OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Hong Kong, China (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



OECD

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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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 85 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 9 August 2019 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

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

Executive summary

Hong Kong, China has a modest tax treaty network with almost 40 tax treaties. Hong Kong, China has limited experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 16 cases pending on 31 December 2017. Of these cases, approximately 60% concern allocation/attribution cases. Overall Hong Kong, China meets the majority of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Hong Kong, China is working to address them.

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

- Two tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015) nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments
- Two other tax treaties do not contain the equivalent to of Article 25(3), second sentence of the OECD Model Tax Convention stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Hong Kong, China needs to amend and update a certain number of its tax treaties. In this respect, the provisional list of notifications and reservations under the Multilateral Instrument has been submitted in respect of tax treaties entered into by Hong Kong, China, and the Multilateral Instrument will modify a number of Hong Kong, China's tax treaties to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Hong Kong, China reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard.

Hong Kong, China meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request roll-back of bilateral APAs. While some cases were requested during the period of review, these requests are still under consideration by Hong Kong, China.

Hong Kong, China also meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2016 not received any MAP requests concerning cases where there has been an audit settlement or where anti-abuse provisions are applied. However, one case could not be initiated because Hong Kong, China had doubts about the taxpayer's residency. Furthermore, Hong Kong, China has in place a documented

notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Hong Kong, China has recently introduced clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice.

Concerning the average time needed to close MAP cases, the MAP statistics for Hong Kong, China for the period 2016-18 are as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2018	Average time to close cases (in months)*
Attribution/allocation cases	1	13	4	10	14.05
Other cases	5	4	3	6	14.72
Total	6	17	7	16	14.33

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

The number of cases Hong Kong, China closed in 2016-18 is less than the number of all new cases started in those years. Its MAP inventory as per 31 December 2018 increased as compared to its inventory as per 1 January 2016. During these years, MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 14.33 months. However, Hong Kong, China's MAP inventory has increased by more than 150% during these years, which mainly concerns attribution/allocation cases. This might indicate that additional resources specifically dedicated to handling these cases may be necessary. Hong Kong, China has indicated that it has recently hired more resources for the competent authority function. In this respect, Hong Kong, China should closely monitor whether this will contribute to achieve a reduction of its MAP inventory.

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

As there was no MAP agreement reached that required implementation in 2016, 2017 or 2018, it was not yet possible to assess whether it meets the Action 14 Minimum Standard as regards the implementation of MAP agreements.

References

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264239081-en.

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

Introduction

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

Hong Kong, China has entered into 39 tax treaties on income (and/or capital), all of which are in force.[1] These 39 treaties are being applied to the same number of jurisdictions. All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, ten of the treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.[2]

In Hong Kong, China, the competent authority to conduct MAP is the Commissioner of Inland Revenue or his authorised representative, and is delegated to the Tax Treaty Section of the Inland Revenue Department ("**IRD**"). The Section currently consists of 29 professional officers and all of them are also dealing with other treaty-related tasks besides MAP cases.

Hong Kong, China has issued guidance on the governance and administration of the mutual agreement procedure ("**MAP**") available at:

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

Recent developments in Hong Kong, China

Hong Kong, China reported it is currently conducting tax treaty negotiations with 14 jurisdictions, namely, Bahrain, Bangladesh, Cambodia, Cyprus,[3] Estonia, Germany, Israel, Republic of North Macedonia, Maldives, Mauritius, Nigeria, Norway, Serbia and Turkey.

On 7 June 2017, the People's Republic of China signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**") to adopt, where necessary, modifications to the MAP article under the tax treaties entered into by Hong Kong, China with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. The People's Republic of China submitted the provisional list of notifications and reservations under the Multilateral Instrument in respect of tax treaties entered into by Hong Kong, China.[4] In relation to the Action 14 Minimum Standard, Hong Kong, China has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

Where treaties will not be modified by the Multilateral Instrument, Hong Kong, China reported that it strives updating them through future bilateral negotiations.

Basis for the peer review process

The peer review process entails an evaluation of Hong Kong, China's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative

framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Hong Kong, China, its peers and taxpayers. The questionnaires for the peer review process were sent to Hong Kong, China and the peers on 31 December 2018.

The period for evaluating Hong Kong, China's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2018 ("**Review Period**"). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Hong Kong, China'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 Hong Kong, China is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of Hong Kong, China's tax treaties regarding the mutual agreement procedure.

In total six peers provided input: Austria, Japan, Korea, Liechtenstein, Switzerland and the United Kingdom. Out of these six peers, four had MAP cases with Hong Kong, China that started on or after 1 January 2016. These four peers represent about 35% of post-2015 MAP cases in Hong Kong, China's inventory that started in 2016-18. Input was also received from taxpayers. Generally, all peers indicated having limited MAP experience with Hong Kong, China, some of them emphasising good relationships and communication with the competent authority of Hong Kong, China. One peer, however, reported that it experienced difficulties in initiating a MAP case with Hong Kong, China.

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

- MAP profile[5]
- MAP statistics[6] according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Hong Kong, China

The analysis of Hong Kong, China's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018 ("**Statistics Reporting Period**"). According to the statistics provided by Hong Kong, China, its MAP caseload during this period was as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2018
Attribution/allocation cases	1	13	4	10
Other cases	5	4	3	6
Total	6	17	7	16

General outline of the peer review report

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

A. Preventing disputes

B. Availability and access to MAP

C. Resolution of MAP cases

D. Implementation of MAP agreements.

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

The 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 Hong Kong, China 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 Hong Kong, China has entered into are available at: https://www.ird.gov.hk/eng/tax/dta_inc.htm. Reference is made to Annex A for the overview of tax treaties of Hong Kong, China.

2. It concerns the treaties with Canada, Guernsey, Italy, Japan, Jersey, Liechtenstein, Luxembourg, Netherlands, Pakistan, and Switzerland. Reference is made to Annex A for the overview of Hong Kong, China's tax treaties.

3. 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 recognises 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 recognised 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.

