OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Israel (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 80 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 Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already

has more than 115 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 BEPS on 14 August 2018 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

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

Executive summary

Israel[1] has a relatively large tax treaty network with over 50 tax treaties. Israel has an established MAP programme and has modest experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and almost 15 cases pending on 31 December 2017. Of these cases, approximately 40% concern allocation/attribution cases. Overall Israel meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Israel is working to address most of them.

All but one of Israel's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of *Model Tax Convention on Income and on Capital 2014* (*OECD Model Tax Convention*, OECD, 2015). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Almost a quarter of its 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), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Approximately 15% of its tax treaties do not contain the equivalent of Article 25(1) to the OECD Model Tax Convention (OECD, 2015), whereby the majority of these treaties do not contain the equivalent of Article 25(1), first sentence, 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, 2015b) since they do not allow taxpayers to submit a MAP request to the state of which it is a national, where its case comes under the non-discrimination provision.
- Over 10% of its tax treaties do not contain the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015) 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, Israel needs to amend and update a certain number of its tax treaties. In this respect, Israel signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument, Israel reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. In this regard, Israel has initiated negotiations with some jurisdictions and plans to engage first with other jurisdictions where the existing treaty needs the most significant revisions.

With respect to the prevention of disputes, Israel meets the relevant element of the Action 14 Minimum Standard, as Israel confirmed it is able to provide roll-backs of bilateral APAs in appropriate cases, although it did not receive any request in relation hereto as from 1 January 2016.

Israel 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 request concerning the application of anti-abuse provisions or where taxpayers and the tax authorities have already entered into an audit settlement. Israel has in place a notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, which has been used in practice. However, this process is not yet documented, while Israel intends to do this in the future. Israel has issued clear guidance on the availability and the use of MAP. This guidance specifies the manner and form in which the taxpayer should submit its MAP request, but neither includes the contact details of Israel's competent authority nor addresses the relationship between MAP and audit settlements.

Concerning the average time needed to close MAP cases, the MAP statistics for Israel for the period 2016-17 are as follows:

2016-17	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2017	Average time to close cases (in months)*
Attribution/allocation cases	8	6	8	6	38.48
Other cases	9	13	14	8	30.80
Total	17	19	22	14	33.60

* 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, Israel used as the start date the date Israel received notice of the case, either from the partner country or the request from an Israeli resident to initiate MAP, and as the end date the case was either resolved (agreement reached with other CA), or otherwise closed.

Israel closed more cases in 2016 or 2017 than the number of new cases started in those years. Its MAP inventory as per 31 December 2017 decreased as compared to its inventory as per 1 January 2016. However, Israel's competent authority did not close MAP cases 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 33.60 months. In this respect, Israel reported that the median time to close MAP cases was 22.19 months. While this median is below the pursued average of 24 months, the time needed to resolve attribution/allocation cases is significantly higher than the time needed to resolve other cases. This indicates that additional resources may be necessary to accelerate the resolution of these cases, which is under consideration by Israel.

Furthermore, Israel meets all other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Israel's competent authority operates fully independently from the audit function of the tax authorities and adopts a co-operative approach to resolve MAP cases. Its organisation is adequate and Israel does not use any inappropriate performance indicators to assess staff in charge of MAP function.

Lastly, Israel also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Israel monitors the implementation of MAP agreements. It has implemented all MAP agreements thus far and no issues have surfaced regarding the

implementation throughout the peer review process. However, Israel has a domestic statute of limitation for implementation of MAP agreements, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Note

1. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Introduction

Available mechanisms in Israel to resolve tax treaty-related disputes

Israel[1] has entered into 56 tax treaties on income (and/or capital), 54 of which are in force.[2] These 56 treaties apply to the same number of jurisdictions. All but one of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty upon request by taxpayers. In addition, two of the 56 treaties provide for a voluntary arbitration procedure as a final stage to the mutual agreement procedure.

In Israel, the competent authority function to conduct MAP is delegated to the International Tax Division of Israel's Tax Authority. The competent authority of Israel currently employs two employees, who are also engaged in other tasks and are provided with assistance from other personnel including international specialists.

Israel issued guidance on the governance and administration of the mutual agreement procedure ("MAP") in its MAP Guidelines, which is available at (in Hebrew):

https://taxes.gov.il/incometax/documents/horaotbitsua/ma23-2001.pdf

Recent developments in Israel

Israel is currently conducting tax treaty negotiations with eight jurisdictions. Israel recently signed new treaties with Armenia, Austria and Macedonia, which have not yet entered into force.

Furthermore, Israel signed on 7 June 2017 the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**"), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Where treaties will not be modified by the Multilateral Instrument, Israel reported that it strives updating them through future bilateral negotiations, which were already initiated for some of them. In this respect, Israel reported that it plans to engage first with jurisdictions where the existing treaty needs the most significant revisions. With the signing of the Multilateral Instrument, Israel also submitted its list of notifications and reservations to that instrument.[3] In relation to the Action 14 Minimum Standard, Israel reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.[4] This reservation is in line with the requirements of the Action 14 Minimum Standard.

Basis for the peer review process

The peer review process entails an evaluation of Israel's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by the assessed jurisdiction, its peers and taxpayers. The questionnaires for the peer review process were sent to Israel and the peers on 29 December 2017.

The period for evaluating Israel's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2017 ("**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 Israel'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 Israel 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 Israel's tax treaties regarding the mutual agreement procedure.

In total eight peers provided input: Canada, the People's Republic of China, Germany, the Russian Federation, Sweden, Switzerland, Turkey and the United States. Input was also received from one taxpayer. Out of these eight peers, six had MAP cases with Israel that started on or after 1 January 2016. These six peers represent approximately 70% of post-2015 MAP cases in Israel's inventory that started in 2016 or 2017. Generally, all peers emphasised that they had very limited experience with Israel and one peer indicated that it had experienced positive and good co-operation with Israel's competent authority.

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

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

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

Overview of MAP caseload in Israel

The analysis of Israel's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017 ("**Statistics Reporting Period**"). According to the statistics provided by Israel, its MAP caseload during this period was as follows:

2016-17	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2017
Attribution/allocation cases	8	6	8	6
Other cases	9	13	14	8
Total	17	19	22	14

General outline of the peer review report

This report includes an evaluation of Israel'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 Action 14 Minimum Standard to make dispute resolution mechanisms more effective ("**Terms of Reference**").[7] Apart from analysing Israel's legal framework and its administrative practice, the report also incorporates input from peers and a taxpayer and responses to such input by Israel. Furthermore, the report depicts the changes adopted and plans shared by Israel 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 Israel 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 statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

2. The tax treaties Israel has entered into are available at: http://mof.gov.il/en/InternationalAffairs/InternationalTaxation/Pages/AvoidanceDoubleTaxationTreaties.aspx (accessed on 18 July 2018). The treaties that are signed but have not yet entered into force are with Armenia (2017), Austria (2017) and Macedonia (2015). The newly signed treaty with Austria (2017), ratified in Israel on 28 December 2017, will replace the existing treaty (1970), once entered into force. For that reason this new treaty with Austria (2017) is taken into account in the treaty analysis. Reference is made to Annex A for the overview of Israel's tax treaties.

3. Available at: www.oecd.org/tax/treaties/beps-mli-position-israel.pdf.

4. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, Israel reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified."

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

6. The MAP statistics of Israel are included in Annexes B and 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.

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OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239081-en (accessed on 18 July 2018).

Part A

Preventing disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of Israel's tax treaties

2. Out of Israel's[1] 56 tax treaties, 51 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.[2] One of the five remaining treaties does not contain any provision based on Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2015). For three treaties, a provision based on Article 25(3), first sentence, is contained, but the word "interpretation" is missing. For the remaining treaty, the term "may" is used instead of "shall." For this reason, these five treaties are considered as not containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

3. Israel reported that the absence of a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in its treaty will not obstruct its competent authority to enter into MAP agreement of general nature.

