

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 85 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

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

Inclusive Framework, which already has more than 136 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 11 December 2019 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

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

Executive summary

Liechtenstein has a small tax treaty network consisting of 20 treaties. It has a small MAP inventory with a small number of new cases submitted each year and 12 cases pending on 31 December 2017. Of these cases, 67% concern attribution/allocation cases. The outcome of the stage 1 review process was that overall Liechtenstein met almost all of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Liechtenstein worked to address them, which has been monitored in stage 2 of the process. In this respect, Liechtenstein solved some of them.

All of Liechtenstein's tax treaties contain a provision relating to MAP. Save for one treaty, all of these treaties follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention, following which its tax treaty network is almost entirely consistent with the requirements of the Action 14 Minimum Standard. The remaining treaty does neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law nor contains the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments. In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Liechtenstein needs to amend and update this tax treaty. In this respect, Liechtenstein signed, without any reservation on the MAP article, the Multilateral Instrument. Furthermore, Liechtenstein opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. As the relevant treaty will not be modified by this instrument, bilateral actions are necessary to meet the requirements under the standard. Liechtenstein, however, did not undertake any action to bring this treaty in line with the requirements of this standard. Taking this into account, negotiations need to be initiated without further delay to ensure compliance with this part of the Action 14 Minimum Standard.

Concerning the prevention of disputes, although Liechtenstein can provide bilateral APAs and enables taxpayers to request rollbacks of such APAs, since 1 January 2016 no requests for roll-back of APAs were received.

Liechtenstein meets the Action 14 Minimum Standard regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases. Furthermore, it has in place a notification process for those situations in which Liechtenstein's competent authority considers the objection raised by taxpayers in a MAP request as not justified. While in its stage 1 peer review report it was identified that this process was not documented, Liechtenstein has done so recently. Liechtenstein also has comprehensive guidance on the availability of MAP and on how it applies this process in practice.

Concerning the average time needed to resolve MAP cases, the MAP statistics for the year 2016 are shown in the table below.

2016-17	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2016	Average time to resolve cases (in months)*
Allocation/attribution cases	4	6	2	8	38.01
Other cases	7	1	4	4	15.13
Total	11	7	6	12	22.76

*The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Liechtenstein used the rules as set out in the MAP Statistics Reporting Framework with one exception. Liechtenstein used as the end-date the date when official information of the outcome is reported to the taxpayer (if this information is available to Liechtenstein in cases where the taxpayer is informed by the other competent authority; if this information is not available, the date of notification by the other competent authority to Liechtenstein informing it that the taxpayer has been informed about the outcome of the MAP case).

The number of cases Liechtenstein closed in 2016 or 2017 is approximately 85% of the number of new cases started in those years. During these years, MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time needed was 22.76 months. This mainly concerns other MAP cases, which average is significantly below the pursued 24-month average (15.13 months). The average time to close attribution/allocation cases is thereby considerably longer (38.01 months) and above this pursued average. Furthermore, the average for 2017 as compared to 2016 has also increased. Apart from that, Liechtenstein's MAP inventory on 31 December 2017 slightly increased as compared to the inventory on 1 January 2016, which follows from a doubling of attribution/allocation cases. While Liechtenstein has introduced internal deadlines to accelerate the resolution of cases, the high average for attribution/allocation cases and the increase in the inventory of that type of cases indicates that more resources or additional actions may be necessary to cope with this increase and to ensure that Liechtenstein resolves all MAP cases in a timely, effective and efficient manner.

These figures point out that the number of cases Liechtenstein closed is slightly higher than the number of cases started in 2016, and its MAP inventory as per 31 December 2016 almost remained the same as compared to its inventory as per 1 January 2016. The current available resources for the MAP function are in principle adequate to manage the influx of new MAP cases, although additional resources may be necessary to achieve a net reduction of the number of cases in its inventory.

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

Lastly, Liechtenstein almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Liechtenstein monitors the implementation of such agreements. However, it has a domestic statute of limitation, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, albeit that no problems have surfaced regarding implementation throughout the peer review process.

Introduction

Available mechanisms in Liechtenstein to resolve tax treaty-related disputes

Liechtenstein has 20 tax treaties on income (and/or capital), 19 of which are in force.¹ These 20 treaties apply to an equal number of jurisdictions. All 20 treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 13 of such treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.

Under Liechtenstein’s tax treaties, the competent authority function to conduct MAP is assigned to the Fiscal Authority of Liechtenstein. This function has been delegated to the International Division within the Fiscal Authority. Liechtenstein’s competent authority consists of 2.6 full time equivalents who are dedicated to both negotiations of tax treaties and handling MAP cases.

Liechtenstein has issued guidance in relation to the governance and administration of the mutual agreement procedure in its Fact sheet on international mutual agreement procedures under the double taxation conventions with respect to taxes on income and on capital (“**MAP guidance**”) which is available in English at:

<https://www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf>

Developments in Liechtenstein since 1 April 2017

Developments relating to the tax treaty network

In the stage 1 peer review report of Liechtenstein, it is reflected that Liechtenstein was conducting tax treaty negotiations with Ireland, Norway and the Slovak Republic, and that it finalised such negotiations with Bahrain and signed a tax treaty with Monaco, but ratification procedures for the latter treaty at the time had not yet been finalised. Since then, the treaty with Monaco has entered into force.

Furthermore, on 7 June 2017 Liechtenstein signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. It further opted for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. In relation to the Action 14 Minimum Standard, Liechtenstein has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure). Liechtenstein reported that it is completing its final position on the Multilateral Instrument and working towards eliminating all remaining mismatches with its treaty partners. Furthermore, Liechtenstein reported it expects to ratify the Multilateral Instrument in the second half of 2019.

In addition, Liechtenstein reported that since 1 April 2017 it has concluded several treaty negotiations and has signed a new tax treaty with Monaco (2017), Jersey (2018) and Lithuania (2019), of which the one with Monaco and Jersey have already entered into force. All three treaties are taken into account in the analyses of this report.

For the one tax treaty that was in stage 1 of the peer review report considered not to be in line with one of the elements of the Action 14 Minimum Standard, Liechtenstein reported that it is in regular contact with its treaty partner and that they have expressed their intention to bring this tax treaty in line with the requirements under the Action 14 Minimum Standard in the course of the next update to the tax treaty.

Other developments

Liechtenstein reported that it has created internal guidance on the necessary steps for the process of resolving MAP cases. These guidelines contain a standardised and detailed approach for handling MAP cases, including timelines to be applied throughout the process and is meant to assist staff in the resolution of MAP cases. Furthermore, Liechtenstein reported that it is in the process of updating its MAP guidance.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Liechtenstein'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 Liechtenstein and its peers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Liechtenstein'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 5 September 2017. This report identifies the strengths and shortcomings of Liechtenstein 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.² 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 Liechtenstein. In this update report, Liechtenstein 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. This update report forms the basis for the completion of the peer review process with respect to Liechtenstein.

Outline of the treaty analysis

For the purpose of this report and the statistics below, in assessing whether Liechtenstein 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, where applicable. Reference is made to Annex A for the overview of Liechtenstein'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 Liechtenstein launched on 7 March 2017, with the sending of questionnaires to Liechtenstein and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Liechtenstein in September 2017, with the subsequent approval by the BEPS Inclusive Framework on 13 October 2017. On 13 October 2018, Liechtenstein submitted its update report, which initiated stage 2 of the process.

The commitment to the Action 14 Minimum Standard starts from 1 January 2016. The period for evaluating Liechtenstein's implementation of this standard ranges from 1 January 2016 up to 31 March 2017 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 April 2017 and depicts all developments as from that date until 30 September 2018. Next to its assessment on the compliance with the Action 14 Minimum Standard, Liechtenstein also addressed best practices and asked for peer input on best practices.

In total two peers provided input during stage 1: Germany and Switzerland. In stage 1, these peers represented approximately 92% of post-2015 MAP cases in Liechtenstein's inventory that started in 2016. During stage 2, the same peers provided input on the update report of Liechtenstein. Furthermore, Austria and Luxembourg also provided input during stage 2. For this stage, these peers represent approximately 82% of post-2015 MAP cases in Liechtenstein's inventory that started in 2016 or 2017.³ For stage 1, one of the peers noted that it had no MAP cases so far with Liechtenstein and therefore that it could not provide any material input. The other peer indicated that it has currently one MAP case pending with Liechtenstein, but did not report any experiences in this respect. Specifically with respect to stage 2, nearly all peers that provided input reported that the update report of Liechtenstein fully reflects the experiences these peers have had with Liechtenstein since 1 April 2017 and/or that there was no addition to previous input given. Two peers reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance.

Input by Liechtenstein and cooperation throughout the process

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

- MAP profile⁴
- MAP statistics⁵ according to the MAP Statistics Reporting Framework⁶ (see below).

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

Finally, Liechtenstein is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Where relevant, Liechtenstein provided peer input and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions.