4. Available at: www.oecd.org/tax/treaties/beps-mli-position-hong-kong.pdf.

5. Available at: www.oecd.org/tax/dispute/Hong-Kong-Dispute-Resolution-Profile.pdf.

6. The MAP statistics of Hong Kong, China are included in Annex B and Annex C of this report.

7. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

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

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

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

Current situation of Hong Kong, China's tax treaties

2. All of Hong Kong, China's 39 tax treaties contain 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

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

Conclusion

	Areas for improvement	Recommendations
[A.1]	-	Hong Kong, China 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.

Hong Kong, China's APA programme

6. Hong Kong, China has implemented an APA programme. The legal and administrative framework of the APA programme is Division 4 of Part 8AA of and Schedule 17H to the Inland Revenue Ordinance ("**IRO**")[2] as well as the Departmental Interpretation and Practice Notes No. 48 on "Advance Pricing Arrangement" ("**DIPN 48**"), which was published in 2012.[3]

7. The threshold for an APA application is set by the annual amount of transactions covered by an APA in DIPN 48, and it ranges from HKD 20 million to HKD 80 million, depending on the types of transactions. DIPN 48 describes the APA process in Hong Kong, China, which consists of five stages including: (i) pre-filing, (ii) formal application, (iii) analysis and evaluation, (iv) negotiation and agreement, and (v) drafting, execution and monitoring. It also provides guidance on APA renewals, audits and roll-back, and other administrative issues of APA process. Hong Kong, China reported that the tentative timeframe for concluding an APA is 18 months from the acceptance of the formal application and that it however would depend on the progress of negotiations with the other competent authority.

Roll-back of bilateral APAs

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

9. As for the granting of roll-back, DIPN 48 prescribes that the decision on granting roll-back depends on the transfer pricing risks involved. Roll-back will be sought for cases where the transfer pricing issues are considered as high risk.

10. Hong Kong, China added that the granting of roll-back will depend on the availability of all relevant information in respect of the prior years and the changes in the enterprise's circumstances.

Practical application of roll-back of bilateral APAs

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

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

Anticipated modifications

13. Hong Kong, China indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	Hong Kong, China is able to provide for roll-back of bilateral APAs. Even though Hong Kong, China received requests for roll-back of bilateral APAs during the Review Period, these requests are still under consideration. It was therefore not possible at this stage to evaluate the effective implementation of this element in practice.	

Notes

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines (OECD, 2017b) for Multinational Enterprises and Tax Administrations.
2. The relevant provisions were added to the IRO by the enactment of the Inland Revenue (Amendment) (No. 6) Ordinance 2018 ("Amendment Ordinance") in July 2018. The IRO is available at: https://www.elegislation.gov.hk/hk/cap112.
3. DIPN 48 on "Advance Pricing Arrangement" is available at: https://www.ird.gov.hk/eng/pdf/e_dipn48.pdf.

References

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

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.

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

Current situation of Hong Kong, China's tax treaties

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

15. Out of Hong Kong, China's 39 tax treaties, 35 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017a) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report, OECD, 2015a), allowing taxpayers to submit a MAP request to the competent authority of the jurisdiction in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either jurisdiction. In addition, two of Hong Kong, China's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015b), as changed by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either jurisdiction.

16. The remaining two treaties are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the

adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the jurisdiction of which they are a national where the case comes under the non-discrimination article. However, for the following reasons both treaties are considered to be in line with this part of element B.1:

- the relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the jurisdictions (one treaty)
- the non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the jurisdictions (one treaty).

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

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

18. All but one of 39 tax treaties of Hong Kong, China contain 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.

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

Practical application

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

20. As noted in paragraphs 15 and 16 above, in all of Hong Kong, China's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Hong Kong, China reported that it would grant access to MAP even in cases where there is a pending court proceeding or if a court decision has been rendered regarding the same subject matter. Hong Kong, China also reported that its competent authority is unable to deviate from final decisions rendered by its domestic courts.

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

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

Taxpayer input

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

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

- The taxpayer should be considered as a resident of Hong Kong, China, and not of the jurisdiction of the treaty partner to which the MAP case was submitted. This is further discussed below in paragraph 25.
- The competent authority of Hong Kong, China did not agree with the taxpayer's position in particular on several technical items relating to the nature of the payments, the beneficial owner of the intangible, the basis of calculating royalties, the amount that qualifies as royalties (if any), the tax liability of the entity in Hong Kong, China and the possibility of artificial arrangement. This will be discussed further under element B.4.
- The taxpayer initiated formal legal proceedings to the independent tribunal in Hong Kong, China and this tribunal is an appropriate forum to resolve the dispute rather than MAP. This was discussed above in paragraphs 21-22.

25. The taxpayer also noted that this letter was addressed directly to them, but not to the competent authority to which they submitted their requests. With respect to the issue addressed under the first bullet point in paragraph 24, the relevant peer mentioned that Hong Kong, China's competent authority stated that the question of residence of taxpayer should be determined before initiating the MAP case and that this preliminary issue should be resolved before MAP starts. In addition, as it will also be discussed under element C.2, this peer reported the taxpayer requested arbitration as the competent authorities could not resolve the case within two years after the presentation of the case and the peer reported having sent a draft mutual agreement to Hong Kong's competent authority for the purpose of the arbitration procedure. However, this peer noted that the letter has not been answered. This peer finally reported that it was informed at the end of 2017 by the taxpayer that Hong Kong, China's competent authority had decided to deny access to MAP and arbitration.

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

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

28. Finally, Hong Kong, China clarified that the letter referred to in paragraph 24 was issued to the taxpayer's representative and that the competent authority of Hong Kong, China has communicated on this MAP request with the competent authority of the relevant peer through other correspondence.

Anticipated modifications

Multilateral Instrument

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

29. The provisional list of notifications and reservations under the Multilateral Instrument has been submitted by the People's Republic of China in respect of tax treaties entered into by Hong Kong, China. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and allowing the submission of MAP requests to the competent authority of either contracting jurisdiction – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

30. Hong Kong, China opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting jurisdiction. In other words, where under Hong Kong, China's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting jurisdiction of which it is a resident, Hong Kong, China opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting jurisdiction. In this respect, out of the 37 treaties that do not contain the equivalent of Article 25(1), first sentence as amended by the Action 14 final report, Hong Kong, China listed 35 of them as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

31. In total, 32 of 35 relevant treaty partners are a signatory to the Multilateral Instrument, and 30 have listed their treaty with Hong Kong, China as a covered tax agreement under that instrument and ten reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allowing taxpayers to submit a MAP request to the competent authority of either

contracting jurisdiction. The remaining 20 treaty partners listed their treaty with Hong Kong, China as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Therefore, at this stage, 20 of the 37 tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.

