OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



OECD

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and via treaty provisions. With the negotiation for a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the MLI on 7 June 2017, paving the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

As a result, the OECD established an Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already has more than 100 members, will monitor and peer review the implementation of the minimum standards as well as complete the work on standard setting to address BEPS issues. In addition to BEPS Members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

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Abbreviations and Acronyms

ACAP	Accelerated Competent Authority Procedure
APA	Advance Pricing Arrangement
CASD	Competent Authority Services Division
CATS	Competent Authority Control Tracking System
CRA	Canada Revenue Agency
FTA	Forum on Tax Administration
ITO	International Tax Office
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
TIEA	Treaty and Tax Information Exchange Agreements
TSO	Tax Service Office

Executive summary

Canada has a large tax treaty network with over 90 tax treaties and has an established Mutual Agreemnt Procedure (MAP) program and extensive experience with resolving MAP cases. It has a large MAP inventory with a considerable number of new cases submitted each year and more than 200 cases pending on 31 December 2016, of which more than 80% consist of attribution/allocation cases. Overall Canada meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Canada is working to address them.

All of Canada's tax treaties include a provision relating to MAP, which generally follows paragraphs 1 through 3 of Article 25 of the *Model Tax Convention on Income and on Capital 2014* (*OECD Model Tax Convention*, OECD 2015). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- 75% of its tax treaties include a time limit for the submission of MAP requests that is less than three years; and
- almost 40% of its tax treaties do not provide that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), or include the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Canada therefore needs to amend and update a significant portion of its tax treaties. In this respect, Canada indicated that bilateral negotiations are pending to replace or amend existing tax treaties and that it recently signed the Multilateral Instrument potentially covering 75 of Canada's tax treaties. Furthermore, Canada opted for the arbitration part of the Multilateral Instrument.

Canada meets the Action 14 Minimum Standard concerning the prevention of disputes. It has continued to employ its established procedure enabling taxpayers to request rollbacks of bilateral Advance Pricing Arrangements (APAs).

Canada also meets the requirements regarding the availability and access to the MAP under the Action 14 Minimum Standard, but needs to clarify its MAP guidance with respect the availability of the MAP in case of audit settlements. Canada provides access to MAP in all eligible cases. It has continued to employ its established notification process for those situations in which the Canadian competent authority considers the objection raised by taxpayers in a MAP request as not justified. In addition, Canada has published comprehensive MAP guidance that is updated where necessary, but this guidance does not specify clearly whether Canada will also grant access to MAP in cases where an audit settlement was reached.

Furthermore, the Canadian competent authority operates fully independently from the audit function of the tax authorities and uses a pragmatic approach to resolve MAP cases

in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. Canada therefore meets the requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Concerning the average time needed to resolve MAP cases, the MAP statistics for the year 2016 are as follows:

2016	Opening Inventory	Cases started	Cases closed	End inventory	Average time to resolve cases (in months) (*)
Attribution / allocation cases	221	107	141	187	20.77
Other cases	35	25	19	41	21.65
Total	**256**	**132**	**160**	**228**	**20.87**

(*) The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Canada used as a start date the date of filing of the MAP request and as the end date the date of the closing letter sent to the taxpayer.

These figures point out that Canada resolved a significant number of MAP cases during 2016, higher than the number of MAP cases started. The number of pending cases in Canada's inventory as per 31 December 2016, decreased by more than 10% compared to the inventory as per 1 January 2016 but is still significantly higher than the number of the cases resolved during 2016. The current resources for the MAP function in Canada are considered adequate, and the average time necessary to resolve MAP cases was below 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016).

Lastly, Canada also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements, even though the implementation process relies on taxpayers for ensuring that the issues under review remain open. Canada actively monitors the implementation and is able to identify the reasons why the implementation of some MAP agreements may have been delayed.

Introduction

Available mechanisms in Canada to resolve tax treaty-related disputes

Canada has entered into 96 tax treaties on income (and/or capital), 93 of which are in force[1] (see below). All of these provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty.

21 of the 96 treaties provide for an arbitration procedure that supplements the mutual agreement procedure.[2] All but one of these treaties are in force.

In Canada the competent authority function to handle MAP cases is performed by the Canada Revenue Agency ('**CRA**') and in particular, for taxpayer specific MAP, the competent authority Services Division ('**CASD**'), which is part of the International, Large Business and Investigations Branch of the CRA. The Canadian competent authority consists of 54 people, who are also responsible for other tasks such as handling requests for APAs and conducting the exchange of information. The Information Circular on Competent Authority Assistance under Canada's Tax Conventions (IC71-17R5)[3] ('**MAP Guidance'**) contains information relevant to taxpayers on the operation of CASD and information about the mutual agreement procedure. Non-taxpayer specific MAP (for example, general agreements on interpretation and application of tax treaties under the equivalent of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015) is generally the responsibility of the Legislative Policy and Regulatory Affairs Branch, Legislative Policy Directorate, Tax Treaties Section.

Recent developments in Canada

Canada has recently conducted treaty negotiations with various jurisdictions. In particular, the new treaty entered into with Israel entered into effect in 2017 (the former treaty with Israel was in effect until 31 December 2016). An arrangement entered into between the Trade and Economic Offices of Canada and Chinese Taipei, which has the same substantive effect as a tax treaty, entered into effect in 2017. Canada also signed treaties with Lebanon, Madagascar and Namibia, for which the entry into force is still pending as of January 2017.

Furthermore, Canada intends to meet the Action 14 Minimum Standard through a combination of the signing of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ('**Multilateral Instrument**') and bilateral negotiations. As regards the Multilateral Instrument, Canada indicated that it would sign the instrument in June 2017.

Finally, Canada indicated that it is currently updating its MAP guidance.

Basis for the peer review process

The peer review process entails an evaluation of Canada's implementation of the Action 14 Minimum Standard, through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties,

domestic legislation and regulations, as well as its MAP guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Canada, its peers and taxpayers.

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

The questionnaires for the peer review process were sent to Canada and the peers on 5 December 2016. While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, Canada wished to provide information on the period starting as from 1 January 2015 (the '**Look-back period**') and also opted for the peers to provide input relating to the Look-back period. Next to its assessment on the compliance with the Action 14 Minimum Standard, Canada also asked for peer input on best practices.

In total, 18 peers provided input: Australia, Belgium, Denmark, France, Germany, India, Ireland, Italy, Japan, Korea, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States. These peers represent almost 90% of post-2015 MAP cases in Canada's inventory on 31 December 2016. Input was also received from taxpayers.

Broadly all peers indicated having good working relationships with Canada in regard of MAP, some of them emphasising that the Canadian competent authority is constructive to resolve MAP cases.

Canada provided extensive answers in its questionnaire which was submitted on time. Canada also responded timely and comprehensively to requests for additional information and provided further clarity where necessary. In addition, Canada provided the following information:

- MAP profile;[4] and
- MAP statistics[5] according to the MAP Statistics Reporting Framework[6] (see below).

Finally, Canada is an active member of the FTA MAP Forum and has shown good cooperation during the peer review process. Canada provided detailed peer input on other jurisdictions in the framework of their peer review and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions. Canada also provided peer input on best practices for all jurisdictions that asked for it.

Overview of MAP caseload in Canada

The analysis of Canada's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2016 (the '**Reporting Period**'). According to the statistics provided by Canada, on 31 December 2016 its MAP inventory was 228 cases, 187 of which concern attribution/allocation cases and 41 other cases. During the Reporting Period 132 cases were initiated and 160 cases were closed.

General outline of the peer review report

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

A. Preventing Disputes;

B. Availability and Access to MAP;

C. Resolution of MAP cases; and

D. Implementation of MAP agreements.

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

The objective of Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that Canada continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

Notes

1. These tax treaties are available online at: www.fin.gc.ca/treaties-conventions/in_force--eng.asp (accessed on 10 September 2017).
2. Reference is made to Annex A for the overview of Canada's tax treaties that provide for an arbitration procedure.
3. Available at www.cra-arc.gc.ca/E/pub/tp/ic71-17r5/README.html (accessed on 10 September 2017).
4. Available at www.oecd.org/tax/dispute/Canada-Dispute-Resolution-Profile.pdf (accessed on 10 September 2017).
5. The MAP statistics of Canada are included in Annex B and C of this report.
6. MAP Statistics Reporting Framework, in *Peer Review Documents* (OECD 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.(accessed on 22 August 2017).
7. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective in *Peer Review Documents* (OECD, 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).

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

Part A

Preventing Disputes

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

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

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

Current situation of Canada's tax treaties

2. Out of Canada's 96 tax treaties, 94 contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. Only two treaties do not include the equivalent of such a provision. Article 25(3), first sentence of one tax treaty reads:

> *"The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties arising as to the application of the Convention."*

3. By comparison with the *OECD Model Tax Convention* (OECD, 2015), this provision does not include (i) the resolution of "doubts" (in addition to "difficulties") and (ii) the reference to the "interpretation" of the Convention (in addition to "the application"). The other treaty only does not include the reference to "interpretation". Such deviations may limit competent authorities' ability to prevent disputes. Therefore, this wording is not equivalent to Article 25(3), first sentence of the *OECD Model Tax Convention* (OECD, 2015). However, Canada indicated that even though such words are missing in the treaty provision, this does not obstruct Canada to enter into interpretative MAP agreements on these issues.

Anticipated modifications

4. For those treaties that do not contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015), Canada indicated that it intends to implement element A.1 either through signing the Multilateral Instrument or via bilateral negotiations.

5. The concerned peers reported that the provisions of their tax treaties with Canada, as discussed previously, do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	Two out of 96 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015).	Where treaties do not include the equivalent of Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Canada should request the inclusion of the required provision via bilateral negotiations. In addition, Canada should maintain its stated intention to include the required provision in all future treaties.

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

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

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.[1] The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The "roll-back" of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Canada's APA programme

7. Canada has implemented an APA programme and the basis of that programme is to be found in Information Circular 94-4.[2] This guidance sets out in detail what APAs are, when and by whom they can be applied for, how the process for obtaining an APA functions in Canada and what information is to be included in a request for an APA. Canada applies APAs as from the first year covered by the request, irrespective of the date when the competent authorities reach an agreement, provided the pre-filing meeting (i.e. the first stage of the APA process) is held within 180 days after the end of the first fiscal year that is to be covered by the APA. For instance, if an APA request is submitted for calendar years 2016 to 2020, the pre-filing meeting should be held before 30 June

2017 and if an agreement is reached in 2018, Canada applies the APA for all five years requested.

