

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Foreword

Digitalisation and globalisation have had a profound impact on economies and the lives of people around the world, and this impact has only accelerated in the 21st century. These changes have brought with them challenges to the rules for taxing international business income, which have prevailed for more than a hundred years and created 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.

In 2013, the OECD ramped up efforts to address these challenges in response to growing public and political concerns about tax avoidance by large multinationals. The OECD and G20 countries joined forces and developed an Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions aimed at 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, including those published in an interim form in 2014, were consolidated into a comprehensive package and delivered to G20 Leaders in November 2015. The BEPS package represents the first substantial renovation of the international tax rules in almost a century. As the BEPS measures are implemented, 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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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. As a result, they created 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 its subsidiary bodies. With over 140 members, the Inclusive Framework monitors and peer reviews the implementation of the minimum standards and is completing the work on standard setting to address BEPS issues. In addition to its 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.

Although implementation of the BEPS package is dramatically changing the international tax landscape and improving the fairness of tax systems, one of the key outstanding BEPS issues – to address the tax challenges arising from the digitalisation of the economy – remained unresolved. In a major step forward on 8 October 2021, over 135 Inclusive Framework members, representing more than 95% of global GDP, joined a two-pillar solution to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate and generate profits in today's

digitalised and globalised world economy. The implementation of these new rules is envisaged by 2023.

This report was approved by the Inclusive Framework on 17 March 2022 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

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

Executive summary

The Faroe Islands has a modest tax treaty network with over ten tax treaties. It has a MAP programme with limited experience in resolving MAP cases. It has a small MAP inventory and a small number of new cases submitted each year, with one MAP case pending on 31 December 2020. The outcome of the stage 1 peer review process was that overall the Faroe Islands met most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, the Faroe Islands has worked to address them, which has been monitored in stage 2 of the process. In this respect, the Faroe Islands has solved almost all the identified deficiencies.

All of the Faroe Islands' 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 for the fact that approximately 20% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, the Faroe Islands reported that it intends to update two of its tax treaties that are presently not in line with the Action 14 minimum standard via bilateral negotiations. Such bilateral negotiations have already been initiated or are envisaged to be initiated for both of these treaties.

The Faroe Islands meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request roll-back of bilateral APAs and such roll-backs would be granted in practice.

Furthermore, the Faroe Islands meets almost all the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 September 2019 not received any MAP request concerning transfer pricing cases or the application of anti-abuse provisions during this period. Furthermore, the Faroe Islands has in place a documented bilateral consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. The Faroe Islands has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice under tax treaties. However, the Faroe Islands has not updated its MAP profile to reflect the contents of such guidance.

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

2016-20	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2020	Average time to close cases (in months)
Attribution/allocation cases	0	0	0	0	N/A
Other cases	3	1	3	1	10.12
Total	3	1	3	1	10.12

As the modest MAP inventory of the Faroe Islands decreased substantially since 1 September 2019 and Faroe Islands has managed to close all but one other MAP case in its MAP inventory, including the one case that started since this date, the competent authority of the Faroe Islands is considered to be adequately resourced.

Furthermore, the Faroe Islands meets all other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. The Faroe Islands' competent authority operates fully independently from the audit function of the tax authorities and adopts a co-operative approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to evaluate the MAP function.

Lastly, the Faroe Islands almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. The Faroe Islands monitors the implementation of such agreements. However, it has a domestic statute of limitation, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), albeit that no problems have surfaced regarding implementation throughout the peer review process.

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>.

Introduction

Available mechanisms in the Faroe Islands to resolve tax treaty-related disputes

The Faroe Islands has entered into 11 tax treaties on income (and/or capital), ten of which are in force.¹ These 11 treaties are being applied to 15 jurisdictions.² All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, one of the 11 treaties contains an arbitration provision as a final stage to the mutual agreement procedure.³

Under the Faroe Islands’ tax treaties, the competent authority function is assigned to the Minister of Finance and is further delegated to the Faroe Tax Agency. The competent authority of the Faroe Islands currently employs one staff member from the legal department who deals with both attribution/allocation and other MAP cases, in addition to other non-MAP-related duties.

The Faroe Islands issued guidance on the governance and administration of the mutual agreement procedure (“**MAP guidance**”), which was published in January 2020 and is available (in Faroese) at:

<https://www.taks.fo/fo/borgari/skattur/tviskatting/>

Developments in the Faroe Islands since 1 September 2019

Developments in relation to the tax treaty network

The stage 1 peer review report of the Faroe Islands noted that the Faroe Islands had signed a treaty with the Cayman Islands (2009), which had not yet entered into force. This situation remains the same. Further, it was noted the Faroe Islands had signed, together with Denmark, Finland, Iceland, Norway and Sweden an amending protocol to the multilateral Nordic Convention (2018), which had not entered into force. This protocol has now entered into force.

For the two treaties that are considered not to be in line with one or more elements of the Action 14 Minimum Standard, the Faroe Islands reported that it intends to update them via bilateral negotiations. In this respect, the Faroe Islands noted that bilateral negotiations are ongoing with one treaty partner and that once these negotiations are concluded, it would initiate negotiations with the remaining treaty partner.

Other developments

Further to the above, the Faroe Islands reported that it has issued comprehensive MAP guidance including *inter alia* the contact details of the competent authority and the specific information and documentation that should be submitted in a taxpayer’s request for MAP

assistance. In addition, the Faroe Islands has introduced a documented bilateral notification process in its internal procedures applicable to situations where the objection raised by a taxpayer in a MAP request is not justified.

Basis for the peer review process

The peer review process entails an evaluation of the Faroe Islands' implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by the Faroe Islands, its peers and taxpayers. The questionnaires for the peer review process were sent to the Faroe Islands and the peers on 30 August 2019.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, the Faroe Islands' 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 12 May 2020. This report identifies the strengths and shortcomings of the Faroe Islands 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.⁴ 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 the Faroe Islands. In this update report, the Faroe Islands 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 the Faroe Islands 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 were taken into account, even if it concerns a modification or a replacement of an existing treaty. The treaty analysis also takes into account the multilateral tax treaty between Denmark, Finland, the Faroe Islands, Iceland, Norway and Sweden (“**Nordic convention**”). This treaty is counted as one treaty, even though it is applicable to multiple jurisdictions. Reference is made to Annex A for the overview of the Faroe Islands' tax treaties regarding the mutual agreement procedure.

Timing of the process and input received from peers and taxpayers

Stage 1 of the peer review process for the Faroe Islands was launched on 30 August 2019, with the sending of questionnaires to the Faroe Islands and its peers. The FTA MAP Forum has approved the stage 1 peer review report of the Faroe Islands in March 2020, with the subsequent approval by the BEPS Inclusive Framework on 12 May 2020. On 12 May 2021, the Faroe Islands submitted its update report, which initiated stage 2 of the process.

