to authorise negotiated MAP agreements, which facilitates a consistent and principled resolution of MAP cases.

Practical application

117. Peers generally reported no impediments by the United Kingdom to perform its MAP function absent from approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. Two peers specifically mentioned that they are not being aware that staff in charge of the MAP in the United Kingdom is dependent on the approval of the tax authorities of MAP agreements. In addition, taxpayers reported that they consider the staff in charge of the MAP in the United Kingdom as being empowered to make decisions and to function independently.

Anticipated modifications

118. The United Kingdom did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for Improvement	Recommendations
[C.4]	-	As it has done thus far, the United Kingdom should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue.-

[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.

119. 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 the United Kingdom

120. The United Kingdom evaluates the performance of staff in charge of MAP processes by inter alia setting quantitative targets. These concern the time taken by personnel to draw up position papers and respond to request made by taxpayers and treaty partners. In addition, the performance of staff in charge of MAP process is also evaluated through an analysis of the quality of the work undertaken, such as building relationships within the competent authority and with other competent authorities, as also whether the arm's length principle was maintained in a MAP agreement (in principle, not in amount).

121. The Action 14 final report (OECD, 2015b) includes examples for performance indicators that are considered appropriate. These indicators are shown below and the items that are used by the United Kingdom are checked in the following boxes:

- ☒ 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); and
- ☒ 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).

122. In the United Kingdom there are no performance indicators that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintaining tax revenue. In other words, in the United Kingdom the specific material outcome of MAP discussions is not a criterion to evaluate performance of staff in charge of MAP. In addition, the United Kingdom does not have a system in place whereby the remuneration of staff in charge of MAP is based on the (joint) performance of this staff. It monitors the average time for resolving MAP cases, whereby the United Kingdom also monitors for which cases adjustments by another jurisdiction were accepted or rejected and for which cases adjustments imposed by the United Kingdom were maintained or withdrawn as the outcome of MAP discussions. This monitoring, however, is not an element in evaluating the performance of staff in charge of MAP.

Practical application

123. Peers generally provided no specific input relating to this element of the minimum standard. Two peers particularly noted that they are not aware of the use of performance indicators in the United Kingdom that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue. As discussed under element C.3, all peers reported that the United Kingdom's competent authority is cooperative, constructive and solution-oriented and also has the intent to resolve cases in a timely, effective and principled manner.

Anticipated modifications

124. The United Kingdom did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for Improvement	Recommendations
[C.5]	-	As it has done thus far, the United Kingdom should continue to use appropriate performance indicators.

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

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

125. 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

126. The United Kingdom has no domestic law limitations for including MAP arbitration in its tax treaties. The inclusion of MAP arbitration is part of its tax treaty policy.¹⁰ In addition, the United Kingdom is a signatory to the EU Arbitration Convention and has been a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument. Its MAP guidance specifies the availability of arbitration under tax treaties.

Practical application

127. Up to date, the United Kingdom has incorporated an arbitration clause in 21 tax treaties as a final stage to the MAP. In 20 treaties this concerns an equivalent of Article 25(5) of the *OECD Model Tax Convention* (OECD, 2015a), whereby in some treaties deviations from this provision were agreed (i.e. a three-year period for the MAP instead of a two-year period). In this respect, the United Kingdom entered into an exchange of notes with Canada and a competent authority agreement with Germany and the Netherlands to detail the rules to be applied during the arbitration procedure.¹¹ The remaining treaty provides for a voluntary and binding arbitration procedure.

