

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Please cite this publication as:

OECD (2022), *Making Dispute Resolution More Effective – MAP Peer Review Report, Brunei Darussalam (Stage 2): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris,
<https://doi.org/10.1787/83469e1b-en>.

ISBN 978-92-64-90823-9 (print)

ISBN 978-92-64-60203-8 (pdf)

OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

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

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

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

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Abbreviations and acronyms

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

Executive summary

Brunei Darussalam has a modest tax treaty network with almost 20 tax treaties. Brunei Darussalam has an established MAP programme and has no experience with resolving MAP cases as it has not yet been involved in any cases. Overall Brunei Darussalam meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Brunei Darussalam worked to address some of them, which has been monitored in stage 2 of the process. In this respect, Brunei Darussalam solved some of the identified deficiencies.

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

- Approximately 20% of Brunei Darussalam's tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Approximately 16% of Brunei Darussalam's tax treaties do not contain the equivalent of Article 25(1), first sentence, either as it read prior to the adoption of the Action 14 final report (OECD, 2015) or as amended by that report, or the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Brunei Darussalam needs to amend and update a certain number of its tax treaties. In this respect, for the five tax treaties that are considered not to be in line with one or more elements of the Action 14 Minimum Standard, Brunei Darussalam reported it intends to sign the Multilateral Instrument with a view to be compliant with the Action 14 Minimum Standard, once its domestic legislation has been amended to allow for the implementation of the Multilateral Instrument. Brunei Darussalam noted that while all the five tax treaties are expected to be modified by the Multilateral Instrument, it intends to update the tax treaties that will not be amended by the Multilateral Instrument via bilateral negotiations to be compliant with the Action 14 Minimum Standard, once its due diligence on the Multilateral Instrument is complete.

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

Brunei Darussalam in principle meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in eligible cases in principle, although it has since 1 January 2016 not received any MAP requests. Furthermore, Brunei Darussalam has in place a documented notification process for those situations in which its competent authority considers the objection raised by

taxpayers in a MAP request as not justified. Lastly, Brunei Darussalam has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice.

Brunei Darussalam has not been involved in any MAP cases during the period 2016-20. Brunei Darussalam meets most of the requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. However, Brunei Darussalam's MAP guidance allows its competent authority to not seek to resolve MAP cases at its discretion where the retrieval of relevant documents is no longer possible owing to time limits under Brunei Darussalam's domestic law. In addition, Brunei Darussalam's MAP guidance also allows its competent authority to not seek to resolve MAP cases at its discretion for any other reasons not specified therein.

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

References

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

Introduction

Available mechanisms in Brunei Darussalam to resolve tax treaty-related disputes

Brunei Darussalam has entered into 19 tax treaties on income (and/or capital), 18 of which are in force.¹ These 19 treaties are being applied to 19 jurisdictions. All but one of these treaties provides for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty.

Under Brunei Darussalam’s tax treaties, the competent authority function is assigned to the Minister of Finance and Economy or his authorised representative. This has been delegated to the Revenue Division of the Ministry of Finance and Economy. The competent authority of Brunei Darussalam currently employs three employees in the International Unit within the Revenue Division who are responsible for both other and attribution/allocation cases in addition to other non-MAP related duties.

Brunei Darussalam has issued guidance on the governance and administration of the mutual agreement procedure (“MAP”) in March 2019, which was updated in December 2020 and is available in English at:

<https://www.mofe.gov.bn/SiteAssets/divisions/avoidance-of-double-taxation-adta/MOFE%20MAP%20Guidelines.pdf>

Developments in Brunei Darussalam since 1 April 2019

Developments in relation to the tax treaty network

The stage 1 peer review report of Brunei Darussalam noted that it was conducting tax treaty negotiations with the Philippines and Thailand. For these two treaties, Brunei Darussalam clarified that negotiations have been concluded but the agreements have not yet been signed. Furthermore, the stage 1 report noted that Brunei Darussalam had signed a new treaty with Tajikistan, which had not yet entered into force. This situation remains the same.

For the five tax treaties that are considered not to be in line with one or more elements of Action 14 Minimum Standard, Brunei Darussalam reported it intends to sign the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard, once its domestic legislation has been amended to allow for the implementation of the Multilateral Instrument. Brunei Darussalam noted that while all the five tax treaties that are considered not in line with one or more elements of the Action 14 Minimum Standard are expected to be modified by the Multilateral Instrument, it intends to update the tax treaties that will not be amended by the Multilateral Instrument via bilateral negotiations to be compliant with the Action 14 Minimum Standard, once its due diligence on the Multilateral Instrument is complete.

Basis for the peer review process

Outline of the peer review process

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

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

Outline of the treaty analysis

For the purpose of this report and the statistics below, in assessing whether Brunei Darussalam is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerns a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of Brunei Darussalam's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

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

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

No peers have provided input during both stage 1 and stage 2 on Brunei Darussalam's implementation of the Action 14 Minimum Standard. This can be explained by the fact that Brunei Darussalam's competent authority has never been involved in a MAP case as it has never received a MAP request from a taxpayer or from another competent authority.