Overview of MAP caseload in Liechtenstein

The analysis of Liechtenstein’s MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2016. For stage 2 the period ranges from 1 January 2017 to 31 December 2017. Both periods are taken into account in this report for analysing the MAP statistics of Liechtenstein. The analysis of Liechtenstein’s MAP caseload relates to the period starting on 1 January 2016 and ending 31 December 2017 (the “**Statistics Reporting Period**”). According to the statistics provided by Liechtenstein, its MAP caseload during this period was as follows:

2016-17	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2017
Attribution/allocation cases	4	6	2	8
Other cases	7	1	4	4
Total	11	7	6	12

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁷ Apart from analysing Liechtenstein’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Liechtenstein, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Liechtenstein to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The 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 have 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 Liechtenstein 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, which include 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 Liechtenstein 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. The tax treaties Liechtenstein has entered into are available at: <https://www.llv.li/files/stv/int-uebersicht-dba-tiea-engl.pdf>. Liechtenstein negotiated a treaty with Lithuania (2019), which has not yet entered into force. Annex A includes an overview of Liechtenstein’s tax treaties with respect to the mutual agreement procedure.
2. Available at: <https://www.oecd-ilibrary.org/docserver/9789264285903-en.pdf?expires=1555607074&id=id&accname=ocid84004878&checksum=56BAA6C89B574DDDB203DE596D98DACE>.
3. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework.
4. Available at: <https://www.oecd.org/tax/dispute/Liechtenstein-Dispute-Resolution-Profile.pdf>.
5. The 2016 and 2017 MAP statistics of Liechtenstein are included in Annex B and C of this report.
6. MAP Statistics Reporting Framework, in *Peer Review Documents* (OECD, 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
7. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective in *Peer Review Documents* (OECD, 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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Part A

Preventing disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention 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 Liechtenstein's tax treaties

2. All of Liechtenstein's 20 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of their tax treaties.

3. Of the peers that provided input, one mentioned its treaty is in line with the requirements under the Action 14 Minimum Standard, which conforms with the above analysis. The other peer mentioned that it agreed with Liechtenstein to bring the treaty in line with these requirements via the Multilateral Instrument, which, however, holds no relevance for element A.1.

4. Further to the above, one of these peers mentioned that it reached several mutual agreements with Liechtenstein on the basis of the provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention) of their tax treaty. By doing so, the peer mentioned both competent authorities could clarify several issues of interpretation of the treaty in advance in order to avoid future mutual agreement procedures.

Recent developments

Bilateral modifications

5. Liechtenstein signed new treaties with three treaty partners, which all regard a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All three treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD

Model Tax Convention. Two of these three treaties have already entered into force. The effects of these three newly signed treaties have been reflected in the analysis above where they have relevance.

Peer input

6. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Liechtenstein. None of this input, however, relates to element A.1 as the treaties to which these peers are a signatory are in line with this element.

Anticipated modifications

7. Liechtenstein reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention 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.

8. 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.

Liechtenstein’s APA programme

9. Liechtenstein reported that it does not have a bilateral APA programme, but considers that on the basis of Article 25(3), first sentence, of the OECD Model Tax Convention its competent authority can enter into such APAs with its treaty partners.

Roll-back of bilateral APAs

10. Although Liechtenstein does not yet have a bilateral APA programme in place, it reported that its competent authority could consider granting a roll-back of bilateral APAs when a bilateral APA is entered into, such to the extent the past years are not yet finally assessed.

Recent developments

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

Practical application of roll-back of bilateral APAs

Period 1 January 2016-31 March 2017 (stage 1)

12. Since Liechtenstein does not have a bilateral APA programme, it has not yet experienced cases where taxpayers asked for a roll-back of bilateral APAs.

13. All peers that provided input indicated not having received any request from a taxpayer asking for a bilateral APA or the roll-back of such an APA involving Liechtenstein, which conforms with the above analysis.

Period 1 April 2017-31 August 2018 (stage 2)

14. Liechtenstein reported not having received any requests for a bilateral APA since 1 April 2017, by which there was no possibility for roll-back.

15. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Liechtenstein fully reflects their experience with Liechtenstein since 1 April 2017 and/or there are no additions to the previous input given. Furthermore, one peer that did not provide input during stage 1 stated that it did not receive a request for a roll-back of a bilateral APA with Liechtenstein since 1 April 2017.

Anticipated modifications

16. Liechtenstein 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 is based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

References

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <https://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.

24. 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 Liechtenstein’s tax treaties

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

25. Out of Liechtenstein’s 20 tax treaties, five contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report allowing taxpayers to submit a MAP request to the competent authority of either contracting 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, all remaining 15 treaties contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of that report.

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

26. All of Liechtenstein’s 20 tax treaties contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

Peer input

27. Of the peers that provided input, one mentioned its treaty is in line with the requirements under the Action 14 Minimum Standard, which conforms with the above analysis. The other peer mentioned that it agreed with Liechtenstein to bring the treaty in line with these requirements via the Multilateral Instrument, which, however, holds no relevance for element B.1.

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

28. As follows from the above analysis, all of Liechtenstein's tax treaties allow a taxpayer to file a MAP request irrespective of domestic remedies. In this respect, Liechtenstein reported that access to MAP is available regardless of whether for the relevant case under review domestic available remedies are still pending or were already concluded. Section 3.1.1 and 3.1.6 of Liechtenstein's MAP guidance confirms that this is indeed the case in Liechtenstein.

Recent developments*Bilateral modifications*

29. Liechtenstein signed new treaties with three treaty partners, which all regards a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. Two of these three treaties have already entered into force.

30. Concerning the first sentence of Article 25(1), all of the three newly negotiated treaties contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to file a MAP request to either competent authority.

31. Concerning the filing period for MAP requests, all three newly negotiated treaties also contain the second sentence of Article 25(1) of the OECD Model Tax Convention.

32. The effects of these three newly signed treaties have been reflected in the analysis above where they have relevance. This *inter alia* concerns a change of the number of tax treaties that now allow the filing of a MAP request to either contracting state from two to five.

Multilateral Instrument

33. Liechtenstein signed the Multilateral Instrument and is currently in the process of ratification, which is expected to be completed in the second half of 2019.

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

34. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and allowing the submission of MAP requests to the competent authority of either contracting 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 as it read prior to the adoption of the Action 14 final

report. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Article 16(4)(a)(i) will not take effect for a tax treaty 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.

35. With the signing of the Multilateral Instrument, Liechtenstein opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Liechtenstein's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which they are a resident, Liechtenstein opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Liechtenstein listed 15 of its 20 tax treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all 15 a notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

36. All of the relevant 15 treaty partners are a signatory to the Multilateral Instrument, but one did not list its treaty with Liechtenstein under that instrument, whereas four reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties. All remaining ten treaty partners listed their treaty with Liechtenstein as having a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Therefore, the Multilateral Instrument will, upon entry into force for these treaties, modify ten of Liechtenstein's 20 tax treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.

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

37. Since all treaties contain the second sentence of Article 25(1) of the OECD Model Tax Convention, there is no need to address the effects of the Multilateral Instrument.

Peer input

38. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Liechtenstein. None of this input, however, relates to element B.1 as the treaties to which these peers are a signatory are in line with this element.

Anticipated modifications

39. Liechtenstein stated that it will seek to include Article 25(1), first and second sentence, of the OECD Model Tax Convention as amended by the Action 14 final report in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	-	-

[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).

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

- i. of either treaty partner; or in the absence of such provision,
- ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases, jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

Domestic bilateral consultation or notification process in place

41. As discussed under element B.1, out of Liechtenstein's 20 tax treaties, five currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, ten of these 20 treaties will be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

42. Liechtenstein reported it has introduced in April 2017 a notification/consultation process which allows the other competent authority concerned to provide its views on the case when Liechtenstein's competent authority does not consider the taxpayer's objection raised in the MAP request to be justified.

Recent developments

43. Liechtenstein reported that the notification/consultation process that was introduced in 2017 has been documented in the internal guidance on the MAP process. This document lays out the process regarding how to proceed if a MAP request is denied access due to unjustified objections. In addition, Liechtenstein reported that it has created notification templates for such purposes, which are to be used to inform the taxpayer and the other

competent authority concerned. In this respect, where Liechtenstein’s competent authority arrives at the conclusion that the objection raised by the taxpayers in his MAP request is not justified, it will inform the other competent authority of this decision within four weeks of receipt of the MAP request. When notifying the other jurisdiction, Liechtenstein includes the following information: identification of the taxpayer(s) concerned, tax years covered, brief issues(s), date of receipt of the taxpayer’s MAP request and the taxpayer’s covering letter (where appropriate) and the contact details of the responsible person for the MAP case within Liechtenstein’s Fiscal Authority.