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

32. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

33. In regard to the tax treaty identified in paragraph 19 above that contains a filing period for MAP requests of less than three years, Hong Kong, China listed this treaty as a covered tax agreement under the Multilateral Instrument and it made, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner, being a signatory to the Multilateral Instrument, listed its treaty with Hong Kong, China as a covered tax agreement under that instrument, and also made such notification. Therefore, at this stage, the tax treaty identified above will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

34. As the one treaty that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention will be modified by the Multilateral Instrument, no bilateral modifications are necessary. In addition, Hong Kong, China reported it will seek to include the equivalent of Article 25(1) as amended by the Action 14 final report in all of its future tax treaties.

Peer input

35. One peer reported that its treaty with Hong Kong, China meets the requirement under this element B.1, which conforms with the above analysis. Another peer reported that its treaty with Hong Kong, China will be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.

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

Conclusion

	Areas for improvement	Recommendations
[B.1]	One out of 39 tax treaties does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty is expected to be modified by the Multilateral Instrument to include such equivalent upon entry into force for this treaty.	Hong Kong, China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in this treaty.
		In addition, Hong Kong, China 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.
	The competent authority did not accept to initiate a MAP case received by its treaty partner from a taxpayer before it analyses and concludes the issue of residence of taxpayer.	Hong Kong, China should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP.

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

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

37. 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

38. As discussed under element B.1, out of Hong Kong, China's 39 treaties, two currently contain 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. As was also discussed under element B.1, 20 of the remaining 37 treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

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

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

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

Practical application

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

Peer input

43. All peers that provided input indicated not being aware of any cases for which Hong Kong, China's competent authority denied access to MAP. They also reported not having been consulted/notified of a case where Hong Kong, China's competent authority considered the objection raised in a MAP request as not justified, which can be clarified by the fact that no such instances have occurred in Hong Kong, China since 1 January 2016.

Anticipated modifications

44. Hong Kong, China indicated that it does not anticipate any modifications in relation to element B.2.

45. As previously discussed under element B.1, the provisional list of notifications and reservations under the Multilateral Instrument has been submitted in respect of tax treaties entered into by Hong Kong, China with the intention to modify its covered tax agreements, inter alia, to allow taxpayers to submit a MAP request to the competent authority of either contracting jurisdiction. Where tax treaties will not be amended via the Multilateral Instrument, Hong Kong, China declared it will continue to apply its bilateral notification or consultation process when its competent authority considers the objection raised in a MAP request not to be justified.

Conclusion

	Areas for improvement	Recommendations
[B.2]	There is a documented process in place to notify the other competent authority in cases where the objection raised in the MAP request was considered as being not justified, However, it was not possible to assess whether the notification process is applied in practice because during the Review Period no such cases have occurred.	

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

Jurisdictions should provide access to MAP in transfer pricing cases.

46. 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

47. Out of Hong Kong, China's 39 tax treaties, 37 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their jurisdiction to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. The remaining two treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but deviate from this provision since these treaties require a mutual agreement procedure for granting corresponding adjustments.

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

49. Sections 50AAN and 50AAO of the IRO refer to the granting of corresponding adjustments in transfer pricing cases.[1] Hong Kong, China's MAP guidance further clarifies that MAP is available for transfer pricing cases and paragraphs 52 and 53 of the Departmental Interpretation Notes 45 on "Relief from Double Taxation due to Transfer Pricing or Profit Reallocation Adjustments" ("**DIPN 45**") state that the MAP Article in Hong Kong, China's tax treaties enables a taxpayer to initiate the procedure where it is considered that the actions of the competent authority of one or both of the jurisdictions concerned result or will result in taxation not in accordance with the provisions of the tax treaty, including transfer pricing and profit reallocation adjustments.[2]

Application of legal and administrative framework in practice

50. Hong Kong, China reported that it has received MAP requests relating to transfer pricing cases since 1 January 2016, and that it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

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

Anticipated modifications

52. Hong Kong, China 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 this provision in all of its future tax treaties. In that regard, the provisional list of notifications and reservations under the Multilateral Instrument has been submitted in respect of tax treaties entered into by Hong Kong, China. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention).

53. Hong Kong, China has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard to the two tax treaties identified in paragraph 47 above that are considered not to contain this equivalent, both treaties are listed as a covered tax agreement under the Multilateral Instrument but for both of them a notification pursuant to Article 17(3) is made. Therefore, at this stage, these two tax treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	As Hong Kong, China has thus far granted access to 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.

54. 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

55. None of Hong Kong, China's 39 tax treaties allows competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of Hong Kong, China do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. Paragraph 10 of Hong Kong, China's MAP guidance provides that access to MAP is granted where the issue for discussion is the application of the anti-abuse provisions in a tax treaty or whether the application of the domestic anti-abuse provisions may conflict with the provisions of a tax treaty.

Practical application

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

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

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

calculating royalties, the amount that qualifies as royalties (if any), the tax liability of the entity in Hong Kong, China and the possibility of artificial arrangement.

59. Hong Kong, China reiterated that its competent authority will not deny access to MAP to cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, as specified in its MAP guidance. In the case referred to by the peer, Hong Kong, China reported that it has concerns about the taxpayer's residence, which is further discussed under element B.1.

Anticipated modifications

60. Hong Kong, China indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	Hong Kong, China 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 request of this kind from taxpayers during the Review Period. Hong Kong, China 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.

61. 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

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

Kong, China reported that to finalise an audit settlement, the taxpayer is required to sign a written agreement which sets out the exact terms of the settlement.

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

Administrative or statutory dispute settlement/resolution process

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

Practical application

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

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

Anticipated modifications

67. Hong Kong, China indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	Hong Kong, China reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Hong Kong, China is therefore recommended to follow its policy and grant access to MAP when such cases surface.	

