OECD/G20 Base Erosion and Profit Shifting Project

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 85 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

As a result, the OECD established the 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 125 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on BEPS on 8 May 2019 and prepared for publication by the OECD Secretariat.

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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 an extensive tax treaty network with over 95 tax treaties. Canada has an established MAP programme and has long-standing and large experience with resolving MAP cases. It has a large MAP inventory, with a very large number of new cases submitted each year and almost 180 cases pending on 31 December 2017. Of these cases, 80% concern attribution/allocation cases. The outcome of the stage 1 peer review process was that overall Canada met most of the elements of the Action 14 Minimum Standard. Where deficiencies were identified, Canada worked to address most of them, which has been monitored in stage 2 of the process. In this respect, Canada has solved almost all identified deficiencies.

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

- More than 70% of its tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, whereby nearly all of these treaties do not contain he equivalent of Article 25(1), second sentence, as the time limit for the submission of MAP requests is shorter than three years
- Almost 40% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Canada signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Furthermore, Canada opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Canada reported that it has put a plan in place for the bilateral renegotiations of these treaties, which consists of two phases. In phase one there will be a focus on those treaty partners that are members of the Inclusive Framework on BEPS and for which that MAP cases are expected to arise on a regular basis. For these treaty partners a prioritisation will be made on the basis of the number of the required amendments to bring the relevant treaty in line with the BEPS minimum standard, including the Action 14 Minimum Standard. Once the negotiations with these treaty partners are finalised, Canada will further initiate bilateral negotiations with the treaty partners that fall in the category listed for phase II, thereby prioritising those partners that are members of the Inclusive Framework on BEPS. Furthermore, Canada reported that, in line with its plan is currently in negotiations with four treaty partners and has established preliminary contacts with another treaty partner to initiate such negotiations.

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

Canada also meets most of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases. Furthermore, Canada has in place a documented notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Canada also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice. In its stage 1 peer review it was identified that this guidance does not specify clearly whether Canada will also grant access to MAP for cases where taxpayers and CRA have entered into an audit settlement. In the meantime, Canada has prepared an update to its MAP guidance that will clarify this when it is published. In addition, Canada has in place an administrative dispute settlement/resolution process that is independent from the audit and examination functions and which can only be accessed through a request from the taxpayer. Taxpayers will be granted access to MAP if a settlement is reached through this process but Canada's competent authority will be bound by the solution found at that level. While the effects of this process on MAP are clarified in Canada's MAP guidance, they are not addressed in the public guidance on this process, which was identified in its stage 1 peer review report. Canada, however, has not yet updated its guidance on this process.

Concerning the average time needed to close MAP cases, the MAP statistics for Canada for the period 2016-17 are as follows:

2016-17	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017	Average time to close cases (in months)*
Attribution/allocation cases	225	171	255	141	22.08
Other cases	37	44	46	35	14.46
Total	**262**	**215**	**301**	**176**	**20.91**

*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 when the MAP request was received and as the end date the date of the closing letter sent to the taxpayer.

The number of cases Canada closed in 2016 or 2017 is higher than the number of all new cases started in those years. Its MAP inventory as per 31 December 2017 decreased as compared to its inventory as per 1 January 2016. During these years, MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 20.91 months and remained stable over time. The average time to close attribution/allocation cases is longer (22 months) than the average time to close other cases (15 months).

Furthermore, Canada meets all of the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Canada's competent authority operates fully independently from the audit function of the tax authorities and adopts 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.

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. In addition, Canada actively monitors the implementation of such agreements.

Reference

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

Introduction

Available mechanisms in Canada to resolve tax treaty-related disputes

Canada has entered into 96 tax treaties on income (and/or capital), of which 93 are in force.[1] These 96 treaties apply to an equal number of jurisdictions. All of these provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 21 of the 96 treaties provide for an arbitration procedure that supplements the mutual agreement procedure.[2]

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 cases, the competent authority Services Division ("**CASD**"), which is part of the International, Large Business and Investigations Branch of the CRA. Canada's 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. Non-taxpayer specific MAP cases (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, 2017)) is generally the responsibility of the Legislative Policy and Regulatory Affairs Branch, Legislative Policy Directorate, Competent Authority Policy and Treaty Advisory Section.

Furthermore, the Information Circular on Competent Authority Assistance under Canada's Tax Conventions (IC71-17R5) ("**MAP Guidance**") contains information relevant to taxpayers on the operation of CASD and information about the mutual agreement procedure. This guidance is available at:

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

Developments in Canada since 1 January 2017

Developments relating to the tax treaty network

In the stage 1 peer review report of Canada it is reflected that it has signed a new treaty with Israel. This treaty entered into force in 2017 and replaced the existing treaty that was in effect until 31 December 2016. An arrangement was also entered into between the Trade and Economic Offices of Canada and Chinese Taipei, which has the same substantive effect as a tax treaty. This arrangement entered into effect in 2017. It was in the stage 1 peer review report also noted that three of Canada's tax treaties have not entered into force. This concerns treaties with Lebanon (1998), Madagascar (2016) and Namibia (2010). Canada reported that the entry into force of these treaties is still pending. In more detail, Canada completed the ratification process for the treaties with Lebanon and Namibia. With respect to the treaty with Madagascar, Canada reported that the necessary implementing legislation has been introduced in Parliament as Bill S-6 on 16 October 2018.

