

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



# **Making Dispute Resolution More Effective – MAP Peer Review Report, Liechtenstein (Stage 1)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**





OECD/G20 Base Erosion and Profit Shifting Project

# **Making Dispute Resolution More Effective – MAP Peer Review Report, Liechtenstein (Stage 1)**

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

**Please cite this publication as:**

OECD (2017), *Making Dispute Resolution More Effective – MAP Peer Review Report, Liechtenstein (Stage 1): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.  
<http://dx.doi.org/10.1787/9789264285903-en>

ISBN 978-92-64-28584-2 (print)  
ISBN 978-92-64-28590-3 (PDF)

Series: OECD/G20 Base Erosion and Profit Shifting Project  
ISSN 2313-2604 (print)  
ISSN 2313-2612 (online)

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

**Photo credits:** Cover © ninog-Fotolia.com.

Corrigenda to OECD publications may be found on line at: [www.oecd.org/about/publishing/corrigenda.htm](http://www.oecd.org/about/publishing/corrigenda.htm).

© OECD 2017

---

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgement of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to [rights@oecd.org](mailto:rights@oecd.org). Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at [info@copyright.com](mailto:info@copyright.com) or the Centre français d'exploitation du droit de copie (CFC) at [contact@cfcopies.com](mailto:contact@cfcopies.com).

---

## 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 via treaty provisions. With the negotiation for a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the MLI on 7 June 2017, paving 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 an Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already has more than 100 members, will monitor and peer review the implementation of the minimum standards as well as complete 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.



## *Table of contents*

<b>Abbreviations and acronyms</b> .....	7
<b>Executive summary</b> .....	9
<b>Introduction</b> .....	11
Available mechanisms in Liechtenstein to resolve tax treaty-related disputes .....	11
Recent developments in Liechtenstein .....	11
Basis for the peer review process .....	11
Overview of MAP caseload in Liechtenstein .....	12
General outline of the peer review report .....	12
Bibliography .....	13
<b>Part A. Preventing disputes</b> .....	15
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties .....	15
[A.2] Provide roll-back of bilateral APAs in appropriate cases .....	16
Bibliography .....	17
<b>Part B. Availability and Access to MAP</b> .....	19
[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties .....	19
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process .....	20
[B.3] Provide access to MAP in transfer pricing cases .....	21
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions .....	22
[B.5] Provide access to MAP in cases of audit settlements .....	23
[B.6] Provide access to MAP if required information is submitted .....	24
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties .....	25
[B.8] Publish clear and comprehensive MAP guidance .....	26
[B.9] Make MAP guidance available and easily accessible and publish MAP profile .....	28
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP .....	29
Bibliography .....	30
<b>Part C. Resolution of MAP Cases</b> .....	31
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties .....	31
[C.2] Seek to resolve MAP cases within a 24-month average timeframe .....	32
[C.3] Provide adequate resources to the MAP function .....	35
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty .....	36
[C.5] Use appropriate performance indicators for the MAP function .....	38
[C.6] Provide transparency with respect to the position on MAP arbitration .....	39
Bibliography .....	40

<b>Part D. Implementation of MAP agreements</b> .....	41
[D.1] Implement all MAP agreements .....	41
[D.2] Implement all MAP agreements on a timely basis .....	42
[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties or alternative provisions in Article 9(1) or Article 7(2) .....	43
<b>Summary</b> .....	45
<b>Annex A. Tax treaty network of Liechtenstein</b> .....	49
<b>Annex B. MAP statistics: Pre-2016 cases</b> .....	51
<b>Annex C. MAP statistics: Post-2015 cases</b> .....	52
<b>Glossary</b> .....	53
<b>Figures</b>	
Figure C.1 Liechtenstein’s MAP inventory .....	32
Figure C.2 End inventory on 31 December 2016 (10 cases) .....	33
Figure C.3 Cases resolved during the Reporting Period (3 cases) .....	33
Figure C.4 Average time (in months) .....	36



*Abbreviations and acronyms*

<b>APA</b>	Advance Pricing Arrangement
<b>BEPS</b>	Base Erosion and Profit Shifting
<b>MAP</b>	Mutual Agreement Procedure
<b>OECD</b>	Organisation for Economic Co-operation and Development



## Executive summary

Liechtenstein has a small tax treaty network with fewer than 20 treaties. It has a relatively new MAP programme and is working to expand its tax treaty network. It has a very small MAP inventory with a very small number of new cases submitted each year and 10 cases pending on 31 December 2016. Overall, Liechtenstein meets almost all of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Liechtenstein is working to address them.

All of Liechtenstein's tax treaties include a provision relating to MAP, all but one reflect paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention on Income and on Capital 2014 (OECD Model Tax Convention, OECD 2015), which is almost entirely consistent with the requirements of the Action 14 Minimum Standard. One treaty does not include a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law. This treaty also does not include 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 one tax treaty. In this respect, Liechtenstein signed, without any reservation on the MAP article, the Multilateral Instrument, potentially covering 15 of its tax treaties. Furthermore, Liechtenstein opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties.

Concerning the prevention of disputes, although Liechtenstein can provide bilateral APAs and enables taxpayers to request rollbacks of bilateral APAs in theory, during the review period no requests for roll-back of APAs were received, by which it was not possible to assess the implementation of this element of the Action 14 Minimum Standard in practice.

Liechtenstein meets the Action 14 Minimum Standard regarding the availability and access to MAP. It provides access to MAP in all eligible cases. However, Liechtenstein has only introduced recently 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 and where the relevant tax treaty does not enable the taxpayers to submit their MAP request to the competent authority of either contracting state. Furthermore, Liechtenstein has comprehensive guidance on inter alia the availability of MAP and on how the MAP function in Liechtenstein is construed and applied in practice.