The period for evaluating the Faroe Islands’ implementation of the Action 14 Minimum Standard for stage 1 ranged from 1 January 2019 to 31 August 2019 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 September 2019 and depicts all developments as from that date until 30 April 2021.

In total two peers provided input: Denmark and Sweden. During stage 2, the same peers provided input. Neither of these peers is a treaty partner that the Faroe Islands has had MAP cases with that started in 2019 or 2020. Generally, all peers indicated that the competent authority of the Faroe Islands was co-operative in the resolution of cases. One peer commented that it had some problems establishing contact with the competent authority, since it could not find any public information. The peer however also reported that once contact was established, the competent authority of the Faroe Islands responded quickly and was pragmatic and solution orientated. Another peer commented that the Faroe Islands’ case handling was seemingly time consuming. Specifically with respect to stage 2, all peers that provided input reported that the update report of the Faroe Islands fully reflects the experiences these peers have had with the Faroe Islands since 1 September 2019 and/or that there was no addition to previous input given.

Input by the Faroe Islands and co-operation throughout the process

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

- a. MAP profile⁵
- b. MAP statistics⁶ according to the MAP Statistics Reporting Framework (see below).

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

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

Overview of MAP caseload in the Faroe Islands

The analysis of the Faroe Islands’ MAP caseload relates to the period starting on 1 January 2019 and ending on 31 December 2020 (“**Statistics Reporting Period**”). According to the statistics provided by the Faroe Islands, its MAP caseload during this period was as follows:

2019-20	Opening inventory 1/1/2019	Cases started	Cases closed	End inventory 31/12/2020
Attribution/allocation cases	0	0	0	0
Other cases	3	1	3	1
Total	3	1	3	1

General outline of the peer review report

This report includes an evaluation of the Faroe Islands' 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 implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁷ Apart from analysing the Faroe Islands' legal framework and its administrative practice, the report also incorporates peer input and responses to such input by the Faroe Islands during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by the Faroe Islands to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of the Faroe Islands 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 included 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 the Faroe Islands 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 the Faroe Islands has entered into are available at: <https://www.taks.fo/fo/log/altjoda-skattaavtalur/tviskattasattmalar/>. The treaty that is signed but has not yet entered into force is with the Cayman Islands (2009). Furthermore, the 11 tax treaties the Faroe Islands has entered into include treaties with Bermuda, Guernsey and Jersey. With these three jurisdictions, the Faroe Islands has entered into separate treaties that have a limited scope of application, one of which relates to transfer pricing and one to certain categories of income of individuals. In this situation, the number of such treaties is regarded as one for each treaty partner jurisdiction for the purpose of this peer review report and Annex A. Reference is made to Annex A for the overview of the Faroe Islands’ tax treaties concerning the mutual agreement procedure.
2. The Faroe Islands is a signatory to the Nordic Convention (2018) that for the Faroe Islands applies to Denmark, Finland, Iceland, Norway and Sweden.
3. This concerns the treaty with Switzerland.
4. Available at: <https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-the-faroe-islands-stage-1-3b65b08d-en.htm>.
5. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.
6. The MAP statistics of the Faroe Islands are included in Annexes B and C of this report.
7. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

References

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

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 the Faroe Islands' tax treaties

2. All of the Faroe Islands' 11 tax treaties 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.¹

3. The peers that provided input during stage 1 confirmed that their treaty with the Faroe Islands is in line with element A.1, which is confirmed by the above analysis.

Recent developments

Peer input

4. Peers provided no specific input in relation to the treaty with the Faroe Islands.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[A.1]	-	-

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

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

6. 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.² 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.

The Faroe Islands’ APA programme

7. The Faroe Islands reported that its domestic law does not overtly specify the possibility to enter into APAs and does not feature an APA programme as such. However, the Faroe Islands reported that in practice, it is possible to enter into bilateral APAs and that its competent authority is open to accepting and discussing bilateral APA requests based on the concerned tax treaty, provided that the relevant treaty contains a provision equivalent to Article 25(3) of the OECD Model Tax Convention (OECD, 2017a).

Roll-back of bilateral APAs

8. The Faroe Islands reported that it is open to providing roll-back of bilateral APAs that are accepted into discussions as noted above. The Faroe Islands noted in this regard that its competent authority would be able to extend such roll-back for the three previous years prior to the fiscal years applied for in the APA application, in line with its domestic law on limitations for amending tax assessments.

Recent developments

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

Practical application of roll-back of bilateral APAs

Period 1 January 2019-31 August 2019 (stage 1)

10. The Faroe Islands reported not having received any requests for bilateral APAs in the period 1 January 2019-31 August 2019.

11. All peers indicated that they had not received any requests for roll back of bilateral APAs with the Faroe Islands in the period 1 January 2019-31 August 2019.

Period 1 September 2019-30 April 2021 (stage 2)

12. The Faroe Islands reported also not having received any requests for a bilateral APA since 1 September 2019.

13. All peers that provided input during stage 1 noted during stage 2 that the update report provided by the Faroe Islands fully reflects their experience with the Faroe Islands since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

14. The Faroe Islands indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. These 11 treaties include the Nordic Convention that for the Faroe Islands applies to Denmark, Finland, Iceland, Norway and Sweden.
2. 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.

15. 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 the Faroe Islands' tax treaties

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

16. Out of the Faroe Islands' 11 tax treaties, one contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.¹ Furthermore, one tax treaty contains 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.

17. The remaining nine treaties contain 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. These treaties

are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), 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, for the following reasons all of the nine treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the states (seven treaties).
- 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 (two treaties).

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

18. Out of the Faroe Islands' 11 tax treaties, eight 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.

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

Provision	Number of tax treaties
No filing period for a MAP request	2
Filing period more than 3 years for a MAP request (5 years)	1*

* This treaty concerns the Nordic Convention that for the Faroe Islands applies to Denmark, Finland, Iceland, Norway and Sweden.

Peer input

20. The peers that provided input during stage 1 confirmed that their treaty with the Faroe Islands is in line with element B.1, which is confirmed by the above analysis.

Practical application

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

21. As indicated in paragraphs 16-17 above, all of the Faroe Islands' tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. In this respect, the Faroe Islands indicated that nothing in its domestic law, policy or practice prevents a taxpayer from requesting MAP assistance where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of the Faroe Islands. Further, the Faroe Islands reported that it would grant access to MAP even in cases where there is a pending administrative or judicial proceeding or if an administrative or court decision has been issued regarding the same subject matter. This is confirmed in the Faroe Islands' MAP guidance, in the section titled "Kæra eftir internari lóggávu" (Complaints in domestic legislation). However, the Faroe Islands noted that its competent authority cannot derogate from a court decision in MAP and therefore it will

only seek to resolve the MAP case by having the treaty partner providing for correlative relief in line with the decision of its court. However, the Faroe Islands also reported that if in the MAP process new information or documentation can appear, this could lead to a different conclusion in MAP from the court decision.