[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.

68. 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

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

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

Practical application

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

72. All peers that provided input indicated not being aware of a limitation of access to MAP by Hong Kong, China since 1 January 2016 in situations where taxpayers complied with information and documentation requirements.

Anticipated modifications

73. Hong Kong, China indicated that it does not anticipate any modification in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	As Hong Kong, China has thus far not limited access to MAP in eligible cases when taxpayers have complied with Hong Kong, China'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.

74. 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 Hong Kong, China's tax treaties

75. Out of Hong Kong, China's 39 tax treaties, 37 contain 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. The remaining two treaties do not contain such a provision at all.

Anticipated modifications

Multilateral Instrument

76. The provisional list of notifications and reservations under the Multilateral Instrument has been submitted in respect of tax treaties entered into by Hong Kong, China. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

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

Bilateral modifications

78. As the two treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention will be modified by the Multilateral Instrument, no bilateral modifications are necessary. In addition, Hong Kong, China 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

79. One peer reported that its treaty with Hong Kong, China meets the requirement under this element, which is in line with the above analysis.

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

Conclusion

	Areas for improvement	Recommendations
[B.7]	Two out of 39 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. These two treaties are expected to be modified by the Multilateral Instrument.	Hong Kong, China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.
		In addition, Hong Kong, China 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.

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

Hong Kong, China's MAP guidance

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

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

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

https://www.ird.gov.hk/eng/pdf/e_dipn45.pdf

84. Hong Kong, China's MAP guidance contains information on:

a. contact information of the competent authority or the office in charge of MAP cases

b. the manner and form in which the taxpayer should submit its MAP request

c. the specific information and documentation that should be included in a MAP request (see also below)

d. how the MAP functions in terms of timing and the role of the competent authorities

e. relationship with domestic available remedies

f. access to MAP in transfer pricing cases, in anti-abuse cases, in multilateral disputes, for bona fide foreign-initiated self-adjustments, and in cases of multi-year resolution of recurring issues through MAP

g. implementation of MAP agreements (including the steps of the process and the timing of such steps for the implementation of MAP agreements, and any actions to be taken by taxpayers)

h. rights and role of taxpayers in the process

i. suspension of tax collection

j. the consideration of interest and penalties in the MAP.

85. The above-described MAP guidance includes detailed information on the availability and the use of MAP and how the competent authority of Hong Kong, China conducts the procedure in practice. This document includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.[3]

Taxpayer input

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

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

Information and documentation to be included in a MAP request

88. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.[4] This agreed guidance is shown below. Hong Kong, China's MAP Guidance, DIPN 45 and the MAP application form (IR1454) enumerate which items must be included in a request for MAP assistance, and these are checked in the following list:

☑ identity of the taxpayer(s) covered in the MAP request

☑ the basis for the request

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

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

Anticipated modifications

90. Hong Kong, China indicated that it does not anticipate any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

[B.9] Make MAP guidance available and easily accessible and publish MAP profile

Jurisdictions should take appropriate measures to make rules, guidelines and procedures on access to and use of the MAP available and easily accessible to the public and should publish their jurisdiction MAP profiles on a shared public platform pursuant to the agreed template.

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

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

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

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

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

MAP profile

94. The MAP profile of Hong Kong, China is published on the website of the OECD. This MAP profile is complete and often with detailed information. This profile includes external links that provide extra information and guidance where appropriate.

Anticipated modifications

95. Hong Kong, China indicated that it does not anticipate any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	As it has recently made its MAP guidance available and easily accessible and as it has thus far published its MAP profile, Hong Kong, China should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and 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.

96. 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

97. As previously discussed under element B.5, under Hong Kong, China's domestic law, it is possible that taxpayers and the tax administration enter into audit settlements. The relationship between access to MAP and audit settlements is not described in paragraph 8 of Hong Kong, China's MAP Guidance.[7] This paragraph clarifies that Hong Kong, China will not preclude access to MAP in cases where the issues in dispute have already been resolved through an audit settlement between the taxpayer and the IRD. It also specifies that it would be difficult for the competent authorities of Hong Kong, China and the other competent authority to discuss and come to an agreement on a position that deviates from the audit settlement which has already been accepted by the taxpayer or its associated enterprise.

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

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

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

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

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

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

Anticipated modifications

102. Hong Kong, China indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. The relevant provisions were added to the IRO by the enactment of the Amendment Ordinance in July 2018.
2. DIPN 45 is available at: https://www.ird.gov.hk/eng/pdf/e_dipn45.pdf.
3. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
4. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
5. DIPN 45 is available at: https://www.ird.gov.hk/eng/pdf/e_dipn45.pdf.
6. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
7. Available at: https://www.ird.gov.hk/eng/pdf/2019/map_guidance.pdf.

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

OECD (2015b), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264239081-en.

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

Part C

Resolution of MAP cases

[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a provision which requires that the competent authority who receives a MAP request from the taxpayer, shall endeavour, if the objection from the taxpayer appears to be justified and the competent authority is not itself able to arrive at a satisfactory solution, to resolve the MAP case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the tax treaty.

103. 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, 2017a), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Hong Kong, China's tax treaties

104. All of Hong Kong, China's 39 tax treaties contain 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

105. Hong Kong, China 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

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

Conclusion

	Areas for improvement	Recommendations
[C.1]	-	Hong Kong, China 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).

107. As double taxation creates uncertainties and leads to costs for both taxpayers and jurisdictions, and as the resolution of MAP cases may also avoid (potential) similar issues for future years concerning the same taxpayers, it is important that MAP cases are resolved swiftly. A period of 24 months is considered as an appropriate time period to resolve MAP cases on average.

Reporting of MAP statistics

108. Statistics regarding all tax treaty related disputes concerning Hong Kong, China are published on the website of the OECD as of 2016.[1]

109. The FTA MAP Forum has agreed on rules for reporting of MAP statistics ("**MAP Statistics Reporting Framework**") for MAP requests submitted on or after 1 January 2016 ("**post-2015 cases**"). Also, for MAP requests submitted prior to that date ("**pre-2016 cases**"), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Hong Kong, China provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Hong Kong, China and of which its competent authority was aware.[2] The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and Annex C respectively[3] and should be considered jointly to understand the MAP caseload of Hong Kong, China. With respect to post-2015 cases, Hong Kong, China reported having reached out to all of its MAP partners with a view to having their MAP statistics matched. In that regard, Hong Kong, China reported that it could match its post-2015 MAP statistics with all of its treaty partners. Based on the information provided by Hong Kong, China's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter [conclusion made for 2016 and 2017 MAP statistics but pending for 2018].