Anticipated modifications

128. The United Kingdom has reported that it will opt for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.

Conclusion

	Areas for Improvement	Recommendations
[C.6]	-	-

Notes

1. These 114 treaties include the treaty with former USSR that is continued to be applied to Belarus, the treaty with former Czechoslovakia that is continued to be applied to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that is continued to be applied to Bosnia and Herzegovina, Montenegro and Serbia.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2015.
3. Available at www.gov.uk/government/publications/transfer-pricing-statistics-2013-to-2014/transfer-pricing-statistics-2013-to-2014 (accessed on 10 September 2017) and http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en (accessed on 10 September 2017). The statistics made available on the website of the United Kingdom are for fiscal years 2013 and 2014. The statistics made available on the website of the EU Joint Transfer Pricing forum are up to and include fiscal year 2015.
4. For post-2015 cases, if the number of MAP cases in the United States' inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five, United States' reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution / allocation cases and other cases).
5. The United Kingdom reported that for pre-2016 and post-2015 cases it follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework defines such case as: *"a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case"*.
6. Reference is made to paragraph 9 of the United Kingdom's MAP guidance for a further description hereof.
7. See Administrative Arrangements for the Implementation of the Mutual Agreement Procedure (Article 25) of the Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (Signed on December 31, 1975, as Amended by Protocols). Available at: www.irs.gov/pub/irs-news/ir-00-79.pdf (accessed on 10 September 2017).
8. Available at: www.gov.uk/guidance/double-taxation-objecting-if-your-company-isnt-being-taxed-correctly#further-information (accessed on 10 September 2017).
9. In paragraph 8 of its MAP guidance the United Kingdom sets out the role of taxpayers in the MAP process. The competent authority of the United Kingdom informally allows taxpayers to participate in the process, which, however, is dependent on whether the other competent authority involved agrees herewith. See specifically for transfer pricing cases paragraph 18 of the United Kingdom's MAP guidance.
10. See in this regard paragraph 33 of the United Kingdom's MAP guidance.

11. The mutual agreement with Germany is available at:
www.gov.uk/government/publications/germany-tax-treaties (accessed on 10 September 2017).

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Part D

Implementation of MAP Agreements

[D.1] Implement all MAP agreements

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

129. 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

130. Under the requirements that the below described conditions are met, all MAP agreements reached are implemented in the United Kingdom notwithstanding domestic statute of limitations.

131. The United Kingdom's competent authority informs taxpayers of a MAP agreement reached, whereby taxpayers are to decide to either reject or to accept this agreement. In cases where the MAP agreement is rejected taxpayers are at liberty to pursue domestic remedies if still available. If taxpayers accept the agreement reached, they have to file a claim for relief of double taxation. This applies both for agreements reached as the result of the MAP, as also for any agreements reached following the decision of an arbitration panel as a final stage to the MAP.

132. Pursuant to section 124 of the Tax International and Other Provisions Act 2010 (TIOPA 2010) the United Kingdom waives domestic time limits if a case is dealt with in a MAP. This waiver allows the actual implementation of MAP agreements once reached and prevents domestic time limits from impeding the implementation of such agreements. In straightforward cases, where the implementation of a MAP agreement only requires the deduction of taxable income or the increase of losses carried-forward, no further action by taxpayers is necessary for the MAP agreement to be implemented, once accepted by them. For non-straightforward cases, the United Kingdom's domestic legislation requires taxpayers to make a claim for relief following a MAP agreement within a period of 12 months as from the date that agreement is notified to them. The United Kingdom explained that this requirement is inter alia put in place because of its system of offsetting losses and group-relief. For example, where a taxpayer prefers to have losses to be carried-back to profits of previous fiscal years or prefers that such losses are under the system of group-relief offset against profits of another group company, section 124(4) of TIOPA 2010 replaces domestic available time limits for making claims for relief and subsequently requires taxpayers to make such claim within 12 months as from the date of notification of the MAP agreement. This system ensures that taxpayers have the availability to inform the United Kingdom's competent authority on how they prefer to have losses to be offset or to what entity with the group company losses should be allocated.

133. For agreements reached under the EU Arbitration Convention the system for implementing MAP agreements is slightly different, as domestic time limits for granting relief of double taxations do not apply. In other words, agreements reached under the EU Arbitration Convention are – upon acceptance by taxpayers – always implemented without requiring taxpayers to submit a request for relief within a certain timeframe. This is specified in section 127(5) of TIOPA 2010, which stipulates:

‘An enactment which imposes deadlines for the making of claims for relief under any provision of the Tax Acts does not apply to a claim made in pursuance of a Convention determination.’