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

22. For those tax treaties mentioned in paragraph 19 above that do not contain a filing period for MAP requests, the Faroe Islands reported that its competent authority would apply no filing period for MAP requests, irrespective of domestic time limits having expired.

Recent developments

Peer input

23. Peers provided no specific input in relation to the treaty with the Faroe Islands.

Anticipated modifications

24. The Faroe Islands reported it will seek to include Article 25(1), first and sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	-	-

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

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

25. 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

26. As discussed under element B.1, out of the Faroe Islands’ 11 treaties, one currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

27. The Faroe Islands reported that it has introduced a bilateral notification process that allows the other competent authority concerned to provide its views on the case when its competent authority considers the objection raised in the MAP request not to be justified. The Faroe Islands reported that when its competent authority considers that the objection raised by a taxpayer in a MAP request is not justified, it will notify the competent authority of the treaty partner and the taxpayer. The Faroe Islands clarified that the procedure as well as the template for the same has been documented in the internal handbook for the staff in its competent authority and that they have been briefed on this process. In this regard, the Faroe Islands noted that this notification should be done within four weeks per this handbook.

Recent developments

28. In the stage 1 report, it was noted that the Faroe Islands had not yet introduced a bilateral consultation or notification process which allowed the other competent authority concerned to provide its views on the case when its competent authority considered the objection raised in the MAP request not to be justified.

29. As detailed above, the Faroe Islands has since 1 September 2019 introduced a bilateral notification process that is applicable in situations where its competent authority considers the objection raised in the MAP request not to be justified. Therefore, the recommendation made in stage 1 has been addressed.

Practical application

Period 1 January 2019-31 August 2019 (stage 1)

30. The Faroe Islands reported that in the period 1 January 2019-31 August 2019 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified.

31. All peers that provided input indicated not being aware of any cases for which the Faroe Islands’ competent authority denied access to MAP in the period 1 January 2019-31 August 2019. They also reported not having been consulted/notified of a case where the Faroe Islands’ competent authority considered the objection raised in a MAP request as not justified since that date, which can be clarified by the fact that no such instances have occurred in the Faroe Islands during this period.

Period 1 September 2019-30 April 2021 (stage 2)

32. The Faroe Islands reported that since 1 September 2019 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2019 and 2020 MAP statistics submitted by the Faroe Islands also show that none of its MAP cases was closed with the outcome “objection not justified”.

33. All peers that provided input during stage 1 noted during stage 2 that since 1 September 2019 they are not aware of any cases for which the Faroe Islands’ competent authority considered an objection in a MAP request not justified. They also reported not having been consulted/notified in such cases, which can be clarified by the fact that no such instances have occurred in the Faroe Islands since that date.

Anticipated modifications

34. The Faroe Islands indicated that it does not anticipate 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.

35. 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

36. Out of the Faroe Islands’ 11 tax treaties, four 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.² The remaining seven treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Out of these seven treaties, six are treaties with a limited scope that do not contain a provision that is based on or equivalent to Article 9 of the OECD Model Tax Convention (OECD, 2017).

37. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in the Faroe Islands’ 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, the Faroe Islands indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties. This is confirmed in the Faroe Islands’ MAP guidance in the section titled “Umbøn frá borgara ella virki” (Request from citizen or company). Further, the Faroe Islands reported that it would provide access to MAP in those three treaties that do not contain a provision that is based on or equivalent to Article 9 of the OECD Model Tax Convention (OECD, 2017), but that allow the MAP to be initiated for transfer pricing cases.

Recent developments

38. There are no recent developments with respect to element B.3.

Application of legal and administrative framework in practice***Period 1 January 2019-31 August 2019 (stage 1)***

39. The Faroe Islands reported that in the period 1 January 2019-31 August 2019 it has not denied access to MAP on the basis that the case concerned a transfer pricing case. However, no such cases were received during this period

40. All peers that provided input reported that they were not aware of any cases for which the competent authority of the Faroe Islands had refused access to MAP on the basis that the case concerned a transfer pricing case in the period 1 January 2019-31 August 2019.

Period 1 September 2019-30 April 2021 (stage 2)

41. The Faroe Islands reported that also since 1 September 2019 it has not denied access to MAP on the basis that the case concerned a transfer pricing case. However, no such cases were received during this period either.

42. All peers that provided input during stage 1 stated during stage 2 that the update report provided by the Faroe Islands fully reflects their experience with the Faroe Islands since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

43. The Faroe Islands 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.

44. 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

45. None of the Faroe Islands’ 11 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 the Faroe Islands 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. As discussed under element B.8, this is not expressly stated in the Faroe Islands’ MAP guidance.

Recent developments

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

Practical application

Period 1 January 2019-31 August 2019 (stage 1)

47. The Faroe Islands reported that in the period 1 January 2019-31 August 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 were received during this period.

48. All peers who provided input reported that they were not aware of any cases in which the competent authority of the Faroe Islands had refused access to MAP in the period 1 January 2019-31 August 2019 with regard to the application of a treaty anti-abuse provision or a domestic law anti-abuse provision.

Period 1 September 2019-30 April 2021 (stage 2)

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

50. All peers that provided input during stage 1 stated during stage 2 that the update report provided by the Faroe Islands fully reflects their experience with the Faroe Islands since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

51. The Faroe Islands indicated that it does not anticipate 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.

52. 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

53. The Faroe Islands reported that there is no audit settlement process available in the Faroe Islands.

Administrative or statutory dispute settlement/resolution process

54. The Faroe Islands 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. In that regard, the Faroe Islands reported that the administrative appeal process provided by domestic legislation does not affect the rights of the taxpayer to submit a MAP request. It further reported that its competent authority would be bound by an administrative decision, if the circumstances, facts or documentation are the same as the basis under the administrative appeal case, however new information can be provided during the MAP, and in such a case, the competent authority can deviate from the conclusion of the administrative appeal decision.

Recent developments

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

Practical application

Period 1 January 2019-31 August 2019 (stage 1)

56. The Faroe Islands reported that in the period 1 January 2019-31 August 2019 it has not denied access to MAP in any case where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and

the tax administration, which is explained by the fact that such settlements are not possible in the Faroe Islands.

57. All peers indicated not being aware of a denial of access to MAP in the Faroe Islands in the period 1 January 2019-31 August 2019 in cases where there was an audit settlement between the taxpayer and the tax administration.

Period 1 September 2019-30 April 2021 (stage 2)

58. The Faroe Islands reported that since 1 September 2019 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax administration since such settlements are still not possible in the Faroe Islands.

59. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Faroe Islands fully reflects their experience with the Faroe Islands since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

60. The Faroe Islands indicated that it does not anticipate 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.

61. 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

62. The information and documentation the Faroe Islands requires taxpayers to include in a request for MAP assistance are discussed under element B.8.