Input by Brunei Darussalam and co-operation throughout the process

During stage 1, Brunei Darussalam provided extensive answers in its questionnaire, which was submitted on time. Brunei Darussalam was very responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and provided further clarity where necessary. In addition, Brunei Darussalam provided the following information:

- MAP profile³
- MAP statistics⁴ according to the MAP Statistics Reporting Framework (see below).

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

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

Overview of MAP caseload in Brunei Darussalam

The analysis of Brunei Darussalam’s MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2018. For stage 2 the period ranges from 1 January 2019 to 31 December 2020. Both periods are taken into account in this report for analysing the MAP statistics of Brunei Darussalam. The analysis of Brunei Darussalam’s MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2020 (“**Statistics Reporting Period**”). According to the statistics provided by Brunei Darussalam, as mentioned above, Brunei Darussalam has not been involved in any MAP cases during the Statistics Reporting Period.

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁵ Furthermore, the report depicts the changes adopted and plans shared by Brunei Darussalam to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements has been updated with a recent

development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Brunei Darussalam relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes in the recent development sections.

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

Notes

1. The tax treaties Brunei Darussalam has entered into are available at: <https://www.mofe.gov.bn/divisions/avoidance-of-double-taxation-adta.aspx>; <https://www.mofe.gov.bn/divisions/tax-information-exchange-agreement-tiea.aspx>. The treaty that is signed but has not yet entered into force is with Tajikistan. For that reason the newly negotiated treaty is taken into account in the treaty analysis. Reference is made to Annex A for the overview of Brunei Darussalam's tax treaties.
2. Available at: <https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-brunei-darussalam-stage-1-87e2abc5-en.htm>.
3. Available at <https://www.oecd.org/tax/dispute/Brunei-Dispute-Resolution-Profile.pdf>.
4. The MAP statistics of Brunei Darussalam are included in Annexes B and C of this report.
5. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

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

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

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

Current situation of Brunei Darussalam’s tax treaties

2. Out of Brunei Darussalam’s 19 tax treaties, 18 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. The remaining treaty does not contain any provision based on, or equivalent to, Article 25(3) first sentence, of the OECD Model Tax Convention (OECD, 2017a).

3. Brunei Darussalam reported that it considers itself able to enter into interpretative MAP agreements irrespective of whether the applicable treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

4. No peer input was provided during stage 1.

Recent developments

Bilateral modifications

5. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element A.1.

Peer input

6. No peer input was provided.

Anticipated modifications

7. For the treaty that does not contain the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Brunei Darussalam reported it intends to sign the Multilateral Instrument once its domestic legislation has been amended to allow for the implementation of the Multilateral Instrument, following which the treaty will be compliant with the Action 14 Minimum Standard.

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

Conclusion

	Areas for Improvement	Recommendations
[A.1]	One out of 19 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). For this treaty, no actions have been taken but Brunei Darussalam intends to modify it via the Multilateral instrument.	Brunei Darussalam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in the treaty that currently does not contain such equivalent.

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

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

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

Brunei Darussalam’s APA programme

10. Brunei Darussalam does not have an APA programme, by which there is no possibility for providing roll-back of bilateral APAs to previous years. Brunei Darussalam did report, however, that it considers that tax treaties that contain a provision allowing both contracting states to consult together for the elimination of double taxation in cases not provided for in the convention could be applied to the conclusion of bilateral APAs. Brunei Darussalam further reported that it considers that it would be able to grant roll-back of bilateral APAs in such cases, subject to the applicable time limits and where the relevant facts and circumstances are the same.

Recent developments

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

Practical application of roll-back of bilateral APAs*Period 1 January 2016-31 March 2019 (stage 1)*

12. Brunei Darussalam reported in the period 1 January 2016-31 March 2019 it received no requests for bilateral APAs.
13. No peer input was provided.

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

14. Brunei Darussalam reported that since 1 April 2019 it has also not received any bilateral APA requests.
15. No peer input was provided.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Note

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

References

- OECD (2017a), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.
- OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, <https://dx.doi.org/10.1787/tpg-2017-en>.

Part B

Availability and access to MAP

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

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

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

Current situation of Brunei Darussalam's tax treaties

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

18. Out of Brunei Darussalam's 19 tax treaties, 16 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. None of Brunei Darussalam's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state.

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

Provision	Number of tax treaties
No MAP provision	1
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	2

20. The treaty in the first row of the table above does not contain any provision relating to MAP at all. The remaining two treaties mentioned in the second row in the table above are initially considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, both of these treaties are considered to be in line with this part of element B.1 due to the fact that the non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to allow only for the submission of MAP requests to the state of which the taxpayer is a resident.