Furthermore, on 7 June 2017 Canada signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**"), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. It further opted for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. With the signing, Canada also submitted its list of notifications and reservations to the Multilateral Instrument.[3] In relation to the Action 14 Minimum Standard, Canada reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.[4] Canada also reserved, pursuant to Article 16(5)(c), the right not to apply the second sentence of Article 16(2) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to provide that mutual agreements shall be implemented notwithstanding any time limits in the domestic law of the contracting states.[5] These reservations are in line with the requirements of the Action 14 Minimum Standard. In this respect, Canada reported that a government legislative bill (Bill C-82) was introduced in Canada's parliament on 20 June 2018.[6] When this bill is passed by the parliament, Canada reported it will be in a position to ratify the Multilateral Instrument.

In addition and specifically relating to the BEPS minimum standards, Canada stressed it remains committed to them. For those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Canada reported it has put a plan in place to *inter alia* bring its treaties in line with this standard. This plan entails reaching out to its treaty partners for the initiation of bilateral negotiations, which consists of two phases.

In phase I Canada will focus on treaty partners that are members of the Inclusive Framework on BEPS and under which treaties MAP cases are expected to arise on a regular basis. Canada will thereby prioritise negotiations with those treaty partners on the basis of the number of required amendments to bring the relevant treaty in line with the requirements under the BEPS minimum standards, including the Action 14 Minimum Standard. In this respect, Canada identified 16 treaties that will be addressed in phase I. For four of the 16 treaties bilateral negotiations are already initiated or are about to be initiated. Furthermore, for another treaty Canada expects to reach out to the relevant treaty partner for the purpose of developing a joint plan of action to bring the treaty in line with *inter alia* the Action 14 Minimum Standard. For the remaining 11 treaty partners, Canada will strive to update them via the Multilateral Instrument to ensure that these treaties will meet the requirements under this standard. Where the relevant treaties will not be modified by that instrument, Canada reported it will approach the treaty partner to solve the matter bilaterally once the pending or envisaged negotiations are finalised.

Phase II will commence once the negotiations with the jurisdictions for which the treaty is addressed in phase I are completed. This concerns 37 tax treaties and includes those treaty partners with which the number of MAP cases is extremely low or non-existent. For these 37 treaties, a prioritisation will be made for those 24 treaty partners that are members of the Inclusive Framework on BEPS.

Other developments

Finally, Canada indicated that:

- it is currently updating its MAP guidance to reflect Canada's implementation of the BEPS minimum standards and the ratification of the Multilateral Instrument
- it is making changes to its inventory management system to ensure an accurate reporting of MAP statistics and changes to standard correspondence templates
- it has initiated and established electronic secure exchange of documents with several treaty partners for efficiency.

Basis for the peer review process

Outline of 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.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Canada's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 5 September 2017. This report identifies the strengths and shortcomings of Canada in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.[7] Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Canada. In this update report. Canada reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. This update report forms the basis for the completion of the peer review process in respect of Canada.

Outline of the treaty analysis

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.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process was for Canada launched on 5 December 2016, with the sending of the questionnaires to Canada and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Canada in May 2017, with the subsequent approval by the BEPS Inclusive Framework on 5 September 2017. On 6 September 2018, Canada submitted its update report, which initiated stage 2 of the process.

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 and also requested peer input relating to this period. The period for evaluating Canada's implementation of this standard ranges from 1 January 2016 up to 31 December 2016 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2017 and depicts all developments as from that date until 31 August 2018. Next to its assessment on the compliance with the Action 14 Minimum Standard, Canada also asked for peer input on best practices.[8]

In total, 18 peers provided input during stage 1: Australia, Belgium, Denmark, France, Germany, India, Ireland, Italy, Japan, Korea, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States.

In stage 1 these peers represented more than 90% of post-2015 MAP cases that started with Canada in 2016. During stage 2, the same peers provided input. Furthermore, also Austria, Singapore and Slovenia provided input during stage 2. For stage 2, these peers represent approximately 87% of the post-2015 MAP cases that started with Canada in 2016 or 2017.[9]

Input was also received from taxpayers during stage 1.

Broadly all peers indicated having good working relationships with Canada in regard of MAP, some of them emphasising that Canada's competent authority is constructive to resolve MAP cases. Specifically with respect to stage 2, the peers reported the same experience and referred to professional and efficient working relationship.

Input by Canada and cooperation throughout the process

During stage 1, 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[10]
- MAP statistics[11] according to the MAP Statistics Reporting Framework[12] (see below).

Concerning stage 2 of the process, Canada submitted its update report slightly after the deadline and it contained basic information. Canada was co-operative during stage 2 and the finalisation of the peer review process.

Finally, Canada is an active member of the FTA MAP Forum and has shown good co-operation 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[13] for all jurisdictions that asked for it.

Overview of MAP caseload in Canada

The analysis of Canada's MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2016. For stage 2 the period ranges from 1 January 2017 to 31 December 2017. Both periods are taken into account in this report for analysing the MAP statistics of Canada. The analysis of Canada's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017 (the "**Statistics Reporting Period**").