134. The United Kingdom reported that it monitors the actual implementation of all MAP agreements. For MAP cases that concern large multinational enterprises, a customer relationship manager of HMRC monitors the implementation of MAP agreements. For small multinational enterprises, the implementation of MAP agreements is performed by a processing officer within HMRC. As these officers may have little experience with MAP agreements, the United Kingdom’s competent authority provides advice and assistance to the officers responsible for implementing MAP agreements. This to ensure that MAP agreements are effectively implemented. In relation hereto, the United Kingdom has established a central point of contact.

135. Paragraph 51 of the United Kingdom’s MAP guidance further details how relief from double taxation is granted in practice. This is dependent on the facts and circumstances of each individual case, but this is either by allowing a deduction against the taxable profit or by granting a tax credit. If a MAP agreement is reached and accepted by the taxpayer, it is invited by the United Kingdom’s competent authority to submit a revised computation of the taxable income that reflects the agreed relief. Paragraph 52 of the MAP guidance specifically addresses that the sole possibility to obtain relief from double taxation is through the MAP. Taxpayers are, either through a self-assessment or following a foreign-initiated adjustment, not allowed to adjust their taxable income in their tax returns so as to obtain relief from double taxation.

Practical application

136. The United Kingdom reported that 17 MAP agreements have not been implemented since 1 January 2015. This concerns 14 agreements reached in 2015 and 3 in 2016. Reasons for not implementing were because taxpayers either did not request for relief within the required 12 months or did not accept the agreement.

137. In general peers and taxpayers have not indicated experiencing any problems with the United Kingdom regarding the implementation of MAP agreements reached on or after 1 January 2015. One peer noted that in its jurisdiction the competent authority requires the taxpayer’s acceptance of a MAP agreement as a prerequisite for implementation (along with waiving domestic appeals procedures), for which a parallel process appeared not to be applicable in the United Kingdom. In its cases with the United Kingdom this caused problems/delays regarding implementation of MAP agreements. As described above, the United Kingdom, however, has in place a procedure whereby implementation of MAP agreements is dependent on the taxpayer’s filing of a claim, which would show its acceptance of such agreement.

Anticipated modifications

138. The United Kingdom did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for Improvement	Recommendations
[D.1]	-	As it has done thus far, the United Kingdom should continue to implement all MAP agreements if the conditions for such implementation are fulfilled.

[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.

139. 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

140. The United Kingdom has in its domestic legislation and/or administrative framework no timeframe for implementation of mutual agreements reached. This regards both the situation in which the MAP agreement leads to additional tax to be paid or to a refund of tax in the United Kingdom. Furthermore, its MAP guidance does not include information on the timeframe for implementing MAP agreements.

Practical application

141. Peers have not indicated experiencing any problems with the United Kingdom regarding the implementation of MAP agreements reached on or after 1 January 2015 in general or not on a timely basis. One peer reported that to its knowledge all MAP agreements with the United Kingdom have been implemented correctly and timely. However, this peer also reported that in one MAP case the agreement reached is still to be implemented, despite the fact that the agreement was reached a year ago. The reason cited for this delay is that the taxpayer concerned is in doubt on the tax implications of the MAP agreement to the tax position of its permanent establishment. Other difficulties were not reported, but in the particular case it was not due to (in)actions by the competent authority of the United Kingdom that the MAP agreement was not implemented on a timely basis.

Anticipated modifications

142. The United Kingdom did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for Improvement	Recommendations
[D.2]	-	As it has done thus far, the United Kingdom should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.

[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.

143. 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, 2015) 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 the United Kingdom's tax treaties

144. As discussed under element D.1, the United Kingdom's domestic legislation does not include a statute of limitations for implementing MAP agreements.

145. Out of the United Kingdom's 129 tax treaties, 26 contain a provision that is equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. For the remaining 103 treaties, the following analysis is made:

- ∞ In 84 tax treaties no equivalent provision to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) is included.¹ These 84 treaties include the 15 treaties mentioned in the Introduction that do not provide for a MAP article. Further, none of these 84 tax treaties the United Kingdom include the equivalent to Article 9(1) and Article 7(2), setting a time limit for making adjustments; and
- ∞ 19 tax treaties an equivalent provision to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) is included, but this provision is supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states (e.g. 'except such limitations as apply for the purposes of giving effect to such an agreement'). Although the United Kingdom uses no statute of limitations for implementing MAP agreements, such statute of limitation may be in existence in the domestic legislation of the treaty partner. These 19 treaties therefore are considered not having the full equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015).