Monitoring of MAP statistics

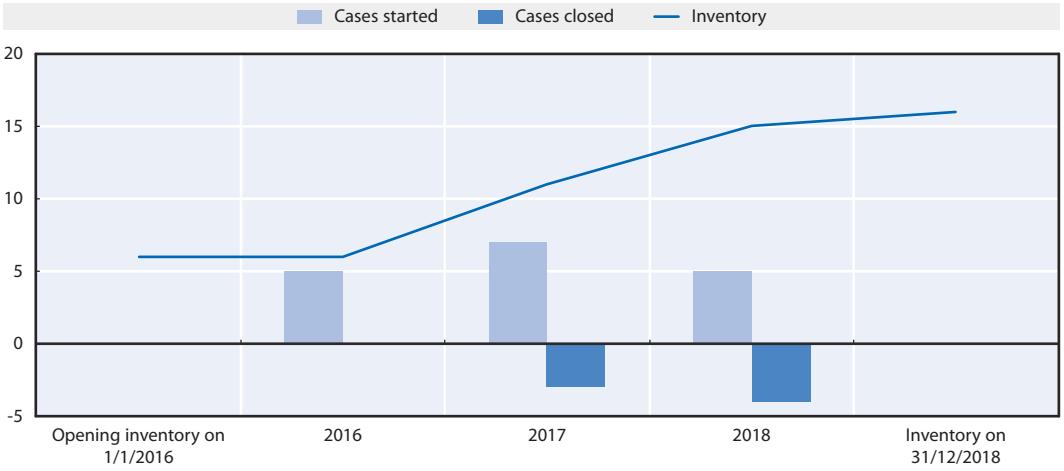
110. Hong Kong, China reported that it maintains a dedicated MAP register to record the details of all MAP cases processed, including the date of receipt, the nature of the issue, the actions taken, the date on which the MAP solution is arrived at and the date on which the solution is implemented. Such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

Hong Kong, China aims at resolving each MAP case within 24 months from receiving the complete request until the implementation of the MAP agreement.

Analysis of Hong Kong, China's MAP caseload

111. The following graph shows the evolution of Hong Kong, China's MAP caseload over the Statistics Reporting Period.

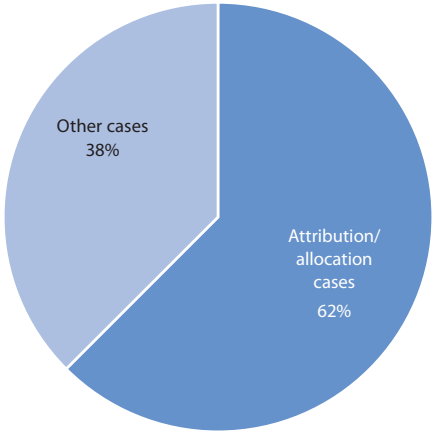
Figure C.1. **Evolution of Hong King, China's MAP caseload**



112. At the beginning of the Statistics Reporting Period Hong Kong, China had six pending MAP cases, of which one was an attribution/allocation case and five other cases.[4] At the end of the Statistics Reporting Period, Hong Kong, China had 16 MAP cases in its inventory, of which ten are attribution/allocation cases and six are other MAP cases. Hong Kong, China's MAP caseload increased by 167% during the Statistics Reporting Period, and most of the increase concerns attribution/allocation cases.

113. The breakdown of the end inventory can be shown as follows:

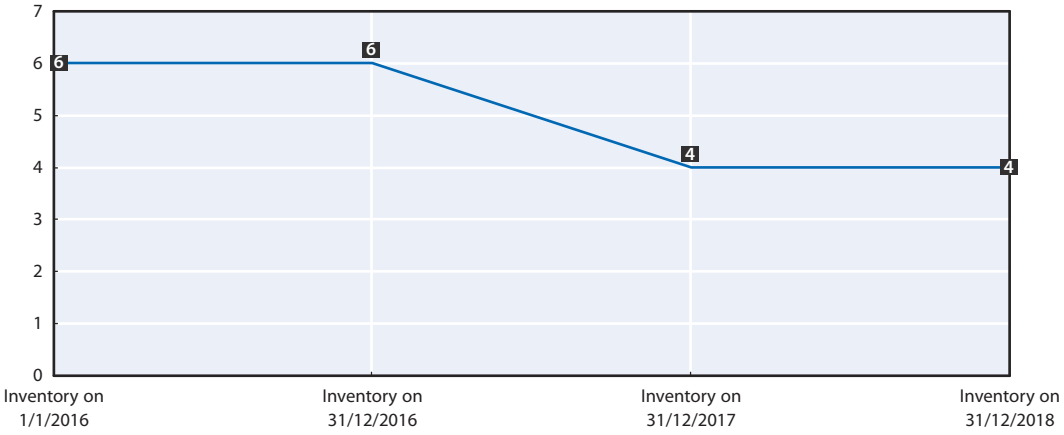
Figure C.2. **End inventory on 31 December 2017 (16 cases)**



Pre-2016 cases

114. The following graph shows the evolution of Hong Kong, China's pre-2016 MAP cases over the Statistics Reporting Period.