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

44. Liechtenstein reported that in the period 1 January 2015-31 March 2017 its competent authority has for one of the MAP requests it received decided that the objection raised by the taxpayers was not justified. For this case, Liechtenstein clarified that in 2016 its competent authority received an aggregated MAP request from a group of taxpayers, all of them facing the same taxation issues for which they claimed that it was not in accordance with the provisions of the applicable tax treaty. While Liechtenstein’s competent authority successfully resolved this case with the treaty partner, the facts underlying the case changed after an agreement was reached. The change in facts led one of the taxpayers concerned to submit a new MAP request. However, the change also led to taxation that was in accordance with the provisions of the treaty. In this respect, Liechtenstein reported that it did not initiate the MAP process with this treaty partner. It did not notify the treaty partner until it informed the taxpayer of the decision that the objection raised in its MAP request was not justified.

45. The 2016 MAP statistics submitted by Liechtenstein show that two of its MAP cases were closed with the outcome “objection not justified”. Liechtenstein clarified that one of these cases concerned the case discussed above, while in the other case the treaty partner’s competent authority took the decision hereto.

46. All peers that provided input indicated not being aware of any cases for which Liechtenstein’s competent authority denied access to MAP in the period 1 January 2016-31 March 2017. They also reported not having being consulted/notified of a case where the competent authority of Liechtenstein considered the objection raised in a MAP request as not justified. The relevant peer to the case referred to in paragraph 37 above did not provide input.

Period 1 April 2017-30 September 2018 (stage 2)

47. Liechtenstein reported that since 1 April 2017 its competent authority has in two cases it received decided that the objection raised by taxpayers in such request was not justified. In one of these cases, the decision was taken because the case was only of a hypothetical nature, while in the second case the decision was due to the fact that there was no taxation not in accordance with the treaty. In the first case, the treaty partner’s competent authority had been informed by the taxpayer and therefore no separate notification was necessary, while in the second case the treaty partner was notified. The 2017 MAP statistics submitted by Liechtenstein show that one of its MAP cases was closed with the outcome “objection not justified”. Liechtenstein clarified that in this case the treaty partner’s competent authority took the decision hereto, while its own competent authority made such a decision in the two cases mentioned above, for which the decisions were made in 2018.

48. All peers that provided input during stage 1 also indicated that since 1 April 2017 they are not being aware of any cases for which Liechtenstein’s competent authority considered the objection raised in a MAP request as not justified. They also reported not having been consulted/notified in such cases, which can be clarified by the fact that no such instances have occurred in Liechtenstein since that date.

Anticipated modifications

49. Liechtenstein 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.

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

Legal and administrative framework

51. Out of Liechtenstein’s 20 tax treaties, 19 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a corresponding adjustment in case a transfer pricing adjustment is made by the other treaty partner. The remaining treaty does not contain any provision based on Article 9(2) of the OECD Model Tax Convention.

52. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Liechtenstein’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 Liechtenstein indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments regardless of whether the equivalent of Article 9(2) is contained in its tax treaties.

53. Section 2.1 of Liechtenstein’s MAP guidance refers to the fact that the mutual agreement procedure is also available for situations of double taxation in the area of transfer pricing.

Recent developments

Bilateral modifications

54. Liechtenstein signed new treaties with three treaty partners, which all regards a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All three treaties contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention. Two of these three treaties have already entered into force. The effects of these three newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

55. Liechtenstein signed the Multilateral Instrument and is currently in the process of ratification, which is expected to be completed in the second half of 2019.

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

57. Liechtenstein has reserved, pursuant to Article 17(3), 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. The treaties listed under this reservation also regards the one treaty identified above that does not contain Article 9(2). Therefore, this treaty will not be modified by the Multilateral Instrument to include that provision.

Practical application

Period 1 January 2016-31 December 2016 (stage 1)

58. Liechtenstein reported that in the period 1 January 2016-31 March 2017, its competent authority has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

59. All peers that provided input indicated not being aware of a denial of access to MAP by Liechtenstein in the period 1 January 2016-31 March 2017 on the basis that the case concerned was a transfer pricing case.

Period 1 April 2017-30 September 2018 (stage 2)

60. Liechtenstein reported that since 1 April 2017 it received two MAP requests relating to transfer pricing, for which access to MAP was granted.

61. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Liechtenstein fully reflects their experience with Liechtenstein since 1 April 2017 and/or there are no additions to the previous input given. One peer that did not provide input in stage 1 also reported that it is not aware of a denial of access to MAP by Liechtenstein since 1 April 2017.

Anticipated modifications

62. Liechtenstein reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. Other than this, Liechtenstein did not indicate that it anticipates any modifications in relation to element B.3.

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.

63. 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

64. None of Liechtenstein's 20 tax treaties allow competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition the domestic law and/or administrative processes of Liechtenstein 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 are in conflict with the provisions of a tax treaty.

65. Liechtenstein reported that it considers issues relating to the application of a treaty anti-abuse provision and the question of whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of MAP. It further mentioned that it considered that under the MAP article there is a legal obligation to initiate the procedure whenever a violation of the treaty has occurred or is likely to occur due to application of treaty anti-abuse provisions. Liechtenstein's MAP guidance, however, does not include any information on whether access to MAP is provided in such situations.

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

67. Liechtenstein reported that it has in the period 1 January 2016-31 March 2017 not denied access to MAP in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received in that period.

68. All peers that provided input indicated not being aware of a denial of access to MAP by Liechtenstein in relation to the application of a treaty or domestic anti-abuse provision in the period 1 January 2016-31 March 2017.

Period 1 April 2017-30 September 2018 (stage 2)

69. Liechtenstein reported that since 1 April 2017 it has also not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received since that date.

70. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Liechtenstein fully reflects their experience with Liechtenstein since 1 April 2017 and/or there are no additions to the previous input given. One peer that did not provide input in stage 1 also reported that it is not aware of a denial of access to MAP by Liechtenstein since 1 April 2017.

Anticipated modifications

71. Liechtenstein 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.

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

Legal and administrative framework***Audit settlements***

73. Liechtenstein reported that under its domestic law, it is possible for taxpayers and the tax authorities to enter into a settlement during the course of or after an audit has been completed. In this respect, Liechtenstein stated that if an audit settlement has been reached, it will not preclude access to MAP.

74. Section 3.1.6 of Liechtenstein’s MAP guidance explains that taxpayers have access to MAP in cases of audit settlements.

Administrative or statutory dispute settlement/resolution process

75. Liechtenstein reported that it has no administrative or statutory dispute settlement/resolution process in place that allows Liechtenstein to deny access to MAP for issues resolved through that process.

Recent developments

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

Practical application***Period 1 January 2016-31 March 2017 (stage 1)***

77. Liechtenstein reported that it has in the period 1 January 2016-31 March 2017 not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax administration. However, no such cases in relation hereto were received in that period.

78. All peers that provided input indicated not being aware of denial of access to the MAP by Liechtenstein in the period 1 January 2016-31 March 2017 in case there was already an audit settlement between the taxpayer and the tax administration.

Period 1 April 2017-30 September 2018 (stage 2)

79. Liechtenstein reported that since 1 April 2017 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax administration. However, no such cases in relation hereto were received since that date.

80. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Liechtenstein fully reflects their experience with Liechtenstein since 1 April 2017 and/or there are no additions to the previous input given. One peer that did not provide input in stage 1 also reported that it is not aware of a denial of access to MAP by Liechtenstein since 1 April 2017.

Anticipated modifications

81. Liechtenstein 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.

82. 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

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

84. Liechtenstein reported that its competent authority has to verify the validity of the MAP request and the necessary documents within two weeks upon receipt of the request. Where taxpayers have not provided all the required information and documentation, they will be requested to provide this information for which they generally have two weeks, but which can be extended in justified circumstances. If the taxpayer does not provide the requested information, Liechtenstein clarified that in that situation the Fiscal Authority will

send a first and second reminder to give the taxpayer on a case-by-case basis a sufficient time to respond. If, however, the taxpayer does eventually not provide the necessary information, he will be informed that the case is considered to be withdrawn and closed accordingly. For MAP statistical purposes, the case would be reported as an “objection not justified”.

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

86. According to Liechtenstein it provides access to MAP in all cases where taxpayers have complied with the information or documentation required by its competent authority and as set out in its MAP guidance. In this respect, Liechtenstein reported that its competent authority has denied access to MAP in one case in the period 1 January 2016-31 March 2017 on the grounds that insufficient information was provided. In this case, the representative of the taxpayer did not submit all the relevant information required by the Fiscal Authority as enumerated in section 3.1.3 of its MAP guidance. The taxpayer’s representative initially contacted the Fiscal Authority via email regarding the initiation of the MAP process. The Fiscal Authority used this email channel for informing the taxpayer’s representative about the necessity of handing in all the information and documentation required under section 3.1.3 of the published general MAP guidance. Specifically, the taxpayer’s request was missing (i) the tax periods for which double taxation is claimed (ii) a description of the facts and circumstances of the specific case and (iii) a valid power of attorney for the taxpayer’s representative. A second reminder, which included the information that access to MAP would be denied and the request would be considered to be withdrawn if the missing information is not provided within 30 days, was emailed to the known email address as well. Since no response was received, the Fiscal Authority considered the case to be closed and informed the taxpayer’s representative about this fact via a written letter. This letter was sent to the representative’s address, which was included in his email signature. The Fiscal Authority has never received any kind of response to this letter and the request was officially classified as “objection not justified” for purposes of MAP statistics.

