

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



Making Dispute Resolution More Effective – MAP Peer Review Report, Guernsey (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Note by Turkey

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Note by all the European Union Member States of the OECD and the European Union

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

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

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

This report was approved by the Inclusive Framework on 19 November 2021 and prepared for publication by the OECD Secretariat.

Table of contents

Abbreviations and acronyms	7
Executive summary	9
References	10
Introduction	11
References	15
Part A. Preventing disputes	17
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties	17
[A.2] Provide roll-back of bilateral APAs in appropriate cases	19
References	20
Part B. Availability and access to MAP	21
[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties	21
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process	26
[B.3] Provide access to MAP in transfer pricing cases	28
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions	30
[B.5] Provide access to MAP in cases of audit settlements	31
[B.6] Provide access to MAP if required information is submitted	33
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties	34
[B.8] Publish clear and comprehensive MAP guidance	35
[B.9] Make MAP guidance available and easily accessible and publish MAP profile	37
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP	38
References	39
Part C. Resolution of MAP cases	41
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties	41
[C.2] Seek to resolve MAP cases within a 24-month average timeframe	43
[C.3] Provide adequate resources to the MAP function	45
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty	47
[C.5] Use appropriate performance indicators for the MAP function	48
[C.6] Provide transparency with respect to the position on MAP arbitration	49
References	50

Part D. Implementation of MAP agreements	51
[D.1] Implement all MAP agreements	51
[D.2] Implement all MAP agreements on a timely basis	52
[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties or alternative provisions in Article 9(1) and Article 7(2)	53
Reference	55
Summary	57
Annex A. Tax treaty network of Guernsey	59
Annex B. MAP statistics reporting for pre-2016 cases (1 January 2016 to 31 December 2020)	63
Annex C. MAP statistics reporting for post-2015 cases (1 January 2016 to 31 December 2020)	66
Glossary	69
Figure	
Figure C.1 Evolution of Guernsey’s MAP caseload	44

Abbreviations and acronyms

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

Executive summary

Guernsey has a modest tax treaty network with over 25 tax treaties. Guernsey has an established MAP programme and has no experience with resolving MAP cases. During the 2016-20 period, Guernsey has only been involved in one “other” MAP case that was submitted to its treaty partner who considered the objection raised by the taxpayer as not justified. Overall Guernsey meets almost all the elements of the Action 14 Minimum Standard. Where it has deficiencies, Guernsey worked to address them, which has been monitored in stage 2 of the process. In this respect, Guernsey solved most of the identified deficiencies.

All of Guernsey’s tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention (OECD, 2017). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Approximately 7% of Guernsey’s 27 tax treaties do not contain 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 Action 14 final report (OECD, 2015b), since it does 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.
- Approximately 7% of Guernsey’s 27 tax treaties do not contain the equivalent of Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2017), which sets a three-year time limit for filing a MAP request.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Guernsey needs to amend and update a certain number of its tax treaties. In this respect, Guernsey signed and ratified the Multilateral Instrument. Through this instrument the majority of the relevant tax treaties have been or will 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 for the treaties concerned, Guernsey reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard. For two of the three tax treaties that are not in line with the Action 14 Minimum Standard, such bilateral negotiations have been finalised. For the remaining tax treaty, Guernsey reported that the relevant treaty partner declined Guernsey’s proposal to renegotiate the treaty.

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

Guernsey in principle meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in eligible cases in principle, although it has since 1 January 2016 not received any MAP requests from taxpayers. Furthermore, Guernsey has in place a documented bilateral consultation process

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

Concerning the average time needed to close MAP cases, the MAP statistics for Guernsey for the period 2016-20 are as follows:

2016-20	Opening inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2020	Average time to close cases (in months)*
Attribution/allocation cases	0	0	0	0	n.a.
Other cases	0	1	1	0	3.81
Total	0	1	1	0	3.81

*The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. There were no pre-2016 cases pending on 1 January 2016.

As mentioned previously, during the 2016-20 period, Guernsey has only been involved in one “other” MAP case that was submitted to its treaty partner who considered the objection raised by the taxpayer as not justified. The case concerned a post-2015 case and was closed within the pursued 24-month average.

Guernsey meets in principle all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Guernsey’s competent authority operates fully independently from the audit function of the tax authorities and the performance indicators used are appropriate to perform the MAP function.

Lastly, Guernsey in principle meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Since Guernsey did not enter into any MAP agreements that required implementation by Guernsey in 2016-20, no problems have surfaced regarding the implementation throughout the peer review process.

References

- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.
- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

Introduction

Available mechanisms in Guernsey to resolve tax treaty-related disputes

Guernsey has entered into 27 tax treaties on income (and/or capital), all of which are in force.^{1,2} These 27 treaties are being applied to the same number of jurisdictions. All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, seven of the 27 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.³

Under Guernsey’s tax treaties, the competent authority function to conduct mutual agreement procedure (“MAP”) is delegated to the Director of the Revenue Service or her delegate. Guernsey reported that it does not have a dedicated MAP unit, which can be explained by its very small MAP caseload (Guernsey reported that it has only ever had one MAP request, and that was considered, and concluded, as unjustified). Guernsey reported that MAP cases once received would be dealt with by the Director and other delegated senior staff.

Guernsey has issued guidance on the governance and administration of the mutual agreement procedure, which was last updated in November 2020 and is available at:

<https://www.gov.gg/CHttpHandler.ashx?id=118907&p=0>

Developments in Guernsey since 1 April 2019

Developments in relation to the tax treaty network

In the stage 1 peer review report of Guernsey, it is reflected that all of Guernsey’s treaties are in force and that there were no recent signed treaties that were pending ratification. Since 1 April 2019, Guernsey signed a new treaty with Estonia (2019) and amending protocols to the treaties with Finland (2020), Isle of Man (2019) and New Zealand (2019). The treaty with Estonia and an amending protocol with Isle of Man have entered into force, while amending protocols with Finland and New Zealand have not yet entered into force as only Guernsey has ratified them. The new treaty with Estonia contains Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015). In addition, the amending protocols with Finland and Isle of Man amend the MAP provision in those treaties allowing taxpayers to file a MAP request to the competent authorities of either contracting state, and the amending protocol with New Zealand amends the MAP provision to include the equivalent to Article 25(1-2) and the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015).