According to the statistics provided by Canada, its MAP caseload during this period was as follows:

2016-17	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017
Attribution/allocation cases	225	171	255	141
Other cases	37	44	46	35
Total	262	215	301	176

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

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 (OECD, 2016) to make dispute resolution mechanisms more effective ("**Terms of Reference**").[14] Apart from analysing Canada's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Canada, both during stage 1 and stage 2. 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 basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Canada relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, which include a general description of the changes in the recent development sections.

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

Notes

1. The tax treaties Canada has entered into are available online at: www.fin.gc.ca/treaties-conventions/in_force--eng.asp. The treaties that are signed but have not yet entered into force are with Lebanon (1998), Madagascar (2016) and Namibia (2010). This concerns new treaties with treaty partners for which currently no tax treaty is in force. Annex A includes an overview of Canada's tax treaties with respect to the mutual agreement procedure.

2. This concerns treaties with Chile, Ecuador, France, Germany, Greece, Hong Kong (China), Iceland, Ireland, Italy, Kazakhstan, Mexico, Moldova, Mongolia, Namibia, the Netherlands, Peru, South Africa, Switzerland, the United Kingdom, the United States and Venezuela. See for a discussion element C.6 of this report. Reference is made to Annex A for the overview of Canada's tax treaties that provide for an arbitration procedure.

3. Available at: www.oecd.org/tax/treaties/beps-mli-position-canada.pdf.

4. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, Canada reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified".

5. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(c) of the Convention, Canada reserves the right for the second sentence of Article 16(2) not to apply to its Covered Tax Agreements on the basis that for the purposes of all of its Covered Tax Agreements: (i) it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS package by accepting, in its bilateral treaty negotiations, a treaty provision providing that:

   A) the Contracting Jurisdictions shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting Jurisdictions after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have been attributable to the permanent establishment (this provision shall not apply in the case of fraud, gross negligence or wilful default); and

   B) the Contracting Jurisdictions shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but that by reason of the conditions referred to in a provision in the Covered Tax Agreement relating to associated enterprises have not so accrued, after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have accrued to the enterprise (this provision shall not apply in the case of fraud, gross negligence or wilful default)".

6. Available at: https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=9898204&Language=E.

7. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-canada-stage-1-9789264282612-en.htm.

8. This report is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: http://oe.cd/bepsaction14.

9. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework.

10. Available at www.oecd.org/tax/dispute/Canada-Dispute-Resolution-Profile.pdf.

11. The 2016 and 2017 MAP statistics of Canada are included in Annex B and C of this report.

12. 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.

13. This report is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: http://oe.cd/bepsaction14.

14. 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.

References

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

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms*, *Peer Review Documents*, OECD, Paris, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

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

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

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

Current situation of 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 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. One of these two remaining treaties does not include the words "doubts" and "interpretation". The other treaty only does not include the reference to "interpretation". For this reason, both treaties are considered not having the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.

3. Canada indicated that even though such words are missing in the treaty provision, this does not obstruct Canada from entering into interpretative MAP agreements on these issues.

4. Peers that provided input 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.

Recent developments

Multilateral Instrument

5. Canada signed the Multilateral Instrument and has introduced this instrument in parliament in June 2018.

6. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

7. In regard of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Canada listed both as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), for all of them a notification that they do not contain a provision described in Article 16(4)(c)(i). Both relevant treaty partners are a signatory to the Multilateral Instrument, listed their tax treaty with Canada under that instrument and also made a notification on the basis of Article 16(6)(d)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these treaties, modify both treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Other developments

8. There are no other developments regarding element A.1, which also follows that the Multilateral Instrument will upon entry into force for these treaties, modify both treaties that currently do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Peer input

9. Two peers confirmed that its treaty with Canada with respect to element A.1 will be modified by the Multilateral Instrument following which the MAP provision will be in line with the Action 14 Minimum Standard.

Anticipated modifications

10. Canada reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	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. Both treaties are expected to be modified by the Multilateral Instrument to contain the required provision.	Canada should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.

[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.

11. 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

12. 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

13. 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 28 October 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. Canada's competent authority, the foreign tax administration and the relevant TSO have agreed to accept the APA rollback request

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).

14. 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.

Recent developments

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

Practical application of roll-back of bilateral APAs

Period 1 January 2015-31 December 2016 (stage 1)

16. In practice, taxpayers extensively request for roll-back of bilateral APAs in Canada and Canada's 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). Canada's 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.

17. Several peers mentioned that Canada provides roll-back of bilateral APAs in appropriate cases. One peer indicated that an APA was reached with Canada's 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.

18. 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.

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

19. Canada reported that since 1 January 2017 it has received eight requests for roll-back of bilateral APAs, involving two treaty partners. Canada further reported that the roll-back was granted for all years except for one year that was statute barred. One of the relevant treaty partners confirmed that the relevant roll-back requests were accepted and the other one did not comment on element A.2. Another peer mentioned having experience of Canada granting a roll-back in a bilateral APA since 1 January 2017. Two other peers mentioned not having received any roll-back request in discussing bilateral APAs with Canada since 1 January 2017. One last peer referred to its own APA programme which does not allow for roll-back of bilateral APAs.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

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

References

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

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

Part B

Availability and access to MAP

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

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

21. 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

22. Out of Canada's 96 tax treaties, 26 contain a provision equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 Final Report (OECD, 2015b), allowing taxpayers to submit a MAP request 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.