87. All peers that provided input indicated not being aware of a limitation of access to MAP in the period 1 January 2016-31 March 2017 by Liechtenstein in situations where taxpayers complied with information and documentation set out in Liechtenstein’s MAP Guidance.

Period 1 April 2017-30 September 2018 (stage 2)

88. Liechtenstein reported that since 1 April 2017 it has also not limited access to MAP on the grounds that information in the MAP request was not the information or documentation required by its competent authority.

89. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Liechtenstein fully reflects their experience with Liechtenstein since 1 April 2017 and/or there are no additions to the previous input given. One peer that did not provide input in stage 1 also reported that it is not aware of a limitation of access to MAP by Liechtenstein since 1 April 2017.

Anticipated modifications

90. Liechtenstein did not indicate that it anticipates any modifications relating 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.

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

Current situation of Liechtenstein's tax treaties

92. All of Liechtenstein's 20 tax treaties contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties.

Peer input

93. Of the peers that provided input, one mentioned its treaty is in line with the requirements under the Action 14 Minimum Standard, which conforms with the above analysis. The other peer mentioned that it agreed with Liechtenstein to bring the treaty in line with these requirements via the Multilateral Instrument, which, however, holds no relevance for element B.7.

*Recent developments**Bilateral modifications*

94. Liechtenstein signed new treaties with three treaty partners, which all regards a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All three treaties contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Two of these three treaties have already entered into force. The effects of these three newly signed treaties have been reflected in the analysis above where they have relevance.

Peer input

95. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Liechtenstein. None of this input, however, relates to element B.7 as the treaties to which these peers are a signatory are in line with this element.

Anticipated modifications

96. Liechtenstein reported that it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

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.

97. 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.

Liechtenstein’s MAP guidance

98. Liechtenstein issued rules, guidelines and procedures relating to the MAP function, which can be found in a Fact Sheet on international mutual agreement procedures under the double taxation conventions with respect to taxes on income and on capital (“**MAP Guidance**”). This MAP guidance was published in March 2017, and is available in English at:

<https://www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf>

99. This guidance includes detailed information on the availability and the use of the MAP and how its competent authority conducts the process in practice. Next to describing the type of MAP process available under its tax treaties and the legal nature/basis and objective of the MAP process, it covers the following topics:

- a. contact information of the competent authority in charge of MAP cases
- b. the manner and form in which the taxpayer should submit its MAP request
- c. the time limits within which a taxpayer should submit its MAP request
- d. the specific information and documentation that should be included in a MAP request (see also below)
- e. how the MAP functions in terms of timing and the role of the competent authorities

- f. availability of MAP for transfer pricing cases and bona fide foreign-initiated self-adjustments
- g. information on availability of arbitration
- h. relationship with domestic available remedies
- i. access to MAP in transfer pricing cases and audit settlements
- j. confidentiality of information throughout the MAP process
- k. cost of the mutual agreement procedure
- l. implementation of MAP agreements
- m. rights and role of taxpayers in the process.

100. The FTA MAP Forum agreed on what information 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. The above-described MAP guidance of Liechtenstein includes both items. Although the information is comprehensive, some subjects are not specifically discussed. This concerns whether MAP is available in cases relating to (i) the application of anti-abuse provisions and multilateral disputes, (ii) the multi-year resolution of recurring issues through MAP, (iv) the suspension of tax collection during the period a MAP case is pending, (v) the consideration of interest and penalties in MAP, and (vi) the timing of the steps of the process for the implementation of MAP agreements (if any).

Information and documentation to be included in a MAP request

101. 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 listing what information and documentation could be included in a MAP request.¹ In light of this list, the requirements in Liechtenstein's MAP guidance on what information and documentation should be included in a MAP request 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.

102. In addition to the above information, Liechtenstein also requests taxpayers submit the following information:

- the other country/countries involved in the case
- if available, a copy of the tax assessment decisions issued in Liechtenstein and in the other country concerned for the tax periods in question
- if available, a copy of the tax audit reports and adjustment proposals that led or will lead to the double taxation claimed
- if available, detailed information on any legal remedies sought in Liechtenstein or abroad
- information on whether the mutual agreement procedure request is a so-called “protective MAP request”
- a power of attorney, if the taxpayer has an authorised representative.

Recent developments

103. Liechtenstein reported that in October 2017 minor changes were reflected in its MAP guidance and that the contact details of its competent authority have been updated. There were no further material changes.

Anticipated modifications

104. Liechtenstein indicated that its MAP guidance is currently being updated to reflect the newly negotiated treaties.

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.

105. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.²

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

106. The MAP guidance of Liechtenstein is published and can be found at:

<https://www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf>

107. This guidance was last updated in October 2017. It is available on the website of Liechtenstein’s Fiscal Authority and can be found within a few clicks on the homepage after searching for “double taxation”.

MAP profile

108. The MAP profile of Liechtenstein is published on the website of the OECD, which was last updated on March 2017.³ This MAP profile is complete and includes the external links to websites, which provide extra information and guidance.

Anticipated modifications

109. Liechtenstein 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.

110. 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 processes mentioned previously.

MAP and audit settlements in the MAP guidance

111. As previously mentioned in B.5, section 3.1.6 of Liechtenstein's MAP guidance includes information explaining the relationship between access to MAP and audit settlements.

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

MAP and other administrative or statutory dispute settlement/resolution process

113. All the peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Liechtenstein, which can be clarified by the fact that no such process is in place.

Notification of treaty partners of administrative or statutory dispute settlement/ resolution process

114. As Liechtenstein does not have an administrative or statutory dispute settlement/ resolution process available, there is no need for notifying treaty partners of such process.

Recent developments

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

Anticipated modifications

116. Liechtenstein did not indicate that it anticipates any modifications relating to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

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

References

- OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.
- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris, <https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.

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.

143. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include a provision the first sentence of Article 25(2) of the OECD Model Tax Convention, 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 Liechtenstein’s tax treaties

144. All of Liechtenstein’s 20 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is 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.

145. Of the peers that provided input, one mentioned its treaty is in line with the requirements under the Action 14 Minimum Standard, which conforms with the above analysis. The other peer mentioned that it agreed with Liechtenstein to bring the treaty in line with these requirements via the Multilateral Instrument, which, however, holds no relevance for element C.1.

Recent developments

Bilateral modifications

146. Liechtenstein signed new treaties with three treaty partners, which all regards a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All three treaties contain a provision that is equivalent to Article 25(2), first sentence, of the

OECD Model Tax Convention. Two of these three treaties have already entered into force. The effects of these three newly signed treaties have been reflected in the analysis above where they have relevance.

Peer input

147. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Liechtenstein. None of this input, however, relates to element C.1 as the treaties to which these peers are a signatory are in line with this element.

Anticipated modifications

148. Liechtenstein reported that it will seek to include Article 25(2), first sentence of the OECD Model Tax Convention 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

149. 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). 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

150. The FTA MAP Forum has agreed on rules for the 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. Liechtenstein provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Liechtenstein and of which its competent authority was aware. 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 C respectively, and should be considered jointly for an understanding of the MAP caseload of Liechtenstein.¹

151. With respect to post-2015 cases, Liechtenstein reported for the year 2016 having reached out to all its MAP partners with a view to have their MAP statistics matching. Liechtenstein indicated that it could match its statistics with all of its MAP partners. For the year 2017, Liechtenstein reported that it also reached out to all of its MAP partners to match their MAP statistics. It was able to match all these statistics with all of its MAP partners.

152. One peer provided input on the matching of MAP statistics with Liechtenstein and confirmed that it was able to match its statistics for 2016 and 2017.