Concerning the average time needed to resolve MAP cases, the MAP statistics for the year 2016 are as follows:

2016	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	2	1	5	19.04
Other cases	7	0	2	5	15.50
<b>Total</b>	<b>11</b>	<b>2</b>	<b>3</b>	<b>10</b>	<b>16.68</b>

\* 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.

These figures show 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's competent authority operates fully independently from the audit function of the tax authorities and resolves MAP cases in an efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. Liechtenstein therefore meets the requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases.

Lastly, Liechtenstein also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Liechtenstein monitors implementation and no issues have surfaced throughout the peer review process.

## *Introduction*

### **Available mechanisms in Liechtenstein to resolve tax treaty-related disputes**

Liechtenstein has 17 tax treaties on income (and/or capital) in place, all of which are in force and all of which provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. 11 of such treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.<sup>1</sup>

In Liechtenstein, the competent authority function to conduct MAP is performed by the Fiscal Authority of Liechtenstein, International Division (“**International Division**”). Liechtenstein’s competent authority consists of 2.6 full time equivalents who are dedicated to both double tax agreements and MAP. The responsibility for MAP is with the same division of the Fiscal Authority of Liechtenstein which is also responsible for the negotiation of tax treaties. Liechtenstein does not have a separate MAP team for attribution/allocation cases. The organisation of this competent authority function is detailed in Liechtenstein’s 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 at:

[www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf](http://www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf).

### **Recent developments in Liechtenstein**

Liechtenstein is currently conducting tax treaty negotiations with Ireland, Norway and Slovakia. It finalised such negotiations with Bahrain and signed a tax treaty with Monaco, but ratification procedures for these treaties have not yet been finalised.

Liechtenstein reported that it signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”) on 7 June 2017 with no reservation on the application of Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

### **Basis for 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 period for evaluating Liechtenstein’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 March 2017 (“**Review Period**”). This report, however,

may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Liechtenstein’s implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

The questionnaires for the peer review process were sent to Liechtenstein and the peers on 7 March 2017. In total, two peers provided input: Germany and Switzerland. These peers do not represent any post-2015 MAP cases in Liechtenstein’s inventory on 31 December 2016. One of these peers indicated having never had any MAP cases with Liechtenstein and the other one specified having one pending MAP case with Liechtenstein. However, this latter peer experienced a good starting relationship with Liechtenstein, as several meetings were already held and resulted in the conclusion of several interpretative mutual agreements, in order to prevent disputes in the future. In addition to the assessment on its compliance with the minimum standard, Liechtenstein also addressed best practices and asked for peer input on these best practices.

In addition to completing the Questionnaire for Assessed Jurisdiction, Liechtenstein provided the following information:

- MAP profile;<sup>2</sup>
- MAP statistics according to the MAP Statistics Reporting Framework.<sup>3</sup>

Liechtenstein is an active member of the FTA MAP Forum and has expressed good co-operation during the peer review process. It provided extensive answers to the questionnaire to assessed jurisdiction before the deadline and was responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and providing clarity where necessary. Finally, Liechtenstein also generally contributes to the improvement of the effectiveness of the mutual agreement procedure as it is an active member of the FTA MAP Forum. Liechtenstein provided peer input on some other jurisdictions in the framework of their own peer review.

## Overview of MAP caseload in Liechtenstein

The analysis of Liechtenstein’s MAP caseload relates to the period that started on 1 January 2016 and ended on 31 December 2016 (the “**Statistics Reporting Period**”). According to the statistics provided by Liechtenstein, on 31 December 2016 its MAP inventory was ten cases, five of which concern attribution/allocation cases and five other cases. During the Statistics Reporting Period two cases were started and three cases were closed.

## 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; and
- 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 implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).<sup>4</sup> Apart from analysing Liechtenstein’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Liechtenstein. 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 objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that Liechtenstein continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

## Notes

1. This concerns treaties with Georgia, Germany, Guernsey, Hong Kong, Iceland, Luxembourg, Malta, San Marino, Switzerland, United Kingdom, and Uruguay.
2. Available at: [www.oecd.org/tax/dispute/Liechtenstein-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/Liechtenstein-Dispute-Resolution-Profile.pdf).
3. The MAP statistics of Liechtenstein are included in Annex B and C.
4. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ([www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf)).

## Bibliography

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf) (accessed on 22 August 2017).





## *Part A*

### Preventing disputes

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

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

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

#### *Current situation of Liechtenstein's tax treaties*

2. All of Liechtenstein's 17 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of their tax treaties.

3. In practice, one peer 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* (OECD, 2015) of their tax treaty. By doing so, both competent authorities could clarify several issues of interpretation of the treaty in advance in order to avoid future mutual agreement procedures.

#### *Anticipated modifications*

4. Liechtenstein reported it intends to include Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

#### *Conclusion*

	Areas for Improvement	Recommendations
[A.1]	-	Liechtenstein should maintain its stated intention to include the required provision in all future treaties.

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

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

5. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.<sup>1</sup> 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***

6. Liechtenstein reported that it does not have a bilateral APA program but considers that bilateral APAs can be concluded by the competent authority of Liechtenstein on the basis of Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015). In this respect, Liechtenstein reported that there are no specific rules in Liechtenstein regarding the starting date for the APA to be applied and that there is no requirement to submit the request in advance.

***Roll-back of bilateral APAs***

7. Although Liechtenstein does not yet have a bilateral APA programme in place, Liechtenstein reported that its competent authority would consider granting a roll-back of bilateral APAs in appropriate cases and to the extent the past years are not yet finally assessed.