23. The 70 remaining tax treaties are considered not to contain the full equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 66 of these 70 treaties are considered to be in line with this part of element B.1:

- 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)

24. The non-discrimination provision in the remaining four treaties are almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2017) and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention is therefore not clarified by the absence of or a limited scope of the non-discrimination article, following which all four treaties are considered not to be in line with this part of element B.1.

25. With respect to these four treaties, 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, however, is 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.

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

26. Out of Canada's 96 tax treaties, 16 treaties contain the equivalent to Article 25(1), second sentence of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty. The remaining 80 treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for MAP requests	8
Filing period less than three years for a MAP request (two years)	70
Filing period less than three years for a MAP request, with a distinction per treaty partner (two and one year)	1
Filing period less than three years for a MAP request, but only for one of the treaty partners (two years)	1

Peer input (stage 1)

27. Several peers 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.

Practical application

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

28. 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 in stage 1 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 disagrees with the interpretation of the treaty as described above by the peer and 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. Canada reported that it will address this issue in the update of its MAP guidance, which is discussed in paragraph 40 below.

29. Canada reported that it grants access to MAP cases in cases where a court decision has already been rendered. Canada explained that after an Appeals Branch has rendered a decision, taxpayers can submit the issue to Canada's competent authority (or if already submitted, ask that the competent authority to take up the case again). However, Canada clarified that if the taxpayer agrees with the Appeals Branch decision, Canada's competent authority will only present the case to the other competent authority to enable the latter to provide for correlative relief. Finally, as specified in its MAP Guidance, in cases where a court decision has been rendered, Canada's competent authority is not allowed to deviate from such decision but would instead provide the other competent authority with the details of, and rationale for, that decision.

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

30. For the eight treaties that do not contain a filing period to submit a MAP request, Canada confirmed that, despite the absence of such a period, 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 and on whether the treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. This is further discussed under element D.3.

Recent developments

Multilateral Instrument

31. Canada signed the Multilateral Instrument and has introduced this instrument in parliament in June 2018.

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

32. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and allowing the submission of MAP

requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Article 16(4)(a)(i) will not take effect for a tax treaty if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

33. With the signing of the Multilateral Instrument, Canada reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.[1] In this reservation, Canada declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report. It subsequently declared to implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The presence and application of such process will be further discussed under element B.2.

34. In view of the above, following the reservation made by Canada, those four tax treaties identified in paragraphs 21-23 above that are considered not containing the equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

35. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

36. In regard of the 72 treaties identified in paragraph 26 above that contain a filing period for MAP requests of less than three years, Canada listed 57 as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), for 56 of them a notification that it does not contain a provision described in Article 16(4)(a)(ii). Of the 56 treaty partners, 14 are not a signatory to the Multilateral Instrument and two did not list their treaty with Canada as a covered tax agreement under that instrument. The remaining 40 treaty partners also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, the Multilateral Instrument will, upon on entry into force for these

treaties, modify 40 treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

37. Furthermore, with respect to the remaining one of the 57 listed covered tax agreements for which Canada did not make a notification on the basis of Article 16(6)(b)(i), Article 16(6)(b)(i) of the Multilateral Instrument stipulates that the second sentence of Article 16(1) – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – will supersede the provision of the covered tax agreement to the extent it is incompatible with that second sentence. Since this treaty does not provide for a filing period of at least three years at the level of all treaty partners, the provision of the covered tax agreement is considered to be incompatible with the second sentence of Article 16(1). The relevant treaty partner is a signatory to the Multilateral Instrument and listed its tax treaty with Canada as a covered tax agreement. Therefore, at this stage, this treaty will be superseded by the Multilateral Instrument upon its entry into force for this treaty, to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Other developments

38. Canada reported that it will update its notifications under the Multilateral Instrument to list another nine treaties as a covered tax agreement, for which it expects that these treaties will be modified by that instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. Based on the details provided by Canada and considering the position of the relevant treaty partners, the update of such notifications would result in six of the nine treaties being modified by the Multilateral Instrument with respect to the second sentence of Article 25(1). Taking this into account, out of the 72 tax treaties that currently do not contain a filing period of at least three years as from the first notification of action resulting in taxation not in the accordance with the provisions of the tax treaty, 47 are expected to be modified by the Multilateral Instrument upon the entry into force for the treaties concerned.

39. Furthermore, as is described in the Introduction, Canada is in negotiations with two treaty partners on the replacement of the existing treaty currently in force *inter alia* with a view to bring these treaties in line with the requirements under element B.1. For the remaining 25 treaties that are not in line with the requirements under this element and will not be modified or superseded by the Multilateral Instrument, Canada has put in place a plan for bringing these treaties in line with that Action 14 Minimum Standard. Three of these treaties will be addressed in phase I of this plan, whereby for one bilateral negotiations are envisaged to be initiated shortly.