63. The Faroe Islands clarified in this regard that if a MAP request does not contain all the necessary information, or if its competent authority needs additional information to assess the validity of the request, a request for additional information would generally be sent to the taxpayer. The Faroe Islands noted that the requested information must be provided to its competent authority within two to four weeks in accordance with the procedures described in the request. The Faroe Islands clarified that if the information is not provided within the requested time, it may provide a further extension of two to four

weeks to provide such information. This process is clarified in the Faroe Islands’ internal handbook on the conduct of MAP.

Recent developments

64. The stage 1 report noted that no rules were in place in the Faroe Islands regarding what information taxpayers need to include in a MAP request nor were any rules and timelines in place for requesting additional information by the competent authority and for taxpayers to provide such information and thus, the Faroe Islands was recommended to put in place clear procedures and timelines for requesting additional information from taxpayers when such information is not included in the initial MAP request and also provide for timelines within which taxpayers should comply with requests for additional information to ensure that eligible cases are dealt with in MAP and that no unnecessary delays occur.

65. As mentioned above, the Faroe Islands has issued its MAP guidance in January 2020 that includes the information and documentation the Faroe Islands requires taxpayers to include in a MAP request. Further, the internal handbook on MAP issued by the Faroe Islands contains clear procedures and timelines for requesting additional information from taxpayers when such information is not included in the initial MAP request. Therefore, the recommendation made in stage 1 has been addressed.

Practical application

Period 1 January 2019-31 August 2019 (stage 1)

66. The Faroe Islands reported that in the period 1 January 2019-31 August 2019 it has not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

67. All peers that provided input indicated not being aware of a limitation of access to MAP by the Faroe Islands in the period 1 January 2019-31 August 2019 in situations where taxpayers complied with information and documentation requirements.

Period 1 September 2019-30 April 2021 (stage 2)

68. The Faroe Islands reported that since 1 September 2019 its competent authority has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

69. All peers that provided input during stage 1 stated during stage 2 that the update report provided by the Faroe Islands fully reflects their experience with the Faroe Islands since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

70. The Faroe Islands indicated that it does not anticipate 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.

71. 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 the Faroe Islands' tax treaties

72. Out of the Faroe Islands' 11 tax treaties, five 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.³

73. None of the remaining six treaties contain a provision that is based on or equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). However, all of these treaties have a limited scope of application.⁴ This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention (OECD, 2017) are not followed. As these treaties were intentionally negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, therefore, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) for those seven treaties with a limited scope of application.

74. The peers that provided input during stage 1 confirmed that their treaty with the Faroe Islands is in line with element B.7, which is confirmed by the above analysis.

Recent developments

Peer input

75. Peers provided no specific input in relation to the treaty with the Faroe Islands.

Anticipated modifications

76. The Faroe Islands reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future comprehensive tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	-	-

[B.8] Publish clear and comprehensive MAP guidance

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

77. 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.

The Faroe Islands' MAP guidance

78. The Faroe Islands issued guidance on the governance and administration of the mutual agreement procedure, which was published in January 2020 and is available (in Faroese) at:

<https://www.taks.fo/fo/borgari/skattur/tviskatting/>

79. The Faroe Islands' MAP guidance is divided into ten sections dealing with:

- the MAP request
- time limits for filing a MAP request
- information and documentation required with a MAP request
- the competent authority before which the MAP request must be filed
- formal requirements in a MAP request
- fees for filing a MAP request (the lack thereof)
- time-limits for implementing MAP agreements
- interaction with domestic remedies
- obligation to resolve MAP cases
- general MAP agreements.

80. These sections contain 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. access to MAP in transfer pricing cases and multilateral cases
- e. the multi-year resolution of recurring issues in MAP
- f. relationship with domestic remedies.

81. The above-described MAP guidance includes detailed information on the availability and the use of MAP and 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.⁵

82. Although the information included in the Faroe Islands' MAP guidance is detailed and comprehensive, various subjects are not specifically discussed, including:

- how the MAP functions in terms of timing and the role of the competent authorities
- whether MAP is available for cases concerning the discussion of anti-abuse provisions and for cases concerning bona fide foreign-initiated self-adjustments
- rights and role of taxpayers in the process
- suspension of tax collection
- interest charges and penalties
- the steps and the timing of the steps of the process for the implementation of MAP agreements, including any actions to be taken by taxpayers.

Information and documentation to be included in a MAP request

83. 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 a request for MAP assistance.⁶ The agreed guidance is shown below. The Faroe Islands' MAP guidance, enumerating which items must be included in a request for MAP assistance, are checked in the following list:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case
- analysis of the issue(s) 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.

84. In addition to the above, the Faroe Islands' MAP guidance also requires the details of foreign entities involved to be provided in transfer pricing cases.

Recent developments

85. As detailed above, the Faroe Islands reported that it has issued its MAP guidance in January 2020. Since the guidance includes the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation/information that it should include in such a request, the recommendation made in stage 1 has been addressed.

Anticipated modifications

86. The Faroe Islands indicated that it does not anticipate any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

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

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

87. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.⁷

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

88. The MAP guidance of the Faroe Islands is published and can be found (in Faroese) at:

<https://www.taks.fo/fo/borgari/skattur/tviskatting/>

89. This guidance was published in January 2020. As regards its accessibility, the Faroe Islands’ MAP guidance can easily be found on the website of the Faroe Tax Authority (www.taks.fo/) under the section “Skattur” (Tax) in the sub-section “Tvískatting” (Double Taxation Agreements). It can also be easily found by searching on that website for “double taxation” or “mutual agreement procedure” in Faroese. However, as mentioned above, this information is not available in English to date.

MAP profile

90. The MAP profile of the Faroe Islands is published on the website of the OECD and was last updated in December 2019. This MAP profile is complete and contains basic information. However, the MAP profile has not been updated with the most recent information since the publication of the Faroe Islands’ MAP guidance.

Recent developments

91. As mentioned above, the Faroe Islands has introduced MAP guidance and has made it publicly available and easily accessible on the website of the Faroe Tax Authority in January 2020. However, the Faroe Islands has not updated its MAP profile since the publication of its MAP guidance. Therefore, the recommendation made in stage 1 has not been fully addressed.

Anticipated modifications

92. The Faroe Islands indicated that it does not anticipate any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	The MAP profile contains outdated information.	The Faroe Islands should update its MAP profile to include the most up to date information and align the content of its MAP profile with its MAP guidance.

[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.

93. 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

94. As previously discussed under B.5, it is not possible that taxpayers and the tax administration enter into audit settlements in the Faroe Islands.

95. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in the Faroe Islands' MAP guidance.

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

96. As previously mentioned under element B.5, the Faroe Islands 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 the Faroe Islands’ MAP guidance.