Roll-back of bilateral APAs

8. Canada is entitled to provide roll-back of bilateral APAs. Information on roll-back of bilateral APAs is included in paragraph 13 of its APA Guidance and in CRA's transfer pricing memo (TPM-11 Advance Pricing Arrangement (APA) Rollback dated October 28, 2008).[3] Canada will generally agree to consider a request to expand the period of an APA to cover transactions that occurred in filed fiscal years that are not barred by a statute of limitations, provided that:

(i) no request for information (which would signal the start of an audit process) has been issued by a Tax Service Office ('**TSO**');

(ii) the facts and circumstances for the previous years are the same;

(iii) the Canadian competent authority, the foreign tax administration and the relevant TSO have agreed to accept the APA rollback request; and

(iv) appropriate waivers have been filed by the taxpayer in order to keep previous fiscal years open for adjustment during the APA process (as they could normally become barred by statute before an agreement is reached).

9. In the course of a transfer pricing audit, taxpayers may make a request to CASD for an APA for future years and ask CASD to seek agreement from the relevant TSO to include years under audit in the APA process. If the TSO agrees, these years would not be considered as rollbacks but would be resolved under the MAP APA process.

Practical application of roll-back of bilateral APAs

10. In practice, taxpayers extensively request for roll-back of bilateral APAs in Canada and the Canadian competent authority generally provides for such roll-backs. Canada has also implemented a mechanism to monitor the granting of roll-back of bilateral APAs. For the years 2015 and 2016, taxpayers requested for roll-back of bilateral APAs in around 75% of the cases where they could be granted (e.g. not renewals of APAs, not unilateral APAs). The Canadian competent authority in all cases granted such roll-back, except for exceptional circumstances. In 2015, 21 APAs were entered into, 11 of which provide for a roll-back. In 2016, 19 APAs were entered into, 6 of which provided for a roll-back.

11. Several peers mentioned that Canada provides roll-back of bilateral APAs in appropriate cases. One peer indicated that an APA was reached with the Canadian competent authority in 2016 and included a roll-back. Another peer mentioned that it received several roll-back requests in the framework of pending bilateral APAs involving Canada and that it was confident that roll-back would be provided once agreements would be reached.

12. One peer shared a specific experience where roll-back was requested, whereby the years which were supposed to be covered by the roll-back were audited before an agreement could be reached by the competent authorities and that those years were finally subject to the MAP.

Anticipated modifications

13. Canada did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for Improvement	Recommendations
[A.2]	-	As it has done thus far, Canada should continue to provide for roll-back of bilateral APAs in appropriate cases.

Notes

1. This description of an APA is based on the definition of an APA in the OECD Transfer Pricing Guidelines (OECD, 2017) for Multinational Enterprises and Tax Administrations.
2. Available at: www.cra-arc.gc.ca/E/pub/tp/ic94-4r/ic94-4r-e.html (accessed on 10 September 2017).
3. Available at: www.cra-arc.gc.ca/tx/nnrsdnts/cmmn/trns/tpm11-eng.html (accessed on 10 September 2017).

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

Part B

Availability and Access to MAP

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

Jurisdictions should ensure that their tax treaties contain a MAP provision which provides that when the taxpayer considers that the actions of one or both of the Contracting Parties result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty, the taxpayer, may irrespective of the remedies provided by the domestic law of those Contracting Parties, make a re-quest 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.

14. 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 Canada's tax treaties

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

15. All of Canada's tax treaties contain a provision based on Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report* (Action 14 final report, OECD 2015b), allowing taxpayers to submit a MAP request when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.

16. Canada's tax treaties can be categorised as follows:

Provision	Number of treaties
Equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b)	26
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) (see below).	70

17. The 70 treaties mentioned above 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. In relation to this article, these 70 treaties can be analysed as follows:

- the relevant tax treaty does not include a non-discrimination provision and only applies to residents of one of the states (five treaties);

- the non-discrimination provision of the relevant tax treaty only covers nationals who are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (61 treaties); and

- the non-discrimination provision of the relevant tax treaty also covers nationals who are not resident of one of the contracting states (four treaties).

18. Based on this categorisation it follows that only the latter four treaties are considered not to have the full equivalent of Article 25(1), first sentence of the *OECD Model Tax Convention* (OECD, 2015a), as the limitation of the scope of the MAP provision is not clarified by the absence or a limited scope of the non-discrimination article. Canada reported that it would in any case take an administrative position to accept, when the other general conditions under the MAP article are met, a non-discrimination case presented by a national even when the MAP article does not include such possibility. Canada indicated that it would also discuss such a case where the person in question is a national of the other contracting state and the MAP request was submitted in that state. Canada emphasised that the discussion of the case is, however, also subject to the other country being willing to discuss such case under the MAP. Further, Canada mentioned that it is open to enter into discussions with a view to reaching competent authority agreements to specify the mutual understanding on the scope of the MAP in this regard, also to further assure that the Action 14 Minimum Standard will be met.

19. Further to the above, one peer reported that, in transfer pricing cases, Canada requests Canadian taxpayers to submit a MAP request in Canada even though the related entity resident in the other jurisdiction already submitted a MAP request in that jurisdiction, while under the tax treaty it is already sufficient that only one of the related entities submits a MAP request in its state of residence. According to this peer, this requirement is not compliant with the tax treaty and taxpayers may not be aware of it. As such process can delay cases to be effectively discussed in the MAP, this peer suggests

deleting such requirement to improve the functioning of the MAP, which was also echoed by other peers. Canada responded that its MAP guidance requires the Canadian resident participant in a controlled transaction to file a complete MAP request with Canada's competent authority. Canada also responded that it has largely applied this requirement in a practical manner, recognising the burden it could place upon taxpayers and in particular, that it would agree to give access to the MAP to a taxpayer that would submit its MAP request after the time limit provided in the tax treaty if they filed a MAP request in the other country on time. However, Canada believes that this requirement is necessary to give a legal basis to the modification of the tax situation of Canadian taxpayers, but reported it is considering reviewing its current practice. Canada's view was adhered to by another peer.

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

20. Out of Canada's 96 tax treaties, 16 treaties contain the equivalent to Article 25(1), second sentence of the *OECD Model Tax Convention* (OECD, 2015a). Furthermore, 8 treaties do not provide a specific period to submit a MAP request. Canada confirmed that despite the absence of such a period in these 8 tax treaties taxpayers are allowed to submit a MAP request irrespective of any time limits provided in their domestic law. Nevertheless, although taxpayers may have access to MAP, a late submission of a MAP request could hinder the MAP agreement reached from being implemented, depending on the specific wording of the applicable tax treaty. This is further discussed under element D.3.

21. The remaining 72 tax treaties provide a two-year filing period for submissions of MAP requests.

Anticipated modifications

22. Canada indicated that it expects to update its treaties that do not meet the Action 14 Minimum Standard through either through signing the Multilateral Instrument or via bilateral negotiations.

23. Several peers also reported that the provisions of their tax treaty with Canada do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[B.1]	73 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a). Of those 73 tax treaties: o Three tax treaties do not incorporate the equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty (2 years); o One tax treaty does not incorporate the full equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a); o 69 tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty (2 years in most cases).	Where treaties do not include the equivalent of Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Canada should request the inclusion of the required provision via bilateral negotiations. This concerns both: o a provision that is equivalent to Article 25(1), first sentence of the *OECD Model Tax Convention* (OECD, 2015a) either: a) As amended in the Action 14 final report (OECD, 2015b); or b) As it read prior to the adoption of the Action 14 final report (OECD, 2015b); and o a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. In addition, Canada should maintain its stated intention to include the required provision in all future treaties.

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

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

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

(i) of either treaty partner; or in the absence of such provision;

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

Domestic bilateral consultation or notification process in place

25. All of Canada's tax treaties contain a provision that is based on Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). However, Canada has a notification process in place for all its treaties when its competent authority considers the objection raised in a MAP request as not justified. Pursuant to the notification process the Canadian competent authority informs the other competent authority involved each time they receive a MAP request by providing the basic details of the case under review, being: (i) the identification of the taxpayer in both jurisdictions, (ii) the fiscal years concerned and (iii) the amount at stake. The Canadian competent authority will also inform in writing the other competent authority each time it considers the taxpayer's objection raised in the MAP request as being not justified, thereby citing the reasons why the request is considered as such. This process is explained in CRA's Mutual Agreement Procedure Program Report for 2014-2015.[1]

Practical application

26. No peer indicated that it was aware of or that it had been consulted/notified of a case where the Canadian competent authority considered the objection raised in a MAP request as not justified since 1 January 2015. This can be explained by the fact that Canada has not considered that an objection raised in a MAP request was not justified since then.

Anticipated modifications

27. Canada indicated that it will continue to notify the other competent authority in cases where the Canadian competent authority considered the objection raised in the MAP request as not justified. Canada also reported that it may continue to apply its notification procedure as a best practice even if a treaty will be updated by the Multilateral Instrument or a bilateral negotiation to allow for presentation of a case to either competent authority.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	Canada has in place a process to notify the other competent authority in cases where it considered the objection raised in the MAP request as not justified. However, it was not possible to assess whether the notification process is applied in practice because for the period under review no such cases have occurred.	

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

Jurisdictions should provide access to MAP in transfer pricing cases.

28. Where two or more tax administrations take different positions on what constitutes arm's length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner's transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the

main objective of tax treaties. Countries should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

29. Out of Canada's 96 tax treaties, 79 contain a provision based on Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is made by their treaty partner. Out of these 79 tax treaties, five treaties also include a time limit for the corresponding adjustment to be made or contain wording that may result in providing such a time limit. In addition, it is noted that Canada made a reservation on Article 25 of the *OECD Model Tax Convention* (OECD, 2015a) entailing that Canada reserves the right to include a provision similar to a provision referred to in paragraph 10 of the commentary on Article 9 of the *OECD Model Tax Convention* (OECD, 2015a), which effectively sets a time limit within which a contracting state can make a (primary) adjustment to the profits of an enterprise.

Practical application

30. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is included in Canada's tax treaties and irrespective of whether its domestic legislation enables it to make corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Canada indicated it will always provide access to MAP for transfer pricing cases and that any deviations from Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) would not prevent it from making appropriate adjustments to avoid taxation that is not in accordance with the tax treaty so long as all relevant treaty requirements were met. However, Canada also specified that when a MAP concerns a transfer pricing case, the Canadian competent authority requires from the Canadian related company to make a MAP request in Canada (in addition to the MAP request made by the foreign related company as the case may be) to discuss the case (see also discussion under element D.1).

31. Transfer pricing cases are also referred to in the examples of typical requests for MAP assistance, as included in Canada's MAP Guidance. However, Canada's MAP guidance does not specify that corresponding adjustments would be made by Canada, even when the underlying treaty does not include such a provision.