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



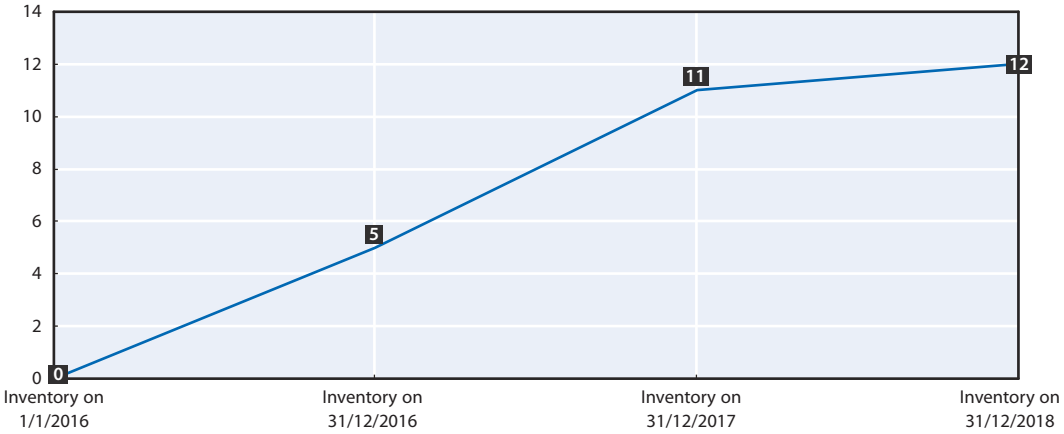
115. At the beginning of the Statistics Reporting Period, Hong Kong, China's MAP inventory of pre-2016 MAP cases consisted of six cases, one out of which was an attribution/allocation case and five were other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases decreased to four cases, consisting of one attribution/allocation case and three other case. The decrease in the number of pre-2016 MAP cases is shown in the table below.

Pre-2016 cases only	Evolution of total MAP caseload in:			Cumulative evolution of total MAP caseload over the three years (2016-18)
	2016	2017	2018	
Attribution/allocation cases	(no cases closed)	(no cases closed)	(no cases closed)	(no evolution)
Other cases	(no cases closed)	-40%	(no cases closed)	-40%

Post-2015 cases

116. The following graph shows the evolution of Hong Kong, China's post-2015 MAP cases over the Statistics Reporting Period.

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



117. In total, 17 MAP cases started during the Statistics Reporting Period, 13 of which concerned attribution/allocation cases and four other cases. At the end of this period the total number of post-2015 cases in the inventory was 12 cases, consisting of nine attribution/allocation cases and three other cases. Conclusively, Hong Kong, China closed five post-2015 cases during the Statistics Reporting Period, four of them being attribution/allocation cases and one of them being other case. The total number of closed cases represents 29% of the total number of post-2015 cases that started during the Statistics Reporting Period.

118. The number of post-2015 cases closed as compared to the number of post-2015 cases started during the Statistics Reporting Period is shown in the table below.

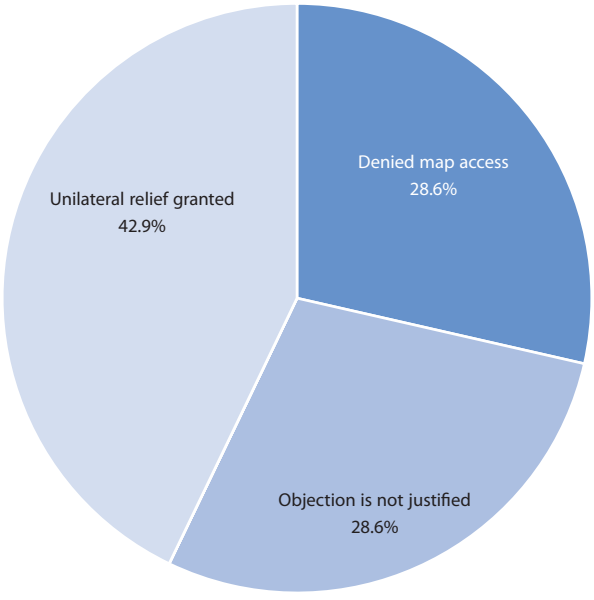
	% of cases closed compared to cases started in:			Cumulative % of cases closed compared to cases started over the three years (2016-18)
Post-2015 cases only	2016	2017	2018	
Attribution/allocation cases	(no cases closed)	14%	100%	31%
Other cases	(no cases closed)	(no cases started)	50%	25%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

119. During the Statistics Reporting Period Hong Kong, China in total closed seven MAP cases for which the following outcomes were reported:

Figure C.5. **Cases closed in 2016, 2017 or 2018 (seven cases)**



120. This chart shows that during the Statistics Reporting Period, three cases were closed with the outcome of "unilateral relief granted".

Reported outcomes for attribution/allocation cases

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

- denied MAP access [50%]
- unilateral relief granted [50%].

Reported outcomes for other cases

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

- objection is not justified [67%], and
- unilateral relief granted [33%]

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

123. The average time needed to close MAP cases during the Statistics Reporting Period was 14.33 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	4	14.05
Other cases	3	14.72
All cases	7	14.33

Pre-2016 cases

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

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

Post-2015 cases

125. For post-2015 cases Hong Kong, China reported that on average it needed 14.05 months to close four attribution/allocation cases and 3.52 months to close one other case. This resulted in an average time needed of 11.94 months to close five post-2015 cases.

Peer input

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

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

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

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

Anticipated modifications

130. Hong Kong, China indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Hong Kong, China submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016, 2017 and 2018. Based on the information provided by Hong Kong, China's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. [At this stage this concerns 2016 and 2017 MAP statistics and needs to be confirmed for 2018]. Hong Kong, China's MAP statistics show that during the Statistics Reporting Period it closed 29.4% (five out of 17 cases) of its post-2015 cases in 11.94 months on average. In that regard, Hong Kong, China is recommended to seek to resolve the remaining 70.6% of the post-2015 cases pending on 31 December 2018 (12 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.

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

Description of Hong Kong, China's competent authority

132. Under Hong Kong, China's tax treaties, the competent authority function is assigned to the Commissioner of Inland Revenue. Hong Kong, China reported that the competent authority function is further delegated to its Tax Treaty Section.

133. Hong Kong, China reported that the Tax Treaty Section is headed by two chief assessors and supervised by the Deputy Commissioner of Inland Revenue (Technical). Hong Kong, China further reported that the Section consists of nine teams, each of which consists of one senior assessor, one assessor and one assistant assessor. Overall, Hong Kong, China reported that 29 professional officers are working with its competent authority, including two chief assessors.