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

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

98. As the Faroe Islands 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

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

Anticipated modifications

100. The Faroe Islands indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. This treaty concerns the Nordic Convention that for the Faroe Islands applies to Denmark, Finland, Iceland, Norway and Sweden.
2. These four treaties include the Nordic Convention that for the Faroe Islands applies to Denmark, Finland, Iceland, Norway and Sweden.
3. These five treaties include the Nordic Convention that for the Faroe Islands applies to Denmark, Finland, Iceland, Norway and Sweden.
4. These six treaties concern treaties with Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man and Jersey.
5. Available at: www.oecd.org/fr/fiscalite/beps/beps-action-14-accroitre-l-efficacite-des-mecanismes-de-reglement-des-differends-documents-pour-l-examen-par-les-pairs.pdf.

6. Available at: www.oecd.org/fr/fiscalite/beps/beps-action-14-accroitre-l-efficacite-des-mecanismes-de-reglement-des-differends-documents-pour-l-examen-par-les-pairs.pdf.
7. 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.

101. 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 the Faroe Islands' tax treaties

102. All of the Faroe Islands' 11 tax treaties 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.¹

103. The peers that provided input during stage 1 confirmed that their treaty with the Faroe Islands is in line with element C.1, which is confirmed by the above analysis.

Recent developments

Peer input

104. Peers provided no specific input in relation to the treaty with the Faroe Islands.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.1]	-	-

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

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

106. 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

107. 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 of the year in which the jurisdiction joins the Inclusive Framework, in the case of the Faroe Islands, 2019 (“**post-2018 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2019 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. The Faroe Islands provided its MAP statistics for the years 2019 and 2020 pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving the Faroe Islands of which its competent authority was aware. The statistics discussed below include both pre-2019 and post-2018 cases and the full statistics are attached to this report as Annex B and Annex C respectively and should be considered jointly to understand the Faroe Islands’ MAP caseload.²

108. With respect to post-2018 cases, the Faroe Islands reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, the Faroe Islands reported that it could match its post-2018 MAP statistics with all of its treaty partners, except with one treaty partner which did not respond to the Faroe Islands’ request to match MAP statistics.

109. No peer input was received on the matching of MAP statistics with the Faroe Islands for the years 2019-20.

110. In that regard, based on the information provided by the Faroe Islands’ MAP partners, its post-2018 MAP statistics match those of its treaty partners as reported by the latter, except for the one treaty partner as noted above.

Monitoring of MAP statistics

111. The Faroe Islands does not have a system in place with its treaty partners that communicates, monitors and manages the MAP caseload. The Faroe Islands however reported that it prepares statistics according to the OECD MAP Statistics Reporting Framework and registers all the MAP cases in its own template, which includes the contracting party, date of the request received, the issue of the case, the outcome of the discussions, the date of agreement, the outcome of the agreement, the date when the taxpayer

accepted the agreement and the date of implementation of the agreement. The Faroe Islands also reported that the head of the legal department monitors such statistics.

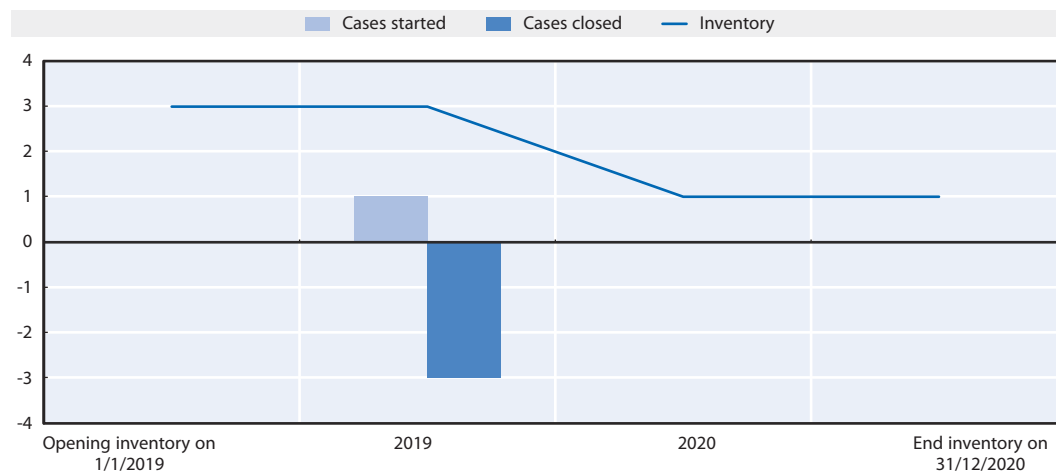
Analysis of the Faroe Islands' MAP caseload

Global overview

112. The analysis of the Faroe Islands' MAP caseload relates to the period starting on 1 January 2019 and ending on 31 December 2020.

113. Figure C.1 shows the evolution of the Faroe Islands' MAP caseload over the Statistics Reporting Period.

Figure C.1. Evolution of the Faroe Islands' MAP caseload

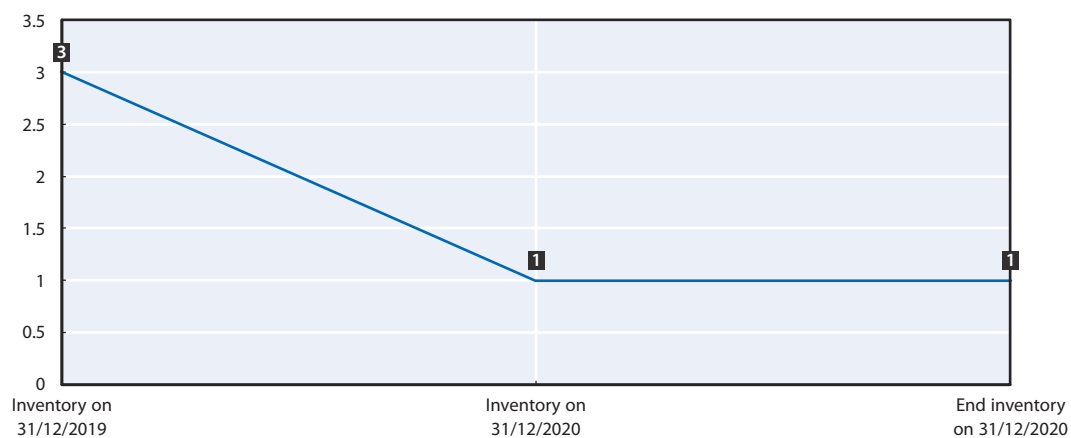


114. At the start of the Statistics Reporting Period, there were three other MAP cases pending in the Faroe Islands' MAP inventory.³ At the end of the Statistics Reporting Period, one other MAP case was pending. The Faroe Islands' MAP caseload has decreased by 67% during the Statistics Reporting Period.