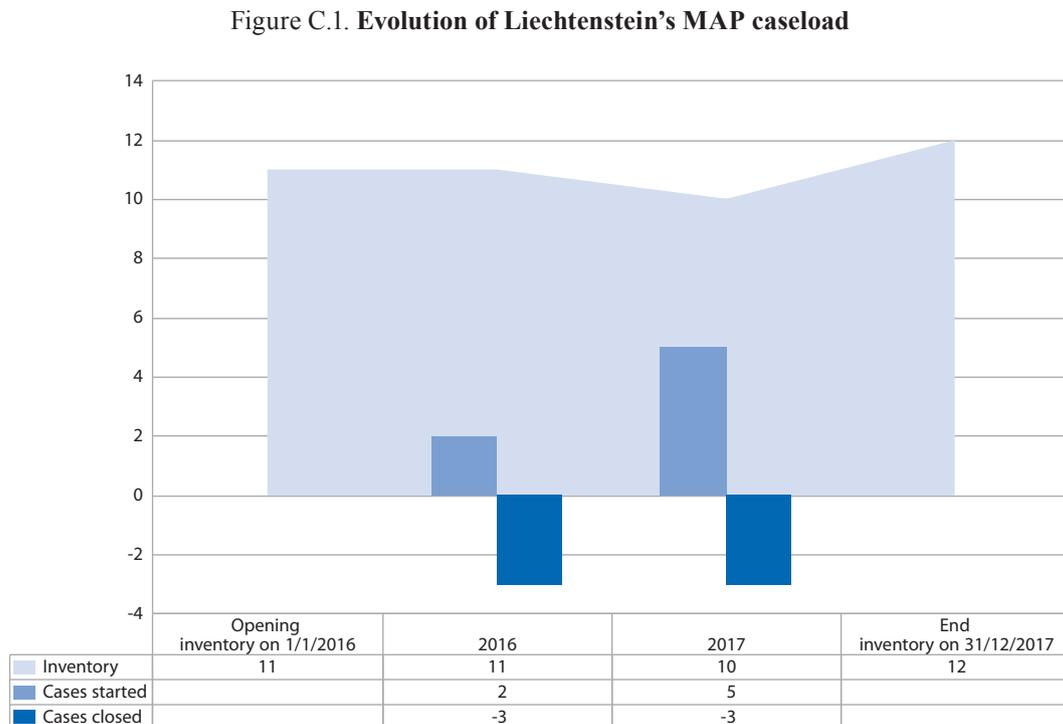
Monitoring of MAP statistics

153. Liechtenstein reported that it has compiled its MAP statistics for the first time in 2016 and that it keeps track of both MAP inventory and number of cases closed in order to monitor its MAP statistics.

Analysis of Liechtenstein’s MAP caseload

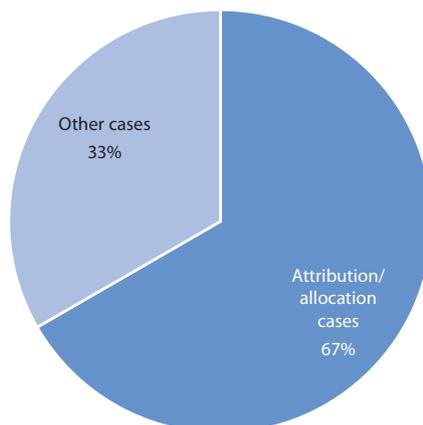
154. The analysis of Liechtenstein’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017.

155. The following graph shows the evolution of the Liechtenstein’s MAP caseload over the Statistics Reporting Period.



156. At the beginning of the Statistics Reporting Period, Liechtenstein had 11 pending MAP cases, of which four are attribution/allocation cases and seven other MAP cases.² At the end of the Statistics Reporting Period, Liechtenstein had 12 MAP cases in its inventory, of which eight are attribution/allocation cases and four other MAP cases. Consequently, Liechtenstein’s pending MAP cases have increased by 10% during the Statistics Reporting Period. This increase can be broken down into an increase by 100% for attribution/allocation cases and a decrease of almost 50% for other cases. The breakdown of the end inventory can be shown as in Figure C.2.

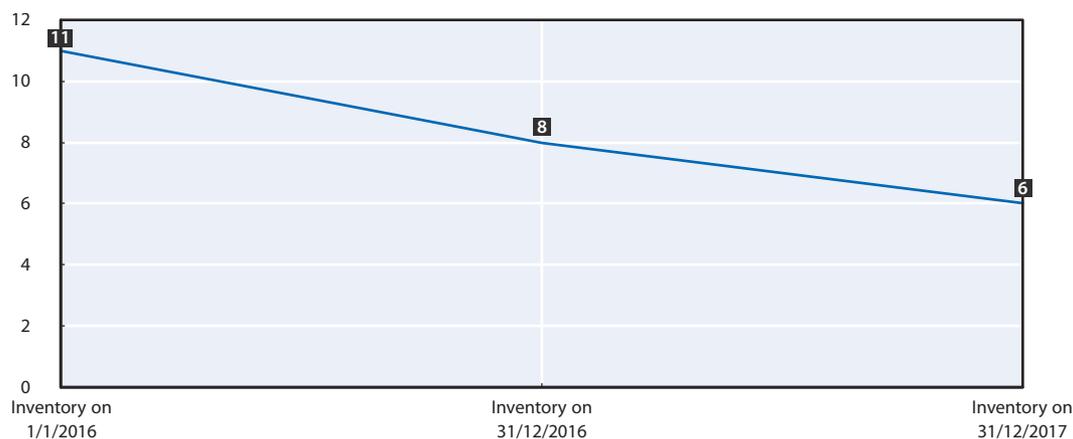
Figure C.2. End inventory on 31 December 2017 (12 cases)

*Pre-2016 cases*

157. The following graph shows the evolution of Liechtenstein's pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Liechtenstein's MAP inventory

Pre-2016 cases



158. At the beginning of the Statistics Reporting Period, Liechtenstein's MAP inventory of pre-2016 MAP cases consisted of 11 cases, four of which were attribution/allocation cases and seven other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to six cases, consisting of two attribution/allocation cases and four other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016 + 2017)
Attribution/allocation cases	-25%	-33%	50%
Other cases	-29%	-20%	43%

Post-2015 cases

159. The following graph shows the evolution of Liechtenstein’s post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. **Evolution of Liechtenstein’s MAP inventory**



160. In total, seven MAP cases started during the Statistics Reporting Period, six of which concerned attribution/allocation cases and one other case. At the end of this period the total number of post-2015 cases in the inventory was six cases, all of which are attribution/allocation cases. Conclusively, Liechtenstein closed one post-2015 case during the Statistics Reporting Period. The total number of closed cases represent 14% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016 + 2017)
Attribution/allocation cases	0%	0%	0%
Other cases	No cases started	100%	100%

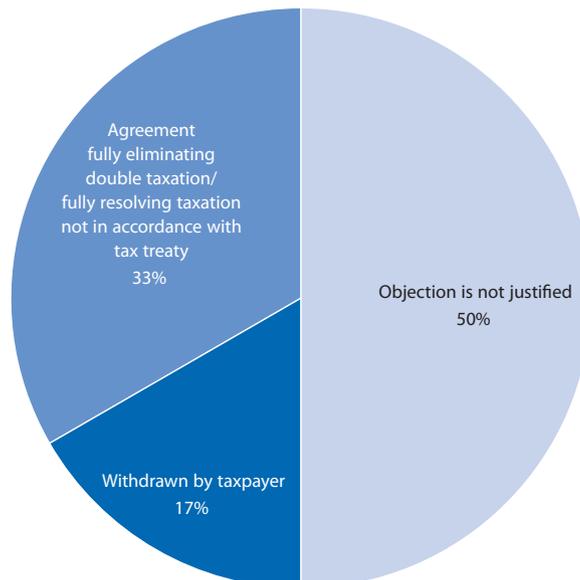
Overview of cases closed during the Statistics Reporting Period

Reported outcomes

162. During the Statistics Reporting Period Liechtenstein in total closed six MAP cases for which the outcomes shown in Figure C.5 were reported.

163. Figure C.5 shows that during the Statistics Reporting Period, two of the six closed cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Figure C.5. Cases closed during 2016 and 2017 (six cases)



Reported outcomes for attribution/allocation cases

164. In total, two attribution/allocation cases were closed during the Statistics Reporting Period. In one of these cases the outcome was “withdrawn by taxpayers”, while in the other case the outcome was “objection not justified”.

Reported outcomes for other cases

165. In total, four cases were closed during the Statistics Reporting Period. In two of the four cases the outcome was “objection not justified”, while in the other two the outcome was “agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty”.

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

166. The average time needed to close MAP cases during the Statistics Reporting Period was 22.76 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/allocation cases	2	38.01
Other cases	4	15.13
All cases	6	22.76

Pre-2016 cases

167. For pre-2016 cases, Liechtenstein reported that on average it needed 38.01 months to close one attribution/allocation case and 20.06 months to close three other cases. This resulted in an average time needed of 27.24 months to close five pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Liechtenstein used:

- *Start date:* the rules as set out in the MAP Statistics Reporting Framework. However, as an exception for one case the date when the MAP request was received was considered to be the start date to avoid that this case would have been incorrectly classified as having a start date later than 31 December 2015 while being a pre-2016 case.
- *End date:* the date when the official information of the outcome is reported to the taxpayer (if this information is available to Liechtenstein in cases where the taxpayer is informed by the other competent authority); if this information is not available, the date of notification by the other competent authority to Liechtenstein informing it that the taxpayer has been informed about the outcome of the MAP case.