Anticipated modifications

Multilateral Instrument

4. Israel signed the Multilateral Instrument. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD

Model Tax Convention (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(c)(i) 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)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

5. In regard of the five tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), Israel listed all of them as a covered tax agreement under the Multilateral Instrument and only for three of them did it make, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). All treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Israel as a covered tax agreement and also made such a notification. Therefore, at this stage, the Multilateral Instrument will, upon entry into force, modify three of the five tax treaties identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

6. Israel further reported that when the tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element A.1. Israel has already contacted one of the two relevant treaty partners, and expects to enter into negotiation with this treaty partner in 2018. In addition, Israel reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future tax treaties.

Peer input

7. Some of the peers that provided input noted that their treaty with Israel meets the requirement under this element A.1, which is consistent with the above analysis.

8. For the five treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), one of the relevant peers observed that its treaty will be modified by the Multilateral Instrument, which is also consistent with the above analysis.

Conclusion

	Areas for improvement	Recommendations
[A.1]	Five out of 56 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Israel should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), following its entry into force, Israel should request the inclusion of the required provision in bilateral negotiations and follow up its stated intention to initiate bilateral negotiations for that effect. In addition, Israel 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.

9. 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.[3] 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.

Israel's APA programme

10. Israel is authorised to enter into bilateral APAs. The basis of concluding bilateral APAs is the MAP article of Israel's tax treaties as well as the authority to make rulings under its domestic legislation.

11. Israel has not established an APA programme in its legislation or guidance, but Israel reported that its competent authority is open to discuss APA cases within the legal framework mentioned above. Israel reported that no specific timeline applies to the submission of an APA request.

Roll-back of bilateral APAs

12. Israel reported that it is in theory possible to grant a roll-back of bilateral APAs, but it can be granted only within its domestic statute of limitation on assessment. As prescribed in Article 145 of Income Tax Ordinance (new version) 5721-1961, Israel's domestic legislation includes a general statute of limitation of four or five years from the end of the tax year in which the tax return was filed.

Practical application of roll-back of bilateral APAs

13. Israel reported that it has not received any bilateral APA requests up to now.

14. None of the peers that provided input have received any request for a roll-back of a bilateral APA with Israel nor experienced a roll-back relating to a bilateral APA with Israel.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[A.2]	Israel is in theory able to extend bilateral APAs to previous fiscal years. However, it was not possible at this stage to evaluate the effective implementation of this element in practice since Israel did not receive any request for roll-back of bilateral APAs during the Review Period.	

Notes

1. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

2. These 56 treaties include the treaty recently signed with Austria (2016) that is not yet in force and which will replace, once entered into force, the existing treaty of Austria (1970).

3. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

References

OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, http://dx.doi.org/10.1787/tpg-2017-en (accessed on 18 July 2018).

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239081-en (accessed on 18 July 2018).

Part B

Availability and access to MAP

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

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

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

Current situation of Israel's tax treaties

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

17. Out of Israel's[1] 56 tax treaties, 44 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b) allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. None of Israel's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as changed by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state.

18. The remaining 12 treaties can be categorised as follows:

Provision	Number of tax treaties
No provision allowing the taxpayer to submit a MAP request	1
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby (i) taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident, and (ii) MAP is only available in case of "double taxation not in accordance with the provision of the convention".	1
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby it is not provided that the taxpayer can submit a MAP request "irrespective of domestic available remedies".	1
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	8

19. The treaty in the first row does not contain any provision based on Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) at all.

20. The treaty referred to in the second row of the table only provides for MAP in cases where it concerns "double taxation not in accordance with this Convention" As Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) only requires "taxation not in accordance with the provision of the Convention", this treaty is considered not to be in line with element B.1.

21. For the treaty in the third row of the table above, the provision incorporated in the protocol of this treaty reads:

> With reference to paragraph 1 of Article 26, the expression "irrespective of the remedies provided by the domestic laws" means that the mutual agreement procedure is not alternative to the national contentious proceeding which shall be, in any case preventively initiated, when the claim is related to an assessment of the taxes not in accordance with this Convention.

22. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though the provision contained in the MAP article is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report of Action 14. This treaty is therefore considered not in line with element B.1.

23. For the treaty in the fourth row, the phrase "irrespective of domestic available remedies" is missing.

24. The eight treaties mentioned in the fifth row above are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national

where the case comes under the non-discrimination article. However, the following analysis is made:

- In five of those eight treaties, the non-discrimination provision only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident.
- In the remaining three of the eight treaties, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2015a) and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) is therefore not clarified by the absence of or a limited scope of the non-discrimination provision, following which these two treaties are not in line with this part of element B.1.

25. In total seven treaties are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

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

26. Out of Israel's 56 tax treaties, 43 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing taxpayers to submit a MAP request within a period of 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.

27. The remaining 13 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No provision allowing the taxpayer to submit a MAP request	1
No filing period for a MAP request	7
Filing period less than three years for a MAP request (two years)	5

28. In the absence of a filing period for MAP requests in the tax treaty, paragraph 3.3 of Income Tax Order of Performance 23/2001, Israel's MAP guidance, prescribes that a request for MAP shall be submitted within a reasonable time duration, following the date when the applicant found out for the first time about the action which leads or might lead to taxation not in accordance with the treaty provisions. In this respect, Israel reported that access to MAP will be denied if the MAP request is submitted after the expiration of its domestic statute of limitation of four to five years after the end of the tax year of the filing of the corresponding tax return.

Taxpayer Input

29. One taxpayer reported having experienced difficulties in accessing MAP in Israel. This taxpayer indicated having been informed late (by Israel's treaty partner) about the availability of MAP in its case. He further reported that it submitted a MAP request in Israel in 2017 and that it never received any acknowledgement of receipt. In response, Israel reported that the MAP request concerned was submitted to the competent authority of another jurisdiction and that Israel's competent authority received a notification from

the other competent authority only in 2018. Israel reported that it acknowledged receipt of such a notification and that the case is under consideration.

Anticipated modifications

Multilateral Instrument

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

30. Israel signed the Multilateral Instrument. 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 (OECD, 2015a) as amended by the final report on Action 14 and allowing the submission of MAP requests to the competent authority of either contracting state – 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 (OECD, 2015a) as it read prior to the adoption of the final report on Action 14. 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 (OECD, 2015a) as it read prior to the adoption of the final report on Action 14. 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.

31. Israel reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.[2] In this reservation, Israel declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14. It subsequently declared to implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction and application of such process will be further discussed under element B.2.

32. In view of the above, following the reservation made by Israel, those six treaties identified in paragraph 25 above that are considered not including the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14, will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

33. 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 (OECD, 2015a) – 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 (OECD, 2015a).

34. In regard of the five tax treaties identified in paragraph 27 above that contain a filing period for MAP requests of less than three years, Israel listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the five relevant treaty partners, two are not a signatory to the Multilateral Instrument. All remaining three treaties partners also made a notification under Article 16(6)(b)(i). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify three of five treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

35. With regard to the tax treaty identified in paragraph 27 above that does not contain a MAP provision, Israel listed this treaty as a covered tax agreement under the Multilateral Instrument, but did not make, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii) nor did it make such a notification on the basis of Article 16(6)(b)(ii) that this treaty contains such a provision. The relevant treaty partner also listed its treaty with Israel under the Multilateral Instrument and also did not make a notification on the basis of either Article 16(6)(b)(i) or Article 16(6)(b)(ii). In this situation, Article 16(6)(b)(i) of the Multilateral Instrument stipulates that the second sentence of Article 16(1) – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will supersede the provision of the covered tax agreement to the extent it is incompatible with that second sentence. Since the tax treaty does not contain a provision that allows taxpayers to submit a MAP request and as such provision will not be included via the Multilateral Instrument, it cannot be assessed at this point whether the treaty would be incompatible to the provision of the second sentence of Article 16(1).

Bilateral modifications

36. Israel further reported that when the tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14, and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. In this regard, Israel reported having contacted one of the relevant jurisdictions and initialled an amending protocol. Israel reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14, in all of its future tax treaties.