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

21. Out of Brunei Darussalam’s 19 tax treaties, 16 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

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

Provision	Number of tax treaties
No MAP provision	1
Filing period less than 3 years for a MAP request (2 years)	2

Peer input

23. No peer input was provided during stage 1.

Practical application

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

24. All but one of Brunei Darussalam’s tax treaties contain a provision allowing taxpayers to file a MAP request irrespective of domestic remedies. Brunei Darussalam’s Mutual Agreement Procedure Guidelines (“**MAP guidance**”) states that MAP does not deprive taxpayers of other remedies available under their respective domestic tax law. This guidance further states that taxpayers should inform Brunei Darussalam’s and the relevant foreign competent authority if the matter is adjudicated through any legal or judicial proceedings while the MAP process is still ongoing. Brunei Darussalam’s MAP guidance

also makes it clear that where the matter has been subjected to litigation and determination by Brunei Darussalam’s tribunals and courts, the Ministry of Finance and Economy is unlikely to depart from the determination of Brunei Darussalam’s tribunals and courts.

25. Brunei Darussalam’s MAP guidance stated that a MAP request will only be accepted if it is evident that the actions of one or both countries resulted or will result in taxation not in accordance with the tax treaty. However, Brunei Darussalam clarified that its competent authority expects from the taxpayer general explanations, if possible with proof or evidence, on how the actions of one or both countries resulted or will result in taxation not in accordance with the tax treaty. It is further stated that a MAP request will only be accepted if the issue is not one that Brunei and/or the treaty partner’s competent authority have decided, as a matter of policy, not to consider. However, Brunei Darussalam clarified that this concerns issues that are found not to be related to the relevant tax treaty.

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

26. Although there is only one tax treaty that does not contain a filing period, which is the treaty that does not contain any MAP provision at all, Brunei Darussalam’s MAP guidance states that if the time limit for presenting a MAP application is not specified in the relevant tax treaty, Brunei Darussalam’s competent authority will follow the time limits specified in Article 25 on MAP of the OECD Model Tax Convention (OECD, 2017), which is within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the convention.

Recent developments

Bilateral modifications

27. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element B.1.

Peer input

28. No peer input was provided.

Anticipated modifications

29. Brunei Darussalam reported that for the three tax treaties that do not contain the equivalent of the first or second sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b), it intends to sign the Multilateral Instrument once its domestic legislation has been amended to allow for the implementation of the Multilateral Instrument, following which the three treaties will be compliant with the Action 14 Minimum Standard.

30. Brunei Darussalam reported it will seek to include Article 25(1), first sentence, as amended by the Action 14 final report (OECD, 2015b), in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
	One of 19 tax treaties does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, no actions have been taken but Brunei Darussalam intends to modify it via the Multilateral instrument.	Brunei Darussalam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent.
[B.1]	Two out of 19 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. For these two treaties, no actions have been taken but Brunei Darussalam intends to modify them via the Multilateral instrument.	Brunei Darussalam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the two treaties that currently do not contain such equivalent.

[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).

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

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

Domestic bilateral consultation or notification process in place

32. As discussed under element B.1, out of Brunei Darussalam's 19 treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) 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.

33. Brunei Darussalam has introduced a documented bilateral consultation or notification process for those situations where its competent authority would consider the objection raised in a MAP request as not being justified. Brunei Darussalam's internal guideline

clarifies that its competent authority will notify the other competent authority of having received the MAP request within three days, and verify documentation based on a checklist in its MAP guidance within four days. If there are deficiencies, the competent authority will request the taxpayer such information within seven days. Then, the competent authority will evaluate the case within 14 days, and if it considers the objection is not justified it will notify the other competent authority of the facts and circumstances leading to its decision and ask the other competent authority for their view on the case within seven days. If both agree, the competent authority will inform the taxpayer of the rejection of the MAP request with the reasons within seven days.

Recent developments

34. Brunei Darussalam reported that it has introduced a documented bilateral consultation or notification process for those situations where its competent authority would consider the objection raised in a MAP request as not being justified, and the staff in charge of MAP cases has been informed of the process.

Practical application

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

35. Brunei Darussalam reported that in the period 1 January 2016-31 March 2019 its competent authority has not received any MAP requests. Therefore, there were no cases where it was decided that the objection raised by taxpayers in such request was not justified.

36. No peer input was provided.

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

37. Brunei Darussalam reported that since 1 April 2019 it has also not received any MAP requests. Therefore, there were no cases where it was decided that the objection raised by taxpayers in such request was not justified.

38. No peer input was provided.

Anticipated modifications

39. Brunei Darussalam did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

40. Where two or more tax administrations take different positions on what constitutes arm's length conditions for specific transactions between associated enterprises, economic

double taxation may occur. Not granting access to MAP with respect to a treaty partner's transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the main objective of tax treaties. Jurisdictions should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

41. Out of Brunei Darussalam 19 tax treaties, 14 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, two treaties do not contain such a provision at all. The remaining three treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviate from this provision for the following reasons:

- One treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but the granting of a corresponding adjustment is only optional as the word “shall” is replaced by “may”.
- One treaty contains a provision that is based on Article 9(2), but is missing the part of the last sentence of the provision that reads “... and the competent authorities of the Contracting States shall, if necessary, consult each other.”
- Another treaty also misses the last sentence mentioned in the bullet point above and only allows for a corresponding adjustment to be granted through the mutual agreement procedure.

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

Recent developments

Bilateral modifications

43. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element B.3.