Pre-2019 cases

115. Figure C.2 shows the evolution of the Faroe Islands' pre-2019 MAP caseload over the Statistics Reporting Period.

Figure C.2. Evolution of the Faroe Islands' MAP inventory: Pre-2019 cases



116. At the start of the Statistics Reporting Period, there were three pre-2019 MAP cases pending in the Faroe Islands, all of which were other cases. At the end of the Statistics Reporting Period, the total inventory of pre-2019 cases had decreased to one other MAP case. Therefore, two pre-2019 other cases were closed during the Statistics Reporting Period. The decrease in the number of pre-2019 MAP cases is shown in the table below.

Pre-2019 cases	Evolution of total MAP caseload in 2019	Evolution of total MAP caseload in 2020	Cumulative evolution of total MAP caseload over the three years (2019-20)
Attribution/allocation cases	(no case closed)	(no case closed)	(no case closed)
Other cases	-67%	(no case closed)	-67%

Post-2018 cases

117. One other MAP cases was started during the Statistics Reporting Period, which was closed in 2019.

Overview of cases closed during the Review Period

Reported outcomes

118. During the Review Period the Faroe Islands closed two pre-2019 other MAP cases and one post-2018 other case with the outcome “agreement fully eliminating double taxation or fully resolving taxation not in accordance with the tax treaty”.

Average timeframe needed to resolve MAP cases

All cases closed during the Review Period

119. The average time needed to close MAP cases during the Review Period was 10.12 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	0	N/A
Other cases	3	10.12
All cases	3	10.12

Pre-2019 cases

120. For pre-2019 cases the Faroe Islands reported that on average it needed 12.53 months to close two other cases.

Post-2018 cases

121. For post-2018 cases the Faroe Islands reported that it needed 5.29 months to close one other case.

Peer input

122. The peer input in relation to resolving MAP cases will be discussed under element C.3.

Recent developments

123. In the stage 1 peer review report, under element C.2, the Faroe Islands was recommended to seek to resolve future post-2018 cases within a timeframe that results in an average timeframe of 24 months. In this regard, the Faroe Islands noted that the one remaining case in its MAP inventory was closed in 2021, after the Statistics Reporting Period.

124. In view of the statistics discussed above, it follows that the Faroe Islands' MAP inventory has decreased from three cases to one case. The statistics also show that the Faroe Islands has in the period 2019-20 closed the three cases it closed within an average timeframe of 24 months. Element C.3 will further consider these numbers in light of the adequacy of resources.

125. All peers that provided input during stage 1 confirmed during stage 2 that this input holds equal relevance for the period starting 1 September 2019.

Anticipated modifications

126. The Faroe Islands indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

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 the Faroe Islands' competent authority

128. Under the Faroe Islands' tax treaties, the competent authority function is assigned to the Minister of Finance or his authorised representative or the authority which is designated as a competent authority for the purpose of the agreement. The Faroe Islands reported that this function has been further delegated to the Faroe Tax Authority. The Faroe Islands' competent authority consists of one staff member, who partly deals with MAP cases along with other tasks such as treaty negotiations.

129. The Faroe Islands reported that the staff member in charge of MAP is a legal adviser, and has been working many years with taxation and double taxation issues. The Faroe Islands also reported that this staff member has undergone internal training, mostly by the use of the commentary on the OECD Model Tax Convention (OECD, 2017) and other OECD publications, in-house sessions and discussions, and by attending the annual meetings with administrations in the other Nordic countries. The Faroe Islands also noted that the staff member in its competent authority has participated in one MAP training session organised by the OECD.

130. In terms of resources, the Faroe Islands reported that its competent authority considers that resources available for MAP are currently sufficient. The Faroe Islands commented that there is no funding accrued directly to the MAP authority function but there is funding to the tax administration as a whole, where the MAP authority function is one of many. The Faroe Islands noted that it has not yet had any face-to-face meetings regarding MAP cases, but if this were necessary, it would not be a problem to fund such meetings.

Monitoring mechanism

131. The Faroe Islands reported that the head of the legal department is regularly monitoring if cases are handled in a timely manner, including MAP cases. The Faroe Islands noted that if the resources are not sufficient to handle the cases, the head of the legal department would provide more resources as MAP cases are given high priority.

Recent developments

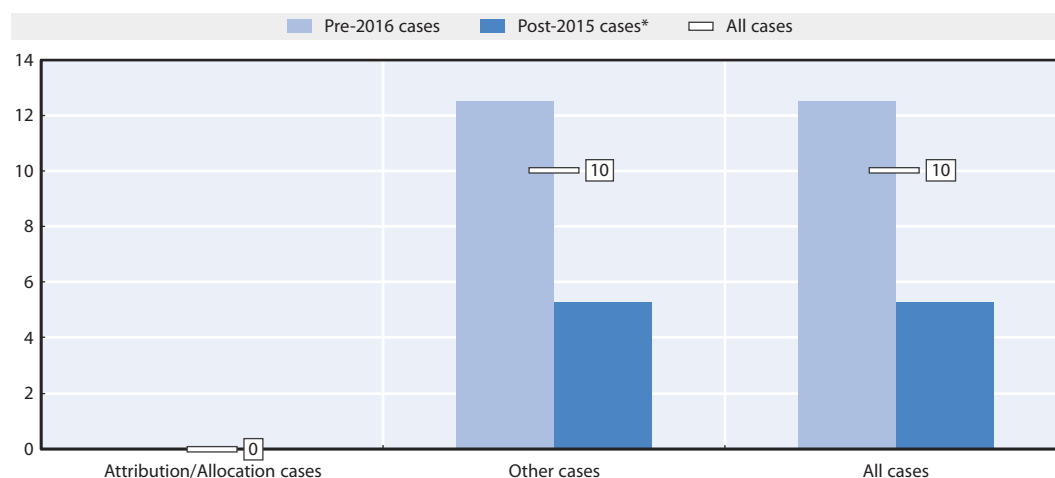
132. In the stage 1 report, the Faroe Islands was recommended to continue to monitor whether it has adequate resources in place to ensure that MAP cases are resolved in a timely, efficient and effective manner. In this regard, the Faroe Islands noted that no actions have been taken and that there are no recent developments to report with respect to element C.3.

Practical application

MAP statistics

133. As discussed under element C.2, the Faroe Islands closed three cases during the Review Period in an average time of 10.12 months, which is within the pursued 24-month average. The cases concerned two other pre-2019 cases which were closed within 12.53 months, and one other post-2018 case which was closed within 5.29 months. The average time to resolve MAP cases in 2019 and 2020 can be illustrated by Figure C.3.

Figure C.3. Average time (in months) to close cases in 2019-20



134. The stage 1 peer review report of the Faroe Islands analysed the tentative 2019 MAP statistics and showed an average of 10.12 months, which concerns only other MAP cases. The final 2019 and 2020 statistics of the Faroe Islands show that the average completion time of MAP cases remains the same.