Furthermore, on 7 June 2017 Guernsey signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral**

Instrument⁷), 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. Guernsey deposited its instrument of ratification of this instrument on 12 February 2019,⁴ following which the Multilateral Instrument for Guernsey entered into force on 1 June 2019. With the deposition of the instrument of ratification, Guernsey also submitted its list of notifications and reservations to that instrument. In relation to the Action 14 Minimum Standard, Guernsey has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

For those tax treaties that were in the stage 1 peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Guernsey reported that it strives updating them through future bilateral negotiations. In the stage 1 peer review report, it is stated that Guernsey contacted all relevant treaty partners to discuss the possibility of amending treaties to comply with the Action 14 Minimum Standard and one partner declined its proposal to amend the treaty. In total, three of Guernsey's tax treaties need a bilateral modification in order to be in line with the requirements under the Action 14 Minimum Standard. For two treaties, Guernsey reported that the texts of amending protocols were agreed, and it completed its internal procedures to sign the amending protocols. For the remaining tax treaty, bilateral modifications are not possible since the relevant treaty partner declined Guernsey's proposal to amend the treaty as mentioned above.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Guernsey'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 Guernsey, its peers and taxpayers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Guernsey's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 14 August 2018. This report identifies the strengths and shortcomings of Guernsey in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.⁵ Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Guernsey. In this update report, Guernsey reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

For the purpose of this report and the statistics below, in assessing whether Guernsey 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 Guernsey's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process was for Guernsey launched on 27 March 2019, with the sending of questionnaires to Guernsey and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Guernsey in September 2019, with the subsequent approval by the BEPS Inclusive Framework on 11 December 2019. On 11 December 2020, Guernsey submitted its update report, which initiated stage 2 of the process.

The period for evaluating Guernsey's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 March 2019 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 April 2019 and depicts all developments as from that date until 31 December 2020.

In total two peers provided input during stage 1: Australia and the United Kingdom. Out of these two peers, one had a MAP case with Guernsey that started in 2017, which is the only MAP case in Guernsey's inventory that started in 2016, 2017 or 2018. This peer reported having had limited interactions with Guernsey which can be explained by the fact that it closed the case unilaterally. During stage 2, the United Kingdom provided input. For this stage, this peer also represents 100% of post-2015 MAP cases in Guernsey's inventory that started in 2016-20. This peer provided information that it has reached a new competent authority agreement with Guernsey on company residence tie-breaker, which was done very easily and quickly.

Input by Guernsey and co-operation throughout the process

During stage 1, Guernsey provided extensive answers in its questionnaire, which was submitted on time. Guernsey 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, Guernsey provided the following information:

- MAP profile⁶
- MAP statistics⁷ according to the MAP Statistics Reporting Framework (see below).

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

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

Overview of MAP caseload in Guernsey

The analysis of Guernsey's MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2018. For stage 2 the period ranges from 1 January 2019 to 31 December 2020. Both periods are taken into account in this report for analysing the MAP statistics of Guernsey. The analysis of Guernsey's MAP caseload

therefore relates to the period starting on 1 January 2016 and ending 31 December 2020 (“**Statistics Reporting Period**”). According to the statistics provided by Guernsey, Guernsey had one MAP case during this period.

2016-20	Opening inventory 1/1/2016	Cases started	Cases Closed	End Inventory 31/12/2020
Attribution/allocation cases	0	0	0	0
Other cases	0	1	1	0
Total	0	1	1	0

General outline of the peer review report

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

- A. Preventing disputes
- B. Availability and access to MAP
- C. Resolution of MAP cases
- D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁸ Apart from analysing Guernsey’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Guernsey. Furthermore, the report depicts the changes adopted and plans shared by Guernsey 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 on how the specific area for improvement should be addressed.

The basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements has been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Guernsey relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Guernsey should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement and recommendation for this specific element.

Notes

1. Guernsey is a Crown Dependency of the United Kingdom and not a state. Where there are references to Guernsey or any of its agreements the term “state” is used and should be read as “jurisdiction” or “party”.
2. The tax treaties Guernsey has entered into are available at: www.oecd.org/tax/dispute/Guernsey-Dispute-Resolution-Profile.pdf. Reference is made to Annex A for the overview of Guernsey’s tax treaties. Furthermore, the 27 tax treaties Guernsey has entered into include treaties with Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden. With these seven jurisdictions, Guernsey has entered into separate treaties that have a limited scope of application, one of which relates to transfer pricing and one to certain categories of income of individuals. In this situation, the number of such treaties is regarded as one for the purpose of this peer review report.
3. It concerns the treaties with Estonia, Hong Kong (China), the Isle of Man, Jersey, Liechtenstein, Luxembourg and the United Kingdom.
4. Available at: www.oecd.org/tax/treaties/beps-mli-position-guernsey-instrument-deposit.pdf.
5. Available at: <https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-guernsey-stage-1-49037fba-en.htm>
6. Available at: www.oecd.org/tax/dispute/Guernsey-Dispute-Resolution-Profile.pdf.
7. The MAP statistics of Guernsey are included in Annex B and C of this report.
8. 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 (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.
- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

Part A

Preventing disputes

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

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

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

Current situation of Guernsey’s tax treaties

2. Out of Guernsey’s 27 tax treaties, 26 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. The remaining treaty only covers any difficulties or doubts arising as to the application of the treaty, and the term “interpretation” is missing. Therefore, this treaty is considered as not containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

3. Guernsey reported that nothing in its legislation or practice would prevent it from being able to enter into MAP agreements of a general nature even in the absence of the equivalent of Article 25(3), first sentence in the relevant tax treaty (provided that the other party to the treaty could also do so, and that the decision reached was not ultra vires Guernsey’s domestic law).

4. For the treaty identified that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), the relevant peer reported during stage 1 that Guernsey approached this peer regarding tax treaty negotiations in 2018.

Recent developments

Bilateral modifications

5. Guernsey signed a new treaty with one treaty partner, which concerns a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. The newly signed treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), and has already entered into force. The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

6. Guernsey signed the Multilateral Instrument and deposited its instrument of ratification on 12 February 2019. The Multilateral Instrument for Guernsey entered into force on 1 June 2019.

7. 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, 2017a) – 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, 2017a). 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, 2017a).

8. In regard of the tax treaty identified above that is considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Guernsey did not list it as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, the tax treaty identified above 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, 2017a).

Peer input

9. The peer that provided input during stage 2 did not provide input in relation to their tax treaty with Guernsey.

Anticipated modifications

10. For the remaining tax treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) and that will not be modified by the Multilateral Instrument, Guernsey reported during stage 1 that although it contacted the relevant treaty partner to discuss the possibility of amending the treaty to comply with the Action 14 Minimum Standard, this partner declined Guernsey's proposal to amend the treaty. Taking this into account there are no treaties left for which bilateral modifications are possible.