Application of legal and administrative framework in practice

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

44. Brunei Darussalam reported that in the period 1 January 2016-31 March 2019, it has not denied access to MAP on the basis that the case concerned a transfer pricing case. However, no such cases in relation hereto were received since that date.

45. No peer input was provided.

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

46. Brunei Darussalam reported that since 1 April 2019, it has also not denied access to MAP on the basis that the case concerned a transfer pricing case. However, no such cases in relation hereto were received since that date.

47. No peer input was provided.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

49. 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

50. None of Brunei Darussalam's 19 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Brunei Darussalam do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

Recent developments

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

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

52. Brunei Darussalam reported that in the period 1 January 2016-31 March 2019 it has not denied access to MAP in any cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received since that date.

53. No peer input was provided.

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

54. Brunei Darussalam reported that since 1 April 2019 it has also not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received in this period.

55. No peer input was provided.

Anticipated modifications

56. Brunei Darussalam did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

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

Legal and administrative framework

Audit settlements

58. Under Brunei Darussalam’s domestic law it is possible that taxpayers and the tax administration enter into an audit settlement. Brunei Darussalam’s MAP guidance states that in cases that involve adjustment of tax or income as a result of an audit settlement, taxpayers are encouraged to notify its competent authority of its intention to request a MAP as soon as the notice of assessment is issued or when the taxpayer files an appeal. Brunei Darussalam further clarified that taxpayers will always be able to submit a MAP request where eligible despite such settlement occurring.

Administrative or statutory dispute settlement/resolution process

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

Recent developments

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

Practical application

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

61. Brunei Darussalam reported that in the period 1 January 2016-31 March 2019 it has not denied access to MAP in any cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

62. No peer input was provided.

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

63. Brunei Darussalam reported that since 1 April 2019 it has also not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request had already been resolved through an audit settlement between the taxpayer and the tax administration. However, no such cases in relation hereto were received since that date.

64. No peer input was provided.

Anticipated modifications

65. Brunei Darussalam did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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

Legal framework on access to MAP and information to be submitted

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

68. Brunei Darussalam's internal guideline clarifies that when its competent authority receives a MAP request that does not include all the information and documentation required to be submitted pursuant to Brunei Darussalam's MAP guidelines, it will request the taxpayer in writing such information and documentation within seven days from the receipt of the MAP submission. Depending on the complexity of the requested information, the taxpayer can be given up to two months to provide the requested information. If the taxpayer requests to extend the deadline, it will be only allowed within two months from the first letter issued. However, if the taxpayer does not provide the requested information within the required period without any reasonable justification, the competent authority will evaluate the case and if the MAP request appears to be not justified, it will notify the other competent authority and ask their view on the case. If both agree, the competent authority will inform the taxpayer of the rejection of the MAP request with the reasons.

Recent developments

69. Brunei Darussalam reported that it has introduced the internal guideline on evaluating a MAP request.

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

70. Brunei Darussalam reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that in the period 1 January 2016-31 March 2019 it has not received any MAP requests and therefore has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

71. No peer input was provided.

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

72. Brunei Darussalam reported that since 1 April 2019 it has not received any MAP requests and therefore has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

73. No peer input was provided.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

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

Current situation of Brunei Darussalam's tax treaties

76. Out of Brunei Darussalam's 19 tax treaties, 17 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. Of the remaining two treaties, two do not contain any provision at all based on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

77. No peer input was provided during stage 1.

*Recent developments**Bilateral modifications*

78. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element B.7.

Peer input

79. No peer input was provided.

Anticipated modifications

80. Brunei Darussalam reported that for the two tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), it intends to sign the Multilateral Instrument once its domestic legislation has been amended to allow for the implementation of the Multilateral Instrument, following which the two treaties will be compliant with the Action 14 Minimum Standard.

81. Brunei Darussalam reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	Two out of 19 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For these two treaties, no actions have been taken but Brunei Darussalam intends to modify them via the Multilateral instrument.	Brunei Darussalam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the two treaties that currently do not contain such equivalent.

[B.8] Publish clear and comprehensive MAP guidance

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

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

Brunei Darussalam's MAP guidance

83. Brunei Darussalam's rules, guidelines and procedures are available at:

<https://www.mofe.gov.bn/SiteAssets/divisions/avoidance-of-double-taxation-adta/MOFE%20MAP%20Guidelines.pdf>

84. This MAP guidance sets out in detail how taxpayers can access the mutual agreement procedure and what rules apply during that procedure under tax treaties Brunei Darussalam entered into, and is divided into 13 sections titled as follows:

1. What is MAP?
2. Why apply MAP?
3. Who can apply MAP?
4. When to apply for MAP?
5. What are the benefits of seeking MAP?
6. How to apply for MAP?
7. Checklist to submit for MAP request
8. Time limits for requesting access to MAP
9. Acceptance of a MAP request
10. Termination of MAP
11. Interaction between MAP and domestic law
12. Confidentiality of taxpayer's information
13. Further information

85. This document includes information on:
- a. contact information of the competent authority or the office in charge of MAP cases
 - b. the manner and form in which the taxpayer should submit its MAP request
 - c. the specific information and documentation that should be included in a MAP request (see also below)
 - d. how the MAP functions in terms of timing and the role of the competent authorities
 - e. relationship with domestic available remedies
 - f. access to MAP in audit settlements
 - g. implementation of MAP agreements (including the steps of the process and the timing of such steps for the implementation of MAP agreements, and any actions to be taken by taxpayers)
 - h. rights and role of taxpayers in the process
 - i. suspension of tax collection.