Peer input (stage 2)

40. The four peers with whom the treaty with Canada is not in line with element B.1 and will not be modified by the Multilateral Instrument provided input. One peer reported that its treaty with Canada with respect to element B.1, first sentence, will be modified by the Multilateral Instrument which is however not in line with the analysis above. Another peer noted that as a result of a reservation to the Multilateral Instrument made by itself and Canada it intends to enter into bilateral negotiations with Canada in order to meet all the elements of the Action 14 Minimum Standard.

41. The remaining two peers provided input but did not comment on any contacts with Canada or any actions taken to bring its treaty with Canada in line with this element.

Anticipated modifications

42. For the remaining 22 treaties that are not in line with element B.1 and will not be modified by the Multilateral Instrument and for which no bilateral negotiates are envisaged, scheduled or pending, Canada reported that it will approach the treaty partners to bring these treaties in line with element B.1 when the prioritised negotiations as described above have been finalised. Regardless, Canada will, in line with its positions as put forward in its notifications under the Multilateral Instrument, include Article 25(1), first and second sentence, of the 2015 OECD Model Tax Convention, either as it read prior to or as amended by the Action 14 final report in all of its future tax treaties.

43. Canada further reported that its tax treaties require that a taxpayer who considers that they are being taxed not in accordance with the treaty must open the case with the competent authority of their jurisdiction of residence. Canada reported that requiring from taxpayers to submit a MAP request in their jurisdiction of residence is only adhering to the terms of the treaties. Canada however clarified that its competent authority will now accept, on an administrative basis, a request by an associated enterprise in another jurisdiction as timely notification of its related party in Canada when Canada's competent authority is made aware of the request by the other jurisdiction or the associated enterprise. In this situation, Canada further explained that the related party in Canada must still make a formal request for assistance in Canada in accordance with Canada's published MAP guidance in order for Canada's competent authority to work the case. Canada finally stated that this policy is clarified in an update to Canada's published MAP guidance currently underway. The peer that had reported the issue in stage 1 provided comments on this clarification provided by Canada. This peer mentioned that it would have preferred Canada to accept to work a MAP case with a MAP request submitted in the other jurisdiction to be sufficient. This peer however noted that the clarification to be provided in the update of Canada's MAP guidance will increase awareness of taxpayers of Canada's practice. Another peer suggested that Canada fully implements notification or consultation of with the competent authority of the other contracting state as the taxpayers will not be allowed to file a MAP request to the competent authority of either state, following Canada's reservation on this provision. Canada responded that notwithstanding its position on this issue, when its competent authority is notified of the existence of a MAP case it accepts this as a timely notification of a case for the purpose of the MAP article of the relevant treaty. Canada reported that it advises the Canadian taxpayer of the necessity of a formal request.

Conclusion

	Areas for improvement	Recommendations
[B.1]	One out of 96 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to or as amended by the Action 14 final report. This treaty will not be modified by the Multilateral Instrument to include the required provision. For this treaty bilateral negotiations are envisaged, scheduled or pending.	Canada should follow-up on its plan to initiate bilateral negotiations or continue such negotiations with respect to the treaty partner concerned to include the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. as amended in the final report of Action 14; or b. as it read prior to the adoption of final report of Action 14.

	Areas for improvement	Recommendations
	69 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these 69 treaties: • 47 are expected to be modified by the Multilateral Instrument to include the required provision, for six of them once Canada updated its notifications under that instrument • 22 will not be modified by that instrument to include the required provision. With respect to these 22 treaties: - For two negotiations are envisaged, scheduled or pending - For the remaining 20 no actions have been taken, but are included in the plan for renegotiations.	Canada should as quickly as possible update its notifications and accordingly ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in those 47 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for these treaties. For the remaining 22 treaties, Canada should: • Continue discussions or negotiations with two treaty partners on the inclusion of the required provision • Also request the inclusion of the required provision via bilateral negotiations in the remaining 20 treaties in accordance with its plan for renegotiations.
[B.1]	Three out of 96 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention 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 Of these three treaties: • Two are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, but not to include the equivalent of the first sentence Article 25(1) as amended by the Action 14 final report • One will not be modified by that instrument to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report One of these treaties is included in the list of treaties for which actions are envisaged, scheduled or pending. For the other two treaties no actions have been taken, but are included in the plan for renegotiations.	Canada should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in the two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for these treaties. Furthermore, for two of these treaties Canada should: • Follow-up on its plan to initiate bilateral negotiations or continue such negotiations with respect to one treaty partner to include the required provision. • Also request the inclusion of the required provision for the other treaty partner in accordance with its plan for renegotiations. In both instances this concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision. For the remaining treaty, Canada should request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. as amended in the Action 14 final report; or b. As it read prior to the adoption of the Action 14 final report; and • 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.

[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).

44. 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

45. As discussed under element B.1, out of Canada's 96 tax treaties, none currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, none of these tax treaties will, following Canada's reservation according to Article 16(5)(a) of the Multilateral Instrument, be modified by that instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

46. Canada reported it has a documented 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 Canada's 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. Canada reported that its 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 2014-15.[2]

Recent developments

47. There are no recent developments relating to element B.2.

Practical application

Period 1 January 2015-31 December 2016 (stage 1)

48. In stage 1, no peers indicated that it was aware of or that it had been consulted/notified of a case where Canada's 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 between 1 January 2015 and 31 December 2016.