Anticipated modifications

146. For those treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015), the United Kingdom indicated that it intends to implement element D.3 for all its existing tax treaties by signing the Multilateral Instrument. In that regard, the United Kingdom envisages not making any reservations against the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing tax treaties to be covered

by that instrument. Furthermore, the United Kingdom indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, the United Kingdom reported that it intends to put in place a plan to update all of its tax treaties to be compliant with element D.3, prioritising those treaties where disputes are most likely to arise or where the deficiencies are most likely to have a practical effect. In addition, the United Kingdom will seek to include Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

147. Several peers also reported that the provisions of their tax treaty with the United Kingdom do not meet all the requirements of the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	<p>103 out of 129 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the <i>OECD Model Tax Convention</i> (OECD, 2015), nor the alternative provisions in Article 9(1) and Article 7(2). Of those 103 tax treaties:</p> <ul style="list-style-type: none"> 84 contain neither a provision that is equivalent to Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015) nor include the alternative provisions; and 19 include a provision that is equivalent to Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015), but are supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states. 	<p>Where treaties do not include the equivalent of Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015), or the alternatives provided in Article 9(1) and Article 7(2), and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, the United Kingdom should request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>Specifically with respect to the treaty with the former USSR that is being applied to Belarus; the treaty with former Yugoslavia that is being applied to Bosnia and Herzegovina, Montenegro and Serbia; and the treaty with former Czechoslovakia that is being applied to the Czech Republic and the Slovak Republic, the United Kingdom should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or its alternatives.</p> <p>In addition, the United Kingdom should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternative provisions, in all future treaties.</p>

Notes

1. These 84 treaties include the treaty with former USSR that is continued to be applied to Belarus, the treaty with former Czechoslovakia that is continued to be applied to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that is continued to being applied to Bosnia and Herzegovina, Montenegro and Serbia.

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Summary

	Areas for Improvement	Recommendations
Part A: Preventing disputes		
[A.1]	15 out of 129 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015).	Where treaties do not include the equivalent of Article 25(3), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, the United Kingdom should request the inclusion of the required provision via bilateral negotiations. In addition, the United Kingdom should maintain its stated intention to include the required provision in all future treaties.
[A.2]	-	The United Kingdom should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far. To keep track of the number of APAs where a roll-back was and was not granted, the United Kingdom could introduce a tracking system.
Part B: Availability and access to MAP		
[B.1]	<p>17 out of 129 tax treaties do not contain a provision that is equivalent to Article 25(1) of the <i>OECD Model Tax Convention</i> (OECD, 2015). Of those 16 tax treaties:</p> <ul style="list-style-type: none"> 16 do not contain a provision that is the equivalent of Article 25(1), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015), either as it read prior to the adoption of the final report on Action 14 or as amended by that final report; and One does not contain a provision based on Article 25(1), second sentence of the <i>OECD Model Tax Convention</i> (OECD, 2015), allowing taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. 	<p>Where treaties do not include the equivalent of Article 25(1) of the <i>OECD Model Tax Convention</i> (OECD, 2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, the United Kingdom should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> a provision that is equivalent to Article 25(1), first sentence of the <i>OECD Model Tax Convention</i> (OECD, 2015) either: <ul style="list-style-type: none"> a) As amended in the Action 14 final report (OECD, 2015); or b) As it read prior to the adoption of Action 14 final report (OECD, 2015), thereby including the full sentence of such provision; and a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>In addition, the United Kingdom should maintain its stated intention to include the required provision in all future treaties.</p>
[B.2]	The United Kingdom has in place a process to notify and/or consult the other competent authority in cases its competent authority considered the objection raised in a MAP request as not justified. Because for the period under review no such cases have occurred, it was not possible to assess whether the notification and/or consultation process is applied in practice.	
[B.3]	-	As the United Kingdom has thus far granted access to the MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	-	As the United Kingdom has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a

		domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.
[B.5]	-	As the United Kingdom has thus far granted access to the MAP in eligible cases, even if there was an audit settlement between the taxpayer and HMRC, it should continue granting access for these cases.
[B.6]	-	As the United Kingdom has thus far granted access to the MAP in eligible cases when taxpayers have complied with the United Kingdom's information and documentation requirements for MAP requests, it should continue granting access for these cases.
[B.7]	80 out of 129 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015).	<p>Where treaties do not include the equivalent of Article 25(3), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, the United Kingdom should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the treaty with the former USSR that is being applied to Belarus; the treaty with former Yugoslavia that is being applied to Bosnia and Herzegovina, Montenegro and Serbia; and the treaty with former Czechoslovakia that is being applied to the Czech Republic and the Slovak Republic, the United Kingdom should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p> <p>In addition, the United Kingdom should maintain its stated intention to include the required provision in all future treaties.</p>
[B.8]	MAP guidance is comprehensive and available, but some further clarity could be provided.	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of clarity of its MAP guidance, the United Kingdom, when updating this guidance, could consider including information on:</p> <ul style="list-style-type: none"> ○ Whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments; ○ Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; ○ The possibility of suspension of tax collection during the course of a MAP; ○ The consideration of interest and penalties in the MAP; and ○ The process how MAP agreements are implemented in terms of steps to be taken and timing of these steps, including any actions to be taken by taxpayers (if any). <p>Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.</p>
	Guidance on what information taxpayers should include in a MAP request is available, but the information required is limited.	The United Kingdom could include in its MAP guidance more information on what taxpayers should include in a MAP request, for example the guidance the FTA MAP Forum agreed on.
[B.9]	-	The United Kingdom should ensure that future updates of its MAP guidance are made publically available and easily accessible. Its MAP profile, published on the shared public platform should be updated if needed.
[B.10]	MAP guidance does not include information on the relationship between MAP and audit settlements, particularly on whether entering into an audit settlement will or will not preclude access to MAP.	The United Kingdom should ensure that it introduces in its MAP guidance the envisaged information on the relationship between audit settlements and MAP, specifically whether entering into an audit settlement will or will not preclude access to MAP.

Part C: Resolution of MAP cases		
[C.1]	15 out of 129 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015).	Where treaties do not include the equivalent of Article 25(2), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, the United Kingdom should request the inclusion of the required provision via bilateral negotiations. In addition, the United Kingdom should maintain its stated intention to include the required provision in all future treaties.
[C.2]	The United Kingdom submitted timely comprehensive MAP statistics and indicated they have been matched with their MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether the United Kingdom's MAP statistics match those of its treaty partners as reported by the latter.	
	Within the context of the state of play outlined above and in relation to the MAP statistics provided by the United Kingdom, it resolved during the Reporting Period 13.93% (17 out of 122 cases) of its post-2015 cases in 4.32 months on average. In that regard, the United Kingdom is recommended to seek to resolve the remaining 86.07% of the post-2015 cases pending on 31 December 2016 (105 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	-	The United Kingdom should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, the United Kingdom should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue.
[C.5]	-	As it has done thus far, the United Kingdom should continue to use appropriate performance indicators.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	As it has done thus far, the United Kingdom should continue to implement all MAP agreements if the conditions for such implementation are fulfilled.
[D.2]	-	As it has done thus far, the United Kingdom should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	<p>103 out of 129 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the <i>OECD Model Tax Convention</i> (OECD, 2015), nor both alternative provisions in Article 9(1) and Article 7(2). Of those 103 tax treaties:</p> <ul style="list-style-type: none"> 84 contain neither a provision that is equivalent to Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015) nor include any of the alternative provisions in Article 9(1) and Article 7(2); and 19 include a provision that is equivalent to Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015), but are supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states. 	<p>Where treaties do not include the equivalent of Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015), or include the alternatives provided in Article 9(1) and Article 7(2), and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, the United Kingdom should request the inclusion of the required provision be willing to accept the inclusion of both alternative provisions.</p> <p>Specifically with respect to the treaty with the former USSR that is being applied to Belarus; the treaty with former Yugoslavia that is being applied to Bosnia and Herzegovina, Montenegro and Serbia; and the treaty with former Czechoslovakia that is being applied to the Czech Republic and the Slovak Republic, the United Kingdom should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p> <p>In addition, the United Kingdom should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternative provisions, in all future treaties.</p>