***Practical application of roll-back of bilateral APAs***

8. Peers indicated not having received any request from a taxpayer asking for a roll-back of a bilateral APA involving Liechtenstein.

***Anticipated modifications***

9. Liechtenstein reported that the Fiscal Authority is currently considering implementing a bilateral APA programme.

***Conclusion***

	Areas for Improvement	Recommendations
[A.2]	Liechtenstein is in theory able to extend bilateral APAs to previous fiscal years. However, it was not possible at this stage to assess the effective implementation of this element in practice since no request for roll-back of a bilateral APA was submitted during the Review Period.	

## Notes

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

## *Bibliography*

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

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

10. 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*

11. All of Liechtenstein’s 17 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) either as changed by the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report, OECD 2015b) or as it read prior to the adoption of that report, allowing taxpayers to submit a MAP request 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.

12. Liechtenstein’s tax treaties can be categorised as follows:

Provision	Number of treaties
Equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the adoption of Action 14 final report, OECD (2015b).	15
Equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read after the adoption of the Action 14 final report, OECD (2015b).	2

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

13. All of Liechtenstein's 17 tax treaties contain a provision 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.

*Anticipated modifications*

14. Liechtenstein stated that it intends to include Article 25(1), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all future treaties.

*Conclusion*

	Areas for Improvement	Recommendations
[B.1]	-	Liechtenstein should maintain its stated intention to include the required provision in all future treaties.

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

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

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

16. Out of the 17 treaties Liechtenstein entered into, 2 contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as changed by the *Action 14 final report* (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For the other 15 treaties, Liechtenstein has introduced a notification 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. This, however, was introduced as of April 2017, which is after the end of the Review Period.

### ***Practical application***

17. Under their notification process, if Liechtenstein receives a MAP request from a taxpayer, it notifies the other competent authority of the request via written letter within a targeted timeframe of four weeks from the receipt of the taxpayer’s 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.

### ***Anticipated modifications***

18. Liechtenstein did not indicate that it anticipates any modifications in relation to element B.2.

### ***Conclusion***

	<b>Areas for Improvement</b>	<b>Recommendations</b>
[B.2]	Liechtenstein has not introduced a notification process prior to the expiration of the Review Period (whereas it introduced such procedure thereafter).	Liechtenstein should ensure that it will actually use the process recently introduced to notify the other competent authority in cases where it considers that the objection raised in the MAP request not to be justified where the tax treaty does not permit the MAP request to be submitted to the competent authority of either contracting state.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

19. 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***

20. Out of Liechtenstein’s 17 tax treaties, 16 contain a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is 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* (OECD, 2015a).

21. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is included in Liechtenstein’s tax treaties and irrespective of whether its domestic legislation enables it to do corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Liechtenstein states it will always provide access to MAP for transfer pricing cases. Section 2.1 of Liechtenstein’s MAP guidance refers to the fact that a mutual agreement procedure that seeks to avoid or eliminate taxation which is not in accordance with a tax treaty is also available for situations of double taxation in the area of transfer pricing.<sup>1</sup>

### ***Practical application***

22. Liechtenstein reported that since 1 January 2016, its competent authority has not denied access to MAP on the basis that the case concerned a transfer pricing case.

23. Peers indicated not being aware of a denial of access to MAP by Liechtenstein for transfer pricing cases since 1 January 2016.

### ***Anticipated modifications***

24. Liechtenstein did not indicate that it anticipates any modifications in relation to element B.3. Liechtenstein reported that it is in favour of including Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in its tax treaties where possible. In that regard, Liechtenstein recently signed the Multilateral Instrument to incorporate – on the basis of Article 17(2) of that instrument – Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in those tax treaties that do not contain the equivalent of that provision. Liechtenstein however, has, pursuant to Article 17(3)(a) of the Multilateral Instrument, reserved the right not to apply Article 17(2) to those treaties that already include a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a). In addition, Liechtenstein reported it will seek to include Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

### ***Conclusion***

	Areas for Improvement	Recommendations
[B.3]	-	As Liechtenstein has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.

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

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

25. 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***

26. None of Liechtenstein's 17 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. Liechtenstein



stated that both the application of a treaty anti-abuse provision and of a domestic anti-abuse provision are within the scope of MAP and 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.

### *Practical application*

27. Liechtenstein reported that since 1 January 2016 it has 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.

28. Peers indicated not being aware of a case that would have been denied access to MAP in Liechtenstein on the grounds that it was about an anti-abuse provision since 1 January 2016.

### *Anticipated modifications*

29. Liechtenstein did not indicate that it anticipates any modifications in relation to element B.4.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.4]	-	As Liechtenstein has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.

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

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

30. 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 dispute 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*

31. If an audit settlement has been reached, Liechtenstein will not preclude access to the MAP. Furthermore, there is no other administrative or statutory dispute settlement or resolution process whereby issues resolved via such process(es) may be denied access to MAP. Liechtenstein's guidance explaining the relationship between access to MAP and audit settlements can be found under section 3.1.6 of its MAP guidance.<sup>2</sup>

***Practical application***

32. According to Liechtenstein, since 1 January 2016 it has not denied access to MAP in any cases where an audit settlement has been reached.
33. Peers indicated not being aware of denial of access to the MAP by Liechtenstein since 1 January 2016.

***Anticipated modifications***

34. Liechtenstein did not indicate that it anticipates any modifications in relation to element B.5.

***Conclusion***

	Areas for Improvement	Recommendations
[B.5]	-	As Liechtenstein has thus far granted access to the MAP in eligible cases, even if there was an audit settlement between the tax authority and the taxpayer, it should continue granting access for these cases.