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

49. Canada reported that its competent authority has not granted access to MAP in one case since 1 January 2017 because of a late submission. It further reported that it consulted with the relevant treaty partner and that both agreed to close the case. The 2016 and 2017 MAP statistics submitted by Canada show that several MAP cases were closed with the outcome "objection not justified". This, however, concerned a decision made by Canada's treaty partners and not by its own competent authority.

Anticipated modifications

50. Canada indicated that it will continue to notify the other competent authority in cases where its 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 via bilateral negotiations to allow for presentation of a case to either competent authority.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

51. 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

52. Out of Canada's 96 tax treaties, 57 contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention requiring their competent authorities to make a correlative adjustment in case a transfer pricing adjustment is made by the treaty partner. Furthermore, 17 tax treaties do not contain such a provision. The remaining 22 treaties contain a provision that is similar to Article 9(2) of the OECD Model Tax Convention, but

uses different or includes additional wording and therefore are not considered the equivalent thereof. These 22 treaties can be classified as follows:

- In 21 treaties the sentence "and the competent authorities of the contracting states shall, if necessary, consult each other" is not contained. However, in 16 of these 21 treaties the MAP provision defines that the competent authorities can discuss a transfer pricing case.
- In one treaty such a provision is contained, but this provision only enables a corresponding adjustment to be made through MAP.

53. Further to the above, five of Canada's 96 tax 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 in the Commentary on Article 25 of the OECD Model Tax Convention 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, which effectively sets a time limit within which a contracting state can make a (primary) adjustment to the profits of an enterprise.

Recent developments

Multilateral Instrument

54. Canada signed the Multilateral Instrument and has introduced this instrument in parliament in June 2018.

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

56. Canada has, pursuant to Article 17(3)(a), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Furthermore, it has, pursuant to Article 17(3)(c), reserved the right not to apply Article 17 in its entirety, such in follow-up to its reservation under Article 16(5)(c)(ii) not to incorporate via this instrument in its tax treaties the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (this provision relates to element D.3, reference is made to that element for

a further discussion). This latter reservation can be made on the basis that Canada shall accept in its tax treaties the equivalent of Article 9(2) of the OECD Model Tax Convention, provided it was able to agree with its treaty partners on the inclusion of such equivalent and the alternative provisions for Article 9(1) and Article 7(2), setting a time limit for making transfer pricing adjustments.

57. Based on these reservations, none of the 39 tax treaties identified in paragraph 52 above will be modified by the Multilateral Instrument to include the equivalent Article 9(2) of the OECD Model Tax Convention.

Practical application

58. 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 B.3, 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 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.

59. In this context, Canada explained that they consider Article 25(3) of the OECD Model Tax Convention as allowing competent authorities to consult on Article 9 matters of both taxpayer specific and general matters, by which in the absence of the equivalent of Article 9(2) of the OECD Model Tax Convention in tax treaties does not obstruct granting access to the MAP to transfer pricing cases. However, Canada also specified that when a MAP concerns a transfer pricing case, its 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 B.1).

60. 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 could be made by Canada, even when the underlying treaty does not include such a provision.

Period 1 January 2015-31 December 2016 (stage 1)

61. Canada reported that while it has received many MAP requests concerning transfer pricing cases, its competent authority has not denied access to MAP on the grounds that the case concerned a transfer pricing case between 1 January 2015 and 31 December 2016.

62. 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.

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

63. Canada reported that it has received many MAP requests concerning transfer pricing cases since 1 January 2017. Canada further reported that its competent authority did not deny access to MAP to any of these cases on the grounds that the case concerned a transfer pricing case.

64. Five peers stated in stage 2 that the update report provided by Canada fully reflects their experiences with Canada since 1 January 2017 and/or there are no additions to the previous input given in stage 1. Two peers confirmed that it is not aware of Canada denying

access to MAP. The other peers that provided input did not comment on this element. Two of them specified that they have not had any MAP cases with Canada since 1 January 2017.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

66. 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

67. 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.

68. 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 Canada's 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 principal purpose test included in a treaty.

Recent developments

69. There are no recent developments relating to element B.4.

Practical application

Period 1 January 2015-31 December 2016 (stage 1)

70. 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. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during this period.

71. 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.

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

72. Canada reported that since 1 January 2017 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. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during this period.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

74. 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

Audit settlements

75. Audit settlements are available in Canada, and Canada reported that its competent authority will not preclude access to MAP in case of an audit settlement. As will be further discussed in element B.10, this was not clearly addressed in Canada's MAP Guidance and was clarified in the recent update of such guidance.

Administrative or statutory dispute settlement/resolution process

76. Canada has an administrative or statutory dispute settlement/resolution process in place. 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. However, this process does not allow 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, Canada's competent authority will only present the case to the other competent authority to seek correlative relief.

Recent developments

77. Canada reported that the recent developments relating to element B.5 are limited to the update of its MAP guidance currently under way, which is further discussed under element B.10.

Practical application

Period 1 January 2015-31 December 2016 (stage 1)

78. Canada reported that between 1 January 2015 and 31 December 2016 it did not deny 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. Its competent authority, however, did not track whether it received MAP requests of this kind during that period.

79. 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.

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

80. Canada reported that since 1 January 2017 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. Its competent authority, however, did not track whether it received MAP requests of this kind during that period.