86. In addition to the MAP guidelines described above, Brunei Darussalam also published a sample letter of authorisation for taxpayers, a flowchart of the MAP process and a detailed, three-page document outlining the steps of the MAP process, which can be found at the following links:

- Sample letter of authorisation: <https://www.mofe.gov.bn/Shared%20Documents/revenue/MAP/MAP - Sample Letter of Authorisation.pdf>
- MAP flow chart: <https://www.mofe.gov.bn/SiteAssets/Divisions/avoidance-of-double-taxation-adta/MOFE%20MAP%20Flowchart.pdf>
- MAP process: <https://www.mofe.gov.bn/SiteAssets/Divisions/avoidance-of-double-taxation-adta/MOFE%20MAP%20Process.pdf>

87. The above-described MAP guidance of Brunei Darussalam includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.¹

88. Although the information included in Brunei Darussalam's MAP guidance is detailed and comprehensive, a few subjects are not specifically discussed in Brunei Darussalam's MAP guidance. This concerns information on:

- whether MAP is available in cases regarding: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments
- the possibility of suspension of tax collection during the course of a MAP.

Information and documentation to be included in a MAP request

89. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information

and documentation taxpayers need to include in request for MAP assistance.² This agreed guidance is shown below. Brunei Darussalam’s MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

Recent developments

90. Brunei Darussalam reported that it has updated its MAP guidance in December 2020 and included the information where taxpayers can request for multi-year resolution of recurring issues through MAP. Further, Brunei Darussalam has updated the MAP flow chart and the MAP process in December 2020.

Anticipated modifications

91. Brunei Darussalam indicated that the remaining items for which the suggestions was made to include them in the MAP guidance in the stage 1 report are under consideration.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

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

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

92. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP

profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.³

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

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

<https://www.mofe.gov.bn/SiteAssets/divisions/avoidance-of-double-taxation-adta/MOFE%20MAP%20Guidelines.pdf>

94. This guidance was last updated in December 2020. As regards its accessibility, Brunei Darussalam’s MAP guidance can easily be found on the website of its Ministry of Finance and Economy by searching for “MAP” in the search box.

MAP profile

95. The MAP profile of Brunei Darussalam is published on the website of the OECD and was last updated in May 2021. This MAP profile is complete with some detailed information. This profile contains external links that provide extra information and guidance where appropriate.

Recent developments

96. Brunei Darussalam has updated its MAP profile following its update of the MAP guidance.

Anticipated modifications

97. Brunei Darussalam did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

98. 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

99. As previously discussed under B.5, under Brunei Darussalam’s domestic law it is possible for taxpayers and the tax administration to enter into audit settlements. The relationship between access to MAP and audit settlements is described under the “Time limit for requesting access to MAP” section of Brunei Darussalam’s MAP guidance.

100. No peer input was provided.

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

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

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

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

Recent developments

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

Anticipated modifications

104. Brunei Darussalam did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

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

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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.

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

Current situation of Brunei Darussalam’s tax treaties

106. Out of Brunei Darussalam’s 19 tax treaties, 18 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty. The remaining treaty does not contain a provision relating to MAP at all.

107. No peer input was provided during stage 1.

Practical application

108. Brunei Darussalam’s MAP guidance, under the section titled “Termination of a MAP case” states that its competent authority reserves the right to propose to the competent authority of the treaty partner to terminate the MAP case in the following circumstances:

- i. when the subject of the MAP request is not within the scope of MAP under the applicable tax treaty
- ii. when the application for MAP or the attachments contain incorrect information

- iii. when the taxpayer does not provide the documents necessary for MAP
- iv. when retrieval of documents necessary for MAP is not possible due to lapse of time
- v. when the taxpayer does not accept the proposed agreement reached by the competent authorities
- vi. when it is recognised that the continuation of MAP will not reach any agreement
- vii. any other reasons not aforementioned.

109. As regards situation (iv) above, Brunei Darussalam clarified that under its Income Tax Act, companies carrying business are required to keep and retain in safe custody sufficient records for a period of seven years from the year of assessment to which an income relates to enable the companies income and allowable deduction under the Income Tax Act to be readily ascertained by the Collector of the Income tax or its authorised representatives.

110. The guidance also clarifies that when the competent authority of the treaty partner accepts the proposal made by Brunei Darussalam's competent authority as above, the taxpayer would be notified of the termination of the case.

