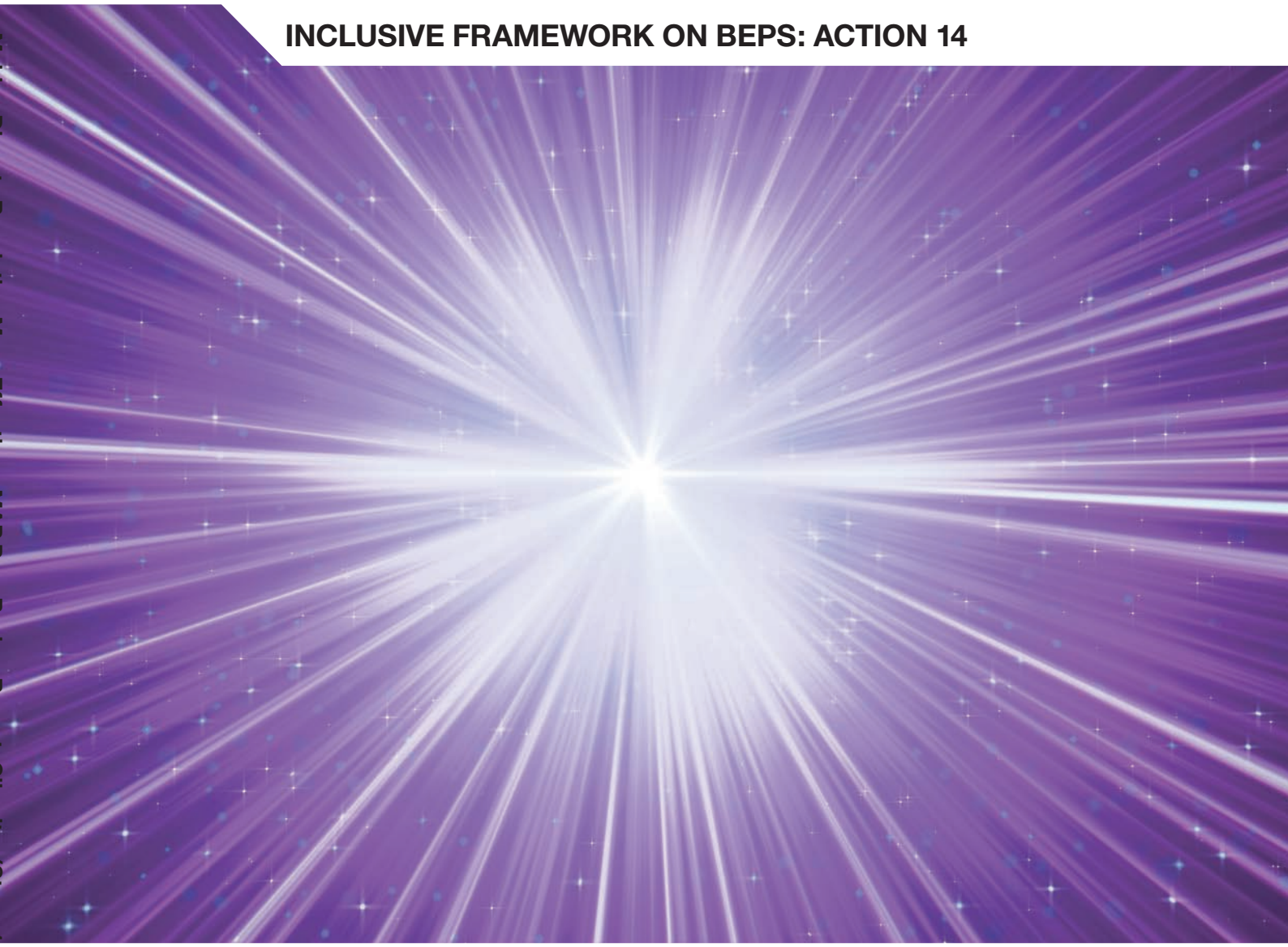
OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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BETTER POLICIES FOR BETTER LIVES

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

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

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

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

Table of contents

Abbreviations and acronyms . . . 7

Executive summary . . . 9

Introduction . . . 11

***Part A.* Preventing disputes** . . . 15

[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties . . . 15

References . . . 16
[A.2] Provide roll-back of bilateral APAs in appropriate cases . . . 16