11. Guernsey reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	-	-

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

Jurisdictions with bilateral advance pricing arrangement (“APA”) programmes should provide for the roll-back of APAs in appropriate cases, subject to the applicable time limits (such as statutes of limitation for assessment) where the relevant facts and circumstances in the earlier tax years are the same and subject to the verification of these facts and circumstances on audit.

12. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.¹ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Guernsey’s APA programme

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

Recent developments

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

Practical application of roll-back of bilateral APAs

15. Peers provided no specific input in relation to element A.2 during stage 1 (1 January 2016-31 March 2019) and stage 2 (1 April 2019-31 December 2020).

Anticipated modifications

16. Guernsey did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Note

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

References

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

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

Part B

Availability and access to MAP

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

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

17. 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 Guernsey's tax treaties

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

18. Out of Guernsey's 27 tax treaties, five contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. Furthermore, 12 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).

19. The remaining ten treaties can be categorised as follows:

Provision	Number of tax treaties
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 taxpayers can only submit a MAP request for transfer pricing adjustments, whereas the scope of the treaty also covers certain items of income concerning individuals.	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 taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	9

20. The treaty in the first row of the table is 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 the scope of the MAP provision is limited to one type of dispute, whereas the treaty has a broader scope of application. This treaty is therefore not in line with this part of element B.1.

21. The nine treaties in the second row 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, eight out of these nine treaties are considered to be in line with this part of element B.1, since they do not contain a non-discrimination provision and only apply to residents of one of the states.

22. For the remaining treaty, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2017) 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, 2017) is therefore not clarified by the absence of or a limited scope of the non-discrimination provision, following which this treaty is not in line with this part of element B.1.

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

23. Out of Guernsey's 27 tax treaties, 25 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

24. For the remaining two treaties, the following analysis can be made:

Provision	Number of tax treaties
Filing period less than three years for a MAP request (two years)	1
Filing period of three years, but only relating to transfer pricing adjustments, while the scope of the treaty is broader in application	1

Peer input

25. For the treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2017), one of the relevant peers reported during stage 1 that Guernsey approached this peer regarding tax treaty negotiations in 2018. The other peers did not provide input.

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

26. As indicated above, all of Guernsey’s tax treaties allow the filing of a MAP request irrespective of domestic remedies. In this respect, Section 7.7.4 of Guernsey’s MAP guidance clarifies that it is possible for a taxpayer to request MAP assistance from Guernsey’s competent authority in situations where a decision has been rendered by Guernsey’s tax tribunal or courts.¹

27. The guidance further states that Guernsey’s competent authority cannot deviate in a MAP from such a decision.

Recent developments*Bilateral modifications*

28. Guernsey signed a new treaty with one treaty partner and three amending protocols to existing treaties. The newly signed treaty is with a treaty partner with which there was no treaty yet in place. This treaty and the three amending protocols contain a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to file a MAP request to either competent authority. The treaty and one amending protocol have entered into force, while the other two amending protocols have not yet entered into force as only Guernsey has ratified them. The effects of the newly signed treaty and the three amending protocols have been reflected in the analysis above where they have relevance.

Multilateral Instrument

29. Guernsey signed the Multilateral Instrument and deposited its instrument of ratification on 12 February 2019. The Multilateral Instrument for Guernsey entered into force on 1 June 2019.

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

30. 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, 2017), as amended by the Action 14 final report (OECD, 2015b) 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 Action 14 final report (OECD, 2015b). 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 Action 14 final report (OECD, 2015b). 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. With the ratification of the Multilateral Instrument, Guernsey opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Guernsey's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which he is a resident, Guernsey opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Guernsey listed nine of its 27 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all of them the notification that they contain a provision 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 Action 14 final report (OECD, 2015b).

32. In total, all nine relevant treaty partners, being a signatory to the Multilateral Instrument, have listed their treaty with Guernsey as a covered tax agreement under that instrument, whereas two out of these nine partners reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Out of the remaining seven treaty partners, six listed their treaty with Guernsey as having a provision that is 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).

33. With respect to these six treaties, five treaty partners already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Guernsey and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b). For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include this equivalent.

34. Furthermore, for the remaining treaty, where the treaty partner did not make a notification on the basis of Article 16(6)(a), this treaty will be superseded by the Multilateral Instrument.

35. In view of the above and in relation to the two treaties identified in paragraphs 19-22 that do not contain 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 Action 14 final report (OECD, 2015b), Guernsey listed none of these two treaties as a covered tax agreement. Therefore, at this stage, none of these two treaties will be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017).

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

36. 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, 2017) – 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, 2017).

37. In regard of the two tax treaties identified in paragraph 24 above that contain a filing period for MAP requests of less than three years or that contain a filing period only concerning transfer pricing adjustments, Guernsey did not list these treaties as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, these two treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

38. For two of the three tax treaties that do not contain the equivalent of Article 25(1), first or second sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument, Guernsey reported that the texts of amending protocols were agreed, and it completed its internal procedures to sign the amending protocols.

Peer input

39. The peer that provided input during stage 2 did not provide input in relation to their tax treaty with Guernsey.

Anticipated modifications

40. Guernsey reported that for the remaining tax treaty that does 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 Action 14 final report (OECD, 2015b) and that will not be modified by the Multilateral Instrument, the relevant treaty partner declined Guernsey's proposal to amend the treaty. Taking this into account, bilateral modifications are not possible for this treaty.

41. Guernsey reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2017), as it read after the adoption of the Action 14 final report (OECD, 2015b), in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	One out of 27 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017). This tax treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, negotiations have been finalised on an amending protocol.	For the treaty that does not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2017) and that will not be modified via the Multilateral Instrument, Guernsey should sign the negotiated amending protocol as soon as possible. This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), either: <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	One out of 27 tax treaties does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, negotiations have been finalised on an amending protocol.	For the treaty that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument, Guernsey should sign the negotiated amending protocol as soon as possible.

[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).

42. 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

43. As discussed under element B.1, out of Guernsey’s 27 treaties, five treaties currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, five of the remaining 22 treaties have been modified by the Multilateral Instrument to include such equivalent, and another two will, upon entry into force, be modified or superseded by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

44. Guernsey reported that it has introduced a bilateral consultation or notification process that allows the other competent authority concerned to provide its views on the case when Guernsey’s competent authority considers the objection raised in the MAP request not to be justified.

45. In this regard, Guernsey’s MAP guidance contains a clear statement that if Guernsey’s Competent Authority does not consider the MAP request to be justified, it will implement such process with the other competent authority which will allow the other party to provide its views on the case.