111. It is acknowledged that competent authorities may under some circumstances not be able to proceed with a MAP case where the MAP case is not covered under the tax treaty or where a taxpayer does not co-operate with the progress of the case after repeated follow-ups, such as those specified in situations (i), (ii), (iii), (v) and (vi). However, Brunei Darussalam's policy reflected above to propose to stop discussions in MAP cases in situation (iv) creates the risk that discussions in MAP are terminated without exploring all reasonable possibilities of reaching an agreement. Further, situation (vii) above leaves it to Brunei Darussalam's competent authority's discretion to propose to terminate a MAP case for any other reason. Situations (iv) and (vii) in Brunei Darussalam's MAP guidance should not be understood to allow Brunei Darussalam's competent authority to terminate a MAP case in these situations without engaging with the other treaty partner in good faith about the merits on continuing the MAP case.

Recent developments

Bilateral modifications

112. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element C.1.

Peer input

113. No peer input was provided.

Anticipated modifications

114. For the treaty that does not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Brunei Darussalam reported it intends to sign the Multilateral Instrument once its domestic legislation has been amended to allow for the implementation of the Multilateral Instrument, following which the treaty will be compliant with the Action 14 Minimum Standard.

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

Conclusion

	Areas for improvement	Recommendations
	One out of 19 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, no actions have been taken but Brunei Darussalam intends to modify it via the Multilateral instrument.	Brunei Darussalam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent.
[C.1]	Brunei Darussalam's MAP guidance allows its competent authority to not seek to resolve MAP cases at its discretion where the retrieval of relevant documents is no longer possible owing to time limits under Brunei Darussalam's domestic law. In addition, Brunei Darussalam's MAP guidance also allows its competent authority to not seek to resolve MAP cases at its discretion for any other reasons not specified therein.	Brunei Darussalam should interpret its MAP guidance in a way such that its competent authority seeks to resolve MAP cases in a manner that is in line with the requirements under Article 25(1) and (2) of the OECD Model Tax Convention (OECD, 2017) as incorporated in Brunei Darussalam's tax treaties. Where the treaty partner's competent authority is of the view that further endeavours may be justified for the case at hand, Brunei Darussalam should, in good faith, engage with its treaty partner with a view to establishing a common understanding on the merits of continuing such a case.

[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).

116. 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

117. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Brunei Darussalam provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, and it reported it has not been involved in any MAP cases so far. As Brunei Darussalam has not been involved in any MAP cases, it was not necessary to match its statistics with its treaty partners.

Monitoring of MAP statistics

118. Brunei Darussalam does not have a system in place with its treaty partners that communicates, monitors and manages with its treaty partners the MAP caseload, which can be explained by the fact that Brunei Darussalam was never involved in a MAP case.

Analysis of Brunei Darussalam’s MAP caseload

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

120. Brunei Darussalam has not been involved in any MAP cases during the Statistics Reporting Period.

Overview of cases closed during the Statistics Reporting Period

121. Brunei Darussalam has not been involved in any MAP cases during the Statistics Reporting Period.

Average timeframe needed to resolve MAP cases

122. Brunei Darussalam has not been involved in any MAP cases during the Statistics Reporting Period.

Peer input

123. No peer input was provided during stage 1.

Recent developments

124. There are no recent developments with respect to element C.2 since Brunei Darussalam has not been involved in any MAP cases during the Statistics Reporting Period.

125. No peer input was provided during stage 2.

Anticipated modifications

126. Despite not having received any MAP requests, any future MAP statistics will be compiled by the International Unit of Revenue Division within Brunei Darussalam’s Ministry of Finance and Economy. Brunei Darussalam indicated that this unit will be responsible for monitoring MAP cases inventory, new MAP requests, the outcomes as well as the times needed to resolve MAP cases.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

127. 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 Brunei Darussalam’s competent authority

128. Under Brunei Darussalam’s tax treaties, the competent authority function is assigned to the Minister of Finance and Economy or his authorised representative. This has been delegated to the Revenue Division of the Ministry of Finance and Economy. Brunei Darussalam reported that MAP cases will be handled by three people in the International Unit within the Revenue Division who are responsible for both other and attribution/allocation cases. Brunei Darussalam reported that these personnel are responsible for, inter alia, preparing, conducting and reviewing negotiations for tax treaties and establishing international relations amongst ASEAN APEC, OECD, ATAIC, IMF and CATA members and jurisdictions. The employees are also responsible for processing and issuing certificates of residence, processing applications for tax relief and processing requests for exchange of tax information. Brunei Darussalam further reported that any necessary adjustments to the level of resources available in its competent authority will be handled by the management of the Revenue Division. Given that Brunei Darussalam has not yet been involved in any MAP cases, there has been no need for a monitoring mechanism to request more staff to handle MAP inventory.

129. Despite not having been involved in any MAP requests, Brunei Darussalam reported that staff are frequently sent overseas for training at MAP workshops organised by international organisations such as the OECD, the Asian Development Bank, and other similar institutions.

Monitoring mechanism

130. As discussed under element C.2, Brunei Darussalam’s competent authority has not yet been involved in any MAP cases, by which there were no MAP statistics available to analyse the pursued 24-month average.

Recent developments

131. There are no recent developments with respect to element C.3 since Brunei Darussalam has not been involved in any MAP cases during the Statistics Reporting Period.