Peer input

37. Four peers that provided input noted that their treaty meets the requirement under element B.1, which is consistent with the above analysis.

38. For the nine treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015), one peer reported that the provision of its treaty will be modified by the Multilateral Instrument updated except for Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015), which is also consistent with the above analysis.

Conclusion

	Areas for improvement	Recommendations
[B.1]	Nine out of 56 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those nine tax treaties: • Three tax treaties do not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. • Three tax treaties do not contain the equivalent to Article 25(1), first sentence. • One tax treaty does not contain a MAP article at all • Two tax treaties provide that 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.	Israel should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: a. as amended in the final report of Action 14, or b. as it read prior to the adoption of final report of Action 14, thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Israel should request the inclusion of the required provision via bilateral negotiations. In addition, Israel should maintain its stated intention to include the required provision in all future tax treaties.
	Where tax treaties do not contain a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Israel should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from being granted access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

[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).

39. 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

40. As discussed under element B.1, none of Israel's 56 treaties currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, none of these 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.

41. Israel reported that it has a notification process in place which allows the other competent authority concerned to provide its views on the case when Israel's competent authority considers the objection raised in the MAP request not to be justified. This process, however, is not documented.

Practical application

42. Israel reported that as from 1 January 2017, in one case, its competent authority considered that the objection raised by a taxpayer in the MAP request is not justified. Israel reported that the other competent authority concerned was notified.

43. Almost all peers reported not being aware of any case that was denied access by Israel. One peer reported it received a notification from Israel in December 2017 regarding several MAP cases where Israel's competent authority considered the objection raised as not justified and whereby this peer was invited to provide its views on such cases. This peer further noted that while the circumstances of the cases and the reasons why the objection was considered not justified were described in the notification, it was not clear when the MAP request(s) was/were submitted to Israel's competent authority, which tax years were concerned and how many taxpayers had submitted such MAP request(s) well as who the concerned taxpayers were (only the representative of these taxpayers was identified). Israel responded that neither the identity of the taxpayers nor the concerned tax years were disclosed by the applicant to Israel's competent authority and for that reason Israel could not report such information to this peer. Israel also reported that the notification was made within two months of the receipt of the request.

Anticipated modifications

44. Israel indicated that it intends to document the notification process in the updates of the MAP guidance in 2019.

45. As previously discussed under element B.1, Israel has recently signed the Multilateral Instrument. Specifically regarding element B.2, Israel reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to existing treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.[3] Where tax treaties will not be amended via the Multilateral Instrument, Israel declared it will continue to apply its notification process when its competent authority considers the objection raised in a MAP request not to be justified. Israel further reported that it currently has

no intention to replace existing tax treaties that contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b) with Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read after adoption of that report.

Conclusion

	Areas for improvement	Recommendations
[B.2]	None of the 56 treaties contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Israel should follow its stated intention and introduce a documented notification process and continue to apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015) as amended by the final report on Action 14.

[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 Israel's 56 tax treaties, 39 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. 13 do not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015). Two of the remaining four treaties contain a provision similar to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but the term "may" is used instead of "shall" in its provision. One treaty does contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but deviates from the model as corresponding adjustments can be only granted on the basis of a mutual agreement between the competent authorities. The remaining treaty contains additional and different wordings from Article 9(2) of the OECD Model Tax Convention (OECD, 2015a).

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

49. In this regard, paragraph 3.1 of Israel's MAP guidance lists transfer pricing cases as an example of double taxation covered by MAP.

Application of legal and administrative framework in practice

50. Israel reported that since 1 January 2016, 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 Israel on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

52. Israel reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) 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, Israel recently signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) – 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 (OECD, 2015a). 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 for a tax treaty not take effect if one or both of the treaty partners to the tax treaty have, pursuant to Article 17(3), reserved the right to not apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015), 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 make a notification whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). 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 (OECD, 2015a)).

53. Israel has not, 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 (OECD, 2015a). In regard of the 17 tax treaties identified in paragraph 47 above that are considered not to contain this equivalent, Israel listed all of them as a covered tax agreement under the Multilateral Instrument and for four of them made, a notification on the basis of Article 17(4) that they do not contain a provision described in Article 17(2).

54. With regard to those four treaties, two treaty partners are not a signatory to the Multilateral Instrument, whereas one has not listed its treaty with Israel under that instrument. The remaining treaty partner also made a notification on the basis of Article 17(4). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, replace the provision in one treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a).

55. With regard to the remaining 13 treaties, two treaty partners are not a signatory to the Multilateral Instrument, whereas one has not listed its treaty with Israel under that instrument. None of the remaining ten treaty partners has, on the basis of Article 17(3), reserved the right not to apply Article 17(2). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, supersede the remaining ten treaties only to the extent that the provisions contained in those ten treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1) of the Multilateral Instrument.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	As Israel 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.

56. 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

57. None of Israel's 56 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of Israel do not have 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.

58. Israel's MAP guidance does not specifically address whether taxpayers have access to MAP in cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse have been met or whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. Israel's MAP profile however contains the information that such issues are within the scope of MAP.

Practical application

59. Israel 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.

60. Peers indicated not being aware of cases that have been denied access to MAP in Israel since 1 January 2016 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

61. Israel did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	Israel reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Israel 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.

62. 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

63. Under Israel's domestic law it is possible that taxpayers and the tax administration enter into an audit settlement. In practice, audit settlements can be negotiated as part of the audit process between taxpayers and assessing officers. In concluding a settlement, a written agreement is signed by them, and an amended assessment is issued with the agreement. Access to MAP is not denied in cases of audit settlement, but the settlement and the circumstances of its negotiation may be taken into account under MAP. Israel's MAP profile indicates that access to MAP could be granted to issues where there is an audit settlement between the tax authority and the taxpayer. However, the domestic law or Israel's MAP guidance do not specifically address this issue, as will be discussed in element B.10.

Administrative or statutory dispute settlement/resolution process

64. Israel reported it has no administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Practical application

65. Israel reported that since 1 January 2016 it has not denied access to MAP for any case 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 that provided input indicated not being aware of a denial of access to MAP in Israel since 1 January 2016 in cases where there was an audit settlement between the taxpayer and the tax administration.

Anticipated modifications

67. Israel indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	Israel 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. Israel is therefore recommended to follow its policy and grant access to MAP in such cases.	

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

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

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 publically available.

Legal framework on access to MAP and information to be submitted

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

70. Israel's MAP guidance provides that if a MAP request does not contain information, details and documents as required, Israel's competent authority is entitled to close the case or deny access to the case. It also provides that Israel's competent authority is entitled to require from the applicant, at any time, the disclosure of any further information, details or documents necessary to handle the request. Israel reported that in practice, a request to submit additional information will be made before the case is rejected, and that there is no pre-defined time limit to respond to such a request, but in general a timeframe from four to six weeks applies in practice.

Practical application

71. Israel reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance.

72. Israel further reported that since 1 January 2016 its competent authority denied access to one MAP case where the taxpayer did not comply with the information and documentation requirements as provided in Israel's MAP guidance. Israel reported that the taxpayer concerned decided to object the decision before the court and the court confirmed Israel's competent authority position. Israel reported that the court also confirmed that Israel's competent authority's information and documentation requirements are reasonable and necessary.

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

Anticipated modifications

74. Israel did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

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

75. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Israel's tax treaties

76. Out of Israel's 56 tax treaties, 48 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. Furthermore, seven treaties do not contain any provision based on Article 25(3) of the OECD Model Tax Convention (OECD, 2015a). The remaining tax treaty contains a provision similar to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015), but this provision refers to the consultation "regarding cases not provided for in the convention", whereas the second sentence of

Article 25(3) refers to the consultation "for the elimination of double taxation in cases not provided for in the convention". As the particular tax treaty provides for a scope of application that is at least as broad as the second sentence of Article 25(3), it is considered to be in line with element B.7.