32. Canada reported that it has not denied access to MAP on the basis that the case concerned a transfer pricing case since 1 January 2015.

33. Peers have indicated not being aware of a denial of access to MAP by Canada for transfer pricing cases since 1 January 2015 on the grounds that it was a transfer pricing case.

Anticipated modifications

34. Canada did not indicate that it anticipates any modifications in relation to element B.3.

Conclusion

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

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

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

35. 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

36. None of Canada's 96 tax treaties allows competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

37. Canada indicated that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of the MAP. In addition, the domestic law and administrative processes of Canada do not include a provision that allows their competent authority to limit access to the 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 comes into conflict with the provisions of a tax treaty. Furthermore, Canada indicated that, irrespective of whether a Limitation on Benefits provision is included in the tax treaty, access to the MAP would be granted 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 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. Canada's MAP Guidance (Tax Avoidance Section) confirms that such cases would be discussed by the Canadian competent authority even though it will limit discussions to seeking relief from the other competent authority where they have determined there has been an abuse as contemplated by a provision such as Canada's general anti-avoidance legislation or under the principle purpose test included in a treaty.

Practical application

38. Canada reported that since 1 January 2015 it has not denied access to MAP for 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.

39. Peers indicated not being aware of cases of denial of access to the MAP by Canada in relation to the application of treaty and/or domestic anti-abuse provision since 1 January 2015.

Anticipated modifications

40. Canada did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

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

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

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

41. 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 a statutory disputes settlement/resolution process that functions independent from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

42. Audit settlements are available in Canada, and the Canadian competent authority will not preclude access to MAP in case of an audit settlement. As will be further discussed in element B.10, this is not clearly addressed in Canada's MAP Guidance.

43. Canada has no administrative or statutory dispute settlement/resolution process(es) in place that allows Canada to deny access to the MAP for issues resolved through that process. While access to the MAP is granted, Canada's MAP guidance specifies that if the taxpayer agrees with the Appeals Branch decision, the Canadian

competent authority will only present the case to the other competent authority to seek correlative relief.

Practical application

44. Canada reported that since 1 January 2015 it has not denied access to MAP requests where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities.

45. Peers indicated not being aware of denial of access to MAP by Canada where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities.

Anticipated modifications

46. Canada did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

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

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

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

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

Legal framework on access to MAP and information to be submitted

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

Practical application

49. Canada reported that it has not limited access to the MAP on the grounds that insufficient information was provided since 1 January 2015. In practice, if a taxpayer does not include all information required as per Canada's MAP Guidance in its MAP request, the Canadian competent authority would request the additional information to be provided within a specified period of time, ranging from 30 to 60 days. Moreover, Canada reported that the Canadian competent authority would also have verbal

communications with the taxpayer to explain to them what information is expected in a MAP request and that they are invited to supplement their requests with such information.

50. Peers indicated not being aware of denial of access to MAP by Canada since 1 January 2015 in situations where taxpayers complied with information and documentation requirements set out in the MAP guidance. One peer, however, mentioned that a case needed to be discussed in depth before Canada agreed to grant access to the underlying MAP case. Canada responded that the MAP request was not complete as the taxpayer did not provide the information requested (which was the same information as the one that was requested – and not obtained – in the course of the CRA audit). Once the Canadian competent authority had the assurance that it would be provided with the necessary information to assess the compliance of the amount charged to the Canadian company with the arm's length principle, it accepted the case, which is now resolved.

Anticipated modifications

51. Canada did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

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

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

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

52. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015a), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Canada's tax treaties

53. Out of Canada's 96 tax treaties 82 contain a provision allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties.

Anticipated modifications

54. For those treaties that do not contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a), Canada indicated

that it intends to implement element B.7 either through signing the Multilateral Instrument or via bilateral negotiations.

55. Several peers also reported that the provisions of their tax treaty with Canada do not meet all the elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[B.7]	14 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a).	Where treaties do not include the equivalent of Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Canada should request the inclusion of the required provision via bilateral negotiations. In addition, Canada should maintain its stated intention to include the required provision in all future treaties.

[B.8] Publish clear and comprehensive MAP guidance

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

56. 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.

Canada's MAP guidance

57. Canada's rules, guidelines and procedures relating to the MAP are included in Canada's MAP Guidance.[2] This guidance contains information on:

(a) Contact information of the competent authority or the office in charge of MAP cases;

(b) The manner and form in which the taxpayer should submit its MAP request;

(c) The specific information and documentation that should be included in a MAP request (see also below);

(d) How the MAP functions in terms of timing and the role of the competent authorities;

(e) Relationship with domestic available remedies;

(f) Access to MAP in transfer pricing cases, audit settlements, anti-abuse provisions and availability of MAP for the multi-year resolution of cases (e.g. the Accelerated Competent Authority Procedure, which is further discussed in BP.9);

(g) Specific situations that will not accepted to be discussed in a MAP (e.g. notional expenses or thin capitalisation);

(h) Implementation of MAP agreements;

(i) Rights and role of taxpayers in the process;

(j) Availability of the suspension of tax collection; and

(k) Consideration of interest and penalties.

58. The above list shows that Canada's MAP guidance includes detailed information on the availability and the use of the MAP and how its competent authority conducts the process in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.[3]

59. In addition to this, Canada publishes annually a MAP Program report[4] that contains information about the MAP, how it functions in practice, the benefits that can be expected from such procedure, as well as an overview of the cases for which only partial relief may be achieved or for which no relief from double taxation can be achieved, and an explanation of cases where a full relief from double taxation has not been achieved. This report also contains an analysis of the time needed in general to reach MAP agreements and an overview of the MAP caseload during the relevant period. The most recent report published regards fiscal year 2014-2015.[5]

60. Although this information is comprehensive, some subjects are not specifically discussed in Canada's MAP guidance. This concerns whether MAP is available in cases of (i) transfer pricing disputes, (ii) the application of anti-abuse provisions, and (iii) multilateral disputes. Moreover, although the process how MAP agreements are implemented in terms of steps to be taken is described, the timing of these steps is not provided.

61. One peer noted that Canada's MAP Guidance provides helpful information. Several taxpayers also indicated that Canada's MAP Guidance provided clear and comprehensive guidance on the MAP and how to submit a MAP request. One taxpayer suggested that additional clarity could be provided on the process of making protective claims. In practice, however, this is already addressed in the MAP Guidance, but Canada indicated that they would take this comment into account to provide further clarity.

Information and documentation to be included in a MAP request

62. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.[6] This agreed guidance is shown below in the form of a checklist. In light of this list, the requirements in Canada's MAP guidance on what information and documentation should be included in a MAP request are checked below:

☑ Identity of the taxpayer(s) covered in the MAP request;

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

63. In addition to this information, Canada's MAP Guidance also requires the following information to be included in a MAP request:

- The Tax Services Office or Taxation Centre that has made or is proposing to make the adjustment, if applicable;
- For each taxpayer involved in the request, a schedule of the statute-barred dates in each jurisdiction (domestic time limits) in respect of all years for which relief is sought; and
- A statement indicating whether the taxpayer has filed a notice of objection or a notice of appeal in Canada.

64. Furthermore, with respect to the availability of arbitration, Canada has agreed with the United Kingdom[7] and the United States[8] that both competent authorities must be provided with the required information, as a prerequisite for cases to become eligible for arbitration.

Anticipated modifications

65. Canada indicated that it is currently drafting an updated version of the MAP Guidance.

Conclusion

	Areas for Improvement	Recommendations
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of clarity of its MAP guidance, Canada could consider including information on: o Whether MAP is available in cases of: (i) transfer pricing disputes, (ii) the application of anti-abuse provisions, and (iii) multilateral disputes; o The timing of the steps of the process for the implementation of MAP agreements. Recommendations on guidance in relation to audit settlements and access to the MAP are discussed in element B.10.

[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.

66. 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[9] further promotes the transparency and dissemination of the MAP programme.

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

67. The MAP guidance of Canada (Information Circular 71-17) is published and can be found at:

http://www.cra-arc.gc.ca/E/pub/tp/ic71-17r5/README.html

68. Canada's MAP guidance was last updated in 2005. It is accessible within a few clicks from the homepage of the CRA website, under "international matters", or after searching for 'double taxation' on the CRA website.

MAP Profile

69. Canada's MAP profile is published on the website of the OECD.[10] This MAP profile is complete, often with detailed information. This profile includes external links to websites of the Canadian government and provides additional information and guidance.

Anticipated modifications

70. Canada indicated that it is preparing an updated version of its MAP Guidance.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	-	Canada should ensure its future updates to the MAP guidance are available and easily accessible and that its MAP profile, published on the shared public platform, is updated if needed.

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

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

71. 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 previous mentioned processes.

MAP and audit settlements in the MAP guidance

72. Canada's MAP guidance provides[11] that filing of waivers of rights to objections or appeals, by which the taxpayer agrees in writing to waive its right of objection or of appeal, do not affect a taxpayer's right to seek relief from taxation not in accordance with a tax treaty via submission of a MAP request to the Canadian competent authority.

73. Paragraph 212 of Canada's guidance on international transfer pricing[12] provides that, with respect to withholding taxes, taxpayers may be granted relief when, among other conditions, they agree in writing to the proposed transfer pricing adjustments. In the same paragraph, the guidance specifies clearly that such an agreement does not restrict the taxpayer to seek relief from double taxation through MAP available under Canada's tax treaties. Canada's MAP guidance, however, provide less clarity on this topic as compared to the guidance on international transfer pricing.

MAP and other internal dispute settlement/resolution process in available guidance

74. Taxpayers can file a notice of objection against a tax (re)assessment and subsequently have their case reviewed by the Appeals Branch, which is an independent department within the CRA. Canada's MAP guidance explains the relationship between the MAP and proceedings before the Appeals Branch. It specifically clarifies that taxpayers have access to the MAP in case they consider that taxation not in accordance with the tax convention remains after the Appeals Branch rendered a decision. As mentioned in element B.5, Canada's MAP guidance also specifies that if the taxpayer agrees with the Appeals Branch decision, the Canadian competent authority will only present the case to the other competent authority to seek correlative relief. In addition, Canada's MAP program report also specifies that some mutual agreement procedures may, however, result in partial relief or no relief of double taxation as the other tax administration could take the position not to provide full relief from double taxation resulting from a Canadian-initiated adjustment that has been settled through the Canadian domestic appeals process.

75. Guidance P148 on Objection and appeal rights under the Income Tax Act[13] explains the process in Canada to file a notice of objection against a tax (re)assessment and to lodge an appeal with the courts. This guidance, however, does not specify the relationship between proceedings under the Appeals Branch and the availability of MAP when cases have been settled through the Canadian domestic appeals process.