Recent developments

46. There are no recent developments with respect to element B.2.

Practical application

Period 1 January 2016-31 March 2019 (stage 1)

47. Guernsey reported that in the period 1 January 2016-31 March 2019 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016-18 MAP statistics submitted by Guernsey show that one case was closed with the outcome of “objection not justified”, but this decision was made by a treaty partner, not by Guernsey’s competent authority.

48. One peer provided input that one case mentioned above was closed with the decision of “objection not justified” by its competent authority. Other peers provided no specific input in relation to element B.2.

Period 1 April 2019-31 December 2020 (stage 2)

49. Guernsey reported that since 1 April 2019 it has not received any MAP requests. Therefore, there were no cases where it was decided that the objection raised by taxpayers in such request was not justified. The 2019 and 2020 MAP statistics submitted by Guernsey confirm that none of its MAP cases were closed with the outcome “objection not justified”.

50. The peer that provided input during stage 2 did not provide input in relation to element B.2.

Anticipated modifications

51. Guernsey did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

52. 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

53. Out of Guernsey's 27 tax treaties, 19 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a corresponding adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, two treaties do not contain a provision on associated enterprises at all.

54. Out of the remaining six treaties, two treaties contain a provision based on Article 9(2), but it requires a recourse to MAP for the granting of corresponding adjustments. One treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but does not contain the last part of the sentence stating that the competent authorities "shall if necessary consult each other". The remaining three treaties contain a provision on associated enterprises, but do not contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017) at all.

55. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Guernsey'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, Guernsey indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments (if applicable) regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties.

56. Section 3.1 of Guernsey's MAP guidance lists examples of scenarios that may require competent authority assistance, one of which concerns the circumstance where a transfer pricing adjustment results in additional tax.²

Recent developments

Bilateral modifications

57. Guernsey signed a new treaty with one treaty partner, which concerns a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. The newly signed treaty contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), and has already entered into force. The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

58. Guernsey reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, Guernsey signed the Multilateral Instrument, and deposited its instrument of ratification on 12 February 2019. The Multilateral Instrument for Guernsey entered into force on 1 June 2019.

59. 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, 2017) – 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, 2017). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). 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, 2017)).

60. Guernsey has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). In regard of the six treaties identified in paragraph 53 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), Guernsey listed two of these six treaties as a covered tax agreement under the Multilateral Instrument, but Guernsey has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument to these two treaties. Therefore, at this stage, no treaties will be modified by the Multilateral Instrument.

Application of legal and administrative framework in practice

Period 1 January 2016-31 March 2019 (stage 1)

61. Guernsey reported that in the period 1 January 2016-31 March 2019, it has not received any MAP requests concerning transfer pricing cases and therefore has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

62. Peers provided no specific input in relation to element B.3.

Period 1 April 2019-31 December 2020 (stage 2)

63. Guernsey reported that since 1 April 2019, it has also not received any MAP requests concerning transfer pricing cases and therefore has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

64. The peer that provided input during stage 2 did not provide input in relation to their tax treaty with Guernsey.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

66. 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

67. None of Guernsey's 27 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 Guernsey do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

68. Section 7.7.5 of Guernsey's MAP guidance clarifies that there is no restriction on a taxpayer's access to MAP for cases where a treaty-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 the relevant tax treaty.³

Recent developments

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

Practical application*Period 1 January 2016-31 March 2019 (stage 1)*

70. Guernsey reported that in the period 1 January 2016-31 March 2019 it has not received a MAP request 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.

71. Peers provided no specific input in relation to element B.4.

Period 1 April 2019-31 December 2020 (stage 2)

72. Guernsey reported that since 1 April 2019 it has also not received a MAP request 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.

73. The peer that provided input during stage 2 did not provide input in relation to element B.4.

Anticipated modifications

74. Guernsey did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

[B.5] Provide access to MAP in cases of audit settlements

Jurisdictions should not deny access to MAP in cases where there is an audit settlement between tax authorities and taxpayers. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, jurisdictions may limit access to the MAP with respect to the matters resolved through that process.

75. 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

76. Guernsey reported that there is no audit settlement process available in Guernsey.

77. Section 7.7.3 of Guernsey’s MAP guidance states that it would only be possible for Guernsey to consider a MAP request where there had been an audit settlement between a taxpayer and another tax jurisdiction, and that the existence of an audit settlement between a taxpayer and another tax authority would not, in and of itself, preclude access to MAP in Guernsey.⁴

Administrative or statutory dispute settlement/resolution process

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

Recent developments

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

Practical application

Period 1 January 2016-31 March 2019 (stage 1)

80. Guernsey reported that in the period 1 January 2016-31 March 2019 it has not received any MAP requests for cases where the issue presented by the taxpayer had already been resolved through an audit settlement between the taxpayer and the tax administration since audit settlements are not available in Guernsey.

81. Peers provided no specific input in relation to element B.5.

Period 1 April 2019-31 December 2020 (stage 2)

82. Guernsey reported that since 1 April 2019 it has also not received any MAP requests for cases where the issue presented by the taxpayer had already been resolved through an audit settlement between the taxpayer and the tax administration since audit settlements are not available in Guernsey.

83. The peer that provided input during stage 2 did not provide input in relation to element B.5.

Anticipated modifications

84. Guernsey did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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

Legal framework on access to MAP and information to be submitted

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

87. Section 7.3 of Guernsey's MAP guidance provides for the timeframes in relation to additional information requests.⁵ It states that in cases where a taxpayer has been notified that the minimum required information has not been provided, or additional information is required, the taxpayer will normally be given 60 days to provide the information and documents. It further notes that where the information or documentation has not been received within this timeframe, and no requests for an additional period of time to provide the material have been agreed in advance, Guernsey's competent authority will consider that the taxpayer has withdrawn the request, and will notify the taxpayer (and the other competent authority, if relevant). The guidance also states that upon request by a taxpayer, Guernsey's competent authority may permit additional time to submit outstanding material, agreed on a case by case basis.

Recent developments

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

Practical application***Period 1 January 2016-31 March 2019 (stage 1)***

89. Guernsey 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. It further reported that in the period 1 January 2016-31 March 2019 its competent authority has not received a MAP request from a taxpayer.

90. Peers provided no specific input in relation to element B.6.

Period 1 April 2019-31 December 2020 (stage 2)

91. Guernsey reported that since 1 April 2019 its competent authority has not received a MAP request from a taxpayer.

92. The peer that provided input during stage 2 did not provide input in relation to element B.6.

Anticipated modifications

93. Guernsey did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a provision under which competent authorities may consult together for the elimination of double taxation in cases not provided for in their tax treaties.

94. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Guernsey's tax treaties

95. Out of Guernsey's 27 tax treaties, 15 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.

96. The remaining 12 treaties have a limited scope of application. This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention (OECD, 2017) are not followed. As these treaties were intentionally negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, therefore, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) for those 12 treaties with a limited scope of application.

97. During stage 1, peers provided no specific input in relation to element B.7.

Recent developments

Bilateral modifications

98. Guernsey signed a new treaty with one treaty partner, which concerns a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), and has entered into force. The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Peer input

99. The peer that provided input during stage 2 did not provide input in relation to their tax treaty with Guernsey.

Anticipated modifications

100. Guernsey reported that it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties, unless the treaties concerned are limited in scope, such that there is justification for them not to contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Conclusion

	Areas for improvement	Recommendations
[B.7]	-	-

[B.8] Publish clear and comprehensive MAP guidance

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

101. 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.

Guernsey’s MAP guidance

102. Guernsey has published rules, guidelines and procedures in Guidelines for requesting Mutual Agreement Procedure (“MAP”) assistance in Guernsey (“**MAP guidance**”), which is available at:

<https://www.gov.gg/CHttpHandler.ashx?id=118907&p=0>

103. The MAP guidance consists of 10 sections and sets out in detail how taxpayers can access the mutual agreement procedure and what rules apply during that procedure under tax treaties Guernsey entered into. More specifically, it contains information on:

1. Introduction
• What is a DTA?/Purpose of DTAs/Double Taxation
2. What is a Mutual Agreement Procedure (MAP)?
3. Making a MAP request
• Example Scenarios that may require Competent Authority Assistance
4. Eligibility for MAP Requests in Guernsey
5. Time Limits for Requesting a MAP
6. Overview of the MAP process

7. The MAP Process

- How to Submit a MAP Request
- Minimum Information Requirements/Timeframes in relation to Additional Information Requests
- Acceptance or Denial of a MAP request
- Resolution of a MAP request
- Interactions with Domestic Remedies
- Other Relevant Guidance (Suspension of Tax and Payment of Additional Tax, Access to MAP in Transfer Pricing Cases/the Application of Anti-abuse Provisions/for Multiple Years, Audit Settlements, Statutory Dispute Settlement/Resolution Process, Multiple MAPs, Late Payment surcharges and/or Penalties, Aspects Not Covered by MAP)

8. Timescales for the Conclusion of a MAP case

9. Undertakings

10. Confidentiality of MAP requests

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

Information and documentation to be included in a MAP request

105. 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 requests for MAP assistance.⁶ This agreed guidance is shown below. Guernsey's MAP guidance enumerating which items must be included in a request for MAP assistance 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.

106. Section 7.2 of Guernsey's MAP guidance contains the detailed list of information and documentation to be submitted by taxpayers in requests for MAP assistance.

Recent developments

107. Guernsey reported that it has updated its MAP guidance in November 2020 for minor updates and corrections.

Anticipated modifications

108. Guernsey did not indicate that it anticipates any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

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

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

109. 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.⁷

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

110. The MAP guidance of Guernsey is published and can be found at:

<https://www.gov.gg/CHttpHandler.ashx?id=118907&p=0>

111. This guidance was last updated in November 2020. As regards its accessibility, Guernsey’s MAP guidance can easily be found on the website of the States of Guernsey by searching e.g. “mutual agreement procedure”.

MAP profile

112. The MAP profile of Guernsey is published on the website of the OECD and was last updated in May 2021.⁸ This MAP profile is complete with some detailed information. This profile includes a couple of external links that provide extra information and guidance where appropriate.

Recent developments

113. Guernsey reported that it has updated its MAP profile following the update of its MAP guidance.

Anticipated modifications

114. Guernsey did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP

Jurisdictions should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, and jurisdictions limit access to the MAP with respect to the matters resolved through that process, jurisdictions should notify their treaty partners of such administrative or statutory processes and should expressly address the effects of those processes with respect to the MAP in their public guidance on such processes and in their public MAP programme guidance.

115. 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

116. As previously discussed under B.5, it is not possible that taxpayers and the tax administration enter into audit settlements in Guernsey. The relationship between access to MAP and audit settlements made between taxpayers and another jurisdiction is described in Section 7.7.3 of Guernsey's MAP guidance.⁹

117. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Guernsey's MAP guidance.

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

118. As previously mentioned under element B.5, Guernsey 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.

119. Peers raised no issues with respect to an administrative or statutory dispute settlement/resolution process in Guernsey, which can be clarified by the fact that such process is not in place in Guernsey.

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

120. As Guernsey 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.

Recent developments

121. There are no recent developments with respect to element B.10.

Anticipated modifications

122. Guernsey did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. Guernsey’s MAP guidance is available at: <https://www.gov.gg/CHttpHandler.ashx?id=118907&p=0>.
2. Guernsey’s MAP guidance is available at: <https://www.gov.gg/CHttpHandler.ashx?id=118907&p=0>.
3. Guernsey’s MAP guidance is available at: <https://www.gov.gg/CHttpHandler.ashx?id=118907&p=0>.
4. Guernsey’s MAP guidance is available at: <https://www.gov.gg/CHttpHandler.ashx?id=118907&p=0>.
5. Guernsey’s MAP guidance is available at: <https://www.gov.gg/CHttpHandler.ashx?id=118907&p=0>.
6. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
7. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
8. Available at: <https://www.oecd.org/tax/dispute/Guernsey-Dispute-Resolution-Profile.pdf>.
9. Available at: <https://www.gov.gg/CHttpHandler.ashx?id=118907&p=0>.

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- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.
- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

Part 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.

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

Current situation of Guernsey’s tax treaties

124. Out of Guernsey’s 27 tax treaties, 26 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty. The remaining treaty does not contain any such equivalent.

125. For the treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peer reported during stage 1 that Guernsey approached this peer regarding tax treaty negotiations in 2018.

Recent developments

Bilateral modifications

126. Guernsey signed a new treaty with one treaty partner and one amending protocol to an existing treaty. The newly signed treaty is with a treaty partner with which there was no treaty yet in place. This treaty and the amending protocol contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD,

2017). The treaty has entered into force, while the amending protocol has not yet entered into force as only Guernsey has ratified it. The effects of the newly signed treaty and the amending protocol have been reflected in the analysis above where they have relevance.