Practical application

MAP statistics

132. As discussed under element C.2, Brunei Darussalam has not yet received any MAP requests, by which there were no MAP statistics available to analyse the pursued 24-month average.

Peer input

133. No peer input was provided during stage 1 (1 January 2016-31 March 2019) and stage 2 (1 April 2019-31 December 2020).

Anticipated modifications

134. Brunei Darussalam stated that it will aim to close all future MAP cases within a 24 months from receiving the taxpayer’s complete application. Brunei Darussalam also reported that it will consistently ensure the adequacy of resources including personnel and funding to be readily available if there will be MAP cases to be resolved in the future.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	-

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

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

135. Ensuring that staff in charge of MAP can and will resolve cases, absent any approval/direction by the tax administration personnel directly involved in the adjustment and absent any policy considerations, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

136. Brunei Darussalam noted that the Revenue Division, Ministry of Finance and Economy, which is the competent authority, is also responsible for the assessment process of taxation in Brunei Darussalam. However, Brunei Darussalam clarified that staff in charge of MAP are located in the international unit that is separate from the unit in charge of tax audits. Brunei Darussalam further reported that in practice the international unit would operate independently and would have the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment.

137. Brunei Darussalam clarified that any decisions on MAP will be based on the applicable tax treaty and that the process for entering into MAP agreements not influenced by policy considerations that Brunei Darussalam would like to see reflected in future amendments to the treaty.

Recent developments

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

Practical application

139. No peer input was provided during stage 1 (1 January 2016-31 March 2019) and stage 2 (1 April 2019-31 December 2020).

Anticipated modifications

140. Brunei Darussalam did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

141. 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 Brunei Darussalam

142. As Brunei Darussalam has not yet received a MAP request, it reported that at the time of review performance indicators have not yet been set for the MAP office.

143. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below in bullet form:

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

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

Recent developments

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

Practical application

146. No peer input was provided during stage 1 (1 January 2016-31 March 2019) and stage 2 (1 April 2019-31 December 2020).

Anticipated modifications

147. Brunei Darussalam reported that it would use the indicators that are considered appropriate by the Action 14 final report (OECD, 2015) to assess the performance of employees who handle MAP cases in the future.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

148. 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

149. Brunei Darussalam's MAP profile clearly states that it has no domestic law limitations for including MAP arbitration in its tax treaties but that MAP arbitration is not currently available for the resolution of tax treaty related disputes in any of its tax treaties.

Recent developments

150. There are no recent developments with respect to element C.6.

Practical application

151. Brunei Darussalam has not incorporated an arbitration clause in any of its 19 tax treaties as a final stage to the MAP.

Anticipated modifications

152. Brunei Darussalam did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

References

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

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

153. 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

154. Brunei Darussalam reported that under Chapter 35 of its Income Tax Act, taxpayers may be assessed within the year of assessment or within six years after the expiration thereof. In practice, Brunei Darussalam indicated that all MAP cases will be implemented notwithstanding these time limits in its domestic laws.

155. Brunei Darussalam further reported that when a MAP agreement is reached, its competent authority will inform the taxpayer in writing of the outcome within one month of reaching agreement. Upon receipt of the letter, the taxpayer will have to decide and then inform Brunei Darussalam's competent authority in writing that it accepts the agreement. Brunei Darussalam reported that although taxpayers are allowed to reject the outcome, they are not allowed to choose which part of an agreed outcome it would like to be implemented as such an agreement must be accepted in its entirety. Brunei Darussalam further noted that if any interest or penalties were imposed in a jurisdiction in connection with the taxation that is the subject of the MAP, such agreement may address whether any refund of such interest or penalties might be appropriate. Brunei Darussalam stated that if the taxpayer accepts the agreement, then its competent authority will work with the other competent authority to finalise the implementation of the agreement in accordance with the applicable tax treaty.

156. Brunei Darussalam's MAP guidance contains a section on implementation where all of the above information can also be found. In addition, as discussed under element C.1, Brunei Darussalam's MAP guidance states that its Ministry of Finance and Economy reserves the right to propose to the competent authority of the treaty partner to terminate MAP case processes. It further states that a MAP case can be terminated in some situations such as "when retrieval of documents necessary for MAP is not possible due to a lapse of time". In this respect, Brunei Darussalam clarified that the time lapse for retrieving records would not hinder or impede the MAP process in practice and that it commits to implement all MAP agreements reached.

Recent developments

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

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

158. As Brunei Darussalam was not involved in any MAP cases in the period 1 January 2016-31 March 2019, it was not possible to assess the implementation of MAP agreements by Brunei Darussalam.

159. No peer input was provided.

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

160. Brunei Darussalam was also not involved in any MAP cases since 1 April 2019.

161. No peer input was provided.

Anticipated modifications

162. Brunei Darussalam did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

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

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

163. 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

164. As discussed under element D.1., Brunei Darussalam reported that it notifies the taxpayer of a MAP agreement within one month of a MAP agreement being reached. Brunei Darussalam noted that it would send a reminder letter if no response is received from the taxpayer within one month from the date the query letter is issued. Brunei Darussalam did not report any other applicable timeframes regarding the implementation process.