76. One peer noted that it understands from Canada's MAP Guidance that settlements reached in such administrative appeals processes cannot be adjusted in a MAP. In other words, it understands that the Canadian competent authority considers itself bound by such settlement. Another peer expressed concerns about the fact that this administrative or statutory settlement/resolution process was not referred to in the MAP profile.

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

77. Canada reported that all treaty partners were notified of the existence of its statutory/administrative dispute settlement/resolution process and its consequences for MAP, because this process is identified and described in Canada's MAP guidance and MAP profile, both of which are publicly available. All peers that provided input on Canada's compliance with the Action 14 Minimum Standard, however, reported that they were not notified of the existence of such process in Canada. While Canada did not separately notify their treaty partners of the existence of its statutory/administrative dispute settlement/resolution process by means of a formal letter, Canada includes detailed information on this process in its MAP profile, with a reference to its domestic MAP guidance in which the process is outlined in detail. This is considered to be in line with the requirement on element B.10.

Anticipated modifications

78. Canada indicates that it envisages updating its MAP Guidance to provide further clarity to taxpayers in relation to element B.10.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	The MAP guidance does not include clear information on the relationship between MAP and audit settlements.	Canada's MAP guidance should clarify that taxpayers are not precluded access to the MAP in case of audit settlements.
	The guidance on Objection and appeal rights does not include information on the relationship between internal administrative or statutory dispute settlement / resolution process available and MAP (while this relationship is explained in the MAP Guidance).	Canada's guidance on Objection and appeal rights should address the consequences of settling a dispute through the Canadian domestic appeals process regarding the right for a taxpayer to submit a MAP request.

Notes

1. Available at: www.cra-arc.gc.ca/tx/nnrsdnts/cmp/mp_rprt_2014-2015-eng.html (accessed on 10 September 2017).
2. Available at www.cra-arc.gc.ca/E/pub/tp/ic71-17r5/README.html (accessed on 10 September 2017).
3. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
4. Available at www.cra-arc.gc.ca/tx/nnrsdnts/cmp/cs_mp-eng.html (accessed on 10 September 2017).
5. Available at www.cra-arc.gc.ca/tx/nnrsdnts/cmp/mp_rprt_2014-2015-eng.html (accessed on 10 September 2017).
6. Available at www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
7. The agreement can be found at www.fin.gc.ca/treaties-conventions/uk-ru-1-eng.asp (accessed on 10 September 2017).
8. See Memorandum of Understanding Between The Competent Authorities of Canada and The United States of America, available at www.cra-arc.gc.ca/tx/nnrsdnts/2010brtrtnm-eng.html (accessed on 10 September 2017).
9. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
10. Available at www.oecd.org/tax/dispute/Canada-Dispute-Resolution-Profile.pdf.
11. See paragraph 40 of Canada's MAP Guidance.
12. Available at www.cra-arc.gc.ca/E/pub/tp/ic87-2r/ic87-2r-e.html (accessed on 10 September 2017).
13. Available at www.cra-arc.gc.ca/E/pub/tg/p148/p148-e.html (accessed on 10 September 2017).

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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.

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

Current situation of Canada's tax treaties

80. All of Canada's 96 treaties contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

Anticipated modifications

81. Canada did not indicate that it anticipates any modifications in relation to element C.1.

Conclusion

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

[C.2] 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).

82. 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

83. Canada's MAP Program report includes MAP statistics, which also concern the time needed to resolve MAP cases.[1] Furthermore, the statistics published by Canada also relate to the average time taken to complete the various stages of cases, detailing the time needed to: (i) initiate or accept a MAP case, (ii) prepare a position paper, (iii) evaluate the positions taken and (iv) negotiate an agreement. Statistics regarding all tax treaty related disputes of Canada are also published on the website of the OECD[2] as of 2007.

84. The FTA MAP Forum has agreed on rules for the reporting of MAP statistics ('**MAP Statistics Reporting Framework**') for MAP requests submitted on or after January 1 2016 ('**post-2015 cases**'). Also, for MAP requests submitted prior to that date ('**pre-2016 cases**') the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Canada provided their MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Canada and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively,[3] and should be considered jointly for an understanding of the MAP caseload of Canada. With respect to post-2015 cases, Canada reported having reached out to all its MAP partners with a view to have their MAP statistics matching. Canada indicated that it could match its statistics with almost all of its MAP partners. According to Canada, six of its MAP partners (representing together less than 10% of Canada's end inventory of post-2015 MAP cases) did not respond to Canada's request to match statistics.

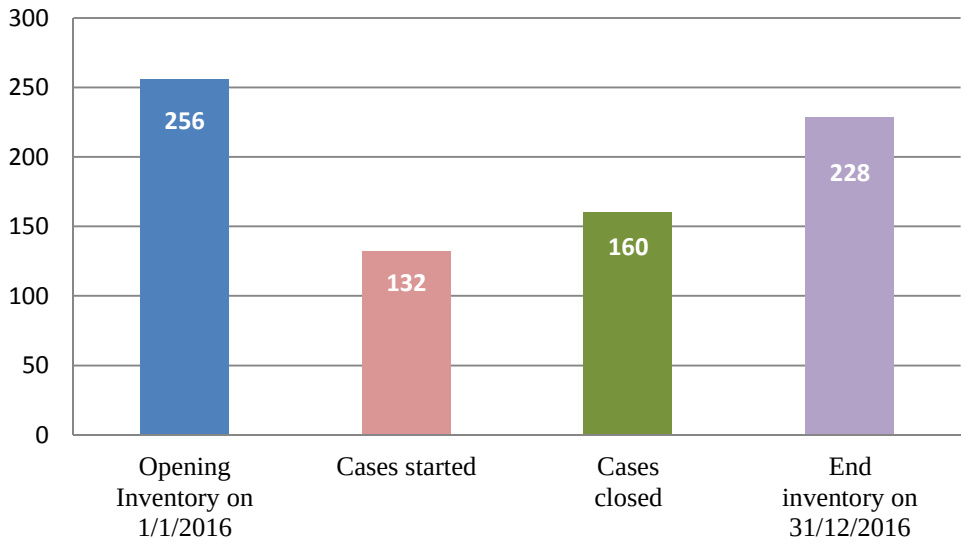
Monitoring of MAP statistics

85. The CRA has an internal management tracking system in place to measure performance with respect to MAP. This concerns measuring whether the overall timeframes of issuing a position paper within six months of receipt of a complete MAP request were met, as also the ability to reach an agreement within 24 months.

Analysis of Canada's MAP caseload

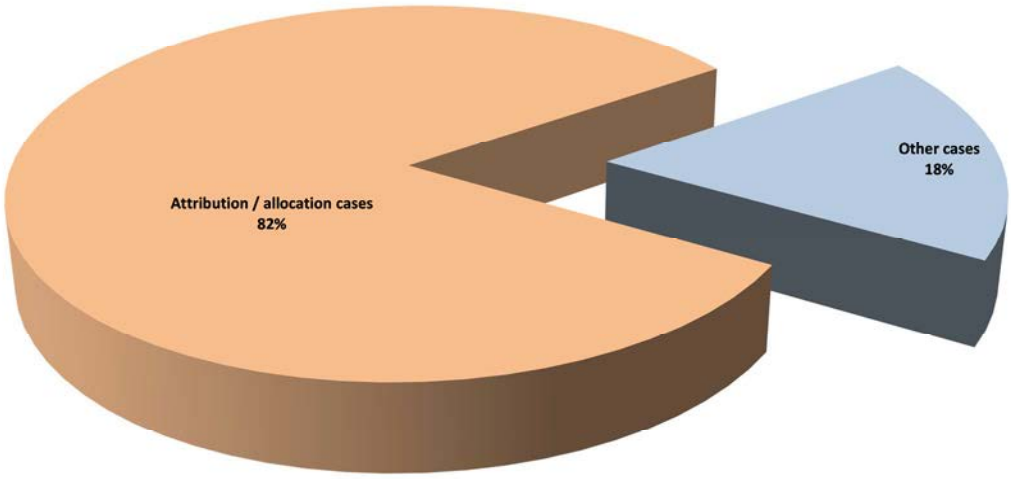
86. The following graph shows the evolution of Canada's MAP caseload over the Reporting Period.

Figure C.1 Canada's MAP inventory



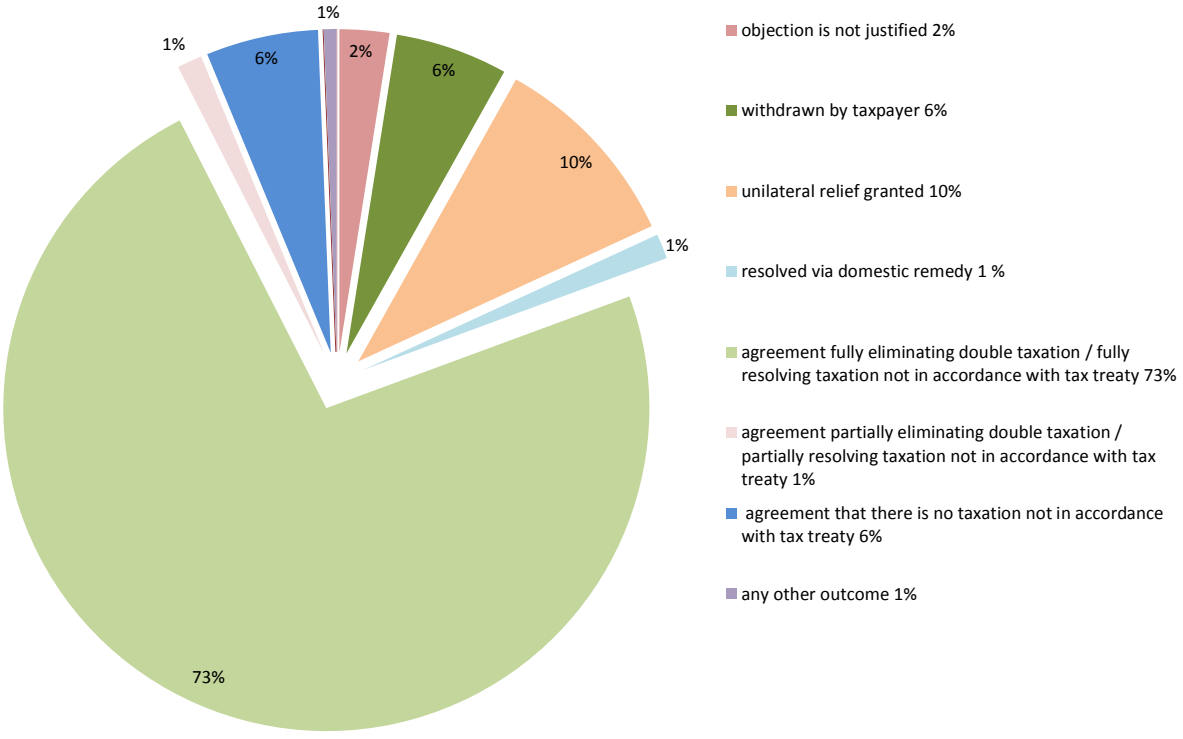
87. At the beginning of the Reporting Period Canada had 256 pending MAP cases, of which 221 were attribution/allocation cases and 35 other MAP cases.[4] At the end of the Reporting Period, Canada had 228 MAP cases in inventory, of which 187 are attribution or allocation cases and 41 other MAP cases. The breakdown of the end inventory can be illustrated as follows:

Figure C.2 End inventory on 31 December 2016 (228 cases)



88. During the Reporting Period Canada resolved 160 MAP cases and the following outcomes were reported:

Figure C.3 Cases resolved during the Reporting Period (160 cases)



89. This chart points out that during the Reporting Period, 117 out of 160 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Average timeframe needed to resolve MAP cases

Pre-2016 cases

90. Canada reported that on average it needed 27.77 months to resolve attribution/allocation cases and 27.10 months to resolve other cases. This resulted in an average time needed of 27.69 months to close pre-2016 cases. For the purpose of computing the time to resolve pre-2016 cases, Canada used:

- as the start date, the date when the MAP request was received; and
- as the end date, the date of the closing letter sent to the taxpayer.