Anticipated modifications

Multilateral Instrument

77. Israel recently signed the Multilateral Instrument. 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 (OECD, 2015a) – 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 (OECD, 2015a). 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 (OECD, 2015a).

78. In regard of the seven tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), Israel listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant seven treaty partners, two are not a signatory to the Multilateral Instrument. All remaining five treaty partners also made such notification on the basis of Article 16(d)(ii). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify five of the seven tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

79. Israel further reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.7. Israel has not yet entered into bilateral negotiations with respect to these two treaties. In addition, Israel reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future tax treaties.

Peer input

80. Some peers commented that their treaty with Israel contains the provision meeting the requirement under this element B.7, which is consistent with the above analysis.

81. For the seven treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), one relevant peer reported the absence of such provision in its treaty, which is also consistent with the above analysis.

Conclusion

	Areas for improvement	Recommendations
[B.7]	Seven out of 56 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Israel 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 (OECD, 2015a) in those five treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Israel should request the inclusion of the required provision via bilateral negotiations. In addition, Israel 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.

82. 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.

Israel's MAP guidance

83. Israel's rules, guidelines and procedures are included in Income Tax Order of Performance 23/2001 – the Unit of International Taxation (the first of Tevet, 5762, 16 December 2001) and are available at:

https://taxes.gov.il/incometax/documents/horaotbitsua/ma23-2001.pdf

84. This contains information on:

a. name 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

g. suspension of tax collection.

85. Israel's MAP guidance describes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) identification 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.[4] However the contact details (mailing address or email address) of the competent authority to which a MAP request should be sent are not specified.

86. Although the information included in Israel's MAP guidance is detailed, various subjects are not specifically addressed in the guidance. This concerns information on:

- whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the consideration of interest and penalties in the MAP
- the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers.

87. No input was provided by peers and taxpayers in relation to element B.8.

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. This agreed guidance is shown below. Israel's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

89. Israel's MAP guidance specifies that if the applicant does not include information, details and documents as required, the competent authority is entitled to close the case or deny access to MAP. It also mentions that documents in other language than Hebrew shall be filed in the original language as well as in its translation to Hebrew.

90. Peers indicated that they are not aware of any issues related to this element. One taxpayer reported not being informed about the availability of MAP in Israel.

Anticipated modifications

91. Israel indicated that it anticipates the revision of its MAP guidance in 2019 in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	Contact details of Israel's competent authority are not shown in Israel's MAP guidance.	Israel should include information on contact details of the competent authority in its MAP guidance. Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Israel could consider including information on: • whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • The possibility of suspension of tax collection during the course of a MAP • the consideration of interest and penalties in the MAP • the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any). Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.

[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.

92. 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.[5]

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

93. The MAP guidance of Israel is published and can be found at:

https://taxes.gov.il/incometax/documents/horaotbitsua/ma23-2001.pdf

94. Israel reported that this guidance was issued in 2001 and is expected to be updated in 2019. Israel also reported that as regards its accessibility, it can easily be found on the website of Israel's tax administration by searching the term "mutual agreement procedures", "double taxation" or "tax treaty" in Hebrew on the website.

MAP profile

95. The MAP profile of Israel is published on the website of the OECD. This MAP profile is complete and with detailed information. This profile includes external links which provide extra information and guidance where appropriate.

Anticipated modifications

96. Israel indicated that it anticipates updating its MAP guidance in 2019.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	As it has thus far made its MAP Guidance available and easily accessible and published its MAP profile, Israel should ensure that its future updates to the MAP Guidance continue to be publically 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.

97. 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

98. As previously discussed under B.5, it is possible under Israel's domestic law that taxpayers and the tax administration enter into audit settlements. The relationship between access to MAP and audit settlements, however, is not described in its MAP guidance. Israel's MAP profile indicates that access to MAP could be granted to any issues where there is already an audit settlement between the tax authority and the taxpayer.

99. The peers that provided input raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Israel's MAP guidance.

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

100. As previously mentioned under element B.5, Israel 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 this regard, there is no need to address in Israel's MAP guidance the effects of such process with respect to MAP.

101. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Israel, which can be clarified by the fact that such process is not in place in Israel.

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

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

Anticipated modifications

103. Israel did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	Israel's MAP guidance does not include information on the relationship between MAP and audit settlements.	Israel's MAP guidance should clarify that taxpayers have access to MAP in case of audit settlements.

Notes

1. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

2. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, Israel reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions,

that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified". An overview of Israel's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-israel.pdf.

3. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, Israel reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified". An overview of Israel's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-israel.pdf.

4. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

5. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).

OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239081-en (accessed on 18 July 2018).

OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241633-en (accessed on 18 July 2018).

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.

104. 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, 2015a), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Israel's tax treaties

105. Out of Israel's[1] 56 tax treaties, 52 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty. One of the remaining four treaties does not contain any provision that is based on Article 25(2) of the OECD Model Tax Convention (OECD, 2015a). For one treaty, although it contains a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), its scope is limited to cases of "double taxation", and not taxation that is not in accordance with the provision of the treaty. The remaining two treaties do not contain the phrase "if it is not itself able to arrive at a satisfactory solution" in its provision. For the above reason, all the remaining four treaties are considered as not having the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Anticipated modifications

Multilateral Instrument

106. Israel recently signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of this equivalent, Article 16(4)(b)(i) 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)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

107. In regard of the four tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015a), Israel listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), a notification that they do not contain a provision described in Article 16(4)(b)(i). Of the relevant four treaty partners, one is not a signatory to the Multilateral Instrument. All remaining three treaty partners also made a notification on the basis of Article 16(6)(c)(i). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify three of the four tax treaties identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

108. Israel further reported that when the tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element C.1. In addition, Israel reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future tax treaties.

Peer input

109. Four peers commented that their treaty with Israel meets the requirement under element C.1, which is consistent with the above analysis.

110. For the four treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), one relevant peer indicated that its treaty does not contain the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015a), and another peer expects its treaty to be modified by the Multilateral Instrument, which is also consistent with the above analysis.

Conclusion

	Areas for improvement	Recommendations
[C.1]	Four out of 56 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	Israel should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Israel should request the inclusion of the required provision via bilateral negotiations. In addition, Israel 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).

111. 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

112. Statistics regarding all tax treaty related disputes concerning Israel are published on the website of the OECD as of 2010.[2]

113. 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. Israel provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Israel and of which its competent authority was aware.[3] The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annexes B and C respectively[4] and should be considered jointly for an understanding of the MAP caseload of Israel. With respect to post-2015 cases, Israel reported having reached out to all its MAP partners with a view to have their MAP statistics matching. In that regard, Israel reported that it could match its statistics with all but one.

Monitoring of MAP statistics

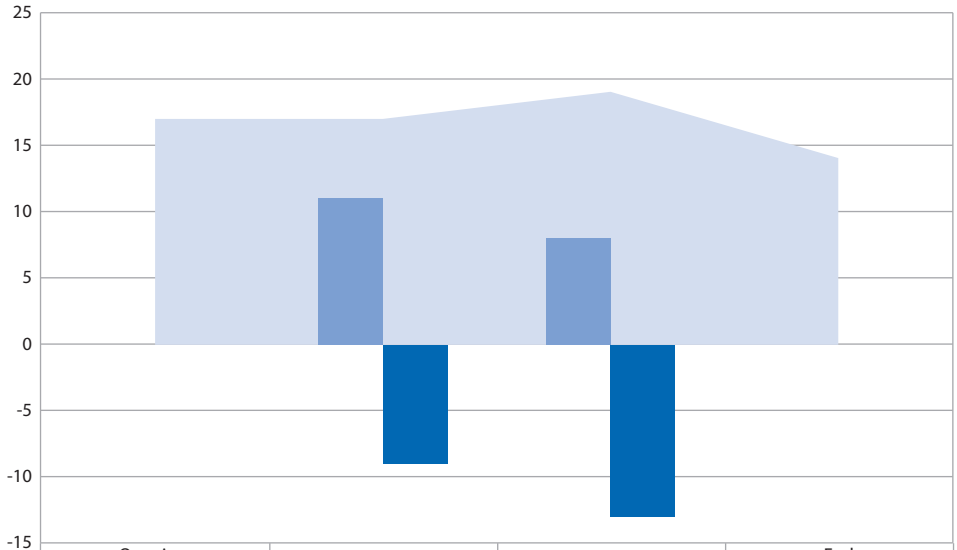
114. Israel has a system in place whereby it communicates, monitors and manages with its treaty partners the MAP caseload. Israel closely monitors every case and analyses the cause for any delay in closing cases.