Post-2015 cases

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

169. For post-2015 cases, Liechtenstein reported that on average it needed 0.33 months to close one other case.

Peer input

170. Peers did not report any input with respect to this element.

Recent developments

171. Further to the above, in the stage 1 peer review report Liechtenstein was under element C.2 recommended to seek to resolve the two post-2015 MAP cases that were pending on 31 December 2016, such within an average timeframe of 24 months.

172. With respect to the recommendation, Liechtenstein reported that it has introduced internal deadlines for responses by its competent authority to its treaty partners. Liechtenstein further clarified that these deadlines are included in the internal guidelines alongside a description of the MAP process and the steps to be taken throughout this process.

173. As follows from the MAP statistics discussed above, during 2016 and 2017 Liechtenstein has closed its MAP cases within the pursued average of 24 months. In 2016, it closed none of the post-2015 cases started in that year. By the end of 2017, Liechtenstein closed in total one of the post-2015 cases that started in 2016 and 2017. Furthermore, its MAP inventory has increased by almost 10% since 1 January 2016. While no specific recommendation was made in its stage 1 peer review report, it may be that additional actions are necessary to manage the increase in its MAP caseload in such a manner that Liechtenstein will in future years remain to be able to close MAP cases within the pursued average of 24 months. This will be further discussed under element C.3.

174. All peers that provided input during stage 1 confirmed that this input hold equally relevance for the period starting on 1 April 2017. Specific input on the resolution of MAP cases will be further discussed under element C.3.

Anticipated modifications

175. As will be further discussed under element C.6, Liechtenstein reported that it is open to include a mandatory and binding arbitration provision in its tax treaties to provide that treaty-related disputes will be resolved within a specified timeframe and which should globally improve the time needed to settle MAP cases. Apart from that Liechtenstein 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

176. 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 Liechtenstein’s competent authority

177. Under Liechtenstein’s tax treaties, the competent authority function to conduct MAP is assigned to the Fiscal Authority of Liechtenstein. This function has been delegated to the International Division within the Fiscal Authority and which consists of 2.6 full time equivalents who are dedicated to both negotiating double tax agreements and handling MAP cases.

178. Section 2.4 of Liechtenstein’s MAP guidance also defines that the International Division acts as the competent authority for handling MAP cases. Section 3.1.1 further lists the contact details of the competent authority.

Recent developments

179. Liechtenstein reported that in September 2017 the head of the International Division retired and was replaced by the former deputy head of division. Liechtenstein further reported that it took almost a year to fill the vacancy for the deputy position, by which the International Division was temporarily understaffed. Apart from this, Liechtenstein also reported that the new head of division introduced internal deadlines that have to be followed when handling MAP cases (see element C.2 under recent developments). In this respect, Liechtenstein mentioned that it will take some time until the new guidelines’ impact in practice can be measured.

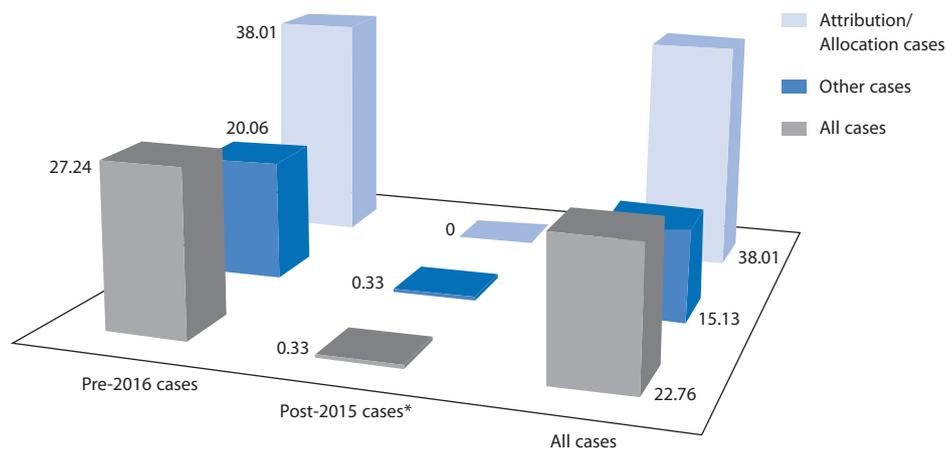
Monitoring mechanism

180. Liechtenstein reported that the monitoring and assessment of whether the existing resources are adequate is done by monitoring both its MAP inventory and the number of MAP cases closed. Liechtenstein reported that it expects its MAP caseload to increase as it expands its tax treaty network and therefore monitors both of these metrics to ensure that its existing resources are adequate.

Practical application

181. As discussed under C.2, Liechtenstein has resolved its MAP cases during the Statistics Reporting Period within the pursued 24-month average, as the average is 22.76 months. However, a variance exists between the average time taken to solve attribution/allocation cases and other cases. This can be shown by the following graph:

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



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

182. The average time to close MAP cases for 2016 and 2017 can be broken down as follows:

	2016	2017
Attribution/allocation cases	19.04	56.98
Other cases	15.50	14.76
All cases	16.68	28.83

183. The stage 1 peer review report of Liechtenstein analysed the 2016 statistics and it was on that basis concluded that it closed MAP cases within the pursued average of 24 months. In that regard, Liechtenstein was recommended to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.

184. The 2017 statistics show that the average completion time of MAP cases in Liechtenstein increased to 28.83 months, resulting in an average for both years of 22.76 months. However, in 2017 the average completion time for attribution/allocation cases was significantly above

24 months and furthermore – as analysed in element C.2 – the MAP inventory of Liechtenstein increased since 1 January 2016. This can be shown as follows:

2016 + 2017	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2016 Start inventory on 1/1/2017	Cases started	Cases closed	End inventory on 31/12/2017	Evolution of total MAP caseload over the two years (2016+2017)
Attribution/ allocation cases	4	2	1	5	4	1	8	100%
Other cases	7	0	2	5	1	2	4	-43%
Total	11	2	3	10	5	3	12	9%

185. The increase in the number of MAP cases with 100% for attribution/allocation cases and the average completion time of 38.01 months for these cases indicates that more resources or additional actions may be necessary to cope with this increase and to ensure that for the current and future MAP cases Liechtenstein resolve them within the pursued average of 24 months.

Peer input

Period 1 January 2016-31 March 2017 (stage 1)

186. Peers did not provide any input with respect to experience in handling and resolving MAP cases with Liechtenstein, also not as regards the adequacy of resources.

Period 1 April 2017-30 September 2018 (stage 2)

187. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Liechtenstein fully reflects their experience with Liechtenstein since 1 April 2017 and/or there are no additions to the previous input given. One of these peers added that the competent authority of Liechtenstein seems to dispose of the necessary resources and staff. This peer further noted that in the past MAP cases with Liechtenstein could be solved within a reasonable period with the full elimination of the double taxation. In addition, a peer that did not provide input in stage 1 stated that its experience with Liechtenstein's competent authority is positive and that it has regular communications and a good working relationship. This peer further clarified that since 1 April 2017 it solved one pre-2016 case with Liechtenstein while another pre-2016 case could not be solved due to a court decision that bound the peer's competent authority. In this regard, the peer also mentioned that it currently has one post-2015 case pending with Liechtenstein that has been suspended as the case under review is also being dealt with by a domestic court.

Anticipated modifications

188. Liechtenstein did not indicate that it anticipates any modifications relating to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	<p>While Liechtenstein closed MAP cases in 22.76 months on average, attribution/allocation cases were closed in 38.01 months on average, by which there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016.</p> <p>Furthermore, the MAP caseload relating to attribution/allocation cases has doubled since 1 January 2016, this indicates that the competent authority may not be adequately resourced to cope with this increase.</p>	<p>Liechtenstein should closely monitor whether it has adequate resources in place to ensure that pending and future MAP cases are resolved in a timely, efficient and effective manner, and whether the introduction of internal deadlines will have an effect in this regard. Specifically with respect to attribution/allocation cases, Liechtenstein could devote additional resources to cope with the increase of the number of cases and to be able to resolve these cases in a timely, efficient and effective manner.</p>

[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.

189. 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 consideration, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

190. Liechtenstein reported that when a MAP request is submitted to Liechtenstein's competent authority, the staff in charge of the International Division proposes to the Head of Division whether the objection made by the taxpayer is justified, such by (i) examining the case and (ii) taking into consideration the relevant treaty provision(s), case law and available literature, including the Commentary to the OECD Model Tax Convention as well as the OECD Transfer Pricing Guidelines. This initial proposal is then reviewed by the Head of the International Division or her/his deputy. Furthermore, then the person in charge in the International Division decides on whether or not to enter into a MAP agreement with the other competent authority. When such agreement is reached, this person will inform the responsible persons in the relevant assessment divisions to make the necessary adjustments

191. Further to the above, Liechtenstein also reported that other divisions of the Fiscal Authority, namely the Division for Individual Persons and the Division for Legal Entities, are involved in the MAP process to gather the relevant facts and to provide them together with a statement of their perspective of the case. In this respect, Liechtenstein clarified that the Head of the International Division only depends on the Divisions for Individual Persons and for Legal Entities for fact gathering and that any decision on the MAP case is only made by the competent authority based on an own assessment of the cases under review. In other words, the Head of International Division has no reporting line to neither the Head of the Divisions for Individual Persons or the Head of Division for Legal Entities.