Recent developments

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

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

166. As Brunei Darussalam was not involved in any MAP cases in the period 1 January 2016-31 March 2019, it was not possible to assess the timely implementation of MAP agreements by Brunei Darussalam.

167. No peer input was provided.

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

168. Brunei Darussalam was also not involved in any MAP cases since 1 April 2019.

169. No peer input was provided.

Anticipated modifications

170. Brunei Darussalam indicated that although it has not yet received any MAP requests it will strive to implement future MAP agreements as soon as possible.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

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

Legal framework and current situation of Brunei Darussalam's tax treaties

172. As discussed under element D.1, Brunei Darussalam's domestic legislation includes a statute of limitations of six years for implementing MAP agreements, unless overridden by tax treaties. In practice, however, Brunei Darussalam indicated that all MAP cases will be implemented notwithstanding any time limits in its domestic laws.

173. Out of Brunei Darussalam's 19 tax treaties, 15 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time

limits in their domestic law. Furthermore, one tax treaty contains the alternative provision in Article 9(1), setting a time limit for making transfer pricing adjustments. The remaining three tax treaties do not contain any provision based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) at all or the alternative provisions of Article 9(1) and 7(2).

174. No peer input was provided during stage 1.

Recent developments

Bilateral modifications

175. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element D.3.

Peer input

176. No peer input was provided.

Anticipated modifications

177. For the four treaties, that do not contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Brunei Darussalam reported it intends to sign the Multilateral Instrument once its domestic legislation has been amended to allow for the implementation of the Multilateral Instrument, following which the four treaties will be compliant with the Action 14 Minimum Standard.

178. Brunei Darussalam reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	Four out of 19 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). For these four treaties, no actions have been taken but Brunei Darussalam intends to modify them via the Multilateral instrument.	Brunei Darussalam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the four treaties that currently do not contain such equivalent.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	One out of 19 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, no actions have been taken but Brunei Darussalam intends to modify it via the Multilateral instrument.	Brunei Darussalam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	One of 19 tax treaties does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, no actions have been taken but Brunei Darussalam intends to modify it via the Multilateral instrument.	Brunei Darussalam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent.
	Two out of 19 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. For these two treaties, no actions have been taken but Brunei Darussalam intends to modify them via the Multilateral instrument.	Brunei Darussalam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the two treaties that currently do not contain such equivalent.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	Two out of 19 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For these two treaties, no actions have been taken but Brunei Darussalam intends to modify them via the Multilateral instrument.	Brunei Darussalam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the two treaties that currently do not contain such equivalent.
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-

	Areas for improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	One out of 19 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, no actions have been taken but Brunei Darussalam intends to modify it via the Multilateral instrument.	Brunei Darussalam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent.
[C.1]	Brunei Darussalam's MAP guidance allows its competent authority to not seek to resolve MAP cases at its discretion where the retrieval of relevant documents is no longer possible owing to time limits under Brunei Darussalam's domestic law. In addition, Brunei Darussalam's MAP guidance also allows its competent authority to not seek to resolve MAP cases at its discretion for any other reasons not specified therein.	Brunei Darussalam should interpret its MAP guidance in a way such that its competent authority seeks to resolve MAP cases in a manner that is in line with the requirements under Article 25(1) and (2) of the OECD Model Tax Convention (OECD, 2017) as incorporated in Brunei Darussalam's tax treaties. Where the treaty partner's competent authority is of the view that further endeavours may be justified for the case at hand, Brunei Darussalam should, in good faith, engage with its treaty partner with a view to establishing a common understanding on the merits of continuing such a case.
[C.2]	-	-
[C.3]	-	-
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-
[D.3]	Four out of 19 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). For these four treaties, no actions have been taken but Brunei Darussalam intends to modify them via the Multilateral instrument.	Brunei Darussalam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the four treaties that currently do not contain such equivalent.

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration										
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) third sentence? (Note 6)	Inclusion Art. 25(3) fourth sentence? (Note 6)	A.1	A.2	B.1	B.2	B.3	B.4	B.5	B.6	B.7	B.8
Hong Kong (China)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Indonesia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Japan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kuwait	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Laos	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Malaysia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Oman	Y	N/A	O	ii	2-years	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Pakistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Qatar	Y	N/A	O	ii	2-years	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Singapore	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Tajikistan	N	3-Apr-10	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
United Arab Emirates	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
United Kingdom	Y	N/A	N	iv	No MAP Provision	N/A	i	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Viet Nam	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Annex B

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

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

2017 MAP Statistics														
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome								No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period			
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

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

2019 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2019	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2020 MAP Statistics														
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2020	Number of pre-2016 cases closed during the reporting period by outcome								No. of pre-2016 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing pre-2016 cases during the reporting period			
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
		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			
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

Annex C

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

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

2017 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

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

2019 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2019	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2020 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2020	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

Glossary

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

OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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



PRINT ISBN 978-92-64-90823-9
PDF ISBN 978-92-64-60203-8



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