Analysis of Israel's MAP caseload

Global overview

115. Figure C.1 shows the evolution of Israel's MAP caseload over the Statistics Reporting Period.

Figure C.1. **Evolution of Israel's MAP caseload**

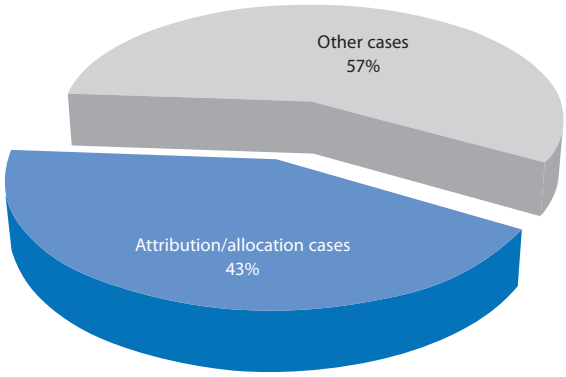


	Opening inventory on 1/1/2016	2016	2017	End inventory on 31/12/2017
Inventory	17	17	19	14
Cases started		11	8	
Cases closed		-9	-13	

116. At the beginning of the Statistics Reporting Period Israel had 17 pending MAP cases, of which eight were attribution/allocation cases and nine other MAP cases.[5] At the end of the Statistics Reporting Period, Israel had 14 MAP cases in its inventory, of which six are attribution/allocation cases and eight are other MAP cases. Israel's MAP caseload has reduced by 18% during the Statistics Reporting Period, which results from a decrease of a quarter of the number of attribution/allocation cases in inventory, while the number of other cases decreased by 11% at the end of the Statistics Reporting Period.

117. The breakdown of the end inventory can be shown as in Figure C.2.

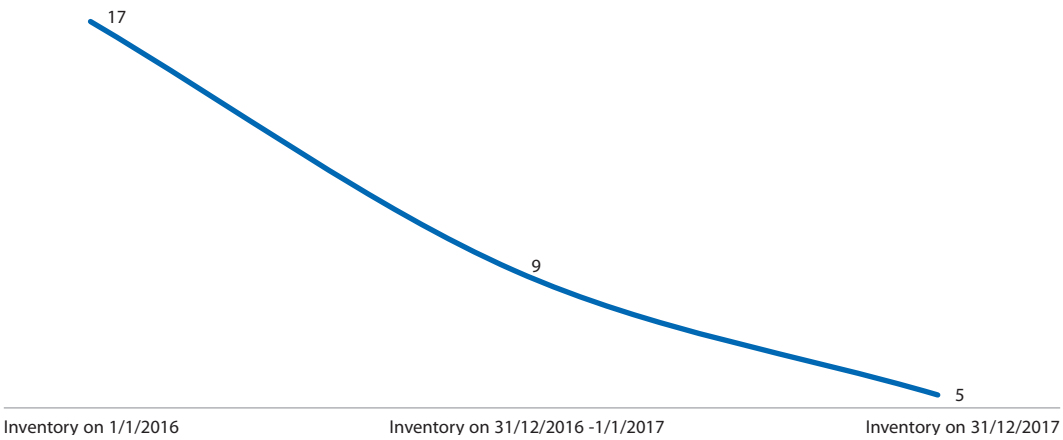
Figure C.2. **End inventory on 31 December (14 cases)**



Pre-2016 cases

118. Figure C.3 shows the evolution of Israel's pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. **Evolution of Israel's MAP inventory, pre-2016 cases**



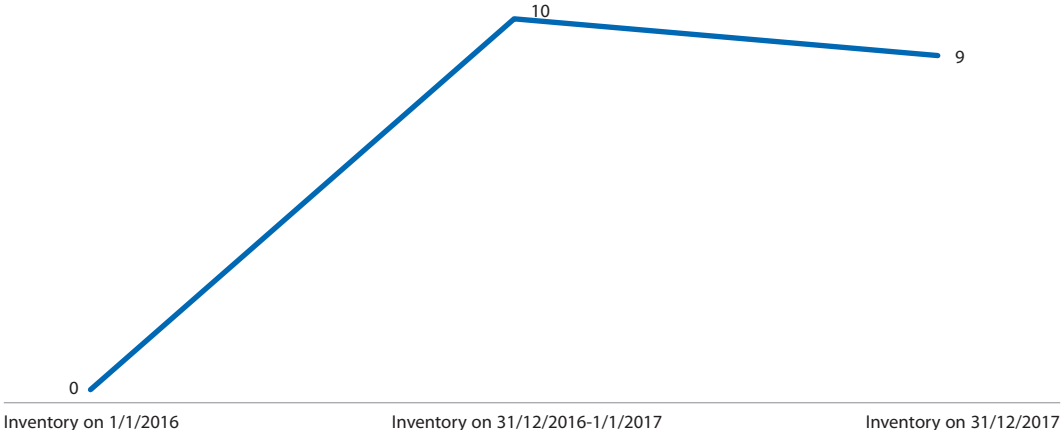
119. At the beginning of the Statistics Reporting Period, Israel's MAP inventory of pre-2016 MAP cases consisted of 17 cases, of which were eight attribution/allocation cases and nine other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to five cases, consisting of one attribution/allocation case and four other cases. 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 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016+2017)
Attribution/allocation cases	-63%	-67%	-88%
Other cases	-33%	-33%	-56%

Post-2015 cases

120. Figure C.4 shows the evolution of Israel's post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. **Evolution of Israel's MAP inventory, post-2015 cases**



121. In total, 19 MAP cases started during the Statistics Reporting Period, six of which concerned attribution/allocation cases and 13 other cases. At the end of this period the total number of post-2015 cases in the inventory was nine cases, consisting of five attribution/allocation cases and four other cases. Conclusively, Israel closed ten post-2015 cases during the Statistics Reporting Period, one of them being attribution/allocation cases and nine of them of them being other cases. The total number of closed cases represents half of the total number of post-2015 cases that started during the Statistics Reporting Period.

122. 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.

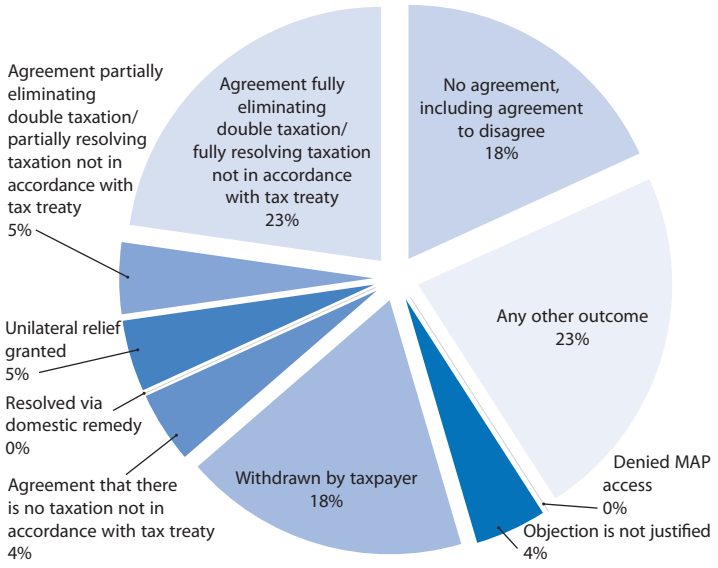
Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution/allocation cases	0%	50%	17%
Other cases	14%	133%	69%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

123. During the Statistics Reporting Period in total Israel closed 22 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. **Cases closed during the Statistics Reporting Period (22 cases)**



124. Figure C.5 shows that five cases were closed during the Statistics Reporting Period with the outcomes of "agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty" and five other cases with the outcome "any other outcome".