***Part B.* Availability and access to MAP** . . . 17

[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties . . . 17
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process . . . 18
[B.3] Provide access to MAP in transfer pricing cases . . . 19
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions . . . 20
[B.5] Provide access to MAP in cases of audit settlements . . . 21
[B.6] Provide access to MAP if required information is submitted . . . 22
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties . . . 23
[B.8] Publish clear and comprehensive MAP guidance . . . 24
[B.9] Make MAP guidance available and easily accessible and publish MAP profile . . . 26
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP . . . 26

References . . . 28

***Part C.* Resolution of MAP cases** . . . 29

[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties . . . 29
[C.2] Seek to resolve MAP cases within a 24-month average timeframe . . . 30
[C.3] Provide adequate resources to the MAP function . . . 31
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty . . . 32
[C.5] Use appropriate performance indicators for the MAP function . . . 33
[C.6] Provide transparency with respect to the position on MAP arbitration . . . 34

References . . . 35

***Part D.* Implementation of MAP agreements** . . . 37

[D.1] Implement all MAP agreements . . . 37
[D.2] Implement all MAP agreements on a timely basis . . . 38

[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) . . . 39

References . . . 39

Summary . . . 41

***Annex A.* Tax treaty network of Gibraltar** . . . 43

***Annex B.* MAP Statistics Reporting for the 2019 Reporting Periods (1 January 2019 to 31 December 2019) for pre-2019 cases** . . . 45

***Annex C.* MAP Statistics Reporting for the 2019 Reporting Periods (1 January 2019 to 31 December 2019) for post-2018 cases** . . . 46

Glossary . . . 47

Abbreviations and acronyms

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

Executive summary

Gibraltar only has one tax treaty. Gibraltar has no experience with resolving MAP cases, as it has not been involved in any cases. Overall Gibraltar meets almost all the elements of the Action 14 Minimum Standard. Where it has deficiencies, the Gibraltar is working to address them.

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

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

Gibraltar meets some of the requirements regarding availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2019 not received any MAP requests. Furthermore, Gibraltar does not have in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. However, as the one tax treaty of Gibraltar contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner, there is no need for introducing a bilateral consultation or notification process. Gibraltar has not yet issued MAP guidance but submitted its MAP profile.

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

As there was no MAP agreement reached that required implementation in 2019, it was not yet possible to assess whether Gibraltar meets the Action 14 Minimum Standard as regards the implementation of MAP agreements.

Introduction

Available mechanisms in Gibraltar to resolve tax treaty-related disputes

Gibraltar has entered into one tax treaty on income (and/or capital), which is in force.[1] This treaty is being applied to one jurisdiction. It provides for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, the treaty provides for an arbitration procedure as a final stage to the mutual agreement procedure.[2]

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

Gibraltar has issued guidance on the governance and administration of MAP and reported that it intends to publish it soon after the review period.[3]

Recent developments in Gibraltar

Gibraltar reported that it is currently actively seeking to conduct further tax treaty negotiations with prospective partners. There is no need to modify the treaty Gibraltar has entered into.

In addition, Gibraltar reported that as a relatively new member of the Inclusive Framework, Gibraltar is actively considering signing up to the Multilateral Instrument.

Basis for the peer review process

The peer review process entails an evaluation of Gibraltar's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Gibraltar, its peers and taxpayers. The questionnaires for the peer review process were sent to Gibraltar and the peers on 20 December 2019.

The period for evaluating Gibraltar's implementation of the Action 14 Minimum Standard ranges from 1 January 2019 to 31 December 2019 ("**Review Period**"). In general, developments following the Review Period, including the subsequent introduction of MAP Guidance, have not been taken into account for the analysis in this report. However, the report may depict some recent developments that have occurred after the Review Period,

which at this stage will not impact the assessment of Gibraltar's implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether the assessed jurisdiction is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaty was taken into account. Reference is made to Annex A for the overview of Gibraltar's tax treaties regarding the mutual agreement procedure.

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

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

- MAP profile[4]
- MAP statistics[5] according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Gibraltar

As mentioned above, Gibraltar has not been involved in any MAP cases during the Review Period.