Post-2015 cases

91. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 12 months. It is noted that Canada closed 31.8% of post-2015 cases during the Reporting Period. During these 12 months, Canada closed on average attribution/allocation cases within 1.10 months and other cases within 6.40 months.

All cases resolved during Reporting Period

92. The average time needed to resolve MAP cases during the Reporting Period was 20.87 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution / Allocation cases	141	20.77
Other cases	19	21.65
All cases	**160**	**20.87**

Peer input

93. Several peers indicated that the 24-month targeted timeframe to resolve MAP cases was reached in handling their MAP cases with Canada. Two peers raised the point that they have waited for a long time on a response to an e-mail or on a position paper issued by the Canadian competent authority, when the case concerned a Canadian-initiated adjustment. However, one peer indicated that it also contributed itself to the delay caused. Another peer indicated that only using written correspondence was considered not the most efficient, but it noted that it only had limited MAP experience with Canada. It indicated that Canada should also be ready to make concessions when they only deal with cases through written correspondence in order to improve the timelines of the resolution of such MAP cases. Canada responded that its policy is to seek a principled application of tax treaties and its domestic law to provide for relief from double taxation, not to bargain on the isolated basis of monetary amounts or expedience. Others have noted that they had managed resolving long-pending transfer pricing disputes recently, emphasising the progress being made, and stating that no major impediment had been encountered to solve these cases in a timely manner.

94. One peer also noted that, even though their tax treaty with Canada includes a mandatory arbitration provision, the competent authorities often resolved cases before such cases become eligible for arbitration.

Anticipated modifications

95. As it will be discussed is element C.6, Canada's tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties to provide that treaty-related disputes will be resolved within a specified timeframe. In Canada's view this should generally improve the time needed to settle MAP cases even though cases potentially eligible for arbitration are not given priority over other cases under review by the Canadian competent authority.

Conclusion

	Areas for Improvement	Recommendations
[C.2]	Canada submitted timely comprehensive MAP statistics and indicated they have been matched with almost all of its MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether Canada's MAP statistics match those of its treaty partners as reported by the latter.	
	Within the context of the state of play outlined above and in relation to the MAP statistics provided by Canada, it resolved during the Reporting Period 31.8% (42 out of 132 cases) of its post-2015 cases in 1.71 months on average. In that regard, Canada is recommended to seek to resolve the remaining 68.2% of the post-2015 cases pending on 31 December 2016 (90 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

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

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

96. 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 Canadian competent authority

97. As of 15 November, 2016, the CASD, which is responsible for handling taxpayer specific MAP cases, along with other tasks such as handling requests for APAs and conducting the exchange of information, consists of 54 people. This concerns one director, seven managers and 46 staff. These 46 people have the following tasks:

- 23 (including eight economists) are assigned to the Mutual Agreement Procedure – Advance Pricing Arrangement team with primary responsibility to handle transfer pricing cases;
- Five are assigned to the Mutual Agreement Procedure – Technical Cases team; and
- 18 are assigned to the Exchange of information Services team and hold responsibility for administration of procedures, reporting requirements and other tasks.

98. The Canadian competent authority reported it has flexibility in hiring technically qualified CRA personnel from a pool of available persons at the level of CRA headquarters, but also from other CRA offices. This enables it to fill in gaps in positions that may arise during a year following unexpected events. It is noted that staff in charge of MAP and APAs in Canada has increased in the last few months. The Canadian competent authority can also hire from the larger pool of candidates which is the Canadian Federal Public Service and the private sector, however hiring from these groups takes more time than internal transfer from within CRA.

99. Canada reported that, each time a change occurs regarding personnel working in the competent authority, it provides each of the states with which it entered into a Treaty and tax information exchange agreements (TIEA) an official notification letter or email

containing a revised competent authority list. In addition, contact details of the competent authority are published on the CRA website.[5]

100. With respect to training, the CRA reported that it has internal course material and mandatory training sessions that the Canadian competent authority's staff must attend in order to be familiar with the MAP, the *OECD Model Tax Convention* (OECD, 2015a) and *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017* (OECD Transfer Pricing Guidelines, OECD 2017). In addition, managers of the CRA hold regular meetings with their team of analysts and economists to ensure that all personnel involved in handling MAP cases are familiar with the latest policies, procedures, and interpretation of economic approaches taken by the CRA and the OECD. Moreover, where issues arise as to the interpretation of a tax treaty, the Canadian competent authority has access to legal services and treaty experts from other areas within the CRA.

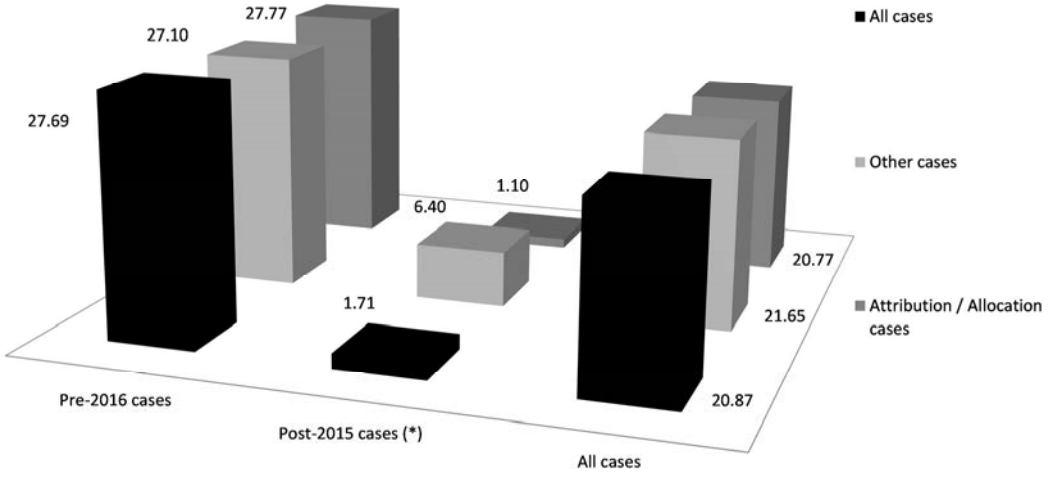
Monitoring mechanism

101. As regards the monitoring of whether the resources provided to the MAP function are adequate, the Canadian competent authority assesses on an annual basis the budget and the staffing level for this function. In this respect, it takes into account (i) inflow from past periods and (ii) the expected future inflow of MAP cases that may change due to policy changes or commitments by the CRA or legislative changes by the Canadian Department of Finance, which may affect the competent authority function. In addition to the annual review, the Canadian competent authority also conducts reviews on a monthly and quarterly basis to address changes in staff due to for instance unexpected departure or transfer of personnel. For this purpose the Canadian competent authority uses a management tracking system, which enables it to review file progress on an ongoing basis as well as to be informed of inabilities to meet their commitments on a timely basis.

Practical application

102. As discussed under element C.2 Canada resolved its MAP cases within the pursued 24-month average. The difference between the average time taken to solve attribution / allocation cases and other cases can be illustrated by the following graph:

Figure C.4 Average time (in months)



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

103. Based on these figures, it follows that on average it took Canada 20.87 months to resolve MAP cases. In particular, it took Canada 20.77 months to resolve attribution / allocation cases and 21.65 months to resolve other cases. This shows that the global average timeframe as well as the average timeframes specific to the attribution / allocation cases and other cases are below 24 months.

104. Canada identified several reasons that could, however, explain delays in resolving MAP cases during the Reporting Period: delays of taxpayers providing additional information requested by the competent authorities during their discussions, complexity of some cases, delays from some treaty partners lacking resources, difficulties in communication by phone with some treaty partners because of time differences or language. Canada also specified that its current practice leads to delays in informing the taxpayer of an agreement reached with a treaty partner. In practice, Canada waits for a formal letter from other treaty partners confirming in writing the agreement reached, even when there is no need for such a formal letter as the draft closing letter is always sent to the other competent authority when they reach an agreement. Canada assessed the impact of such a practice by computing, for all cases resolved during the Reporting Period, the average time between (i) the date when the agreement is reached and (ii) the date when it sends the closing letter to the taxpayer. Canada indicated that the timeframe for this last step is approximately 2.5 months on average.

105. Moreover, the timeframe computed only relates to pre-2016 cases, for which the start date was the date when the MAP request was received. According to the MAP Statistics Reporting Framework, the start date of post-2015 cases shall be one week from the date of notification by the competent authority that receives the MAP request from the taxpayer or five weeks from the receipt of the taxpayer's MAP request, whichever is the earlier date (except where a competent authority receives a MAP request that does not include all the information and documentation required to be furnished pursuant to its published MAP guidance). Therefore, the start date of some cases could have been five weeks later if computed as required for post-2015 cases. The definition of the start date that Canada used impacted and increased the average timeframe.

106. Canada reported that it is confident that with its current resource level it can continue to meet its commitments under tax treaties in relation to MAP. In particular, Canada indicated that it would continue to monitor its MAP caseload to ensure adequate resources are provided.