Reported outcomes for attribution/allocation cases

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

- any other outcome [38%]
- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty [25%]
- withdrawn by taxpayer [25%].

Reported outcomes for other cases

126. In total, 14 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- no agreement including agreement to disagree [29%]
- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty [21%].

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

127. The average time needed to close MAP cases during the Statistics Reporting Period was 33.93 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	8	38.48
Other cases	14	30.80
All cases	22	33.60

Pre-2016 cases

128. For pre-2016 cases Israel reported that on average it needed 43.35 months to close attribution/allocation cases and 68.54 months to close other cases. This resulted in an average time needed of 53.85 months to close 12 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Israel reported that it uses the following:

- *Start date*: the date Israel received notice of the case, either from the partner country or the request from an Israeli resident to initiate MAP
- *End date*: the day the case was either resolved (agreement reached with other competent authorities), or otherwise closed.

Post-2015 cases

129. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 24 months.

130. For post-2015 cases Israel reported that on average it needed 4.41 months to close attribution/allocation cases and 9.84 months to close other cases. This resulted in an average time needed of 9.30 months to close ten post-2015 cases.

Peer input

131. Generally, all peers emphasised that they had very limited experience with Israel. One peer observed that Israel's competent authority makes principled arguments and also considers alternative principled perspectives to resolve MAP cases. Another peer mentioned that it did not observe any impediments which led to unnecessary delays in finding a solution for a MAP case.

Anticipated modifications

132. Israel did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Israel submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Israel's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. Israel's MAP statistics show that during the Statistics Reporting Period it closed 52%f (ten out of 19 cases) of its post-2015 cases in 9.30 months on average. In that regard, Israel is recommended to seek to resolve the remaining 48% of the post-2015 cases that were pending on 31 December 2017 (nine 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.

133. 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 Israel's competent authority

134. In Israel, the competent authority power is delegated to the International Tax Division of Israel's tax authority. The division is under the supervision of the Senior Deputy Director for Professional Affairs. Two persons of the division deal partly with MAP cases along with other tasks, and priority is given to MAP tasks. They are provided administrative assistance from other personnel within the division and technical assistance from an ad-hoc group of professional experts, including transfer pricing experts, economists, international and legal advisors.

135. Israel reported that the staff of its competent authority receives training in combination with the training given to other international specialists of the division. Israel reported that budget for travel and translation is allocated under the annual work plan and that unexpected expenses are covered where necessary as well.

Monitoring mechanism

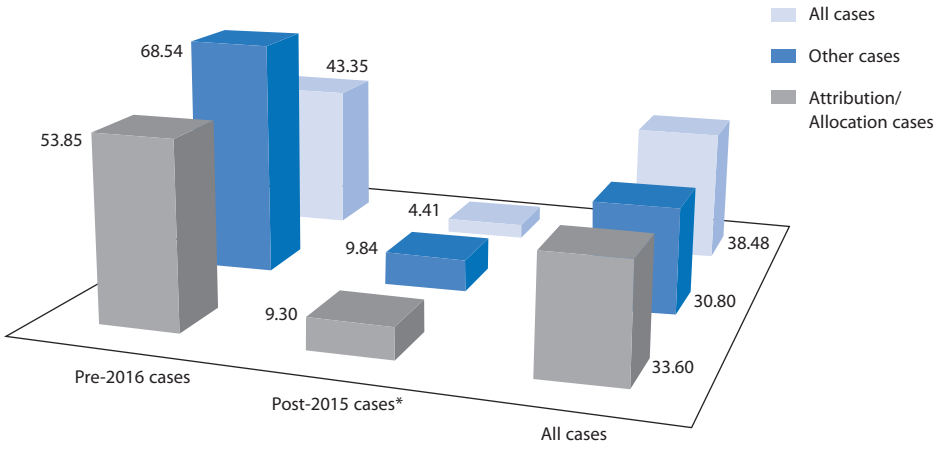
136. Israel reported that it monitors its MAP caseload based on the OECD statistics reporting and additional internal information. Israel further reported that resources are assessed on a continuous basis and that the annual budget takes into account the forecast of the MAP inventory.

Practical application

MAP statistics

137. As discussed under element C.2, Israel did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average. The average time taken to close attribution/allocation cases is slightly higher than the average time needed for other cases. This can be illustrated by Figure C.6.

Figure C.6. **Average time (in months) to close cases in 2016 or 2017**



* Note that these post-2015 cases only concern cases started and closed during 2016 or 2017.

138. Based on these figures, it follows that on average it took Israel 33.60 months to close MAP cases. In particular it took Israel on average 38.48 months to close attribution/allocation cases, while the average time to close other cases was 30.80 months. This might indicate additional resources for both types of cases may be necessary to accelerate the resolution of MAP cases.

139. Israel provided the following explanations:

- the median time taken to close MAP cases was 22.19 months
- significant delays resulted from taxpayers' non-provision of documentation and information
- some cases are complex attribution/allocation cases or other cases entailed a few clarifications and extensive translations.

Peer input

140. Several peers reported that they had very limited experience with Israel, mentioning that they were not in a position to provide relevant peer input. Three peers provided input with respect to their relationship with Israel's competent authority. One of these peers reported that Israel's competent authority is competent, efficient and easy to get in contact with. Another peer viewed its co-operation and communication as good and prospering.

Anticipated modifications

141. Israel indicated that its competent authority has requested additional resources and that this request is being under consideration.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	Israel should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner. In addition, Israel could consider devoting additional resources, as requested by its competent authority, to accelerate the resolution of MAP cases, in particular 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.

142. 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

143. Israel reported that it has the following legal and administrative framework in place to monitor and evaluate the performance of the MAP function.

144. There is no formal requirement for the staff of Israel's competent authority to consult or involve any tax administration personnel outside its office on MAP cases. Offices in charge of tax assessments are notified of the MAP procedure and its process. Those offices are only requested to provide the MAP staff with relevant information and materials. The legal department of the tax authority provides legal advice in appropriate cases. Professional experts are consulted or involved, but they do not have any authority to approve or reject any aspect of MAP. Israel also reported that the organisational framework of its tax authority allows extensive consultation with international specialists during

the ordinary assessment operation. Israel believes that such consultation may contribute to limit treaty-related disputes and that its competent authority remains independent in resolving MAP cases.

145. As described above, Israel reported that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations.

Practical application

146. Peers generally reported not being aware of any impediments in Israel 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.

Anticipated modifications

147. Israel 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, Israel 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 Israel 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.

148. 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 Israel

149. Israel reported that the staff in charge of MAP is evaluated bi-annually on the basis of targets set for and developments by the department in the tax authority. Targets are set with regard to meeting deadlines for some projects including issuance of guidance or digitalisation, but not in terms of resolution of MAP cases. As such, no performance indicators related to MAP case resolution are used.

150. The Final Report on Action 14 (OECD, 2015b) includes examples of performance indicators that are considered appropriate. These indicators are shown below. None of the following items is specifically used by Israel.

- ☐ 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).

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

Practical application

152. Peers provided no specific input relating to this element of the Action 14 Minimum Standard.

Anticipated modifications

153. Israel did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	Israel could consider using the examples of performance indicators mentioned in the Final Report on Action 14 (OECD, 2015b) to evaluate staff in charge of the MAP processes.

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

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

154. 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

155. Israel reported that it has some limitations to include MAP arbitration in its tax treaties.

156. Israel was a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument but it did not opt for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.[6] Israel also made a reservation not to include Article 25(5) of the OECD Model Tax Convention (OECD, 2015a).