General outline of the peer review report

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

A. Preventing disputes

B. Availability and access to MAP

C. Resolution of MAP cases

D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ("**Terms of Reference**").[6] Furthermore, the report depicts the changes adopted and plans shared by Gibraltar to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The objective of the 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 Gibraltar 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 one tax treaty of Gibraltar has entered into are available at: https://www.gibraltar.gov.gi/income-tax-office. Reference is made to Annex A for the overview of Gibraltar's tax treaties. This treaty has entered into force on 24 March 2020.
2. It concerns the treaty with the United Kingdom. Reference is made to Annex A for the overview of Gibraltar's tax treaty.
3. This Guidance was published in March 2020 and is available at: https://www.gibraltar.gov.gi/income-tax-office/downloads-ito.
4. Available at https://www.oecd.org/tax/dispute/gibraltar-dispute-resolution-profile.pdf.
5. The MAP statistics of Gibraltar are included in Annex B and C of this report.
6. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

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

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

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

Current situation of Gibraltar's tax treaties

2. The one tax treaty of Gibraltar contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.

Anticipated modifications

Bilateral modifications

3. As the one tax treaty of Gibraltar contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, there is no need for modifications. Gibraltar reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

4. No peer input was provided.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	-	Gibraltar should maintain its stated intention to include the required provision in all future tax 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.[1] The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The "roll-back" of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Gibraltar's APA programme

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

7. No peer input was provided.

Anticipated modifications

8. Gibraltar indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for Improvement	Recommendations
[A.2]	-	-

Note

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

References

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

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

Part B

Availability and access to MAP

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

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

9. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties include a provision allowing taxpayers to request a mutual agreement procedure and that this procedure can be requested irrespective of the remedies provided by the domestic law of the treaty partners. In addition, to provide certainty to taxpayers and competent authorities on the availability of the mutual agreement procedure, a minimum period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, is the baseline.

Current situation of Gibraltar's tax treaties

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

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

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

11. The one tax treaty of Gibraltar contains a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

Practical application

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

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

Anticipated modifications

Bilateral modifications

13. As the one tax treaty of Gibraltar contains a provision equivalent to Article 25(1) of the OECD Model Tax Convention, there is no need for modifications. Gibraltar reported it will seek to include Article 25(1) of the OECD Model Tax Convention, as changed by the Action 14 final report, in all of its future tax treaties.

Peer input

14. No peer input was provided.

Conclusion

	Areas for Improvement	Recommendations
[B.1]	-	Gibraltar should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.

[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).

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

i. of either treaty partner; or, in the absence of such provision,

ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases, jurisdictions should have in place a bilateral consultation or notification process

where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

Domestic bilateral consultation or notification process in place

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

Practical application

17. Gibraltar reported that since 1 January 2019 its competent authority has not received any MAP requests. Therefore, there were no cases where it was decided that the objection raised by taxpayers in such request was not justified.

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

19. No peer input was provided.

Anticipated modifications

20. Gibraltar indicated that it does not anticipate any modifications in relation to element B.2.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

21. Where two or more tax administrations take different positions on what constitutes arm's length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner's transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the main objective of tax treaties. Jurisdictions should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

22. The one tax treaty of Gibraltar contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner.

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

Application of legal and administrative framework in practice

24. Gibraltar reported that it has received no MAP requests for transfer pricing cases since 1 January 2019.

25. No peer input was provided.

Anticipated modifications

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

Conclusion

	Areas for Improvement	Recommendations
[B.3]	Gibraltar reported that it will provide access to MAP in transfer pricing cases. Its competent authority, however did not receive any MAP request for such cases during the Review Period. Gibraltar is therefore recommended to follow its policy and grant access to MAP in such 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.

27. 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

28. The one tax treaty of Gibraltar does not allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Gibraltar do not include

a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

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

Practical application

30. Gibraltar reported that since 1 January 2019 it has not received any MAP requests from taxpayers.

31. No peer input was provided.

Anticipated modifications

32. Gibraltar indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for Improvement	Recommendations
[B.4]	Gibraltar reported it will give access to MAP in 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. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Gibraltar is therefore recommended to follow its policy and grant access to MAP in such 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.

33. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to the MAP in such cases, unless they were already resolved via an administrative or statutory disputes settlement/resolution process that functions independently from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

Audit settlements

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

Administrative or statutory dispute settlement/resolution process

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

Practical application

36. Gibraltar reported that since 1 January 2019 it has not received any MAP requests from taxpayers.

37. No peer input was provided.

Anticipated modifications

38. Gibraltar indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for Improvement	Recommendations
[B.5]	-	-

[B.6] Provide access to MAP if required information is submitted

Jurisdictions should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information based on the rules, guidelines and procedures made available to taxpayers on access to and the use of MAP.

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

Legal framework on access to MAP and information to be submitted

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

41. Gibraltar's draft MAP guidance describes that when its competent authority receives a MAP request that does not include all the information and documentation required to be submitted pursuant to this guidance, the competent authority may, on a case by case basis, permit a taxpayer more time to submit the additional information provided that there are valid grounds for the extension and that this is agreed in advance.

Practical application

42. Gibraltar reported that it will provide access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its draft MAP guidance. It further reported that since 1 January 2019 it has not received any MAP requests from a taxpayer.

43. No peer input was provided.

Anticipated modifications

44. Gibraltar indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

	Areas for Improvement	Recommendations
[B.6]	Gibraltar reported it will give access to MAP in cases where taxpayers have complied with information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Gibraltar is therefore recommended to follow its policy and grant access to MAP when it receives a request that contains the information and documentation its CA asks the taxpayer to provide.	

[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.

45. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention, enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Gibraltar's tax treaties

46. The one tax treaty of Gibraltar contains a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.

Anticipated modifications

Bilateral modifications

47. As the one tax treaty of Gibraltar contains a provision equivalent to Article 25(3), second sentence of the OECD Model Tax Convention, there is no need for modifications. Gibraltar reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

48. No peer input was provided.

Conclusion

	Areas for Improvement	Recommendations
[B.7]	-	Gibraltar should maintain its stated intention to include the required provision in all future tax treaties.

[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.

49. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

Gibraltar's MAP guidance

50. As Gibraltar already issued its MAP guidance during the review period but has not yet published it, the information that the FTA MAP Forum agreed should be included in a jurisdiction's guidance is not publicly available. This information includes: (i) the 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 a MAP request.

Information and documentation to be included in a MAP request

51. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.[1] This agreed guidance is shown below. Although not publicly available, the elements that should be included in a MAP request to Gibraltar are as checked:

- ☑ identity of the taxpayer(s) covered in the MAP request
- ☑ the basis for the request
- ☑ facts of the case
- ☑ analysis of the issue(s) requested to be resolved via MAP
- ☑ whether the MAP request was also submitted to the competent authority of the other treaty partner

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

Anticipated modifications

52. Gibraltar indicated that guidance was already issued during the review period and is foreseen to be published soon after the review period, and that such guidance would *inter alia* address the following items:

- contact information of the competent authority
- the manner and form in which the taxpayer should submit its MAP request
- the specific information and documentation that should be included in a MAP request
- how the MAP functions in terms of timing and the role of the competent authorities
- information on availability of arbitration
- relationship with domestic available remedies
- access to MAP in transfer pricing cases, audit settlements and anti-abuse provisions, multilateral disputes, bona fide foreign-initiated self-adjustments and for multi-year resolution of cases
- the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any)
- rights and role of taxpayers in the process
- suspension of tax collection
- interest charges, refunds and penalties.

Conclusion

	Areas for Improvement	Recommendations
[B.8]	There is no published MAP guidance.	Gibraltar should follow up on its stated intention to publish guidance on access to and use of the MAP, and in particular include the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation and information that should be included in such a request. Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Gibraltar could consider follow its stated intention to include the items identified above.

[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.

53. 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.[2]

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

54. As discussed under element B.8, Gibraltar issued but has not yet published MAP guidance.

MAP profile

55. The MAP profile of Gibraltar is published on the website of the OECD. This MAP profile is complete and with some detailed information. This profile includes external links that provide extra information and guidance where appropriate.

Anticipated modifications

56. Gibraltar indicated that it does not anticipate any modifications in relation to element B.9.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	There is no MAP guidance publicly available.	Gibraltar should make its draft guidance publicly available and easily accessible. Furthermore, Gibraltar should ensure that its MAP profile published on the shared public platform is 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.

57. As explained under element B.5, an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction's MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the

public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the previously mentioned processes.