Annex A

Tax treaty network of United Kingdom

		Action 25(1) of the OECD Model Tax Convention (“MTC”)	Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		
		B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority (new Art. 25(1), first sentence)	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MC?				
	Y = yes	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, others 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 ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art 7 equivalent ii = no, but have Art 9 equivalent iii = no, but have both Art 7 & 9 equivalent N = no and no equivalent of Art 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no	if yes: i-Art. 25(5) ii- mandatory other iii - voluntary
	N = signed pending ratification										
Albania	Y	O	Y	Y	i	Y	N	Y	Y	Y	i
Algeria	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Antigua and	Y	O	iv	i		N	N	N	N	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority (new Art. 25(1), first sentence)	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MC?				
Barbuda											
Argentina	Y	O	i	Y	i	Y	N	Y	N	N	
Armenia	Y	O	Y	Y	i	Y	N	Y	Y	Y	i
Australia	Y	O	i	Y	i	Y	N	Y	Y	N	
Austria	Y	O	i	i	i	Y	N	Y	N	N	
Azerbaijan	Y	O	i	Y	i	Y	N	Y	N	N	
Bahrain	Y	O	i	Y	i	Y	N	Y	Y	Y	i
Bangladesh	Y	O	i	i	i	Y	N	Y	N	N	
Barbados	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Belarus	Y	O	i	i	i	Y	N	Y	N	N	
Belgium	Y	O	Y	i	i	Y	Y	Y	N	Y	i
Belize	Y	O	iv	i		N	N	N	N	N	
Bolivia	Y	O	i	Y	i	Y	N	Y	N	N	
Bosnia and Herzegovina	Y	O	i	i	i	Y	N	Y	N	N	
Botswana	Y	O	i	Y	i	Y	N	Y	N	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority (new Art. 25(1), first sentence)	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MC?				
British Virgin Islands	Y	O	i	i	i	Y	N	Y	N	N	
Brunei	Y	O	iv	i		N	N	N	N	N	
Bulgaria	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Canada	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Cayman Islands	Y	E	i	i	i	Y	N	Y	Y	N	
Chile	Y	O	i	Y	i	Y	N	Y	N	N	
China	Y	O	i	Y	i	Y	Y	Y	Y	N	
Chinese Taipei	Y	O	i	Y	i	Y	N	Y	Y	N	
Colombia	N	E	Y	Y	i	Y	Y	Y	Y	N	
Côte d'Ivoire	Y	O	i	Y	i	Y	N	Y	N	N	
Croatia	Y	O	Y	Y	i	Y	Y	Y	N	N	
Cyprus*	Y	O	i	i	i	Y	N	Y	N	N	
Czech Republic	Y	O	i	i	i	Y	N	Y	N	N	
Denmark	Y	O	i	i	i	Y	N	Y	N	N	
Egypt	Y	O	i	i	i	Y	N	Y	N	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority (new Art. 25(1), first sentence)	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MC?				
Estonia	Y	O	i	Y	i	Y	N	Y	N	N	
Ethiopia	Y	O	Y	Y	i	Y	N	Y	Y	N	
Falkland Islands	Y	O	i	Y	i	Y	N	Y	N	N	
Faroe Islands	Y	O	i	Y	i	Y	N	Y	Y	N	
Fiji	Y	O	i	i	i	Y	N	Y	N	N	
Finland	Y	O	i	Y	i	Y	N	Y	N	N	
France	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Gambia	Y	O	i	i	i	Y	N	Y	N	N	
Georgia	Y	O	i	Y	i	Y	N	Y	Y	N	
Germany	Y	O	Y	Y	i	Y	N	Y	Y	Y	i
Ghana	Y	O	i	Y	i	Y	N	Y	N	N	
Greece	Y	O	iv	i		N	N	N	N	N	
Grenada	Y	O	iv	i		N	N	N	N	N	
Guernsey	Y	O	Y	Y	i	Y	N	Y	Y	N	
Guyana	Y	O	i	Y	i	Y	N	Y	N	N	