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

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

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

***Legal framework on access to MAP and information to be submitted***

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

***Practical application***

37. Liechtenstein has denied access to MAP in one case during the Statistics Reporting Period 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 a MAP. 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.

38. Peers indicated not being aware of denial of access to MAP by Liechtenstein in situations where taxpayers complied with information and documentation set out in Liechtenstein’s MAP Guidance since 1 January 2016.

### *Anticipated modifications*

39. Liechtenstein did not indicate that it anticipates any modifications relating to element B.6.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.6]	-	As Liechtenstein has thus far not limited access to the MAP in eligible cases when taxpayers have complied with Liechtenstein’s information and documentation requirements for MAP requests, it should continue this practice.

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

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

40. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015a), 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*

41. All of Liechtenstein’s 17 tax treaties contain a provision allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties.

### *Anticipated modifications*

42. Liechtenstein reported that it intends to include Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all future treaties.

### Conclusion

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

### [B.8] Publish clear and comprehensive MAP guidance

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

43. 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*

44. Liechtenstein's rules, guidelines and procedures relating to the MAP function can be found in its Fact Sheet on international mutual agreement procedures under the double taxation conventions with respect to taxes on income and on capital published in March 2017, which is available at:

[www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf](http://www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf)

45. This contains information on:
- 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 specific information and documentation that should be included in a MAP request (see also below);
  - d. How the MAP functions in terms of timing and the role of the competent authorities;
  - e. Availability of the MAP for bona fide foreign-initiated self-adjustments;
  - f. Information on availability of arbitration;
  - g. Relationship with domestic available remedies;
  - h. Access to MAP in transfer pricing cases and audit settlements;
  - i. Implementation of MAP agreements; and
  - j. Rights and role of taxpayers in the process.
46. The above list shows that Liechtenstein's MAP guidance includes detailed information on the availability and the use of the MAP and how its competent authority conducts the process in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.

47. Although this information is comprehensive, some subjects are not specifically discussed in Liechtenstein’s MAP guidance. This concerns whether MAP is available in cases relating to (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) multi-year resolution of recurring issues through MAP. This also concerns information on (iv) the suspension of tax collection, (v) interest and penalties, and (vi) the timing of the steps of the process for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

***Information and documentation to be included in a MAP request***

48. 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.<sup>3</sup> This agreed upon list is copied below. Liechtenstein’s MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

- Identity of the taxpayer(s) covered in the MAP request;
- The basis for the request;
- Facts of the case;
- Analysis of the issue(s) requested to be resolved via MAP;
- Whether the MAP request was also submitted to the competent authority of the other treaty partner;
- Whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes;
- Whether the issue(s) involved were dealt with previously; and
- 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.

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

- 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; and
- information on whether the mutual agreement procedure request is a so-called “protective MAP request.”

*Anticipated modifications*

50. Liechtenstein did not indicate that it anticipates any modifications in relation to element B.8.

*Conclusion*

	Areas for Improvement	Recommendations
[B.8]	-	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of clarity, Liechtenstein could consider including in its MAP guidance information on:</p> <ul style="list-style-type: none"> <li>• whether MAP is available in cases of (i) the application of anti-abuse provisions, (ii) multilateral disputes; and (iii) multi-year resolution of recurring issues;</li> <li>• the non-suspension of tax collection;</li> <li>• the consideration of interest and penalties; and</li> <li>• the timing of the steps of the process for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).</li> </ul>

**[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.

51. 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.<sup>4</sup>

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

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

[www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf](http://www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf).

53. This guidance was last updated in March 2017. It is accessible within a few clicks from the homepage of the Liechtenstein’s National Administration after searching for “double taxation” on its homepage.

*MAP Profile*

54. The MAP profile of Liechtenstein is published on the website of the OECD. This MAP profile is complete and the external links to websites provide extra information and guidance.

*Anticipated modifications*

55. Liechtenstein did not indicate that it anticipates any modifications in relation to element B.9.

### Conclusion

	Areas for Improvement	Recommendations
[B.9]	-	As Liechtenstein has thus far made its MAP guidance available and easily accessible and published its MAP profile, Liechtenstein should ensure its future updates to the MAP guidance continue to be available and easily accessible and that its MAP profile, published on the shared public platform, is updated if needed.

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

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

56. As explained under element B.5, an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction's MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the previously mentioned processes.

#### *MAP and audit settlements in the MAP guidance*

57. As previously mentioned in B.5, Liechtenstein's guidance explaining the relationship between access to the MAP and audit settlements can be found under section 3.1.6 of its MAP guidance.<sup>5</sup> This guidance clarifies that taxpayers have access to the MAP in case of audit settlements.

58. Peers indicated no issues regarding element B.10 in relation to audit settlements.

#### *MAP and administrative or statutory dispute settlement/resolution process in available guidance*

59. Liechtenstein reported that there is no other administrative or statutory dispute settlement/resolution process in Liechtenstein that impacts the access to the MAP.

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

60. There is no need for notification of treaty partners as Liechtenstein does not limit access to MAP to cases that may be solved through an administrative or statutory dispute settlement or resolution process.

### ***Anticipated modifications***

61. 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.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf](http://www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf) (accessed on 22 August 2017).
2. Available at: [www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf](http://www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf) (accessed on 22 August 2017).
3. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
4. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).
5. [www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf](http://www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf) (accessed on 22 August 2017).

## ***Bibliography***

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

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

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



## *Part C*

### Resolution of MAP Cases

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

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

62. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the *OECD Model Tax Convention* (OECD, 2015a), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

#### *Current situation of Liechtenstein's tax treaties*

63. All of Liechtenstein's 17 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

#### *Anticipated modifications*

64. Liechtenstein reported that it intends to include the equivalent of Article 25(2), first sentence of the *OECD Model Tax Convention* (OECD, 2015a) in all future treaties.