135. Furthermore – as analysed in element C.2 – the modest MAP inventory of the Faroe Islands decreased substantially since 1 January 2019 and Faroe Islands has managed to close all but one other MAP case in its MAP inventory, including the one case that started since this date. As noted before, the Faroe Islands reported that active efforts were taken in the Statistics Reporting Period to resolve the remaining case as well and that this case was closed in 2021 following this period. Like is concluded in its stage 1 peer review report, also during stage 2, the competent authority of the Faroe Islands is considered to be adequately resourced.

Peer input

Period 1 January 2019-31 August 2019 (stage 1)

136. One peer commented that it had some problems establishing contact with the Faroe Islands' competent authority, since it could not find any public information. The Faroe Islands responded that it has submitted its MAP profile to clarify its contact information and it is published on the OECD website. The peer also commented that once contact was established, the Faroe Islands' competent authority responded quickly and was pragmatic and solution oriented. Another peer commented that the Faroe Islands' case handling seems to take a long time although the Faroe Islands' competent authority is co-operative.

Period 1 September 2019-30 April 2021 (stage 2)

137. All peers that provided input during stage 1 stated during stage 2 that the update report provided by the Faroe Islands fully reflects their experience with the Faroe Islands since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

138. The Faroe Islands indicated that it does not anticipate any other modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	-

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

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

139. 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

140. The Faroe Islands noted that the departments in charge of making the adjustments will be either “Taxes (persons)” or “Businesses”, which are unrelated to and independent from the legal department with which the competent authority is constituted. Further, The Faroe Islands reported that in the resolution of MAP cases, the staff member in charge of MAP has to get approval from the head of the legal department both regards to the objection by the taxpayer and on the policy aspect of the issue under MAP. However, the head of the legal department would not be involved in the same case at both the audit and MAP level in a way exceeding the usual involvement of a high level superior for final approval.

141. Further, the Faroe Islands reported that the authority to resolve MAP cases and reach an agreement is derived from the treaties signed by the Faroe Islands, which are implemented in the Faroe Islands’ domestic law and that any decisions on MAP will not be influenced by any proposed future amendments to the treaty.

142. With regard to the above, the Faroe Islands reported that staff in charge of MAP in practices operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations that Faroe Islands would like to see reflected in future amendments to the treaty.

Recent developments

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

Practical application

Period 1 January 2019-31 August 2019 (stage 1)

144. Peers generally reported no impediments in the Faroe Islands to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy in the period 1 January 2019-31 August 2019.

Period 1 September 2019-30 April 2021 (stage 2)

145. All peers that provided input during stage 1 stated during stage 2 that the update report provided by the Faroe Islands fully reflects their experience with the Faroe Islands since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

146. The Faroe Islands indicated that it does not anticipate 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.

147. 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 the Faroe Islands

148. The Faroe Islands reported that it does not have specific performance indicators for its competent authority staff member, but that MAP cases are processed as prompt as possible since they are given high priority.

149. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are:

- 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).

150. Although the Faroe Islands 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

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

Practical application

Period 1 January 2019-31 August 2019 (stage 1)

152. All peers that provided input indicated not being aware that the Faroe Islands used performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue in the period 1 January 2019-31 August 2019.

Period 1 September 2019-30 April 2021 (stage 2)

153. All peers that provided input during stage 1 stated during stage 2 that the update report provided by the Faroe Islands fully reflects their experience with the Faroe Islands since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

154. The Faroe Islands indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

155. 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

156. The Faroe Islands' MAP profile clearly states that its treaty policy allows it to include MAP arbitration in its tax treaties although arbitration is not available for the resolution of tax treaty related disputes for the moment due to the domestic legislation.

Recent developments

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

Practical application

158. To date, the Faroe Islands has incorporated an arbitration clause based on Article 25(5) of the OECD Model Tax Convention (OECD, 2017) in one of its 11 treaties as a final stage to the MAP. The Faroe Islands reported that the arbitration clause will enter into force, upon notice given by the Faroe Islands that it has put into place its internal legal basis and procedures for the implementation, or from the date on which a convention for avoidance of double taxation between the Faroe Islands and a third state which includes a similar arbitration clause becomes effective, whichever is the earlier.

Anticipated modifications

159. The Faroe Islands indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 11 treaties include the Nordic Convention that for the Faroe Islands applies to Denmark, Finland, Iceland, Norway and Sweden.
2. For post-2018 cases, if the number of MAP cases in the Faroe Islands’ inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, the Faroe Islands reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
3. For pre-2019 and post-2018 cases, the Faroe Islands follows the definition provided by the MAP Statistics Reporting Framework to distinguish between attribution/allocation cases and other cases. Annex D of the MAP Statistics Reporting Framework states that: “An attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.

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.

160. 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

161. The Faroe Islands reported that its domestic statute of limitations for amending tax assessments is three years from the time limit for filing the tax return and it applies for both upward and downward adjustments. The Faroe Islands reported that all mutual agreements reached through MAP are implemented notwithstanding any time limits in the Faroe Islands as long as the relevant tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). However, the Faroe Islands reported that its domestic statute of limitations would impact the implementation of MAP agreements if the concerned treaty does not contain such equivalent. This is not in line with the Faroe Islands’ MAP guidance, which under the section titled “Freistir í internari lóggávu” (Time limits of domestic legislation), notes that all MAP agreements shall be implemented irrespective of domestic time limits. In practice, the Faroe Islands indicated that it will implement all the MAP agreements reached, including making appropriate adjustments to the tax assessed in transfer pricing cases.

162. The Faroe Islands also reported that if MAP agreements are not fully in favour of the taxpayer’s position, the taxpayer has to consent to the agreement as a prerequisite for implementation, usually within four weeks which may be extended. The Faroe Islands noted that if a taxpayer gives his consent even after the time limit, the Faroe Islands would still be able to implement the agreement.

Recent developments

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

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

164. The Faroe Islands reported that all MAP agreements that were reached in the period 1 January 2019-31 August 2019 have been implemented.

165. All peers that provided input reported that they were not aware of any MAP agreement reached with the Faroe Islands in the period 1 January 2019-31 August 2019 that was not implemented.

Period 1 September 2019-30 April 2021 (stage 2)

166. The Faroe Islands reported that all MAP agreements that were reached on or after 1 September 2019 also have been implemented.

167. All peers that provided input during stage 1 stated during stage 2 that the update report provided by the Faroe Islands fully reflects their experience with the Faroe Islands since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of the Faroe Islands' tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the three-year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in the Faroe Islands' relevant tax treaty, prevent the implementation of a MAP agreement, the Faroe Islands should put appropriate procedures in place to ensure that such an agreement is implemented and follow its stated intention to inform taxpayers in order to mitigate the risk that an agreement cannot be implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, the Faroe Islands should for clarity and transparency purposes notify the treaty partner thereof without delay.

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

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

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

Theoretical timeframe for implementing mutual agreements

170. The Faroe Islands reported that it does not have a set timeframe for implementing MAP agreements, but that the concerned departments will be informed about an agreement as soon as the agreement is reached, and the taxpayer has consented to the same where required. The Faroe Islands noted that the relevant department would be instructed to make the appropriate adjustments to the tax assessment, following which they would make the adjustment as soon as possible.