192. Concerning policy considerations, as was discussed under element C.3, in Liechtenstein the same persons are in charge of treaty negotiations and of handling MAP cases. In this respect, Liechtenstein stated that it applies its treaties in good faith and that the staff is committed not to be influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty while handling MAP cases. Liechtenstein further reported that its policy to include a mandatory and binding arbitration clause in all of its tax treaties helps to prevent bias during the resolution of MAP cases by such staff.

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

194. All peers that provided input did not report any impediment in Liechtenstein to perform its MAP function absent from approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy.

Period 1 April 2017-30 September 2018 (stage 2)

195. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Liechtenstein fully reflects their experience with Liechtenstein since 1 April 2017 and/or there are no additions to the previous input given. One peer that did not provide input in stage 1 also reported that it is not aware of any impediment in Liechtenstein to perform its MAP function absent from approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy.

Anticipated modifications

196. Liechtenstein 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.

197. 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 Liechtenstein

198. Liechtenstein reported that the determination of employee performance is done on an individual basis and is reviewed annually. Liechtenstein further reported that it does not use standard metrics to assess the performance of the staff in charge of MAP cases. However, Liechtenstein also reported taking into account the timeliness of response of its staff to the other competent authorities and to the taxpayers as well as the quality of their work and the consistency in the approach taken from one case to another.

199. The Final Report on Action 14 includes examples for performance indicators that are considered appropriate. These indicators are shown below and the items that are used by Liechtenstein are checked in the following boxes:

- number of MAP cases resolved
- consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers)
- 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).

200. Furthermore, Liechtenstein reported that it does not use performance indicators that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintaining tax revenue amounts. In other words in Liechtenstein, the specific material outcome of MAP discussions is not a criterion to evaluate staff in charge of MAP.

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

202. All peers that provided input indicated not being aware of that Liechtenstein uses performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue.

Period 1 April 2017-30 September 2018 (stage 2)

203. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Liechtenstein fully reflects their experience with Liechtenstein since 1 April 2017 and/or there are no additions to the previous input given. One peer that did not provide input in stage 1 also reported that it is not aware of any performance indicators used by Liechtenstein that are based on the amount of sustained audit adjustments or maintaining tax revenue.

Anticipated modifications

204. Liechtenstein did not indicate that it expected 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.

205. 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

206. Liechtenstein reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. Furthermore, Liechtenstein reported that as a general policy decision it has committed to adopt and implement mandatory binding arbitration in its tax treaties

207. In this respect, Liechtenstein’s MAP guidance clearly explains that in those cases in which the competent authorities cannot reach an agreement but the underlying double taxation convention contains an arbitration clause, the settlement of the tax conflict is guaranteed by way of arbitration proceedings. Appendix 2 of Liechtenstein’s MAP guidance contains a list of all double tax conventions that contain an arbitration clause (see below).

Recent developments

208. Liechtenstein signed new treaties with three treaty partners, which all regards a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. Two of these three treaties contain an arbitration provision, one of which is based on Article 25(5) of the OECD Model Tax Convention and the other provides for mandatory and binding arbitration. These treaties are included in the specification below

209. Furthermore, Liechtenstein signed the Multilateral Instrument, in which it opted for part VI, which includes a mandatory and binding arbitration provision. The effects of this opting in is also further described below

Practical application

210. Liechtenstein has incorporated a mandatory and binding arbitration clause in 13 of its 20 tax treaties. These clauses are as follows:

- 11 treaties contain an arbitration clause that is based on Article 25(5) of the OECD Model Tax Convention.
- Two treaties provide for a voluntary and binding arbitration procedure.

211. In addition to these 13 treaties, three other treaties contain a most-favoured nation clause that concerns entering into negotiations for the inclusion of an arbitration provision should Liechtenstein’s treaty partner include an arbitration provision with a third state. In

this respect, Liechtenstein reported that none of these clauses have been fulfilled, albeit that for one of these treaties it expects that part VI of the Multilateral Instrument will introduce such arbitration provision (see below).

212. Furthermore, with respect to the effect of part VI of the Multilateral Instrument on Liechtenstein’s tax treaties, there are next to Liechtenstein in total 28 signatories to this instrument that also opted for part VI. Concerning these 28 signatories, Liechtenstein listed seven as a covered tax agreement under the Multilateral Instrument. Of these seven treaty partners, six also listed their treaty with Liechtenstein under that instrument.

213. With respect to these six treaty partners, Liechtenstein already included an arbitration provision in four of the relevant tax treaties. For these four treaties, Liechtenstein opted, pursuant to Article 26(4) of the Multilateral Instrument, not to apply part VI. For the other two treaties, Liechtenstein reported it expects that part VI of the Multilateral Instrument will introduce a mandatory and binding arbitration procedure in these treaties.

Anticipated modifications

214. Liechtenstein reported that it is currently in the process of analysing which of its tax treaties, and to what extent, will be modified to incorporate this arbitration provision of part VI of the Multilateral Instrument.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. For post-2015 cases, if the number of MAP cases in Liechtenstein’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Liechtenstein reported its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
2. For pre-2016 and post-2015 Liechtenstein follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework defines such case as: “a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”. Specifically for pre-2016 cases, Liechtenstein reported that it counted cases concerning the taxation of more than one taxpayer as one case.

References

- OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.
- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris, <https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.

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.

240. 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

241. Liechtenstein reported that MAP agreements will be implemented as permitted by its domestic statute of limitations, unless these limitations are overridden by a tax treaty that contains Article 25(2), second sentence, of the OECD Model Tax Convention. This statute of limitation is stipulated in Article 124(2) of the Liechtenstein Tax Act. According to this provision, a change of tax assessment has to be requested both:

- within 90 days after a mutual agreement has been reached or an arbitration decision has been made
- no longer than ten years after the assessment was rendered.

242. This ten-year time period will be met if the MAP request is submitted within that period, so that the period a MAP request is pending will not negatively affect the implementation of a MAP agreement. With respect to the 90 days deadline, Liechtenstein reported that in practice it considers the implementation of a MAP agreement reached to take precedence over such a provision of its domestic law and therefore such domestic laws would never be an impediment to the implementation of a MAP agreement. In addition, Liechtenstein stated that its competent authority would ensure to request the change of assessment of the taxpayer before the end of this deadline, to ensure that this will in any case not constitute a hindrance to the taxpayer.

243. Further to the above, Liechtenstein reported that when its competent authority enters into a MAP agreement with the other competent authority concerned, the agreement reached is notified to the taxpayer for consideration and for approval. The taxpayer is thereby invited to express his approval to the outcome and the implementation in writing. Unless the MAP agreement is rejected by the taxpayer within 30 days, it is assumed to be accepted. Furthermore, provided the taxpayer is willing to suspend any related legal actions which are already underway or to refrain from taking any legal action in general, Liechtenstein's competent authority will solicit implementation of the MAP agreement and inform the respective division responsible for the assessment of the taxpayer hereof (Division for Individual Persons/Division for Legal Persons).

244. Sections 4.2-4.3 and section 5 of Liechtenstein’s MAP guidance addresses the process for the implementation of MAP agreements and the applicable statute of limitation for the one treaty not containing the second sentence of Article 25(2) of the OECD Model Tax Convention (see element D.3 below).

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

246. Liechtenstein reported it will implement all MAP agreements reached in MAP discussions both for upward and downward adjustments of taxpayers’ positions (including in transfer pricing cases, if required). In that regard it specified that it uses for tracking purposes a spreadsheet, which contains the essential information of each case (e.g. name of the taxpayer, date of the request received, related country, status of the case, registration number).

247. Liechtenstein further reported that in the period 1 January 2016-31 March 2017 one MAP agreement was reached that required an implementation in Liechtenstein, which has been notified to the taxpayer and been implemented upon acceptance by the taxpayer.

248. All peers that provided input reported not being aware of any impediments to the implementation of MAP agreements in Liechtenstein in the period 1 January 2016-31 March 2017.

Period 1 April 2017-30 September 2018 (stage 2)

249. Liechtenstein reported that it reached one MAP agreement after 1 April 2017, which has been implemented after being accepted by the taxpayer concerned. It further mentioned that the implementation of MAP agreements has not been obstructed by its domestic 10-year time limit.

250. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Liechtenstein fully reflects their experience with Liechtenstein since 1 April 2017 and/or there are no additions to the previous input given. One peer that did not provide input in stage 1 also reported that it is not aware of any MAP agreement reached since 1 April 2017 that was not implemented by Liechtenstein.