Multilateral Instrument

127. Guernsey signed the Multilateral Instrument, and deposited its instrument of ratification on 12 February 2019. The Multilateral Instrument for Guernsey entered into force on 1 June 2019.

128. 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, 2017) – 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, 2017). 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, 2017).

129. In regard of the tax treaty identified above that is considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Guernsey did not list it as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, this treaty 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, 2017).

Peer input

130. The peer that provided input during stage 2 did not provide input in relation to their tax treaty with Guernsey.

Anticipated modifications

131. For the remaining tax treaty that does not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument, Guernsey reported that the relevant treaty partner declined Guernsey’s proposal to amend the treaty. Taking this into account, bilateral modifications are not possible for this treaty.

132. Guernsey reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[C.1]	-	-

[C.2] Seek to resolve MAP cases within a 24-month average timeframe

Jurisdictions should seek to resolve MAP cases within an average time frame of 24 months. This time frame applies to both jurisdictions (i.e. the jurisdiction which receives the MAP request from the taxpayer and its treaty partner).

133. 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

134. Statistics regarding all tax treaty related disputes concerning Guernsey are published on the website of the OECD as of 2016.¹

135. 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. Guernsey provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, and reported no MAP cases.² The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and Annex C respectively and should be considered jointly to understand the MAP caseload of Guernsey.

136. With respect to post-2015 cases, one peer reported one case with Guernsey, which was confirmed by Guernsey thereafter. This occurred because the peer had received the request and determined, on the basis of the treaty, that it was unjustified, and notified Guernsey accordingly. Guernsey reported that it received, and closed, the matter on this basis but, erroneously, the officer handling the matter did not record the case as a MAP request (as it required no action from Guernsey, and no communication with the taxpayer or the partner jurisdiction).

Monitoring of MAP statistics

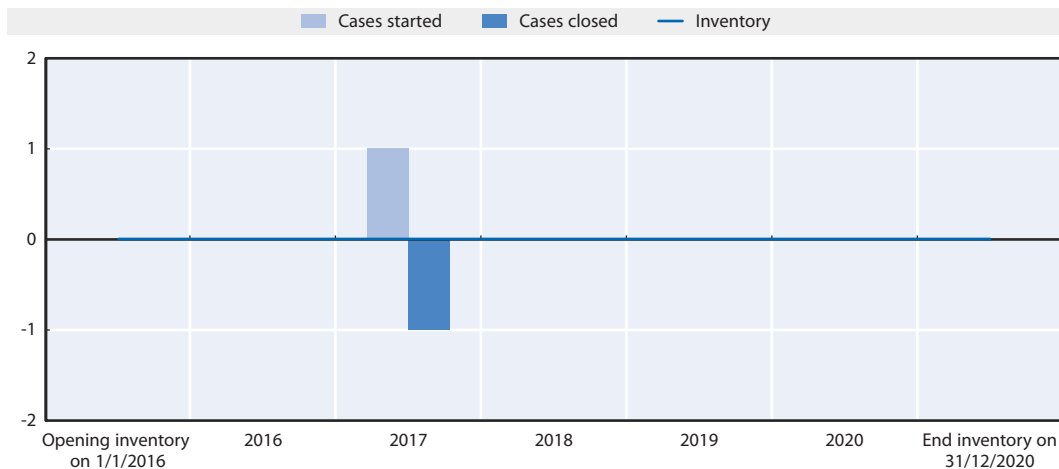
137. Guernsey reported that it does not have a system in place with its treaty partners that communicates, monitors and manages with its treaty partners the MAP caseload. However, it further reported that it intends to create a database to process and monitor all stages of the MAP process in the event it receives a further MAP request.

Analysis of Guernsey’s MAP caseload

138. The analysis of Guernsey’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2020.

139. Figure C.1 shows the evolution of Guernsey’s MAP caseload over the Statistics Reporting Period.

Figure C.1. Evolution of Guernsey’s MAP caseload



140. Throughout the Statistics Reporting Period Guernsey had only one MAP case in 2017, which was closed within the same year. Therefore, there is no MAP case in Guernsey’s end inventory.

Pre-2016 cases

141. Guernsey did not have any pre-2016 cases during the Statistics Reporting Period.

Post-2015 cases

142. As mentioned above, Guernsey had one case that started in 2017 and that was closed in the same year. This case concerns a post-2015 case.

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

143. During the Statistics Reporting Period, Guernsey closed one other post-2015 MAP case with the outcome “objection not justified”. Guernsey reported that the decision was made by Guernsey’s treaty partner.

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

144. The time needed to close one MAP case during the Statistics Reporting Period was 3.81 months. It is shown as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	0	N/A
Other cases	1	3.81
All cases	1	3.81

Peer input

145. The peer that had a case with Guernsey commented during stage 1 that there was limited discussion and the case was closed as “objection not justified” by this peer.

Recent developments

146. Guernsey was in the stage 1 peer review report under element C.2 recommended to seek to resolve future post-2015 cases within a timeframe that results in an average timeframe of 24 months.

147. With respect to this recommendation, Guernsey reported that it was not involved in any MAP cases during the period under review but remains committed to seek to resolve MAP cases within an average timeframe of 24 months as described in its MAP guidance.

148. From the statistics discussed above, it follows that Guernsey has in the period 2016-20 closed one MAP case within the pursued average of 24 months. For these years, as discussed above, Guernsey had only one case that started and was closed in the same year, and therefore there is no MAP case in Guernsey’s end inventory.

149. The peer that provided input during stage 2 did not provide input in relation to element C.2.

Anticipated modifications

150. Guernsey did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

151. 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 Guernsey’s competent authority

152. Under Guernsey’s tax treaties, the competent authority function is assigned to the Director of the Revenue Service or her delegate. Guernsey reported that it does not have a dedicated MAP unit, since it has not considered it necessary, given its MAP caseload (only one MAP request has arisen to date).

153. Guernsey also reported that in practice, any MAP requests received in the future would be dealt with by the competent authority and delegated senior staff, within the direct tax section of the Revenue Service, who have received the necessary training on MAP Procedures. Such staff would already possess extensive professional experience in dealing

with tax matters and as such collectively have the necessary expertise and skill sets to deal with MAP cases, including but not limited to:

- knowledge in the interpretation and application of Guernsey’s domestic law and international agreements, inclusive of all relevant international guidelines as provided by the OECD
- expertise in the required examination and assessment procedures, inclusive of performing any economic/accounting/statistical analysis
- expertise in treaty negotiation.

154. To be more concrete, Guernsey reported that the Director of International Tax Policy could provide oversight of MAP cases, should they arise. The Director (who would not ordinarily have had any involvement in the domestic tax history of a case to which a MAP request related) has more than 40 years of tax experience.