		Action 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority (new Art. 25(1), first sentence)	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MC?				
Hong Kong, China	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Hungary	Y	O	i	Y	i	Y	N	Y	Y	N	
Iceland	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
India	Y	O	i	Y	i	Y	N	Y	N	N	
Indonesia	Y	O	i	i	i	Y	N	Y	N	N	
Ireland	Y	O	i	i	i	Y	N	Y	N	N	
Isle of Man	Y	O	Y	Y	i	Y	N	Y	Y	N	
Israel	Y	O	iv	i		N	N	N	N	N	
Italy	Y	N	i	i	i	Y	N	Y	N	N	
Jamaica	Y	O	iv	i		N	N	N	N	N	
Japan	Y	O	Y	Y	i	Y	N	Y	Y	Y	i
Jersey	Y	O	Y	Y	i	Y	N	Y	Y	N	
Jordan	Y	O	i	Y	i	Y	N	Y	N	N	
Kazakhstan	Y	O	i	Y	i	Y	N	Y	N	N	
Kenya	Y	O	i	i	i	Y	N	Y	N	N	
Kiribati	Y	O	iv	i		N	N	N	N	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority (new Art. 25(1), first sentence)	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MC?				
Kosovo	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Kuwait	Y	O	i	Y	i	Y	N	Y	N	N	
Latvia	Y	O	i	Y	i	Y	N	Y	N	N	
Lesotho	N	O	Y	Y	i	Y	Y	Y	Y	Y	i
Libya	Y	O	i	Y	i	Y	Y	Y	Y	N	
Liechtenstein	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Lithuania	Y	O	i	Y	i	Y	N	Y	N	N	
Luxembourg	Y	O	i	i	i	Y	N	Y	Y	N	
Macedonia	Y	O	Y	Y	i	Y	N	Y	Y	N	
Malawi	Y	O	iv	i		N	N	N	N	N	
Malaysia	Y	O	i	Y	i	Y	N	Y	N	N	
Malta	Y	O	i	Y	i	Y	N	Y	N	N	
Mauritius	Y	O	i	i	i	Y	N	Y	N	N	
Mexico	Y	O	i	Y	i	Y	N	Y	N	Y	iii
Moldova	Y	O	Y	Y	i	Y	Y	Y	N	N	
Mongolia	Y	O	i	Y	i	Y	N	Y	N	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority (new Art. 25(1), first sentence)	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MC?				
Montenegro	Y	O	i	i	i	Y	N	Y	N	N	
Montserrat	Y	O	Y	i	i	Y	N	Y	Y	N	
Morocco	Y	O	i	i	i	Y	N	Y	N	N	
Myanmar	Y	O	iv	i		N	N	N	N	N	
Namibia	Y	O	iv	i		N	N	N	N	N	
Netherlands	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
New Zealand	Y	O	i	i	i	Y	N	Y	N	N	
Nigeria	Y	O	i	Y	i	Y	N	Y	N	N	
Norway	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Oman	Y	O	i	Y	i	Y	N	Y	N	N	
Pakistan	Y	O	i	i	i	Y	N	Y	N	N	
Panama	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Papua New Guinea	Y	O	i	Y	i	Y	N	Y	N	N	
Philippines	Y	O	Y	i	i	Y	N	Y	N	N	
Poland	Y	O	Y	Y	i	Y	N	Y	N	N	
Portugal	Y	O	i	i	i	Y	N	Y	N	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority (new Art. 25(1), first sentence)	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MC?				
Qatar	Y	O	i	Y	i	Y	N	Y	Y	Y	i
Romania	Y	O	i	i	i	Y	N	Y	N	N	
Russia	Y	O	i	Y	i	Y	N	Y	N	N	
Saudi Arabia	Y	O	ii (2 years)	Y	i	Y	N	Y	Y	N	
Senegal	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Serbia	Y	O	i	i	i	Y	N	Y	N	N	
Sierra Leone	Y	O	iv	i		N	N	N	N	N	
Singapore	Y	O	i	Y	i	Y	N	Y	Y	N	
Slovak Republic	Y	O	i	i	i	Y	N	Y	N	N	
Slovenia	Y	O	i	Y	i	Y	N	Y	Y	N	
Solomon Islands	Y	O	iv	i		N	N	N	N	N	
South Africa	Y	O	i	Y	i	Y	N	Y	Y	N	
South Korea	Y	O	i	Y	i	Y	N	Y	N	N	
Spain	Y	O	Y	Y	i	Y	N	Y	Y	Y	i
Sri Lanka	Y	O	i	i	i	Y	N	Y	N	N	