107. Several peers mentioned also that they consider that adequate resources are deployed to the MAP function in Canada.

108. Peers noted that they are frequently in contact (by means of face-to-face meetings, over the phone or via e-mails) with the Canadian competent authority, in particular when Canada is for them a significant MAP partner. It was also noted by several peers that the Canadian competent authority is responsive in their communication and cooperative to deal with. One peer also mentioned that personnel in Canada are well-trained to handle MAP requests. Furthermore, one peer mentioned that the Canadian competent authority provided written position papers to sum up their position with respect to MAP cases in addition to regular meetings where face to face discussions take place to discuss cases. Another peer noted that the Canadian competent authority has a good practice as it makes site visits as part of their MAP case handling, while suggesting that more resources are attributed to the resolution of MAP cases.

109. With respect to suggestions for improvement, one peer suggested using video conference calls or to arrange alternative venues for meetings, for example in Paris during

the course of OECD meetings. Canada responded that this latter suggestion would be impractical for them to adopt due to travel costs and because the Canadian delegates to the OECD meetings are not necessarily those that handle MAP cases and may even be from different ministries. Another peer indicated that it would be useful to have more contact details (email addresses and fax number) available to come in contact with Canadian competent authority. Specifically regarding the adequate resources question, one peer suggested continuing exploring ways to reach principled solutions while at the same time expediting due diligence, case development, negotiations and closing paperwork, in order to maintain adequate use of available resources.

Anticipated modifications

110. Canada indicated that it is currently envisaging an adaptation of its practice to accelerate the date when the taxpayer is informed of the agreement reached with the other competent authority.

Conclusion

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

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

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

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

Functioning of staff in charge of MAP

112. The Canadian competent authority is the only office to which taxpayers can make a request for competent authority assistance, except for requests for refunds of Canadian withholding taxes. For these latter cases taxpayers can ask for a refund directly with the CRA international tax office (ITO). The Canadian competent authority has independent authority to enter into agreements to settle double taxation without needing approval from other departments of the CRA. While resolution of cases may require discussions, legal consultations, and fact gathering from other departments of the CRA (e.g. the TSO), which are separated from the competent authority function, ultimate approval of taxpayer specific MAP agreements are made solely by the director of CASD.

113. Canada indicated that the considerations that staff in charge of MAP processes have to take into account when resolving MAP cases relate to ensuring a good faith application of Canada's tax treaties. More specifically, they should endeavour to resolve MAP cases in an equitable manner and in accordance with the applicable tax treaty, the Canadian Income Tax Act, the Income Tax Conventions Interpretation Act, Canadian case law, the *OECD Model Tax Convention* (OECD, 2015a) and the OECD Transfer Pricing Guidelines (OECD, 2017). To this end, the director of the Canadian competent authority holds regular meetings with the managers responsible for MAP cases so as to ensure a consistent approach to transfer pricing cases and related issues, and also to ensure that cases with similar issues but handled by different managers are dealt with consistently. All position papers prepared by analysts and all economic reports prepared by economists are reviewed by the specific manager and signed off by the director of the Canadian competent authority. In addition, the director and managers regularly review outstanding files to track progress on files, discuss contentious issues and review the overall rationale for proposed adjustments prior to a discussion with another competent authority.

114. Furthermore, the CRA headquarters also provide advisory services and economic assistance to the TSO with respect to transfer pricing adjustments. However, the CASD, part of the CRA headquarters, neither provides such services nor works with the advisory services team within the CRA (except for requiring some facts on a case). International compliance activities may also result in adjustments causing double taxation but the Canadian competent authority is not informed of the results of these cases unless a TSO completes an adjustment and the taxpayer subsequently files a MAP request with CASD.

Practical application

115. One taxpayer expressed concern about the fact that the Canadian competent authority was in contact with the TSO before initiating a MAP case. In response, Canada explained that such contact is necessary to perform the competent authority function properly, as it is critical to obtain all documents supporting the file and to fully understand the adjustment and the facts of the case under review. In any case, the Canadian competent authority does not share its position with the TSO and if the Canadian competent authority holds the view that the adjustment made by the TSO is not justified, it will unilaterally revoke such adjustment and inform both the taxpayer and the other competent authority of the decision. This indicates that the Canadian competent authority is fully independent.

116. In this respect, several peers specified that staff in charge of the MAP function have sufficient authority to resolve MAP cases and that their experience did not make them aware of a dependency upon the TSO responsible for imposing the adjustment. One peer also noted that solutions have been reached efficiently and in a principled manner.

Anticipated modifications

117. Canada did not indicate it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for Improvement	Recommendations
[C.4]	-	As it has done thus far, Canada should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue.

[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.

118. 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 Canada

119. The Canadian competent authority has an extensive checklist used to evaluate staff in charge of MAP. As described under element C.3, the manager conducting the evaluation, along with the director of the competent authority, is responsible for ensuring the overall quality of files and the assurance of consistent application of similar issues. Furthermore, Canada uses performance indicators that are based on the achievement of the overall timeframes applicable for a MAP, which are included in its annual report on MAP. In addition, Canada has set targets for staff in charge of MAP to evaluate their work performance. These are: (i) issuing a position paper within six months of receipt of a complete MAP request and (ii) reaching a MAP agreement within 24 months. Although this does not constitute a performance indicator per se, staff in charge of MAP is also evaluated on the basis of the consistency and quality of their work. Eventually, their work is reviewed by the director of the Canadian competent authority to ensure the positions taken in MAP are consistent and that the output is of a high-standard.

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

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

121. Furthermore, Canada does not use performance indicators based on amounts or assignments that need to be achieved by the Canadian competent authority when resolving MAP cases, nor does Canada use targets to sustain specified audit adjustments or maintain tax revenue amounts. In practice, Canada reported that the Canadian competent authority's staff enters all MAP negotiations prepared to listen to the treaty partner's view and willing to compromise on a principled basis in order to arrive at the full elimination of taxation not in accordance with the provisions of a tax treaty.

Practical application

122. Several peers noted that the personnel working in the Canadian competent authority has a pragmatic orientation to resolve MAP cases, and that they aim at obtaining a final solution that would best reconcile the interest of both competent authorities. One peer noted that their experience with the Canadian competent authority did not make them aware of the use of performance indicators that are based on the amount of sustained audit adjustments or maintaining tax revenue. However, one peer indicated that complex cases were hard to resolve with the Canadian competent authority.

Anticipated modifications

123. Canada did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

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

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

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

124. 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

125. In Canada there are no domestic law limitations for including MAP arbitration in its tax treaties. The inclusion of MAP arbitration is part of its tax treaty policy. Furthermore, Canada has been a participant in the sub-group on arbitration as part of the Multilateral Instrument of Action 15 of the BEPS project.

Practical application

126. Canada has included an arbitration clause in 21 of its 96 treaties, which can be categorised as follows:

- 18 treaties provide a voluntary and binding arbitration procedure; and

- Three treaties, those with Switzerland, the United Kingdom and the United States, provide for a mandatory and binding arbitration procedure.

127. The treaties with Switzerland and with the United Kingdom provide a clause equivalent to Article 25(5) of the *OECD Model Tax Convention* (OECD, 2015a), even though a case only becomes eligible for arbitration if the competent authorities are unable to reach an agreement during a period of three years instead of two years. Furthermore, agreements were entered into with the competent authorities of the United Kingdom[6] and of the United States[7] regarding the application of the arbitration procedure.

128. In practice, the scope of the arbitration clauses included in Canada's tax treaties may be limited to certain articles. Moreover, Canada's treaty policy is to exclude cases concerning anti-abuse provisions from arbitration.

Anticipated modifications

129. One peer mentioned that the arbitration clause contained in the tax treaty with Canada was not in effect, but that it envisages that the MAP article to be updated through the signing of Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[C.6]	-	-

Notes

1. Available at www.cra-arc.gc.ca/tx/nnrsdnts/cmp/mp_rprt_2014-2015-eng.html (accessed on 10 September 2017).
2. www.oecd.org/ctp/dispute/MAP%20PROGRAM%20STATISTICS%20FOR%202015%20CANADA.pdf.
3. For post-2015 cases, if the number of MAP cases in Canada's inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five, Canada reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution / allocation cases and other cases).
4. For pre-2016 and post-2015 cases, Canada follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides 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 (OECD, 2015a); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention (OECD, 2015a), which is also known as a transfer pricing MAP case*".
5. Available at: www.cra-arc.gc.ca/tx/nnrsdnts/cmp/wh-eng.html (accessed on 10 September 2017).
6. The agreement can be found at www.fin.gc.ca/treaties-conventions/uk-ru-1-eng.asp (accessed on 10 September 2017).
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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.

130. 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

131. In Canada MAP agreements can only be implemented as permitted by its domestic statute of limitations, except where these limitations are expressly overridden by a treaty provision (such as those based on Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015). If these time limits are not overridden by a tax treaty, Canadian law generally limits the time allowed to adjust the taxation years of large corporations for MAP-related issues to seven years from the date a filed year was processed by the CRA.

132. When there is no treaty provision in place that overrides domestic law in regard of implementing MAP agreements, taxpayers can secure their rights under tax treaties by filing waivers in prescribed form. These waivers enable specific issues for specified fiscal years to remain open until the MAP process has finalised. In this respect, paragraphs 33 and 34 of Canada's MAP guidance specify that taxpayers are responsible for keeping their income tax returns open through waivers to be filed in prescribed forms. This also applies in cases of foreign-initiated transfer pricing adjustments, for which implementation of correlative adjustments is subject to the Canadian related company's filing of waivers.

133. In addition, paragraph 35 of Canada's MAP guidance stipulates that non-resident taxpayers involved in the MAP should ensure that the taxation year remains open in their own jurisdiction, as the Canadian competent authority will not revoke a Canadian-initiated adjustment only because the fiscal years in that jurisdiction cannot be adjusted because of the applicable statute of limitation. Finally, Canada's annual MAP Program report also describes that partial relief or no relief of double taxation may still be undergone where a taxation year is statute-barred or becomes statute-barred during negotiations in either jurisdiction.

134. As regards the process on how MAP agreements are implemented, paragraphs 53 of 55 of Canada's MAP Guidance describe the steps to be taken (see also discussion under element D.2).

Practical application

135. In practice, Canada requests the concerned taxpayers to give their approval to the agreement reached as a prerequisite for implementation. This applies both for agreements reached as the result of the MAP, as also for any agreements reached following the decision of an arbitration panel as a final stage to the MAP.

136. Canada reported that all MAP agreements, once accepted by taxpayers and subject to the limitations described previously have been (or will be) implemented and that it is not aware of any MAP agreements that were not (or will not be) implemented since 1 January 2015. In practice, the Canadian competent authority ensures that all necessary steps to implement an agreement are completed once an agreement is reached with the other competent authority concerned. In particular, the tracking system currently in place in Canada is the Competent Authority Control Tracking System ('**CATS**'), which is an intranet inventory control program designed to allow staff from the CASD to easily input, change, update and save data relating to the workload and activities of the CASD. This includes tracking the existence of and activity undertaken on MAP cases. Routinely, Canada's competent authority generates reports from the tracking system to ensure that MAP agreements have been implemented.