#### *Conclusion*

	Areas for Improvement	Recommendations
[C.1]	-	Liechtenstein should maintain its stated intention to include the equivalent of Article 25(2), first sentence, of the <i>OECD Model Tax Convention</i> , OECD (2015a) in all future treaties.

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

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

65. 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*

66. 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.<sup>1</sup> With respect to post-2015 cases, Liechtenstein reported 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.

### *Monitoring of MAP statistics*

67. 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*

#### *Global overview*

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

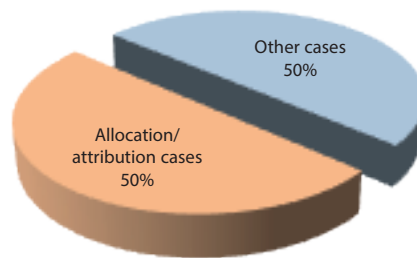
Figure C.1. Liechtenstein’s MAP inventory



69. At the beginning of the Statistics Reporting Period Liechtenstein had 11 pending MAP cases, of which four concerned attribution/allocation cases and seven other cases.<sup>2</sup> At the end of the Statistics Reporting Period, Liechtenstein had ten MAP cases, of which five concerned attribution/allocation cases and five other cases. In total, one out of three closed cases concerned attribution/allocation cases and two concerned other MAP cases. This resulted in a decrease of approximately 10% of the opening inventory, consisting of a 25% increase in attribution/allocation cases and a decrease of 25% in other cases.

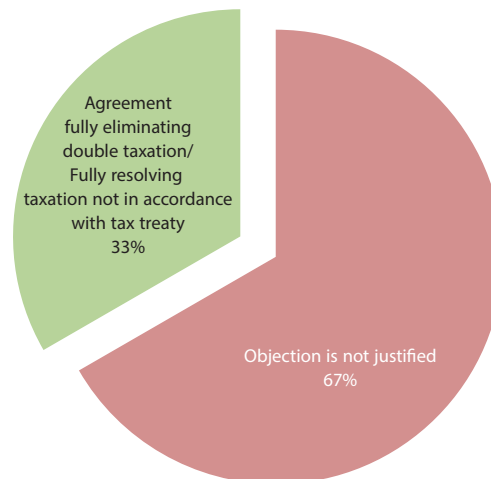
70. The end inventory can be illustrated as follows:

Figure C.2. End inventory on 31 December 2016 (10 cases)



71. During the Statistics Reporting Period, Liechtenstein resolved three cases for which the following outcomes were reported:

Figure C.3. Cases resolved during the Reporting Period (3 cases)



72. This chart shows that during the Statistics Reporting Period, one out of three cases was resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

#### *Pre-2016 cases*

73. At the beginning of the Statistics Reporting Period, Liechtenstein's MAP inventory consisted of 11 cases, of which four 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 eight cases, consisting of three attribution/allocation cases and five other cases. This decrease concerns approximately 30% of the opening inventory. In total, one out of three closed cases concerned attribution/allocation cases and two concerned other MAP cases.

#### *Post-2015 cases*

74. Only two cases were started on or after 1 January 2016, both of which were attribution/allocation cases. At the end of the Statistics Reporting Period the total number of post-2015 cases in Liechtenstein's inventory remained unchanged as Liechtenstein did not resolve any post 2015 cases during the Statistics Reporting Period.

#### *Average timeframe needed to resolve MAP cases*

##### *Pre-2016 cases*

75. For pre-2016 cases, Liechtenstein reported that on average it needed 19.04 months to resolve attribution/allocation cases and 15.50 months to resolve other cases. This resulted in an average time needed to resolve pre-2016 cases of 16.68 months. For the purpose of computing the average time needed to resolve pre-2016 cases, in general Liechtenstein used as the:

- *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*

76. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics of Liechtenstein only comprises 12 months.

77. During the Statistics Reporting Period, Liechtenstein did not resolve any post-2015 cases.

#### *All cases resolved during the Statistics Reporting Period*

78. The average time needed to resolve all MAP cases during the Statistics Reporting Period was 16.68 months, which can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	1	19.04
Other cases	2	15.50
All cases	3	16.68

#### *Peer input*

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

*Anticipated modifications*

80. As will be further discussed under element C.6, Liechtenstein 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]	Liechtenstein submitted timely comprehensive MAP statistics and indicated they have been matched with all of its MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether Liechtenstein's MAP statistics match those of its treaty partners as reported by the latter.	Within the context of the state of play outlined above and in relation to the MAP statistics provided by Liechtenstein, it did not resolve any post-2015 cases during the Statistics Reporting Period. In that regard, Liechtenstein is recommended to seek to resolve its 2 post-2015 cases pending on 31 December 2016 within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

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

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

81. 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*

82. Liechtenstein's competent authority consists of 2.6 full time equivalents who are dedicated to both double tax agreements and MAP. The responsibility for MAP is with the same division of the Fiscal Authority of Liechtenstein which is also responsible for the negotiation of tax treaties. Liechtenstein has no separate MAP team for transfer pricing cases.