Anticipated modifications

251. Liechtenstein did not indicate that it anticipates any modifications relating to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Liechtenstein's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternatives provided in Article 9(1) and 7(2). Therefore, there is a risk that for those tax treaties that do not contain those provisions, not all MAP agreements will be implemented due to the ten year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in Liechtenstein's relevant tax treaty, prevent the implementation of a MAP agreement, Liechtenstein should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Liechtenstein should for clarity and transparency purposes notify the treaty partner thereof without delay.

[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.

252. 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

253. Liechtenstein reported that under its domestic legislation and administrative framework, there is no timeframe for the implementation of MAP agreements and therefore also not for when a taxpayer could expect its tax position to be amended to reflect either (i) a refund of the tax due or paid or (ii) to additional tax to be paid as a result of an agreement reached by the competent authorities.

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

255. Liechtenstein reported that all MAP agreements reached in the period 1 January 2016-31 March 2017, once accepted by taxpayers, have been implemented and that it is not aware of any MAP agreements that were not implemented on a timely basis.

256. All peers that provided input reported not being aware of any impediments in the period 1 January 2016-31 March 2017 concerning the implementation of MAP agreements reached in Liechtenstein on a timely basis.

Period 1 April 2017-30 September 2018 (stage 2)

257. Liechtenstein reported that all MAP agreements reached since 1 April 2017 which required an implementation by Liechtenstein were implemented and that it experienced no delays in the implementation process, neither at the level of its own competent authority nor at the level of its treaty partner.

258. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Liechtenstein fully reflects their experience with Liechtenstein since 1 April 2017 and/or there are no additions to the previous input given. One peer that did not provide input in stage 1 also reported that it is not aware of any MAP agreement reached since 1 April 2017 that was not implemented on a timely basis by Liechtenstein.

Anticipated modifications

259. Liechtenstein did not indicate that it expected any modifications relating 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.

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

Legal framework and current situation of Liechtenstein's tax treaties

261. As discussed under element D.1, Liechtenstein's domestic legislation includes a statute of limitations for implementing MAP agreements, unless tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

262. All but one of Liechtenstein's 20 tax treaties contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention requiring 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 nor any of the alternative provisions in Article 9(1) and Article 7(2) setting a time limit for making transfer pricing adjustments.

263. The peers that provided input mentioned that their treaty with Liechtenstein meets the requirements under element D.3, which conforms with the above analysis.

Recent developments

Bilateral modifications

264. Liechtenstein signed new treaties with three treaty partners, which all regards a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All three treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. Two of these three treaties have already entered into force. The effects of these three newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

265. Liechtenstein signed the Multilateral Instrument and is currently in the process of ratification, which is expected to be completed in the second half of 2019.

266. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Article 16(4)(b)(ii) of the Multilateral Instrument does will for a tax treaty not take effect if one or both of the treaty partners has, pursuant 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.

267. In regard of the one tax treaty identified above that is considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), Liechtenstein listed it as a covered tax agreement under the Multilateral Instrument and made a notification, pursuant to Article 16(6)(c)(ii), that it does not contain a provision described in Article 16(4)(b)(ii). The relevant treaty partner is a signatory to the Multilateral Instrument, but did not list its treaty with Liechtenstein under that instrument. Therefore, this treaty will not be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention.

Other developments

268. For the one treaty that is not in line with element D.3 and will not be modified by the Multilateral Instrument, Liechtenstein reported that it has exchanged views and has expressed their intention to bring the treaty in line with the Action 14 Minimum Standard in the course of the next amendment of the treaty, which is not yet foreseen.

Peer input

269. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Liechtenstein. One of these peers mentioned that it is aware that its treaty with Liechtenstein does not meet the requirements under element D.3 and that their authorities have discussed the issue. This peer further noted that these competent authorities are of the view that not meeting these requirements do not negatively affect the bilateral relationship or the position of the taxpayer and that they have agreed to update the treaty in the course of the next revision.

Anticipated modifications

270. Liechtenstein reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	One out of 20 tax treaties contains neither a provision that is equivalent to Article 25(2) second sentence, of the OECD Model Tax Convention, OECD (2015), nor the alternative provisions in Article 9(1) and Article 7(2). This treaty will not be modified by the Multilateral Instrument to include this equivalent.	Liechtenstein should without further delay request via bilateral negotiations the inclusion of the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or be willing to accept the alternative provisions in Article 9(1) and Article 7(2) in the treaty that does not contain such provision.

Reference

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://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]	-	-
[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]	-	-
[C.2]	-	-
[C.3]	<p>While Liechtenstein closed MAP cases in 22.76 months on average, attribution/allocation cases were closed in 38.01 months on average, by which there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016.</p> <p>Furthermore, the MAP caseload relating to attribution/allocation cases has doubled since 1 January 2016, this indicates that the competent authority may not be adequately resourced to cope with this increase.</p>	<p>Liechtenstein should closely monitor whether it has adequate resources in place to ensure that pending and future MAP cases are resolved in a timely, efficient and effective manner, and whether the introduction of internal deadlines will have an effect in this regard. Specifically with respect to attribution/allocation cases, Liechtenstein could devote additional resources to cope with the increase of the number of cases and to be able to resolve these cases in a timely, efficient and effective manner.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-

	Areas for improvement	Recommendations
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of Liechtenstein's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternatives provided in Article 9(1) and 7(2). Therefore, there is a risk that for those tax treaties that do not contain those provisions, not all MAP agreements will be implemented due to the ten year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in Liechtenstein's relevant tax treaty, prevent the implementation of a MAP agreement, Liechtenstein should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Liechtenstein should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	-	-
[D.3]	One out of 20 tax treaties contain neither a provision that is equivalent to Article 25(2) second sentence, of the OECD Model Tax Convention, nor the alternative provisions in Article 9(1) and Article 7(2). This treaty will not be modified by the Multilateral Instrument to include this equivalent.	Liechtenstein should without further delay request via bilateral negotiations the inclusion of the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or be willing to accept the alternative provisions in Article 9(1) and Article 7(2) in the treaty that does not contain such provision.

Annex A

Tax treaty overview of Liechtenstein

Treaty partner	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
	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	
	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6			
	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?			
	Y = yes N = signed pending ratification	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no
Andorra	Y	O*	Y	i	Y	Y	Y	Y	Y	Y	N
Austria	Y	E	Y	i	Y	Y	Y	Y	Y	Y	N
Czech Republic	Y	O*	Y	Y	Y	Y	Y	Y	Y	Y	N
Georgia	Y	O*	Y	Y	Y	Y	Y	Y	Y	Y	Y
Germany	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y
Guernsey	Y	O*	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		Article 25(3) of the OECD MTC		Arbitration					
	B.1		B.3		B.4		C.1		D.3		A.1		B.7		C.6					
	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 abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) first sentence? (Note 3)		Inclusion Art. 25(3) first sentence? (Note 4)		Inclusion Art. 25(3) second sentence? (Note 5)		Inclusion Art. 25(3) second sentence? (Note 6)		Inclusion arbitration provision?			
Treaty partner	DTC in force?	If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons			If no, will your CA accept a taxpayer's request for MAP in relation to such cases?														
Hong Kong (China)	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
Hungary	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N		
Iceland	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
Jersey	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
Lithuania	N	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N		
Luxembourg	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
Malta	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
Monaco	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
San Marino	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
Singapore	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N		
Switzerland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
United Arab Emirates	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N		
United Kingdom	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		
Uruguay	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		

Legend

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

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

O* The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.

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

Annex B

MAP statistics pre-2016 cases

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in 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 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	4	0	1	0	0	0	0	0	0	0	0	3	19.04
Others	7	0	1	0	0	0	1	0	0	0	0	5	15.50
Total	11	0	2	0	0	0	1	0	0	0	0	8	16.68

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 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 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	3	0	0	1	0	0	0	0	0	0	0	2	56.98
Others	5	0	0	0	0	0	1	0	0	0	0	4	29.19
Total	8	0	0	1	0	0	1	0	0	0	0	6	43.09

Annex C

MAP statistics post-2015 cases

2016 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
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	2	0	0	0	0	0	0	0	0	0	0	2	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	2	0	0	0	0	0	0	0	0	0	0	2	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			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
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	2	4	0	0	0	0	0	0	0	0	0	0	6	N/A
Others	0	1	0	1	0	0	0	0	0	0	0	0	0	0.33
Total	2	5	0	1	0	0	0	0	0	0	0	0	6	0.33

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
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 were 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 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REV1)

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Liechtenstein (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 minimum standard is complemented by a set of best practices. The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 2 peer monitoring of the implementation of the Action 14 Minimum Standard by Liechtenstein, which is accompanied by a document addressing the implementation of best practices.

Consult this publication on line at <https://doi.org/10.1787/b41a9f75-en>.

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