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

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

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

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

Monitoring mechanism

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

Practical application

MAP statistics

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

Figure C.6. **Average time (in months) to close cases in 2016-18**



*Note that post-2015 cases only concern cases started and closed during 2016-18.

140. Based on these figures, it follows that on average it took Hong Kong, China 14.33 months to close MAP cases during the Statistics Reporting Period. However, during this period Hong Kong, China's MAP inventory has increased significantly, as shown in the table below.

	Evolution of total MAP caseload in:			Cumulative evolution of total MAP caseload over the three years (2016-18)
	2016	2017	2018	
Attribution/allocation cases	300%	150%	0%	900%
Other cases	40%	-29%	20%	20%
Total	**83%**	**36%**	**7%**	**167%**

Peer input

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

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

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

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

Anticipated modifications

145. Hong Kong, China indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	As Hong Kong, China's MAP inventory has increased significantly since 1 January 2016, especially for attribution/allocation cases, this might indicate that Hong Kong, China's competent authority is not adequately resourced to resolve such cases.	Hong Kong, China should closely monitor whether the recent increase in resources available for the competent authority function will ensure that MAP cases are resolved in a timely, efficient and effective manner, and especially attribution/allocation cases.

[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.

146. 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

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

148. Hong Kong, China further reported that its competent authority works independently from the audit personnel who made the adjustment at issue who belong to a different unit within the IRD and that its competent authority has the authority to resolve MAP cases. Hong Kong, China further stated that there is no system in place requiring them to ask tax administration officers directly involved in the adjustment at issue for approval of any MAP agreements. As mentioned under element C.3, the staff of Hong Kong, China's competent authority may have prior experience in tax assessment and/or audits. Hong Kong, China added that in order to maintain the independence between the staff in charge of MAP processes and the tax administration personnel who made the adjustments at issue, MAP cases are not assigned to the officer who was previously involved in the audit of the case if such a situation occurs.

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

Practical application

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

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

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

Anticipated modifications

153. Hong Kong, China indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	As it has done thus far, Hong Kong, China 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 adjustment at issue and absent any policy considerations that Hong Kong, China 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.

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

Performance indicators used by Hong Kong, China

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

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

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

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

Practical application

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

Anticipated modifications

159. Hong Kong, China indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	As it has done thus far, Hong Kong, China 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.

160. 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

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

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

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

Practical application

164. Up to date, Hong Kong, China has incorporated an arbitration clause in ten of 39 treaties as a final stage to the MAP. These clauses can be specified as follows:

- Equivalent of Article 25(5) of the OECD Model Tax Convention: six treaties
- Voluntary and binding arbitration: four treaties

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

Anticipated modifications

166. Hong Kong, China indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include year 2017.
2. Hong Kong, China's 2016 and 2017 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for those years. See further explanations in Annex B and Annex C.
3. For post-2015 cases, if the number of MAP cases in Hong Kong, China's inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Hong Kong, China reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
4. For pre-2016 and post-2015 cases, Hong Kong, China follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that "an attribution/allocation MAP case is a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case".
5. An overview of Hong Kong, China's position on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-hong-kong.pdf.

References

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

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

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

167. 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

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

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

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

Practical application

171. Hong Kong, China reported that it had not reached any MAP agreements that required implementation in Hong Kong, China since 1 January 2016.

172. All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2016 that was not implemented by Hong Kong, China.

Anticipated modifications

173. Hong Kong, China 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, China it was not yet possible to assess whether Hong Kong, China has 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.

174. Delays in implementing 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

175. Hong Kong, China reported that after a MAP agreement is accepted by the taxpayer, the Tax Treaty Section will inform the assessing section to amend the taxpayer's assessment within one week. Hong Kong, China further reported that the case will then be followed up after 14 days, and the Tax Treaty Section will then check the database to ensure the relevant amendment has been made. Paragraph 38 of Hong Kong, China's MAP guidance provides a theoretical timeframe for implementing MAP agreements, which is either:

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

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

Practical application

177. Hong Kong, China reported that it had not reached any MAP agreements since 1 January 2016 that needed to be implemented by Hong Kong, China.

Anticipated modifications

178. Hong Kong, China indicated that it does not anticipate any modification in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Hong Kong, China has 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.

179. 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 Hong Kong, China's tax treaties

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

181. Out of Hong Kong, China's 39 tax treaties, 37 contain 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. The remaining two treaties do not contain such equivalent or the alternative provisions.

Anticipated modifications

Multilateral Instrument

182. The provisional list of notifications and reservations under the Multilateral Instrument has been submitted in respect of tax treaties entered into by Hong Kong, China. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting jurisdictions, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

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

Bilateral modifications

184. Hong Kong, China further reported that for the tax treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2) and which will not be modified by the Multilateral Instrument, it intends to update it via bilateral negotiations with a view to be compliant with element D.3.

185. In addition, Hong Kong, China 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.

186. One peer reported that its treaty with Hong Kong, China meets the requirement under this element, which is in line with the above analysis.

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

Conclusion

	Areas for improvement	Recommendations
[D.3]	Two out of 39 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, nor both alternative provisions provided for in Article 9(1) and Article 7(2). One of these two treaties is expected to be modified by the Multilateral Instrument.	Hong Kong, China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned. For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Hong Kong, China should follow its stated intention to request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.
		In addition, Hong Kong, China 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.

Notes

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

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	Hong Kong, China should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	Hong Kong, China is able to provide for roll-back of bilateral APAs. Even though Hong Kong, China received requests for roll-back of bilateral APAs during the Review Period, these requests are still under consideration. It was therefore not possible at this stage to evaluate the effective implementation of this element in practice.	
Part B: Availability and access to MAP		
[B.1]	One out of 39 tax treaties does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty is expected to be modified by the Multilateral Instrument to include such equivalent upon entry into force for this treaty.	Hong Kong, China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in this treaty. In addition, Hong Kong, China 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.
	The competent authority did not accept to initiate a MAP case received by its treaty partner from a taxpayer before it analyses and concludes the issue of residence of taxpayer.	Hong Kong, China should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP.
[B.2]	There is a documented process in place to notify the other competent authority in cases where the objection raised in the MAP request was considered as being not justified, However, it was not possible to assess whether the notification process is applied in practice because during the Review Period no such cases have occurred.	
[B.3]	-	As Hong Kong, China has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	Hong Kong, China 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 request of this kind from taxpayers during the Review Period. Hong Kong, China is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	Hong Kong, China reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Hong Kong, China is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.6]	-	As Hong Kong, China has thus far not limited access to MAP in eligible cases when taxpayers have complied with Hong Kong, China's information and documentation requirements for MAP requests, it should continue this practice.