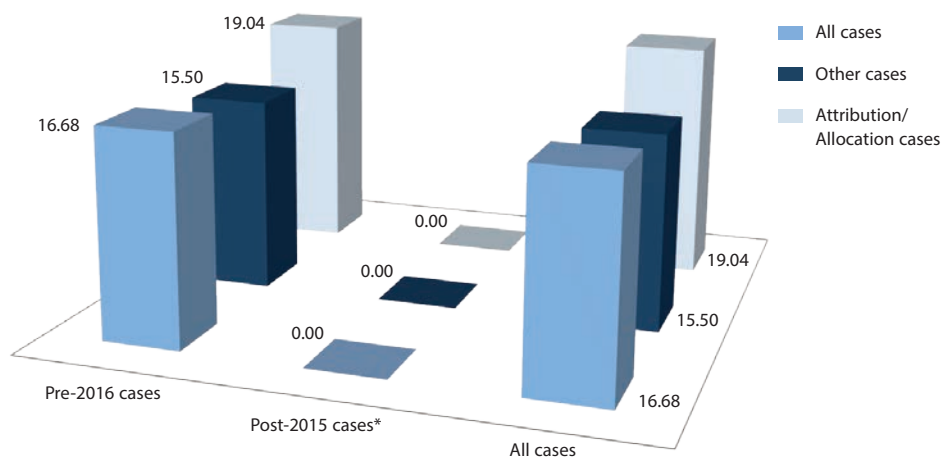
*Monitoring mechanism*

83. In Liechtenstein, monitoring and assessment of whether the existing resources are adequate is done by monitoring both 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*

84. As discussed under C.2, Liechtenstein has resolved its MAP cases during the Statistics Reporting Period below the pursued 24-month average. This both concerns attribution/allocation cases and can be illustrated by the following graph which also reflects the fact that Liechtenstein has not resolved either of its two post-2015 cases:

Figure C.4. Average time (in months)



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

85. Peers did not provide any input with respect to the adequacy of resources in Liechtenstein.

### *Anticipated modifications*

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

### *Conclusion*

	Areas for Improvement	Recommendations
[C.3]	-	Liechtenstein should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.

### **[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.

87. 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***

88. Liechtenstein has the following legal and administrative framework in place to monitor the performance of the MAP function. The principal decision in any MAP case is made at the level of the International Division. When a MAP request is submitted to the Fiscal Authority of Liechtenstein, the staff in charge of the International Division proposes to the Head of Division whether the objection made by the taxpayer or its authorised representative is justified or not by examining the case, taking into consideration the relevant treaty provision(s), case law and available literature, including the commentary of the *OECD Model Tax Convention* (OECD, 2015a) as well as the *OECD Transfer Pricing Guidelines* (OECD, 2017). This initial proposal is then reviewed by the Head of the International Division or her/his deputy.

89. Other divisions of the Fiscal Authority of Liechtenstein, namely the Division for Individual Persons and the Division for Legal Entities are involved in the process to gather the relevant facts and to provide them together with a statement of their perspective of the case to the person in charge in the International Division. The Head of the International Division only depends on the Divisions for Individual Persons and for Legal Entities for fact gathering and his/her decisions are based solely on his/her own assessment of the cases under review. Organisationally, 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. When the MAP is ultimately resolved, the person in charge in the International Division informs the responsible persons in the relevant divisions of necessary adjustments and the implementation of the agreed resolution. Implementation is then the responsibility of the respective assessment divisions.

90. In Liechtenstein, the same persons are in charge of treaty negotiations and of handling of MAP cases. However, 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 it is willing to include a mandatory and binding arbitration clause in all of its tax treaties. According to Liechtenstein, the inclusion of such a mandatory and binding arbitration clause helps prevent bias during the resolution of MAP cases by such staff.

### ***Practical application***

91. Peers did not report any impediment by 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***

92. Liechtenstein did not indicate that it anticipates any modifications in relation to element C.4.

### Conclusion

	Areas for Improvement	Recommendations
[C.4]	-	As it has done thus far, Liechtenstein should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue, or being influenced by considerations of the policy that Liechtenstein would like to see reflected in future amendments to the treaty.

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

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

93. 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*

94. Determination of employee performance is done on an individual basis and is reviewed annually. Liechtenstein does not use standard metrics to assess the performance of the staff involved in the competent authority function. However, Liechtenstein 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.

95. The *Action 14 final report* (OECD, 2015b) includes examples for performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist for Liechtenstein. They are checked when they are taken into account by Liechtenstein's competent authority:

- 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); and
- 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).

96. Furthermore, Liechtenstein does not use performance indicators based on amounts or assignments that need to be achieved by Liechtenstein's competent authority when resolving MAP cases, nor does Liechtenstein use targets to sustain specified audit adjustments or maintain tax revenue amounts.



***Practical application***

97. Peers indicated not being aware of the fact that Liechtenstein’s competent authority would 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.

***Anticipated modifications***

98. Liechtenstein did not indicate that it expected any modifications in relation to element C.5.

***Conclusion***

	Areas for Improvement	Recommendations
[C.5]	-	As it has done thus far, Liechtenstein should continue to use appropriate performance indicators.

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

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

99. 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***

100. Liechtenstein has no domestic law limitations for including MAP arbitration in its tax treaties. Furthermore, Liechtenstein has been a participant in the sub-group on arbitration as part of the multilateral instrument of Action 15 of the BEPS project and is committed to provide for mandatory binding MAP arbitration as a mechanism to guarantee that treaty-related disputes will be resolved within a specified time frame. 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.

***Practical application***

101. Liechtenstein has incorporated a mandatory and binding arbitration clause in 11 of 17 treaties, while 10 of them include a provision that is based on Article 25(5) of the *OECD Model Tax Convention* (OECD, 2015a).

102. In addition to these 11 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.

### *Anticipated modifications*

103. Liechtenstein reported that it has opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision. 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.

### *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. Liechtenstein reported that for pre-2016 cases it used the definition of a MAP case as set out in Annex D of the document “MAP Statistics Reporting Framework” and counted cases concerning the taxation of more than one taxpayer as one case.

## *Bibliography*

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en>.
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2007), *Manual on Effective Mutual Agreement Procedures*, OECD, Paris, [www.oecd.org/ctp/38061910.pdf](http://www.oecd.org/ctp/38061910.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.