155. Guernsey noted that where possible, Guernsey’s preference for MAP negotiations would be via regular phone and electronic correspondence in the first instance, as an efficient, practical and suitable alternative to face-to-face meetings. Guernsey considers that notwithstanding the above, where it is mutually agreed by both jurisdictions that a MAP case would be more appropriately dealt with via face-to-face meetings, Guernsey’s Revenue Service has the facility to bear their own expenses on a case by case basis, as required, as part of the general budget provided for it to perform its functions. There also exists a facility to request additional budget, should exceptional circumstances arise.

156. In terms of future resources available for MAP, Guernsey commented that it considers that the allocation of resources to deal with any future MAP cases is already sufficient to ensure that Guernsey would meet all undertakings and timescales for the processing of MAP cases as contained in the MAP guidance.

Monitoring mechanism

157. As mentioned above, Guernsey considers that resources available for MAP are currently sufficient, but it reported that in the event that the situation changed, Guernsey would re-assess its resources allocation to ensure that it continues to meet all of its undertakings and timescales as contained in Guernsey’s MAP guidance as appropriate.

Recent development

158. There are no recent developments with respect to element C.3.

Practical application

MAP statistics

159. As discussed under element C.2, Guernsey closed one MAP case during the Statistics Reporting Period within the pursued 24-month average. The case concerned an other post-2015 case and was closed within 3.81 months.

Peer input

160. Peers provided no specific input in relation to element C.3 during stage 1 (1 January 2016-31 March 2019) and stage 2 (1 April 2019-31 December 2020).

Anticipated modifications

161. Guernsey did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	-

[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty

Jurisdictions should ensure that the staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty, in particular without being dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty.

162. 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

163. As discussed under element C.3, Guernsey reported that MAP cases would be handled by senior staff within Guernsey’s Revenue Service. In this regard, Guernsey clarified that such senior staff handling a MAP request will not have been involved in the making of the original audit decision to which the request relates. Guernsey also reported that senior staff in charge of MAP cases would not be influenced by considerations of the policy that Guernsey would like to see reflected in future amendments to the treaty when dealing with MAP cases.

164. In regard to the above, Guernsey considers that the staff in charge of MAP in Guernsey have the necessary authority to resolve MAP cases and are not dependent on the approval/direction of outside personnel and that there are no impediments in Guernsey’s abilities to perform its MAP functions.

Recent developments

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

Practical application

166. Peers provided no specific input in relation to element C.4 during stage 1 (1 January 2016-31 March 2019) and stage 2 (1 April 2019-31 December 2020).

Anticipated modifications

167. Guernsey did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

[C.5] Use appropriate performance indicators for the MAP function

Jurisdictions should not use performance indicators for their competent authority functions and staff in charge of MAP processes based on the amount of sustained audit adjustments or maintaining tax revenue.

168. 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 Guernsey

169. As described under element C.2, Guernsey does not have a separate MAP office within the Revenue Service at this time.

170. Guernsey reported that in the event that Guernsey received any MAP requests in the future, performance indicators would be measured only against the timescales to resolve the case and undertakings as detailed in Guernsey’s MAP guidance.

171. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist:

- 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).

172. Further to the above, Guernsey also clarified that there are no performance indicators with regard to any requirement to maintain a certain amount of tax revenue. Section 4 of Guernsey’s MAP guidance indeed contains the statement that Guernsey does not use performance indicators for the competent authority functions and staff in charge of MAP processes based on the amount of adjustments or tax revenue arising from dealing with MAP cases. In other words, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions.

Recent developments

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

Practical application

174. Peers provided no specific input in relation to element C.5 during stage 1 (1 January 2016-31 March 2019) and stage 2 (1 April 2019-31 December 2020).

Anticipated modifications

175. Guernsey did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

176. 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

177. Guernsey reported that it has no legal or policy limitations for including MAP arbitration in its tax treaties, and its model tax agreement contains an arbitration provision.

178. Section 7.5.2.3 of Guernsey’s MAP guidance refers to tax treaties that contain an arbitration provision.³

Recent developments

179. Guernsey signed a new treaty with one treaty partner, which concerns a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. The newly signed treaty contains an arbitration provision, which is based on part VI of the Multilateral Instrument. The treaty has already entered into force. The effects of this newly signed treaty have been reflected in the analysis below where they have relevance.

Practical application

180. Up to date, Guernsey has incorporated an arbitration clause in seven of its 26 treaties as a final stage to the MAP. These clauses can be specified as follows:

- Equivalent of Article 25(5) of the OECD Model Tax Convention (OECD, 2017): five treaties.
- Voluntary and binding arbitration: two treaties.

Anticipated modifications

181. Guernsey did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2017.
2. Guernsey’s 2017 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2017. See further details in Annex C.
3. Guernsey’s MAP guidance is available at: <https://www.gov.gg/CHttpHandler.ashx?id=110655&p=0>.

References

- OECD (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.
- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

182. 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

183. Guernsey reported that under Guernsey’s domestic law, both upward and downward adjustments can be generally made within six years of the end of the year of charge for which a tax assessment pursuant to a tax return was made. Guernsey also reported that Section 172(1) of the Income Tax Law prescribes that arrangements with any other jurisdiction with a view to affording double taxation relief would override any domestic enactment, indicating that any MAP agreements by Guernsey would override its domestic statutes. In addition, Section 7.5.2.1 of Guernsey’s MAP guidance clarifies that the Director of the Revenue Service may implement any MAP agreement reached in a MAP case notwithstanding the time limits in Guernsey’s income tax law.¹

184. Section 7.5.2.1 of Guernsey’s MAP guidance describes the procedure after a MAP agreement is reached. As mentioned in the guidance, Guernsey’s competent authority will notify the taxpayer in writing of the decision and summary of the result within 30 days of the agreement reached. If the taxpayer confirms in writing its acceptance of the MAP agreement, Guernsey reported that its tax authority will give effect to the agreement and seek to ensure its implementation without delay in order that the relevant relief is obtained by the taxpayer promptly. Guernsey’s MAP guidance further provides that the same would apply if the taxpayer would fail to respond but the MAP agreement would not be implemented if the taxpayer objects to such an implementation.

Recent developments

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

Practical application*Period 1 January 2016-31 March 2019 (stage 1)*

186. Guernsey reported that it has not reached any MAP agreements in the period 1 January 2016-31 March 2019, which can be explained by its very small caseload.