137. Peers reported generally not being aware of MAP agreements that were reached on or after 1 January 2015 that have not been implemented in Canada. One peer noted that even though their tax treaty with Canada does not include the equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) and/or provide for a provision setting a time limit for making primary adjustments, both competent authorities have been flexible as to the implementation of MAP agreements in practice. This experience, however, dates back to the period prior to the look-back period. Another peer mentioned that it had not experienced any difficulties regarding the implementation of MAP agreements so far, even though their tax treaty did not include the equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015).

138. One taxpayer that provided input expressed concerns about the fact that while they were informed in writing of the MAP agreement, they were not provided with guidance on how to implement such an agreement. Canada responded that the case was resolved by the Canadian competent authority by a revocation of the Canadian-initiated adjustment. The Canadian competent authority advised the other competent authority and the taxpayer in writing of such a withdrawal, and provided Canada's Appeals branch with the necessary instructions to reverse the CRA adjustment. Therefore, the taxpayer was not expected to take any further steps, which explains why they have not been informed of such steps.

Anticipated modifications

139. Canada did not indicate it anticipates any modifications in relation to element D.1

Conclusion

	Areas for Improvement	Recommendations
[D.1]	If the relevant tax treaty does not override domestic time limits by the inclusion of the equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015), the implementation process relies on taxpayers ensuring the issues under review to remain open despite the fact that their fiscal year is barred as per the statute of limitation, which may bear the risk that the MAP agreement is not implemented if taxpayers are not aware of this.	As it has done thus far, Canada should continue to implement all MAP agreements on a timely basis, if the conditions for such implementation are fulfilled. It is suggested that Canada provide waiver forms upon acceptance of a MAP request to better ensure that the taxpayer can request to keep specific issues for specific tax years open so that MAP agreements can be implemented.

[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.

140. 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

141. After a verbal MAP agreement has been reached with the other competent authority concerned, the first step in the implementation process is that the Canadian competent authority sends a bilateral letter to the other competent authority. Upon receipt of a written acceptation of the agreement from the other competent authority, the Canadian competent authority informs the taxpayer of the agreement reached via a formal letter. In turn, it generally requires taxpayers to notify whether they accept such agreement within 30 days. If the taxpayer accepts the agreement reached, the Canadian competent authority sends the terms of such an agreement to the local TSO and/or appeal office for implementation. Canada indicated that subsequently the CRA is responsible for processing the agreement within 30 days of their receipt of the instructions by the Canadian competent authority.

142. Canada reported that its competent authority actively monitors the implementation of MAP agreements in order to ensure that they are effectively implemented. However, Canada does not have a timeframe in place for implementation of MAP agreements and statistics are not available on the average time taken for such implementation.

Practical application

143. Canada reported that all MAP agreements, once accepted by taxpayers, have been (or will be) implemented on a timely basis and that it is not aware of any MAP agreements that were not implemented on a timely basis since 1 January 2015. Peers generally reported not being aware of MAP agreements that were reached on or after 1 January 2015 and that have not been implemented by Canada on a timely basis. One peer

mentioned that it considered that the MAP agreements it reached with the Canadian competent authority were implemented both timely and correctly. Another peer suggested that the implementation of MAP agreements could be discussed as part of the MAP process to avoid uncertainties relating hereto.

144. Taxpayers have expressed concerns about the fact that the implementation of MAP agreements in Canada could be delayed. Canada explained that delays can occur if the other competent authority does not respond to the bilateral letter mentioned previously in a timely manner and/or if the Canadian taxpayer does not provide a timely acceptance of the agreement (for example because the taxpayer waits for the matching agreement to be proposed to the foreign affiliate by the other competent authority). Apart from that situation, it may occur that the CRA processing centre does not implement a MAP agreement in a timely manner. However, in such a situation, as part of the monitoring of implementation of agreements, the Canadian competent authority would eventually intervene to ensure agreements are implemented.

Anticipated modifications

145. Canada did not indicate it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for Improvement	Recommendations
[D.2]	The system used bears the risk that MAP agreements are not implemented on a timely basis.	Canada should ensure that all MAP agreements are implemented on a timely basis in the future. It is suggested that Canada ensures instructions given to the CRA are clear to enable them to process quickly the implementation of MAP agreements in all cases.

[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.

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

Legal framework and current situation of Canada's tax treaties

147. As discussed under element D.1 Canada's domestic law does not allow the Canadian competent authority to implement mutual agreements if domestic time limits have passed and if they have not been overridden by a tax treaty. Furthermore, Canada

has made a reservation on Article 25 of the *OECD Model Tax Convention* (OECD, 2015) entailing that it reserves the right to include a provision similar to a provision referred to in paragraph 10 of the Commentary on Article 9, which effectively sets a time limit within which a contracting state can make primary adjustments.

148. Out of Canada's 96 tax treaties, 15 treaties contain the equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015), whereby any agreement reached through MAP shall be implemented notwithstanding any time limits in the domestic law of the states concerned. Furthermore, 44 treaties do not have the second sentence of Article 25(2) of the *OECD Model Tax Convention* (OECD, 2015), but include in the MAP article an alternative provision that limits the time during which a contracting state can make a primary adjustment. This provision is considered equivalent to the alternative treaty provisions setting a time limit the time during which a contracting party can make a primary adjustment pursuant to Article 9(1) or Article 7(2). In addition, 1 treaty includes a variation to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015), where the actual implementation of a MAP agreement is dependent on the fact that such agreement is reached within a certain term. This treaty, however, includes an alternative provision in the MAP article that limits the time during which a contracting state can make a primary adjustment. This provision is considered equivalent to the alternative treaty provisions setting a time limit during which a contracting party can make a primary adjustment pursuant to Article 9(1) or Article 7(2).

149. The remaining 36 tax treaties can be categorised as follows:

- 21 treaties neither include the equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) nor the alternative provision provided for in Article 9(1) and Article 7(2). One of these 21 treaties include a variation to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015), but whereby the actual implementation of a MAP agreement is dependent on the notification of the MAP case to the other competent authority involved within a certain term. Furthermore, 6 of these 21 treaties include a provision setting a time limit for making corresponding adjustments, which is not considered equivalent to the alternative provisions provided for in Article 9(1) and Article 7(2); and

- 15 treaties do not include the equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) and only include the alternative provision in Article 9(1) setting a time limit for making primary adjustments. One of these 15 treaties include a variation to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) whereby the actual implementation of a MAP agreement is dependent on the notification of the MAP case to the other competent authority involved within a certain term.

150. Based on the above reasoning, these 36 tax treaties are not considered to have the full equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) and do not contain both alternative provisions to limit the time during which a contracting state can make a primary adjustment.

151. 2 of the 36 treaties mentioned above include a variation to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015), whereby the implementation of MAP agreements is dependent on the timely notification of a MAP request by competent authorities. In this respect, Canada reported that this provision

would not limit the actual implementation of MAP agreements because of the time limits provided by the statute of limitations of the treaty partners and because the notification system is implemented properly with such treaty partners.

Anticipated modifications

152. For those treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015), nor include the alternative provisions in both Article 9(1) and Article 7(2), Canada indicated that it intends to implement element D.3 either through signing the Multilateral Instrument or via bilateral negotiations.

153. Several peers also reported that the provisions of their tax treaty with Canada do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	36 out of 96 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the *OECD Model Tax Convention* (OECD, 2015), nor the alternative provisions in both Article 9(1) and Article 7(2). Of those 36 treaties: o 21 do neither contain a provision that is equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) nor include the alternative provisions; and o 15 do not contain a provision that is equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) and only include the alternative provision in Article 9(1).	Where treaties do not include the equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015), or both alternatives provided in Article 9(1) and Article 7(2), and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Canada should request the inclusion of the required provision or be willing to accept the inclusion of both alternatives via bilateral negotiations. In addition, Canada should maintain its stated intention to include the required provision or be willing to accept the inclusion of both alternatives in all future treaties.

Bibliography

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Summary

	Areas for Improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Two out of 96 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015).	Where treaties do not include the equivalent of Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Canada should request the inclusion of the required provision via bilateral negotiations. In addition, Canada should maintain its stated intention to include the required provision in all future treaties.
[A.2]	-	As it has done thus far, Canada should continue to provide for roll-back of bilateral APAs in appropriate cases.
Part B: Availability and access to MAP		
[B.1]	73 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015). Of those 73 tax treaties: o Three tax treaties do not incorporate the equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty (2 years); o One tax treaty does not incorporate the full equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015); o 69 tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty (2 years in most cases).	Where treaties do not include the equivalent of Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Canada should request the inclusion of the required provision via bilateral negotiations. This concerns both: o a provision that is equivalent to Article 25(1), first sentence of the *OECD Model Tax Convention* (OECD, 2015) either: a) As amended in the Action 14 final report (OECD, 2015); or b) As it read prior to the adoption of the Action 14 final report (OECD, 2015); and o a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. In addition, Canada should maintain its stated intention to include the required provision in all future treaties.
[B.2]	Canada has in place a procedure to notify the other competent authority in cases where it considered the objection raised in the MAP request as not justified. However, it was not possible to assess whether the notification procedure is applied in practice because for the period under review no such cases have occurred.	
[B.3]	-	As Canada has thus far granted access to the MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	-	As Canada has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.