104. 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*

105. If Liechtenstein's 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 then invited to express his approval to the outcome and the implementation in writing. Unless the outcome of the MAP is rejected by the taxpayer within 30 days, it is assumed to be accepted by the taxpayer. 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 mutual agreement and inform the respective division responsible for the assessment of the taxpayer (Division for Individual Persons/ Division for Legal Persons) about the outcome of the MAP. Section 4.3 and section 5 of Liechtenstein's MAP guidance addresses implementation of MAP agreements. This section includes information on the outcome of MAP agreements and procedural aspects of implementation.<sup>1</sup>

106. In Liechtenstein, MAP agreements will be implemented as permitted by its domestic statute of limitations, except where these limitations are overridden by a treaty provision (such as Article 25(2), second sentence, of the *OECD Model Tax Convention* [OECD, 2015]). Liechtenstein has, pursuant to its domestic legislation, a statute of limitations for implementing MAP agreements as stipulated in Article 124(2) of the Liechtenstein Tax Act. According to this provision, a change of assessment has to be requested both:

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

107. 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.

### *Practical application*

108. 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). Liechtenstein reported that during the Review Period one MAP agreement has been reached and was notified to the taxpayer. This agreement has been implemented upon acceptance by the taxpayer.

109. Liechtenstein reported 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).

110. Peers did not indicate experiencing any issues with Liechtenstein regarding the implementation of MAP agreements.

### *Anticipated modifications*

111. 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, all but one of Liechtenstein's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015). There is a risk that for this tax treaty, not all MAP agreements can be implemented due to the time limits in Liechtenstein's domestic law.	As it has done thus far, Liechtenstein should continue to implement all future agreements if the conditions for such implementation are fulfilled. In particular, Liechtenstein should ensure that its domestic legislation does not obstruct the implementation of MAP agreements where a tax treaty does not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015).

## **[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.

112. 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*

113. There is no publically available information on the timeframe 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 a competent authority.

114. In its domestic legislation and/or administrative framework, Liechtenstein does not have a specific timeframe for implementation of mutual agreements reached.

### ***Practical application***

115. Liechtenstein reported that all MAP agreements, 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 since 1 January 2016.

116. Peers did not indicate experiencing any issues with Liechtenstein regarding the implementation of MAP agreements on a timely basis.

### ***Anticipated modifications***

117. Liechtenstein did not indicate that it expected any modifications relating to element D.2.

### ***Conclusion***

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

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

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

### ***Legal framework and current situation of Liechtenstein's tax treaties***

119. Out of Liechtenstein's 17 tax treaties, all but one treaty contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) requiring that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.<sup>2</sup> This treaty also does not contain the alternative provisions in Article 9(1) and Article 7(2).

### *Anticipated modifications*

120. Liechtenstein reported it has recently signed the Multilateral Instrument with a view to inter alia modify – on the basis of Article 16(4)(b)(ii) of that instrument – those tax treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) stipulating that any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the contracting states. In that regard, Liechtenstein reported it has not, as is allowed pursuant to Article 16(5) (c) of the Multilateral Instrument, reserved the right not to apply the second sentence of Article 16(2) of that instrument. In addition, Liechtenstein reported it will seek to include Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

### *Conclusion*

	Areas for Improvement	Recommendations
[D.3]	One out of 17 tax treaties contains neither a provision 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).	For the one treaty that does not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015), or include the alternatives provided in Article 9(1) and Article 7(2), and if it is not modified by the Multilateral Instrument following its entry into force to include such equivalent, Liechtenstein should request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.  In addition, Liechtenstein should maintain its stated intention to include the required provision or be willing to accept the inclusion of both alternative provisions in all future treaties.

## Notes

1. [www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf](http://www.llv.li/files/stv/int-mb-mutualagreementprocedure-en.pdf).
2. Reference is made to Annex A for the overview of Liechtenstein's tax treaties regarding the mutual agreement procedure.

## Summary

Areas for Improvement		Recommendations
<b>Part A: Preventing disputes</b>		
[A.1]	-	Liechtenstein should maintain its stated intention to include the required provision in all future treaties.
[A.2]	Liechtenstein is in theory able to extend bilateral APAs to previous fiscal years. However, it was not possible at this stage to assess the effective implementation of this element in practice since no request for roll-back of a bilateral APA was submitted during the Review Period.	
<b>Part B: Availability and access to MAP</b>		
[B.1]	-	Liechtenstein should maintain its stated intention to include the required provision in all future treaties.
[B.2]	Liechtenstein has not introduced a notification process prior to the expiration of the Review Period (whereas it introduced such procedure thereafter).	Liechtenstein should ensure that it will actually use the process recently introduced to notify the other competent authority in cases where it considers that the objection raised in the MAP request not to be justified where the tax treaty does not permit the MAP request to be submitted to the competent authority of either contracting state.
[B.3]	-	As Liechtenstein has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	-	As Liechtenstein has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.
[B.5]	-	As Liechtenstein has thus far granted access to the MAP in eligible cases, even if there was an audit settlement between the tax authority and the taxpayer, it should continue granting access for these cases.
[B.6]	-	As Liechtenstein has thus far not limited access to the MAP in eligible cases when taxpayers have complied with Liechtenstein's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	-	Liechtenstein should maintain its stated intention to include the required provision in all future treaties.