MAP and audit settlements in the MAP guidance

58. As previously discussed under B.5, audit settlements are not possible in Gibraltar. The relationship between access to MAP and audit settlements made between taxpayers and another jurisdiction is described in Gibraltar's draft MAP guidance.

59. No peer input was provided.

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

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

61. No peer input was provided.

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

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

Anticipated modifications

63. Gibraltar indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	-	-

Notes

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

References

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

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

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.

64. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Gibraltar's tax treaties

65. The one tax treaty of Gibraltar contains a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention 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.

Anticipated modifications

Bilateral modifications

66. As the one tax treaty of Gibraltar contains a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, there is no need for modifications. Gibraltar reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

67. No peer input was provided.

Conclusion

	Areas for Improvement	Recommendations
[C.1]	-	Gibraltar should maintain its stated intention to include the required provision in all future tax 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).

68. 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

69. The FTA MAP Forum has agreed on rules for reporting of MAP statistics ("**MAP Statistics Reporting Framework**") for MAP requests submitted on or after 1 January 2016 ("**post-2015 cases**"). Also, for MAP requests submitted prior to that date ("**pre-2016 cases**"), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Gibraltar joined in the Inclusive Framework in 2019. For this reason the statistics referred to are pre-2019 cases for cases that were pending on 31 December 2018, and post-2018 cases for cases that started on or after 1 January 2019. Gibraltar provided its MAP statistics for 2019. The statistics discussed below include both pre-2019 and post-2018 cases and they are attached to this report as Annex B and Annex C respectively, showing that Gibraltar has not been involved in any MAP cases since 1 January 2019.

Monitoring of MAP statistics

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

Analysis of Gibraltar's MAP caseload

71. Gibraltar has not been involved in any MAP case during the Review Period.

Overview of cases closed during the Statistics Reporting Period

72. Gibraltar has not been involved in any MAP case during the Review Period.

Average timeframe needed to resolve MAP cases

73. Gibraltar has not been involved in any MAP case during the Review Period.

Peer input

74. No peer input was provided.

Anticipated modifications

75. Gibraltar indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for Improvement	Recommendations
[C.2]	As there were no post-2018 MAP cases to resolve, it was at this stage not possible to evaluate whether Gibraltar's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	

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

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

76. Adequate resources, including personnel, funding and training, are necessary to properly perform the competent authority function and to ensure that MAP cases are resolved in a timely, efficient and effective manner.

Description of Gibraltar's competent authority

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

Monitoring mechanism

78. As discussed under element C.2, Gibraltar's competent authority has not yet been involved in any MAP cases, by which there were no MAP statistics available to analyse the pursued 24-month average.

Practical application

MAP statistics

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

Peer input

80. No peer input was provided.

Anticipated modifications

81. Gibraltar indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for Improvement	Recommendations
[C.3]	-	Gibraltar should monitor whether the resources available for the competent authority function remain adequate in order 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.

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

Functioning of staff in charge of MAP

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

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

Practical application

85. No peer input was provided.

Anticipated modifications

86. Gibraltar indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

	Areas for Improvement	Recommendations
[C.4]	-	For future MAP cases, Gibraltar should ensure that its competent authority continues to have the authority, and uses that authority in practice, to resolve such cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Gibraltar would like to see reflected in future amendments to the treaty.

[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.

87. For ensuring that each case is considered on its individual merits and will be resolved in a principled and consistent manner, it is essential that any performance indicators for the competent authority function and for the staff in charge of MAP processes are appropriate and not based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue.

Performance indicators used by Gibraltar

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

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

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

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

Practical application

91. No Peer input was provided.

Anticipated modifications

92. Gibraltar indicated that it intends to monitor response times and efficiency of dispute resolution outcomes by considering and analysing the timeframes involved.

Conclusion

	Areas for Improvement	Recommendations
[C.5]	-	Gibraltar could consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes.

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

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

93. 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

94. Gibraltar reported that it has no domestic law limitations for including MAP arbitration in its tax treaties and its MAP profile clearly states that arbitration is available in the one treaty of Gibraltar.

Practical application

95. Up to date, Gibraltar has incorporated an arbitration clause in the one tax treaty of Gibraltar as a final stage to the MAP. This clause can be specified as Mandatory and binding arbitration.