81. Five peers stated in stage 2 that the update report provided by Canada fully reflects their experiences with Canada since 1 January 2017 and/or there are no additions to the previous input given in stage 1. Two peers confirmed that it is not aware of Canada denying access to MAP. The other peers that provided input did not comment on this element. Two of them specified that they have not had any MAP cases with Canada since 1 January 2017.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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

Legal framework on access to MAP and information to be submitted

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

Recent developments

85. Canada reported that the recent developments relating to element B.6 only relate to the update of its MAP guidance currently under way, which is further discussed under element B.8.

Practical application

Period 1 January 2015-31 December 2016 (stage 1)

86. Canada reported that it did not limit access to the MAP on the grounds that insufficient information was provided between 1 January 2015 and 31 December 2016 while it received many MAP requests from taxpayers during this period. In practice, if a taxpayer does not include all information required as per Canada's MAP Guidance in its MAP request, Canada's 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 its 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.

87. 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 Canada's 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.

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

88. Canada reported that it has not limited access to the MAP on the grounds that insufficient information was provided since 1 January 2017 while it has received many MAP requests from taxpayers since that date. Canada reported that it did not alter the process described above and that its competent authority continues to follow such a process if the MAP request does not contain all required information.

89. Five peers stated in stage 2 that the update report provided by Canada fully reflects their experiences with Canada since 1 January 2017 and/or there are no additions to the previous input given in stage 1. Two peers confirmed that it is not aware of Canada denying access to MAP. The other peers that provided input did not comment on this element. Two of them specified that they have not had any MAP cases with Canada since 1 January 2017.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

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

Current situation of Canada's tax treaties

92. 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. The remaining 14 treaties do not contain a provision that is based on, or equivalent to, Article 25(3), second sentence, of the OECD Model Tax Convention.

93. Several peers 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.

Recent developments

Multilateral Instrument

94. Canada signed the Multilateral Instrument and has introduced this instrument in parliament in June 2018.

95. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

96. In regard of the 14 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Canada listed 12 as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), for all of them a notification that they do not contain a provision described in Article 16(4)(c)(ii). All 12 relevant treaty partners are a signatory to the Multilateral Instrument and listed their treaty with Canada as a covered tax agreement, but only 11 also made a notification pursuant to Article 16(6)(d)(ii). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these treaties, modify 11 of the 14 treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Other developments

97. Canada reported that it will update its notifications under the Multilateral Instrument to list another nine treaties as a covered tax agreement, for which it expects that the remaining three treaties will be modified by that instrument to include Article 25(3), second sentence, of the OECD Model Tax Convention. Based on the details provided by Canada and considering the position of the relevant treaty partners, the update of such notifications would result in two of these treaties being modified by the Multilateral Instrument with respect to the second sentence of Article 25(3).

Peer input

98. All peers with which the treaty with Canada is not in line with the requirements under element B.7 and will not be modified by the Multilateral Instrument did not provide input.

Anticipated modifications

99. For the remaining treaty that is not in line with element B.7 and will not be modified by the Multilateral Instrument and for which no bilateral negotiates are envisaged, scheduled or pending, Canada reported that this treaty falls in phase II of its plan for renegotiations.

Canada therefore will approach the relevant partner once the other negotiations have been finalised.

100. Regardless, Canada reported it will include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	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. Of these 14 treaties: • 13 are expected to be modified by that instrument to contain the required provision, for one of them once Canada updated its notifications and one once the relevant treaty partner updates its notifications under that instrument • One will not be modified by that instrument. For this treaty no actions have been taken, but is included in the plan for renegotiations.	Canada should as quickly as possible update its notifications and accordingly ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those 13 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For the remaining treaty, Canada should request the inclusion of the required provision in accordance with its plan for renegotiations.

[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.

101. 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

102. Canada's rules, guidelines and procedures relating to the MAP are included in Canada's MAP Guidance.[3] 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

k. consideration of interest and penalties.

103. 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.[4]

104. In addition to this, Canada publishes annually a MAP Program report[5] 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 2014-15.[6]

105. 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.

106. 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

107. 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.[7] 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
- ☑ 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.

108. 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
- a statement indicating whether the taxpayer has filed a notice of objection or a notice of appeal in Canada.

109. Furthermore, with respect to the availability of arbitration, Canada has agreed with the United Kingdom[8] and the United States[9] that both competent authorities must be provided with the required information, as a prerequisite for cases to become eligible for arbitration.

Recent developments

110. Canada reported that it is currently drafting an updated version of its MAP guidance, in order to address Canada's implementation of the Action 14 Minimum Standard and other BEPS minimum standards, as well as the ratification of the Multilateral Instrument. In addition, Canada reported that the updated guidance will provide information on the following specific items:

- the process to be followed by taxpayers for keeping fiscal years open to allow the implementation of MAP agreements
- information and documentation requirement for all MAP requests, and for requests for refunds of withholding taxes, where applicable
- the relationship between MAP and audit settlements, to clarify that audits settlements do not preclude taxpayers from accessing MAP and will not prevent a MAP agreement that could vary the audit settlement.