		Action 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority (new Art. 25(1), first sentence)	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MC?				
Saint Kitts and Nevis	Y	O	iv	i		N	N	N	N	N	
Sudan	Y	O	i	i	i	Y	N	Y	N	N	
Swaziland	Y	O	i	i	i	Y	N	Y	N	N	
Sweden	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Switzerland	Y	O	Y	i	i	Y	N	Y	Y	Y	i
Tajikistan	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Thailand	Y	O	i	i	i	Y	N	Y	N	N	
Trinidad and Tobago	Y	O	i	i	i	Y	N	Y	N	N	
Tunisia	Y	O	i	i	i	Y	N	Y	N	N	
Turkey	Y	O	i	Y	i	Y	N	Y	N	N	
Turkmenistan	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Tuvalu	Y	O	iv	i		N	N	N	N	N	
Uganda	Y	O	i	Y	i	Y	N	Y	N	N	
Ukraine	Y	O	i	Y	i	Y	N	Y	N	N	
United Arab Emirates	N	O	Y	Y	i	Y	Y	Y	Y	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority (new Art. 25(1), first sentence)	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MC?				
United States	Y	O	Y	Y	i	Y	N	Y	Y	N	
Uruguay	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Uzbekistan	Y	O	i	Y	i	Y	N	Y	N	N	
Venezuela	Y	O	i	Y	i	Y	N	Y	N	N	
Viet-Nam	Y	O	i	Y	i	Y	N	Y	N	N	
Zambia	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Zimbabwe	Y	O	i	Y	i	Y	N	Y	N	N	

* Footnote by Turkey:

The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

Footnote by all the European Union Member States of the OECD and the European Union:

The Republic of Cyprus is recognized by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Annex B
MAP Statistics pre-2016 cases

Category of cases	No. Of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome:										No. Of pre- 2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	183	0	0	0	1	3	21	1	3	0	5	149	27.59
Others	79	0	0	1	0	2	6	1	0	1	0	68	23.62
Total	262	0	0	1	1	5	27	2	3	1	5	217	26.62

Annex C

MAP Statistics post-2015 cases

Treaty partner	No. Of post-2015 cases in MAP inventory on 1 January 2016	No. Of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome:										No. Of post-2015 cases remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation eliminated / 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	62	0	0	0	0	0	4	0	0	0	0	58	6.93
Others	0	60	0	0	0	0	1	12	0	0	0	0	47	3.52
Total	0	122	0	0	0	0	1	16	0	0	0	0	105	4.32

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
APA guidance	Statement of Practice 2/2010
Look-back period	Period starting from 1 January 2015 for which the United Kingdom wished to provide information and requested peer input
MAP guidance	Statement of Practice 1/2011
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<i>OECD Model Tax Convention</i>	<i>OECD Model Tax Convention</i> on Income and on Capital as it read on 15 July 2014
Pre-2016 cases	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2016
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

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OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, United Kingdom (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Addressing base erosion and profit shifting is a key priority of governments around the globe. In 2013, OECD and G20 countries, working together on an equal footing, adopted a 15-point Action Plan to address BEPS. Beyond securing revenues by realigning taxation with economic activities and value creation, the OECD/G20 BEPS Project aims to create a single set of consensus-based international tax rules to address BEPS, and hence to protect tax bases while offering increased certainty and predictability to taxpayers. In 2015, the OECD and G20 established an Inclusive Framework on BEPS to allow interested countries and jurisdictions to work with OECD and G20 members to develop standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package.

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The minimum standard is complemented by a set of best practices.

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 1 peer review of the implementation of the Action 14 Minimum Standard by the United Kingdom, which is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: <http://oe.cd/bepsaction14>.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264282674-en>.

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