	Areas for Improvement	Recommendations
[B.5]	-	As Canada has thus far granted access to the MAP in eligible cases, even if there was an audit settlement between the tax authority and a taxpayer, it should continue granting access for these cases.
[B.6]	-	As Canada has thus far not limited access to the MAP in eligible cases when taxpayers have complied with Canada's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	14 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015).	Where treaties do not include the equivalent of Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Canada should request the inclusion of the required provision via bilateral negotiations. In addition, Canada should maintain its stated intention to include the required provision in all future treaties.
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of clarity of its MAP guidance, Canada could consider including information on: o Whether MAP is available in cases of: (i) transfer pricing disputes, (ii) the application of anti-abuse provisions, and (iii) multilateral disputes; o The timing of the steps of the process for the implementation of MAP agreements. Recommendations on guidance in relation to audit settlements and access to the MAP are discussed in element B.10.
[B.9]	-	Canada should ensure its future updates to the MAP guidance continue are available and easily accessible and that its MAP profile, published on the shared public platform, is updated if needed.
[B.10]	The MAP guidance does not include clear information on the relationship between MAP and audit settlements. The guidance on Objection and appeal rights does not include information on the relationship between internal administrative or statutory dispute settlement / resolution process available and MAP (while this relationship is explained in the MAP Guidance).	Canada's MAP guidance should clarify that taxpayers are not precluded access to the MAP in case of audit settlements. Canada's guidance on Objection and appeal rights should address the consequences of settling a dispute through the Canadian domestic appeals process regarding the right for a taxpayer to submit a MAP request.
Part C: Resolution of MAP cases		
[C.1]	-	Canada should maintain its stated intention to include the equivalent of Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all future treaties.
[C.2]	Canada submitted timely comprehensive MAP statistics and indicated they have been matched with almost all of its MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether Canada's MAP statistics match those of its treaty partners as reported by the latter.	
	Within the context of the state of play outlined above and in relation to the MAP statistics provided by Canada, it resolved during the Reporting Period 31.8% (42 out of 132 cases) of its post-2015 cases in 1.71 months on average. In that regard, Canada is recommended to seek to resolve the remaining 68.2% of the post-2015 cases pending on 31 December 2016 (90 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

	Areas for Improvement	Recommendations
[C.3]	-	Canada should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Canada should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue.
[C.5]	-	As it has done thus far, Canada should continue to use appropriate performance indicators.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	If the relevant tax treaty does not override domestic time limits by the inclusion of the equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015), the implementation process relies on taxpayers ensuring the issues under review to remain open despite the fact that their fiscal year is barred as per the statute of limitation, which may bear the risk that the MAP agreement is not implemented if taxpayers are not aware of this.	As it has done thus far, Canada should continue to implement all MAP agreements on a timely basis, if the conditions for such implementation are fulfilled. It is suggested that Canada provide waiver forms upon acceptance of a MAP request to better ensure that the taxpayer can request to keep specific issues for specific tax years open so that MAP agreements can be implemented.
[D.2]	The system used bears the risk that MAP agreements are not implemented on a timely basis.	Canada should ensure that all MAP agreements are implemented on a timely basis in the future. It is suggested that Canada ensures instructions given to the CRA are clear to enable them to process quickly the implementation of MAP agreements in all cases.
[D.3]	o 36 out of 96 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the *OECD Model Tax Convention* (OECD, 2015), nor the alternative provisions in both Article 9(1) and Article 7(2). Of those 36 treaties o 21 do neither contain a provision that is equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) nor include the alternative provisions; and o 15 do not contain a provision that is equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) and only include the alternative provision in Article 9(1).	Where treaties do not include the equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015), or both alternatives provided in Article 9(1) and Article 7(2), and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Canada should request the inclusion of the required provision or be willing to accept the inclusion of both alternatives via bilateral negotiations. In addition, Canada should maintain its stated intention to include the required provision or be willing to accept the inclusion of both alternatives in all future treaties.

Annex A
Tax treaty network of Canada

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority	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?				
	Y = yes N = signed pending ratification	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, others reasons	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	if yes: i-Art. 25(5) ii-mandatory other iii - voluntary
Algeria	Y	O	ii (2 years)	Y	i	Y	ii	Y	Y	N	
Argentina	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Armenia	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority	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?				
Australia	Y	O	i	Y	i	Y	N	Y	Y	N	
Austria	Y	O	ii (2 years)	i	i	Y	N	Y	N	N	
Azerbaijan	Y	O	ii (2 years)	Y	i	Y	Y	Y	Y	N	
Bangla-desh	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	N	
Barbados	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	N	
Belgium	Y	O	ii (2 years)	i	i	Y	ii	Y	N	N	
Brazil	Y	O	i	i	i	Y	N	Y	Y	N	
Bulgaria	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Cameroon	Y	O	ii (2 years)	i	i	Y	N	Y	Y	N	
Chile	Y	O	i	Y	i	Y	ii	Y	N	Y	iii
China	Y	O	i	i	i	Y	N	Y	Y	N	
Chinese Taipei	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Colombia	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Côte d'Ivoire	Y	O	ii (2 years)	Y	i	Y	ii	Y	N	N	
Croatia	Y	O	ii (2 years)	i	i	Y	N	Y	Y	N	
Cyprus*	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority	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?				
Czech Republic	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Denmark	Y	O	i	i	i	Y	iii	Y	Y	N	
Dominican Republic	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	N	
Ecuador	Y	O	ii (2 years)	Y	i	Y	iii	Y	N	Y	iii
Egypt	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	N	
Estonia	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Finland	Y	O	Y	Y	i	Y	iii	Y	Y	N	
France	Y	N	ii (2 years)	i	i	Y	N	N	N	Y	iii
Gabon	Y	O	ii (2 years)	i	i	Y	N	Y	Y	N	
Germany	Y	O	ii (2 years)	i	i	Y	N	Y	Y	Y	iii
Greece	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Guyana	Y	O	i	i	i	Y	N	Y	Y	N	
Hong Kong	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Hungary	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Iceland	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	Y	iii
India	Y	O	ii (2 years)	Y	i	Y	ii	Y	Y	N	
Indonesia	Y	O	ii (2 years)	i	i	Y	iii	Y	N	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority	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?				
Ireland	Y	O	ii (2 years)	Y	i	Y	iii	Y	N	Y	iii
Israel	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Italy	Y	O	ii (2 years)	i	i	Y	ii	Y	Y	Y	iii
Jamaica	Y	O	ii (2 years)	i	i	Y	iii	Y	N	N	
Japan	Y	O	ii (2 years)	i	i	Y	ii	Y	Y	N	
Jordan	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Kazakh-stan	Y	O	ii (2 years)	Y	i	Y	N	Y	Y	Y	iii
Kenya	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	N	
Korea	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Kuwait	Y	O	ii (2 years)	Y	i	Y	ii	Y	Y	N	
Kyrgyzstan	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Latvia	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Lebanon	N	N	ii (2 years)	Y	i	Y	N	Y	Y	N	
Lithuania	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Luxem-bourg	Y	O	ii (2 years)	Y	i	Y	ii	Y	Y	N	
Madagas-car	N	O	Y	Y	i	Y	Y	Y	Y	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority	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?				
Malaysia	Y	O	ii (2 years)	i	i	Y	N	Y	N	N	
Malta	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	N	
Mexico	Y	O	Y	Y	i	Y	iii	Y	N	Y	iii
Moldova	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	Y	iii
Mongolia	Y	O	ii (2 years)	i	i	Y	N	Y	Y	Y	iii
Morocco	Y	O	ii (2 years)	i	i	Y	N	Y	Y	N	
Namibia	N	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Nether-lands	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	Y	iii
New Zealand	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Nigeria	Y	O	ii (2 years)	Y	i	Y	ii	Y	Y	N	
Norway	Y	O	ii (2 years)	i	i	Y	N	Y	Y	N	
Oman	Y	O	ii (2 years)	Y	i	Y	N	Y	Y	N	
Pakistan	Y	O	ii (2 years)	i	i	Y	N	Y	N	N	
Papua New Guinea	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Peru	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	Y	iii
Philippines	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority	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?				
Poland	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Portugal	Y	O	ii (2 years)	Y	i	Y	ii	Y	N	N	
Romania	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Russia	Y	O	ii (2 years)	Y	i	Y	ii	Y	Y	N	
Senegal	Y	O	ii (2 years)	i	i	Y	ii	Y	Y	N	
Serbia	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Singapore	Y	O	ii (2 years)	i	i	Y	N	Y	N	N	
Slovak Republic	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Slovenia	Y	N	ii (2 years)	Y	i	Y	ii	Y	Y	N	
South Africa	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	Y	iii
Spain	Y	O	Y	i	i	Y	Y	Y	Y	N	
Sri Lanka	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	N	
Sweden	Y	N	i	Y	i	Y	N	Y	Y	N	
Switzerland	Y	O	Y	i	i	Y	Y	Y	Y	Y	i
Tanzania	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Thailand	Y	O	ii (2 years)	i	i	Y	ii	Y	Y	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority	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?				
Trinidad and Tobago	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Tunisia	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	N	
Turkey	Y	O	ii (2 years for Canada / 1 year for Turkey (protocol)	Y	i	Y	iii	Y	Y	N	
Ukraine	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
United Arab Emirates	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
United Kingdom	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
United States	Y	O	i	i	i	Y	N	Y	Y	Y	ii
Uzbekistan	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Venezuela	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	Y	iii
Viet Nam	Y	O	ii (2 years)	Y	i	Y	iii	Y	Y	N	
Zambia	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	N	
Zimbabwe	Y	O	ii (2 years for Canada / 3 years for Zimbabwe)	Y	i	Y	iii	Y	Y	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a 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?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?
		If yes, submission to either competent authority	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?			

* Footnote by Turkey:
The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.
Footnote by all the European Union Member States of the OECD and the European Union:
The Republic of Cyprus is recognized by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Annex B
MAP Statistics pre-2016 cases

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	number of pre-2016 cases closed during the reporting period by outcome:										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	221	0	3	3	14	0	79	2	2	0	1	117	27.77
Others	35	0	0	3	1	0	3	0	7	0	0	21	27.10
Total	256	0	3	6	15	0	82	2	9	0	1	138	27.69

Notes:

Computation of average time taken:
- Start Date = MAP request received date;
- End Date = Date of closing letter to taxpayer.

Column 12: Other jurisdiction raised adjustment beyond the time limitation provided in the convention stipulating fraud

Annex C
MAP Statistics post-2015 Cases

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome:										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	107	0	0	1	1	0	35	0	0	0	0	70	1.10
Others	0	25	0	1	2	0	2	0	0	0	0	0	20	6.40
Total	0	132	0	1	3	1	2	35	0	0	0	0	90	1.71

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
Look-back period	Period starting from 1 January 2015 for which Canada wished to provide information and requested peer input
MAP guidance	Information Circular on Competent Authority Assistance Under Canada's Tax Conventions (IC71-17R5)
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	*OECD Model Tax Convention* on Income and on Capital as it read on 15 July 2014
OECD transfer pricing guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Reporting period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2016
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

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Addressing base erosion and profit shifting is a key priority of governments around the globe. In 2013, OECD and G20 countries, working together on an equal footing, adopted a 15-point Action Plan to address BEPS. Beyond securing revenues by realigning taxation with economic activities and value creation, the OECD/G20 BEPS Project aims to create a single set of consensus-based international tax rules to address BEPS, and hence to protect tax bases while offering increased certainty and predictability to taxpayers. In 2015, the OECD and G20 established an Inclusive Framework on BEPS to allow interested countries and jurisdictions to work with OECD and G20 members to develop standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package.

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The minimum standard is complemented by a set of best practices.

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

Consult this publication on line at ***http://dx.doi.org/10.1787/9789264282612-en***.

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