96. No Peer input was provided.

Anticipated modifications

97. Gibraltar indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for Improvement	Recommendations
[C.6]	-	-

References

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

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

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.

98. 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

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

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

Practical application

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

102. No peer input was provided.

Anticipated modifications

103. Gibraltar indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for Improvement	Recommendations
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Gibraltar would have implemented all MAP agreements thus far.	

[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.

104. 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

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

Practical application

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

107. No peer input was provided.

Anticipated modifications

108. Gibraltar indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for Improvement	Recommendations
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented in Gibraltar, it was not yet possible to assess whether Gibraltar would have implemented all MAP agreements on a timely basis thus far.	

[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.

109. 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 in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

Legal framework and current situation of Gibraltar's tax treaties

110. The one tax treaty of Gibraltar contains a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.

Anticipated modifications

Bilateral modifications

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

Peer input

112. No peer input was provided.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	-	Gibraltar should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

References

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

Summary

	Areas for Improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	Gibraltar should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	-	Gibraltar should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.
[B.2]	-	-
[B.3]	Gibraltar reported that it will provide access to MAP in transfer pricing cases. Its competent authority, however did not receive any MAP request for such cases during the Review Period. Gibraltar is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.4]	Gibraltar reported it will give access to MAP in 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. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Gibraltar is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	-	-
[B.6]	Gibraltar reported it will give access to MAP in cases where taxpayers have complied with information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Gibraltar is therefore recommended to follow its policy and grant access to MAP when it receives a request that contains the information and documentation its CA asks the taxpayer to provide.	
[B.7]	-	Gibraltar should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	There is no published MAP guidance.	Gibraltar should follow up on its stated intention to publish guidance on access to and use of the MAP, and in particular include the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation and information that should be included in such a request. Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Gibraltar could consider follow its stated intention to include the items identified above.
[B.9]	There is no MAP guidance publicly available.	Gibraltar should make its draft guidance publicly available and easily accessible. Furthermore, Gibraltar should ensure that its MAP profile published on the shared public platform is updated if needed.

	Areas for Improvement	Recommendations
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	-	Gibraltar should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	As there were no post-2018 MAP cases to resolve, it was at this stage not possible to evaluate whether Gibraltar's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	
[C.3]	-	Gibraltar should monitor whether the resources available for the competent authority function remain adequate in order to ensure that future MAP cases are resolved in a timely, efficient and effective manner.
[C.4]	-	For future MAP cases, Gibraltar should ensure that its competent authority continues to have the authority, and uses that authority in practice, to resolve such cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Gibraltar would like to see reflected in future amendments to the treaty.
[C.5]	-	Gibraltar could consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Gibraltar would have implemented all MAP agreements thus far.	
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented in Gibraltar, it was not yet possible to assess whether Gibraltar would have implemented all MAP agreements on a timely basis thus far.	
[D.3]	-	Gibraltar should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Annex A

Tax treaty network of Gibraltar

			Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	**Column 2**		**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**
			Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)			Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence? (Note 4)			
Treaty partner	DTC in force?		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		Inclusion Art. 9(2) (Note 2) 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?	Inclusion Art. 25(2) first sentence? (Note 3)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
	Y = yes N = signed pending ratification	If N, date of signing	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes 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
United Kingdom	N	10/1/2019	E	Y	N/A	Y	i	Y	Y	Y	Y	Y

Legend

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

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

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

Annex B

MAP Statistics Reporting for the 2019 Reporting Periods (1 January 2019 to 31 December 2019) for pre-2019 cases

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

Annex C

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

2019 MAP Statistics														
Category of cases	No. of post-2018 cases in MAP inventory on 1 January 2019	No. of post-2018 cases started during the reporting period	Number of post-2018 cases closed during the reporting period by outcome										No. of post-2018 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-2018 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	**Column 12**	**Column 13**	**Column 14**	**Column 15**
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2019 cases	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2018
Post-2018 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2019
Review Period	Period for the peer review process that started on 1 January 2019 and ended on 31 December 2019
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2019 and that ended on 31 December 2019
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' Stage 1 peer review report. This report reflects the outcome of the Stage 1 peer monitoring of the implementation of the Action 14 Minimum Standard by Gibraltar.

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