Areas for Improvement		Recommendations
[B.8]	-	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of clarity, Liechtenstein could consider including in its MAP guidance information on:</p> <ul style="list-style-type: none"> <li>• whether MAP is available in cases of (i) the application of anti-abuse provisions, (ii) multilateral disputes; and (iii) multi-year resolution of recurring issues;</li> <li>• the non-suspension of tax collection;</li> <li>• the consideration of interest and penalties; and</li> <li>• the timing of the steps of the process for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).</li> </ul>
[B.9]	-	As Liechtenstein has thus far made its MAP guidance available and easily accessible and published its MAP profile, Liechtenstein should ensure its future updates to the MAP guidance continue to be available and easily accessible and that its MAP profile, published on the shared public platform, is updated if needed.
[B.10]	-	-
<b>Part C: Resolution of MAP cases</b>		
[C.1]	-	Liechtenstein should maintain its stated intention to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a) in all future treaties.
[C.2]	<p>Liechtenstein submitted timely comprehensive MAP statistics and indicated they have been matched with all of its MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether Liechtenstein's MAP statistics match those of its treaty partners as reported by the latter.</p> <p>Within the context of the state of play outlined above and in relation to the MAP statistics provided by Liechtenstein, it did not resolve any post-2015 cases during the Statistics Reporting Period. In that regard, Liechtenstein is recommended to seek to resolve its 2 post-2015 cases pending on 31 December 2016 within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.</p>	
[C.3]	-	Liechtenstein should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Liechtenstein should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue, or being influenced by considerations of the policy that Liechtenstein would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Liechtenstein should continue to use appropriate performance indicators.
[C.6]	-	-



Areas for Improvement		Recommendations
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	As will be discussed under element D.3., all but one of Liechtenstein's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015). There is a risk that for this tax treaty, not all MAP agreements can be implemented due to the time limits in Liechtenstein's domestic law.	As it has done thus far, Liechtenstein should continue to implement all future agreements if the conditions for such implementation are fulfilled. In particular, Liechtenstein should ensure that its domestic legislation does not obstruct the implementation of MAP agreements where a tax treaty does not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015).
[D.2]	-	As it has done thus far, Liechtenstein should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	1 out of 17 tax treaties contains neither a provision 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).	For the one treaty that does not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015), or include the alternatives provided in Article 9(1) and Article 7(2), and if it is not modified by the Multilateral Instrument following its entry into force to include such equivalent, Liechtenstein should request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.  In addition, Liechtenstein should maintain its stated intention to include the required provision or be willing to accept the inclusion of both alternative provisions in all future treaties.



## Annex A

### Tax treaty network of Liechtenstein

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11		
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?  If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence?  If no, please state reasons	Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?  If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?		
	Y = yes N = signed pending ratification	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, others reasons  if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art 7 equivalent ii = no, but have Art 9 equivalent iii = no, but have both Art 7 & 9 equivalent N = no and no equivalent of Art 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	if yes: i-Art.25(5) ii-mandatory other iii - voluntary
Andorra	Y	O	Y		Y	i	Y	Y	Y	Y	N	N/A
Austria	Y	E	Y		i	i	Y	Y	Y	Y	N	N/A
Czech Republic	Y	O	Y		Y	i	Y	Y	Y	Y	N	N/A
Georgia	Y	O	Y		Y	i	Y	Y	Y	Y	Y	i

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Germany	Y	O	Y	Y	i	Y	Y	Y	Y	Y	ii
Guernsey	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Hong Kong	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Hungary	Y	O	Y	Y	i	Y	Y	Y	Y	N	N/A
Iceland	Y	E	Y	Y	i	Y	Y	Y	Y	Y	i
Luxembourg	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Malta	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
San Marino	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Singapore	Y	O	Y	Y	i	Y	Y	Y	Y	N	N/A
Switzerland	Y	O	Y	Y	i	Y	N	Y	Y	Y	i
United Arab Emirates	N	O	Y	Y	i	Y	Y	Y	Y	N	N/A
United Kingdom	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Uruguay	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i

## Annex B

### MAP statistics: Pre-2016 cases

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
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/ partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	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

## Annex C

### MAP statistics: Post-2015 cases

Treaty partner	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 MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation eliminated/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	2	0	0	0	0	0	0	0	0	0	0	2	0.00
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Total	0	2	0	0	0	0	0	0	0	0	0	0	2	0.00

## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>International Division</b>	International Division of Fiscal Authority of Liechtenstein
<b>MAP Guidance</b>	Fact sheet on international mutual agreement procedures under the double taxation conventions with respect to taxes on income and on capital
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 15 July 2014
<b>OECD Transfer Pricing Guidelines</b>	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
<b>Pre-2016 cases</b>	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
<b>Post-2015 cases</b>	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
<b>Review Period</b>	Period for the peer review process that started on 1 January 2016 and ended on 31 March 2017
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2016
<b>Terms of Reference</b>	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective





## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

## OECD/G20 Base Erosion and Profit Shifting Project

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

## INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Addressing base erosion and profit shifting is a key priority of governments around the globe. In 2013, OECD and G20 countries, working together on an equal footing, adopted a 15-point Action Plan to address BEPS. Beyond securing revenues by realigning taxation with economic activities and value creation, the OECD/G20 BEPS Project aims to create a single set of consensus-based international tax rules to address BEPS, and hence to protect tax bases while offering increased certainty and predictability to taxpayers. In 2016, the OECD and G20 established an Inclusive Framework on BEPS to allow interested countries and jurisdictions to work with OECD and G20 members to develop standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package. Over 100 countries and jurisdictions have joined the Inclusive Framework.

Under Action 14, jurisdictions 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 jurisdictions against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 1 peer review of the implementation of the Action 14 Minimum Standard by Liechtenstein, which is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: <http://oe.cd/bepsaction14>.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264285903-en>.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases. Visit [www.oecd-ilibrary.org](http://www.oecd-ilibrary.org) for more information.