	Areas for improvement	Recommendations
[B.7]	Two out of 39 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. These two treaties are expected to be modified by the Multilateral Instrument.	Hong Kong, China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. In addition, Hong Kong, China should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	-	-
[B.9]	-	As it has recently made its MAP guidance available and easily accessible and as it has thus far published its MAP profile, Hong Kong, China should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	-	Hong Kong, China should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	Hong Kong, China submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016, 2017 and 2018. Based on the information provided by Hong Kong, China's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. [At this stage this concerns 2016 and 2017 MAP statistics and needs to be confirmed for 2018]. Hong Kong, China's MAP statistics show that during the Statistics Reporting Period it closed 29.4% (five out of 17 cases) of its post-2015 cases in 11.94 months on average. In that regard, Hong Kong, China is recommended to seek to resolve the remaining 70.6% of the post-2015 cases pending on 31 December 2018 (12 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	As Hong Kong, China's MAP inventory has increased significantly since 1 January 2016, especially for attribution/allocation cases, this might indicate that Hong Kong, China's competent authority is not adequately resourced to resolve such cases.	Hong Kong, China should closely monitor whether the recent increase in resources available for the competent authority function will ensure that MAP cases are resolved in a timely, efficient and effective manner, and especially attribution/allocation cases.
[C.4]	-	As it has done thus far, Hong Kong, China 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 adjustment at issue and absent any policy considerations that Hong Kong, China would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Hong Kong, China should continue to use appropriate performance indicators.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As there was no MAP agreement reached during the Review Period, China it was not yet possible to assess whether Hong Kong, China has implemented all MAP agreements thus far.	
[D.2]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Hong Kong, China has implemented all MAP agreements on a timely basis thus far.	

	Areas for improvement	Recommendations
[D.3]	Two out of 39 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, nor both alternative provisions provided for in Article 9(1) and Article 7(2). One of these two treaties is expected to be modified by the Multilateral Instrument.	Hong Kong, China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned. For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Hong Kong, China should follow its stated intention to request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.
		In addition, Hong Kong, China 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 Hong Kong, China

			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)			
			If yes, submission to either competent authority? (new Art. 25(1), first sentence)			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?
Treaty partner	DTC in force?		If yes, either CAs O = yes, only one CA N = No	If no, please state 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
	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							
Austria	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Belarus	Y	N/A	E	Y	N/A	Y	i	Y	Y	Y	Y	N
Belgium	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	N*	N
Brunei	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N

			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?
Canada	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y
Czech Republic	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Finland	Y	N/A	E	Y	N/A	Y	i	Y	Y	Y	Y	N
France	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Guernsey	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y
Hungary	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
India	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Indonesia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Ireland	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Italy	Y	N/A	O	ii*	2 years	i	i	Y	N*	Y	Y	Y
Japan	Y	N/A	O*	Y	N/A	i	i	Y	Y	Y	Y	Y
Jersey	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y
Korea	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Kuwait	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Liechtenstein	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y
Luxembourg	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y
Malaysia	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N

			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**
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Malta	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Mexico	Y	N/A	O*	Y	N/A	Y	i	Y	N	Y	Y	N
Netherlands	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y
New Zealand	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	N*	N
Pakistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Qatar	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Romania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Russia	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Saudi Arabia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
South Africa	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Spain	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Switzerland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y
Thailand	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
United Arab Emirates	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
United Kingdom	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Viet Nam	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N

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 pre-2016 cases

2016 MAP Statistics													
		Number of pre-2016 cases closed during the reporting period by outcome											
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	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	No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
Column 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	1	0	0	0	0	0	0	0	0	0	0	1	N/A
Others	5	0	0	0	0	0	0	0	0	0	0	5	N/A
Total	6	0	0	0	0	0	0	0	0	0	0	6	N/A

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

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

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

2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		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	1	0	0	0	0	0	0	0	0	0	0	1	N/A
Others	3	0	0	0	0	0	0	0	0	0	0	3	N/A
Total	4	0	0	0	0	0	0	0	0	0	0	4	N/A

Annex C

MAP Statistics Reporting for post-2015 cases

2016 MAP Statistics														
			Number of post-2015 cases closed during the reporting period by outcome											
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	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	No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	3	0	0	0	0	0	0	0	0	0	0	3	N/A
Others	0	2	0	0	0	0	0	0	0	0	0	0	2	N/A
Total	0	5	0	0	0	0	0	0	0	0	0	0	5	N/A

2017 MAP Statistics														
			Number of post-2015 cases closed during the reporting period by outcome											
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	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	No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	3	7	1	0	0	0	0	0	0	0	0	0	9	6.41
Others	2	0	0	0	0	0	0	0	0	0	0	0	2	N/A
Total	5	7	1	0	0	0	0	0	0	0	0	0	11	6.41

2018 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	**Column 12**	**Column 13**	**Column 14**	**Column 15**
Attribution/ Allocation	9	3	1	0	0	2	0	0	0	0	0	0	9	16.59
Others	2	2	0	0	0	1	0	0	0	0	0	0	3	3.52
Total	11	5	1	0	0	3	0	0	0	0	0	0	12	13.32

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
DIPN 45	Departmental Interpretation and Practice Notes No. 45 on "Relief from Double Taxation Due to Transfer Pricing and Profit Reallocation Adjustment"
DIPN 48	Departmental Interpretation and Practice Notes No. 48 on "Advance Pricing Arrangement"
MAP Guidance	Guidance on Mutual Agreement Procedure published by the Inland Revenue Department in February 2019
IRD	Inland Revenue Department
IRO	Inland Revenue Ordinance
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2016 and ended on 31 December 2018
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2018
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

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

Consult this publication on line at ***https://doi.org/10.1787/46034be3-en***.

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