187. Peers provided no specific input in relation to element D.1.

Period 1 April 2019-31 December 2020 (stage 2)

188. Guernsey reported that since 1 April 2019 its competent authority did not enter into any MAP agreements that required implementation by Guernsey.

189. The peer that provided input during stage 2 did not provide input in relation to element D.1.

Anticipated modifications

190. Guernsey did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

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

Agreements reached by competent authorities through the MAP process should be implemented on a timely basis.

191. 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

192. Guernsey reported that, apart from the timeframe given to taxpayers and described under element D.1, there is no theoretical timeframe for implementing mutual agreements.

Recent developments

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

Practical application*Period 1 January 2016-31 March 2019 (stage 1)*

194. As discussed under element D.1, Guernsey has not reached any MAP agreements in the period 1 January 2016-31 March 2019.

195. Peers provide no specific input in relation to element D.2.

Period 1 April 2019-31 December 2020 (stage 2)

196. As described under element D.1, since 1 April 2019 Guernsey did not enter into any MAP agreements that required implementation by Guernsey.

197. The peer that provided input during stage 2 did not provide input in relation to element D.2.

Anticipated modifications

198. Guernsey did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties or alternative provisions in Article 9(1) and Article 7(2)

Jurisdictions should either (i) provide in their tax treaties that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law, or (ii) be willing to accept alternative treaty provisions that limit the time during which a Contracting Party may make an adjustment pursuant to Article 9(1) or Article 7(2), in order to avoid late adjustments with respect to which MAP relief will not be available.

199. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

Legal framework and current situation of Guernsey’s tax treaties

200. As discussed under element D.1, Guernsey would be able to implement MAP agreements despite any time limits provided under its domestic legislation, even in the absence of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) in the relevant treaty.

201. Out of Guernsey’s 27 tax treaties, 26 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. The remaining treaty does not contain such equivalent or the alternative provisions.

202. For the treaty identified that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or both alternatives, the relevant peer reported that Guernsey approached this peer regarding tax treaty negotiations in 2018.

Recent developments

Bilateral modifications

203. Guernsey signed a new treaty with one treaty partner and one amending protocol to an existing treaty. The newly signed treaty is with a treaty partner with which there was no treaty yet in place. This treaty and the amending protocol contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). The treaty has entered into force, while the amending protocol has not yet entered into force as only Guernsey has ratified it. The effects of the newly signed treaty and the amending protocol have been reflected in the analysis above where they have relevance.

Multilateral Instrument

204. Guernsey signed the Multilateral Instrument, and deposited its instrument of ratification on 12 February 2019. The Multilateral Instrument for Guernsey entered into force on 1 June 2019.

205. 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, 2017) – 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, 2017). 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, 2017). 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.

206. In regard of the tax treaty identified above that is considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternative provisions for Articles 9(1) and 7(2), Guernsey did not list the treaty as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, this tax treaty 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, 2017).

Peer input

207. The peer that provided input during stage 2 did not provide input in relation to their tax treaty with Guernsey.

Anticipated modifications

208. Guernsey reported that for the remaining tax treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives provided for in Articles 9(1) and 7(2) and that will not be modified by the Multilateral Instrument, the relevant treaty partner declined Guernsey’s proposal to amend the treaty. Taking this into account, bilateral modifications are not possible for this treaty.

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

Conclusion

	Areas for improvement	Recommendations
[D.3]	-	-

Note

1. Guernsey’s MAP guidance is available at: <https://www.gov.gg/CHttpHandler.ashx?id=118907&p=0>.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	-
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	<p>One out of 27 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017). This tax treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, negotiations have been finalised on an amending protocol.</p>	<p>For the treaty that does not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2017) and that will not be modified via the Multilateral Instrument, Guernsey should sign the negotiated amending protocol as soon as possible.</p> <p>This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), either:</p> <ul style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	<p>One out of 27 tax treaties does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, negotiations have been finalised on an amending protocol.</p>	<p>For the treaty that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument, Guernsey should sign the negotiated amending protocol as soon as possible.</p>
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	-	-
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	-	-

	Areas for improvement	Recommendations
[C.2]	-	-
[C.3]	-	-
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-
[D.3]	-	-

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? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? (Note 3)	Inclusion Art. 25(2) first sentence? (Note 4)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	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	C.1	D.3	A.1	A.1	B.7	C.6								
Estonia	Y	N/A	E	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Faroe Island	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Finland	Y	N/A	E	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Greenland	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Hong Kong (China)	Y	N/A	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Iceland	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Ireland	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Isle of Man	Y	N/A	E	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Japan	Y	N/A	O	Y	N/A	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Jersey	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Liechtenstein	Y	N/A	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Luxembourg	Y	N/A	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Malta	Y	N/A	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Mauritius	Y	N/A	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Monaco	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Netherlands	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
New Zealand	Y	N/A	E	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Norway	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Poland	Y	N/A	N	Y	N/A	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Qatar	Y	N/A	O	ii	2-years	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Seychelles	Y	N/A	O**	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11									
	Article 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration																	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)	A.1	A.2	B.1	B.2	B.3	B.4	B.5	B.6	B.7	B.8	C.1	C.2	C.3	C.4	C.5	C.6	
Singapore	Y	N/A	O	Y	N/A	i	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Sweden	Y	N/A	O	Y	N/A	i	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
United Kingdom	Y	N/A	E	Y	N/A	i	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

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

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Legend

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

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

Annex B

MAP statistics reporting for pre-2016 cases (1 January 2016 to 31 December 2020)

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			
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9			Column 10	Column 11	Column 12
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

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			
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9			Column 10	Column 11	Column 12
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2019 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2019	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 2019	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2020 MAP Statistics																
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2020	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 2020	Average time taken (in months) for closing pre-2016 cases during the reporting period			
		Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

Annex C

MAP statistics reporting for post-2015 cases (1 January 2016 to 31 December 2020)

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	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

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	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	1	0	1	0	0	0	0	0	0	0	0	0	0	3.81
Total	0	1	0	1	0	0	0	0	0	0	0	0	0	0	3.81

Note: The 2017 MAP statistics for Guernsey were corrected during its peer review and deviate from the published 2017 MAP statistics.

2018 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2019 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2019	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 2019	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2020 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2020	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 2020	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	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP guidance	Guidelines for requesting Mutual Agreement Procedure assistance in Guernsey
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2020
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Guernsey (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' Stage 1 peer review report. This report reflects the outcome of the Stage 2 peer monitoring of the implementation of the Action 14 Minimum Standard by Guernsey, which is accompanied by a document addressing the implementation of best practices.



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