Practical application

157. Up to date, Israel has incorporated a voluntary arbitration clause in two of its 56 treaties as a final stage to the MAP. Under these clauses, arbitration will be provided on the condition that both competent authorities and the taxpayer agree.

158. Israel has another arbitration provision with a most-favoured nation clause with another state. It stipulates that when an arbitration provision in the treaty between that state and a third state becomes effective, the arbitration provision with Israel also becomes effective. According to that treaty partner, it first needs to amend its domestic law for its arbitration provision to be effective.

159. Peers did not provide particular input related to element C.6.

Anticipated modifications

160. Israel did not indicate any anticipated modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2016.

3. Israel's 2016 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016. See Annex C for a further explanation.

4. For post-2015 cases, if the number of MAP cases in Israel'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, Israel reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).

5. For pre-2016 and post-2015 Israel 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 (OECD, 2015)); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention (OECD, 2015)), which is also known as a transfer pricing MAP case".

6. An overview of Israel's position on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-israel.pdf.

References

OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239081-en (accessed on 18 July 2018).

OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241633-en (accessed on 18 July 2018).

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.

161. 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

162. If the tax treaty concerned contains a provision based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), Israel[1] reported that a MAP agreement shall be implemented notwithstanding any time limits by the domestic law of Israel. In the absence of such provision, Israel reported that a MAP agreement will be implemented provided that appropriate procedures are followed.

163. Israel reported that Income Tax Ordinance (new version) 5721-1961 stipulates that the statute of limitation is four years after the end of the tax year in which the tax return was filed. An additional year may apply in special cases where an investigation is initiated by the general director of Israel's tax authority or to correct any error made in the calculation of deductions, credits or exemptions in the above determination. Israel further reported that if the taxpayer objects to an assessment, the statute of limitation can be extended by up to one year after an objection is submitted. Israel also specified that if the case relates to the amount of tax credits that should be amended further to a change in the amount of tax payable in Israel or abroad, the statute of limitation can be extended by up to two years after the related adjustment is made in Israel or other jurisdiction.

164. When a MAP agreement is reached, Israel's competent authority sends it to the relevant assessing office and to the taxpayer. The taxpayer is also informed that it can object to the MAP agreement or request its implementation and submit any forms, applications or reports in support thereof if necessary. Israel further reported that its competent authority does not follow up the implementation of MAP agreements actively but that the assessing offices regularly consult its competent authority with respect to implementation.

Practical application

165. Israel reported that since 1 January 2016 it has reached the following number of MAP agreements:

Year	MAP agreements
2016	2
2017	5

166. In view of these closed MAP cases, all but one required an implementation by Israel. In this respect, Israel reported that all of the six agreements, once accepted by taxpayers, have been implemented.

167. 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 Israel.

Anticipated modifications

168. Israel indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Israel's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the time limits of four or five years in its domestic law.	Even though Israel has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law. To ensure that all MAP agreements continue to be implemented if the conditions for such implementation are fulfilled, Israel could introduce a tracking system.

[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.

169. Delay of implementation of MAP agreements may lead to adverse financial consequences for both taxpayers and competent authorities. To avoid this and to increase certainty for all parties involved, it is important that the implementation of any MAP agreement is not obstructed by procedural and/or statutory delays in the jurisdictions concerned.

Theoretical timeframe for implementing mutual agreements

170. Israel reported it has in its domestic legislation and/or administrative framework no defined timeframe for implementation of MAP agreements reached. Furthermore, Israel's MAP Guidance also does not contain information in relation to the process of implementation of MAP agreements, in terms of steps to be taken and timing of these steps. Israel also reported that in practice, there is no pre-determined timeframe for the taxpayer to give consent on the MAP, but Israel reported that it is generally within a few weeks to three months.

Practical application

171. As discussed under element D.1, since 1 January 2016, Israel entered into six MAP agreements that required implementation by Israel. In this respect, Israel reported that all of these MAP agreements, once accepted by taxpayers, have been timely implemented and that no cases of noticeable delays have occurred. In this regard, in Israel, assessing offices implementing MAP agreements regularly consult with the competent authority.

172. All peers that provided input have not indicated experiencing any problems with Israel regarding the implementation of MAP agreements reached on a timely basis.

Anticipated modifications

173. Israel did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

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

[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) 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.

174. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

Legal framework and current situation of Israel's tax treaties

175. As discussed under element D.1, Israel's domestic legislation includes a general statute of limitations of four or five years for implementing MAP agreements, unless overridden by tax treaties.

176. Out of Israel's 56 tax treaties, 43 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) whereby any agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law of the contracting states.

177. One of the remaining 13 treaties does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), but has an alternative provision in the

MAP article that limits the time during which a contracting state can make adjustments. This provision is considered equivalent to the treaty provisions setting a time limit during which a contracting party can make adjustments pursuant to Article 9(1) or Article 7(2).

178. The remaining 12 treaties can be categorised as follows:

- Ten treaties do not contain any provision that require implementation of any agreement notwithstanding any domestic time limits.
- Two treaties contain a provision allowing the application of domestic time limit.

Anticipated modifications

Multilateral Instrument

179. Israel recently signed the Multilateral Instrument. 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 (OECD, 2015) – 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 (OECD, 2015). 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 (OECD, 2015). 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 states, 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.

180. In regard of the 13 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), Israel listed 13 as covered tax agreements under the Multilateral Instrument, but only for 12 did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 12 treaty partners, three are not a signatory to the Multilateral Instrument, whereas two did not list their treaty with Israel as a covered tax agreement and one made a reservation on the basis of Article 16(5)(c) not to apply the second sentence of Article 16(2). All remaining six treaty partners also made such notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify six of 13 tax treaties identified above to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

181. Israel further reported that when tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or both alternatives provided for in Articles 9(1) and 7(2) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. Israel has been negotiating with two treaty partners whose treaty is not in line with element D.3. For the remaining partners, Israel reported that it expects entering

into bilateral discussions with one partner in 2018. In addition, Israel reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or both alternatives in all of its future tax treaties.

Peer input

182. Four peers reported that their treaty with Israel meets the requirements under element D.3, which is consistent with the above analysis.

183. For the 13 treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), or both alternatives, two relevant peers noted such absence, and another foresees its treaty to be modified by the Multilateral Instrument, which is also consistent with the above analysis.

Conclusion

	Areas for improvement	Recommendations
[D.3]	13 out of 56 tax treaties do contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor both alternative provisions provided for in Article 9(1) and Article 7(2).	Israel 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 (OECD, 2015) in those six treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining seven treaties 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 (OECD, 2015) following its entry into force, Israel should request the inclusion of the required provision via the bilateral negotiations initiated as well as via other bilateral negotiations. In addition, Israel 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.

Note

1. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Reference

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239081-en (accessed on 18 July 2018).

Summary

	Areas for improvement	Recommendations
Part A. Preventing disputes		
[A.1]	Five out of 56 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Israel should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), following its entry into force, Israel should request the inclusion of the required provision in bilateral negotiations and follow up its stated intention to initiate bilateral negotiations for that effect. In addition, Israel should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	Israel is in theory able to extend bilateral APAs to previous fiscal years. However, it was not possible at this stage to evaluate the effective implementation of this element in practice since Israel did not receive any request for roll-back of bilateral APAs during the Review Period.	
Part B. Availability and access to MAP		
[B.1]	Nine out of 56 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those nine tax treaties: • Three tax treaties do not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. • Three tax treaties do not contain the equivalent to Article 25(1), first sentence. • One tax treaty does not contain a MAP article at all. • Two tax treaties provide that 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.	Israel should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: a. As amended in the final report of Action 14; or b. As it read prior to the adoption of final report of Action 14, thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Israel should request the inclusion of the required provision via bilateral negotiations. In addition, Israel should maintain its stated intention to include the required provision in all future tax treaties.