Recent developments

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

Practical application

Period 1 January 2019-31 August 2019 (stage 1)

172. The Faroe Islands reported that one MAP agreement reached in 2019 needed to be implemented by the Faroe Islands. It further reported that all MAP agreements that were reached in the period 1 January 2019-31 August 2019 have been implemented in a timely manner and that no cases of noticeable delays have occurred, noting that it took three months on average to implement the agreements reached.

173. All peers that provided input have not indicated experiencing any problems with the Faroe Islands regarding the implementation of MAP agreements reached on a timely basis in the period 1 January 2019-31 August 2019. One peer commented that the competent authority of the Faroe Islands is co-operative and willing to accept suggestions for quicker implementation. The other peer commented that the agreement reached has been implemented in a timely manner and that the Nordic countries use the “Trek” agreement, so that taxes can be transferred directly between the tax authorities.

Period 1 September 2019-30 April 2021 (stage 2)

174. The Faroe Islands reported that all MAP agreements that were reached on or after 1 September 2019 also have been implemented in a timely manner.

175. All peers that provided input during stage 1 stated during stage 2 that the update report provided by the Faroe Islands fully reflects their experience with the Faroe Islands since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

176. The Faroe Islands indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

177. 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 the Faroe Islands' tax treaties

178. As discussed under element D.1, the Faroe Islands' domestic statute of limitation impacts the implementation of MAP agreements where the concerned tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

179. Out of the Faroe Islands' 11 tax treaties, nine 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.¹ Furthermore, the remaining two do not contain a provision that is based or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternative provisions for Article 9(1) and Article 7(2) setting a time limit for making transfer pricing adjustments.

180. The peers that provided input during stage 1 confirmed that their treaty with the Faroe Islands is in line with element D.3, which is confirmed by the above analysis.

Recent developments

Other developments

181. For the two tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives, the Faroe Islands reported that negotiations were ongoing with one treaty partner, following which negotiations are scheduled to be initiated with the other treaty partner

Peer input

182. Peers provided no specific input in relation to the treaty with the Faroe Islands.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.3]	Two out of 11 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). With respect to these treaties, negotiations are envisaged, scheduled or pending.	For the two treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions, the Faroe Islands should continue (the initiation of) negotiations with the treaty partners with a view to including the required provision or be willing to accept both alternative provisions.

Note

1. These nine treaties include the Nordic Convention that for the Faroe Islands applies to Denmark, Finland, Iceland, Norway and Sweden.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	-
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	-	-
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	-	-
[B.8]	-	-
[B.9]	The MAP profile contains outdated information.	The Faroe Islands should update its MAP profile to include the most up to date information and align the content of its MAP profile with its MAP guidance.
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	-	-
[C.2]	-	-
[C.3]	-	-
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-

	Areas for improvement	Recommendations
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of the Faroe Islands' tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the three-year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in the Faroe Islands' relevant tax treaty, prevent the implementation of a MAP agreement, the Faroe Islands should put appropriate procedures in place to ensure that such an agreement is implemented and follow its stated intention to inform taxpayers in order to mitigate the risk that an agreement cannot be implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, the Faroe Islands should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	-	-
[D.3]	Two out of 11 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). With respect to these treaties, negotiations are envisaged, scheduled or pending.	For the two treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions, the Faroe Islands should continue (the initiation of) negotiations with the treaty partners with a view to including the required provision or be willing to accept both alternative provisions.

Annex A

Tax treaty network of the Faroe Islands

		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		
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11		
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?		
	Y = yes N = signed pending ratification	If N, date of signing	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no
Bermuda	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	N	N
British Virgin Islands	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	N	N
Cayman Islands	N	6/17/2009	O	Y	N/A	N/A	i	Y	Y	Y	N	N
Denmark	Y	N/A	E	ii	five years	Y	i	Y	Y	Y	Y	N

Column 1	Column 2		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
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4			Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence?		Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons				If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC?			
Finland	Y	N/A	E	li	five years	Y	i	Y	Y	Y	Y	N
Greenland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Guernsey	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	N	N
Iceland	Y	N/A	E	ii	five years	Y	i	Y	Y	Y	Y	N
India	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Isle of Man	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	N	N
Jersey	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	N	N
Norway	Y	N/A	E	ii	five years	Y	i	Y	Y	Y	Y	N
Sweden	Y	N/A	E	ii	five years	Y	i	Y	Y	Y	Y	N
Switzerland	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y
United Kingdom	Y	N/A	O	i	N/A	Y	i	Y	N	Y	Y	N

Annex B

MAP Statistics Reporting for the 2019 and 2020 Reporting Periods (1 January 2019 to 31 December 2020) for pre-2019 cases

2019 MAP Statistics													
Category of cases	No. of pre-2019 cases in MAP inventory on 1 January 2019	Number of pre-2019 cases closed during the reporting period by outcome										No. of pre-2019 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing pre-2019 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	n.a.
Others	3	0	0	0	0	0	2	0	0	0	0	1	13
Total	3	0	0	0	0	0	2	0	0	0	0	1	13

Notes: The average time for closing pre-2019 cases varies from the filed statistics for 2019 by the Faroe Islands' owing to revisions made in the interest of precision.

2020 MAP Statistics													
Category of cases	No. of pre-2019 cases in MAP inventory on 1 January 2020	Number of pre-2019 cases closed during the reporting period by outcome										No. of pre-2019 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing pre-2019 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	n.a.
Others	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Total	1	0	0	0	0	0	0	0	0	0	0	1	n.a.

Annex C

MAP Statistics Reporting for the 2019 and 2020 Reporting Periods (1 January 2019 to 31 December 2020) for post-2018 cases

2019 MAP Statistics														
Category of cases	No. of post-2018 cases in MAP inventory on 1 January 2019	No. of post-2018 cases started during the reporting period	Number of post-2018 cases closed during the reporting period by outcome										No. of post-2018 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-2018 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	n.a.
Others	0	1	0	0	0	0	0	1	0	0	0	0	0	5
Total	0	1	0	0	0	0	0	1	0	0	0	0	0	5

Notes: The average time for closing one post-2018 case varies from the filed statistics for 2019 by the Faroe Islands' owing to a revision made in the interest of precision.

2020 MAP Statistics														
Category of cases	No. of post-2018 cases in MAP inventory on 1 January 2020	No. of post-2018 cases started during the reporting period	Number of post-2018 cases closed during the reporting period by outcome										No. of post-2018 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing post-2018 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	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.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
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-2019 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2018
Post-2018 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2019
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2019 and ended on 31 December 2020
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under BEPS Action 14, members of the OECD/G20 Inclusive Framework on BEPS 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 BEPS 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 BEPS Action 14 Minimum Standard by the Faroe Islands.



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