	Areas for improvement	Recommendations
[B.1] *cont.*	Where tax treaties do not contain a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Israel should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from being granted access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.
[B.2]	None of the 56 treaties contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Israel should follow its stated intention and introduce a documented notification process and continue to apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14.
[B.3]	-	As Israel has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	Israel reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Israel is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	Israel 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. Israel is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.6]	-	As Israel has thus far not limited access to MAP in eligible cases when taxpayers have complied with Israel's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Seven out of 56 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Israel 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 (OECD, 2015a) in those five treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Israel should request the inclusion of the required provision via bilateral negotiations. In addition, Israel should maintain its stated intention to include the required provision in all future tax treaties.

	Areas for improvement	Recommendations
[B.8]	Contact details of Israel's competent authority are not shown in Israel's MAP guidance.	Israel should include information on contact details of the competent authority in its MAP guidance. Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Israel could consider including information on: • whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the possibility of suspension of tax collection during the course of a MAP • the consideration of interest and penalties in the MAP • the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any). Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.
[B.9]	-	As it has thus far made its MAP Guidance available and easily accessible and published its MAP profile, Israel should ensure that its future updates to the MAP Guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	Israel's MAP guidance does not include information on the relationship between MAP and audit settlements.	Israel's MAP guidance should clarify that taxpayers have access to MAP in case of audit settlements.
Part C. Resolution of MAP cases		
[C.1]	Four out of 56 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	Israel should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Israel should request the inclusion of the required provision via bilateral negotiations. In addition, Israel should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	Israel submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Israel's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. Israel's MAP statistics show that during the Statistics Reporting Period it closed 52% (ten out of 19 cases) of its post-2015 cases in 9.30 months on average. In that regard, Israel is recommended to seek to resolve the remaining 48% of the post-2015 cases that were pending on 31 December 2017 (nine cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

	Areas for improvement	Recommendations
[C.3]	-	Israel should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner. In addition, Israel could consider devoting additional resources, as requested by its competent authority, to accelerate the resolution of MAP cases, in particular attribution/allocation cases
[C.4]	-	As it has done thus far, Israel 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 Israel would like to see reflected in future amendments to the treaty.
[C.5]	-	Israel could consider using the examples of performance indicators mentioned in the Final Report on Action 14 to evaluate staff in charge of the MAP processes.
[C.6]	-	-
Part D. Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of Israel's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the time limits of four or five years in its domestic law.	Even though Israel has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law. To ensure that all MAP agreements continue to be implemented if the conditions for such implementation are fulfilled, Israel could introduce a tracking system.
[D.2]	-	As it has done thus far, Israel should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	13 out of 56 tax treaties do contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor both alternative provisions provided for in Article 9(1) and Article 7(2).	Israel 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 (OECD, 2015) in those six treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining seven treaties 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 (OECD, 2015) following its entry into force, Israel should request the inclusion of the required provision via the bilateral negotiations initiated as well as via other bilateral negotiations. In addition, Israel 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 Israel

			Action 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1	B.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? If no, please state reasons		Inclusion Art. 9(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?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
	Y = yes N = signed pending ratification	If N, date of signing	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no	if yes i-Art. 25(5) ii-mandatory other iii – voluntary
Armenia	N	26-07-2017	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Azerbaijan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Austria	N	28-11-2017	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

			Action 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1	B.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?			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?				
			If yes, submission to either competent authority? (new Art. 25(1), first sentence)			Inclusion Art. 9(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?	If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Treaty partner	DTC in force?			If no, please state reasons									
Belarus	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belgium	Y	N/A	N	ii*	2-years	i**	i	N*	N*	N*	N*	N	N/A
Brazil	Y	N/A	N	i	N/A	i	i	Y	N	Y	N	N	N/A
Bulgaria	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Canada	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
China (People's Republic of)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Croatia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Czech Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Denmark	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Estonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Ethiopia	Y	N/A	O	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Finland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
France	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Georgia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Germany	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Greece	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N	N/A

			Action 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1	B.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?			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?				
			If yes, submission to either competent authority? (new Art. 25(1), first sentence)			Inclusion Art. 9(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?	If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Treaty partner	DTC in force?			If no, please state reasons									
Hungary	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N	N/A
India	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Ireland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Italy	Y	N/A	N	ii*	2-years	i**	i	Y	N*	Y	N*	N	N/A
Jamaica	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Japan	Y	N/A	O	Y	N/A	i*	i	Y	Y	Y	Y	N	N/A
Korea	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Lithuania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Macedonia	N	09-12-2015	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Malta	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Mexico	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	Y	iii
Moldova	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Netherlands	Y	N/A	N	i	N/A	i**	i	Y	N*	Y	Y	N	N/A
Norway	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N	N/A

			Action 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1	B.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?			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?				
			If yes, submission to either competent authority? (new Art. 25(1), first sentence)			Inclusion Art. 9(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?	If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Treaty partner	DTC in force?			If no, please state reasons									
Panama	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Philippines	Y	N/A	O	ii	2-years	Y	i	Y	iii	Y	Y	N	N/A
Poland	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N	N/A
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N*	N	N/A
Romania	Y	N/A	N	ii*	2-years	i**	i	Y	Y	Y	Y	N	N/A
Russia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Singapore	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Slovak Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Slovenia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
South Africa	Y	N/A	O	i	N/A	i**	i	Y	N*	N	Y	N	N/A
Spain	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Sweden	Y	N/A	N	i	N/A	i**	i	N*	N*	N*	N*	N	N/A
Switzerland	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Chinese Taipei	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Thailand	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Turkey	Y	N/A	O	i	N/A	Y	i	Y	Y	Y	Y	N	N/A

			Action 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1	B.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?	Inclusion Art. 25(1) second sentence?		Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
			If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons			If no, will your CA accept a taxpayer's request for MAP in relation to such cases?						
Ukraine	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
United Kingdom	Y	N/A	N	iv	N/A	i**	i	N*	N*	N*	N*	N	N/A
United States	Y	N/A	O	i	N/A	i	i	N	Y	N	N	N	N/A
Uzbekistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Viet Nam	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

* Treaties will be modified upon entry into force of the Multilateral Instrument.

** Treaties will be modified upon entry into force of the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of Article 17 of the Multilateral Instrument.

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Annex B

MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for pre-2016 cases

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing 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	8	0	0	2	0	0	0	0	0	0	3	3	39.34
Others	9	0	1	0	0	0	0	1	0	0	1	6	57.56
Total	17	0	1	2	0	0	0	1	0	0	4	9	46.17

Note: The number of pre-2016 cases in the inventory on 1 January 2016 in the table above is different from the number of pre-2016 cases in Israel's published 2016 MAP statistics. This results from the fact that Israel excluded one other case incorrectly recorded.

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	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 2017	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	3	0	0	0	0	0	2	0	0	0	0	1	53.38
Others	6	0	0	0	0	0	1	0	0	0	1	4	85.00
Total	9	0	0	0	0	0	3	0	0	0	1	5	69.19

* The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Annex C

MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for post-2015 cases

2016 MAP Statistics														
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	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 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	5	0	0	0	0	0	0	0	0	0	0	5	n.a.
Others	0	7	0	0	0	0	0	0	0	0	1	0	6	3.62
Total	0	12	0	0	0	0	0	0	0	0	1	0	11	3.03

Notes: The number of post-2015 cases in the inventory on 31 December 2016 is different from the number of post-2015 cases in Israel's published MAP statistics. This results from the fact that:

– Israel had one attribution/allocation case that started in 2016, but was notified by the other competent authority in 2017
– Israel included one other case incorrectly unrecorded.

2017 MAP Statistics														
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	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 2017	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	5	1	0	0	1	0	0	0	0	0	0	0	5	11.77
Others	6	7	0	0	2	0	0	2	0	1	3	0	5	10.62
Total	11	8	0	0	3	0	0	2	0	1	3	0	10	10.75

* The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Guidance	Income Tax Order of Performance 23/2001 – the Unit of International Taxation (the first of Tevet, 5762, 16 December 2001)
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 pending resolution on 31 December 2015
Post-2015 cases	MAP cases 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 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2017 and ended on 31 December 2017
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

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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