Anticipated modifications

111. Canada reported that it envisages publishing the updated guidance currently under preparation soon on the Canada.ca website.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

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

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

112. 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[10] further promotes the transparency and dissemination of the MAP programme.

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

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

https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic71-17r5.html

114. Canada's MAP guidance was last updated in 2005. In stage 1, it was 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

115. Canada's MAP profile is published on the website of the OECD.[11] 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.

Recent developments

116. Canada reported that since 1 January 2017, the users are redirected to the Canada.ca website when requesting the CRA website. Canada further explained that the information that was on the CRA website was transferred to a new website with a Canada.ca address. As a result of this transfer, Canada's MAP guidance can now be found by searching for "mutual agreement procedure" in the search engine of Canada.ca, the website dedicated to the Canadian government, including the Canada Revenue Agency.

Anticipated modifications

117. Canada indicated that it envisages publishing the updated version of its MAP Guidance under preparation soon on the Canada.ca website. Canada clarified that the redirection from the CRA website is scheduled to end in March 2019 and that the public will have go to the Canada.ca website to access CRA tax information. One peer suggested that Canada continues to provide the public with redirection or notify termination by providing a pop-up on Canada.ca website. Canada responded that all CRA information has been located on a

general Canada.ca website and that the latter website, in addition to tax information, provides the public with a single point of access to a wide range of government services and benefits. Canada further clarified that a decision to continue to reroute the public to the new site after March 2019 would not only have to take into account the former CRA site, but also the other government sites that are now consolidated on this website and that decisions with respect to the operation and maintenance of the site are made by a Canadian government department that operates independently from the CRA.

118. Canada further reported that it is currently updating its MAP profile to provide more detailed responses, to update the location of publicly available information and to note the possible effect of the authorised OECD approach ("AOA") contained in Article 7 of the 2010 version of the OECD Model Tax Convention on the MAP process.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

119. 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

120. Canada's MAP guidance provides 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 Canada's competent authority.[12]

121. Paragraph 212 of Canada's guidance on international transfer pricing[13] 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

122. 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 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, Canada's competent authority will only present the case to the other competent authority to seek correlative relief. In addition, Canada's MAP programme 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.

123. Guidance P148 on Objection and appeal rights under the Income Tax Act[14] 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.

124. 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 Canada's 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

125. 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.

Recent developments

126. As discussed under element B.8, Canada reported that the updated guidance currently under preparation will provide information on the relationship between MAP and audit settlements, to clarify that audits settlements do not preclude taxpayers from accessing

MAP and will not prevent a MAP agreement. However, Canada reported that it has not yet updated its guidance on Objection and appeal rights and that this guidance still does not contain information on the consequences of resolving issues at CRA Appeals on the MAP process.

Anticipated modifications

127. Canada indicates that it envisages publishing the MAP guidance under preparation soon.

Conclusion

	Areas for improvement	Recommendations
[B.10]	The MAP guidance does not include clear information on the relationship between MAP and audit settlements.	Canada should follow its stated intention to clarify that taxpayers are not precluded access to MAP in cases 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. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, Canada reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified". An overview of Canada's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-canada.pdf.
2. Available at: www.cra-arc.gc.ca/tx/nnrsdnts/cmp/mp_rprt_2014-2015-eng.html (accessed on 10 September 2017).
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/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

5. Available at www.cra-arc.gc.ca/tx/nnrsdnts/cmp/cs_mp-eng.html.
6. Available at www.cra-arc.gc.ca/tx/nnrsdnts/cmp/mp_rprt_2014-2015-eng.html.
7. Available at www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
8. The agreement can be found at www.fin.gc.ca/treaties-conventions/uk-ru-1-eng.asp.
9. 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.
10. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
11. Available at www.oecd.org/tax/dispute/Canada-Dispute-Resolution-Profile.pdf.
12. See paragraph 40 of Canada's MAP Guidance.
13. Available at www.cra-arc.gc.ca/E/pub/tp/ic87-2r/ic87-2r-e.html.
14. Available at www.cra-arc.gc.ca/E/pub/tg/p148/p148-e.html.

Reference

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

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

OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264241633-en.

Part C

Resolution of MAP cases

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

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

128. 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, 2017a), 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

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

Recent developments

130. There are no recent developments with respect to element C.1.

Anticipated modifications

131. Canada reported that it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[C.1]	-	-

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

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).

132. 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

133. 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.

134. The FTA MAP Forum has agreed on rules for the reporting of MAP statistics ("**MAP Statistics Reporting Framework**") for MAP requests submitted on or after 1 January 2016 ("**post-2015 cases**"). Also, for MAP requests submitted prior to that date ("**pre-2016 cases**") the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. 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. For the year 2016, 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. For the year 2017 Canada reported that it has made all efforts to reach out to its treaty partners and that it was successful towards matching all MAP statistics with its treaty partners for 2017. Seven peers provided input specifically on the matching of MAP statistics with Canada. All of them mentioned that they were able to match successfully their MAP statistics with Canada. One of them specified that it experienced no difficulty in doing so. Another peer reported that there was no matching process for the year 2017 but that the statistics were matched on a case-by-case basis. One last peer also clarified that the matching was achieved after exchanging opinions with Canada.

135. Based on the information provided by Canada's MAP partners, its post-2015 MAP statistics for 2016 and 2017 actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

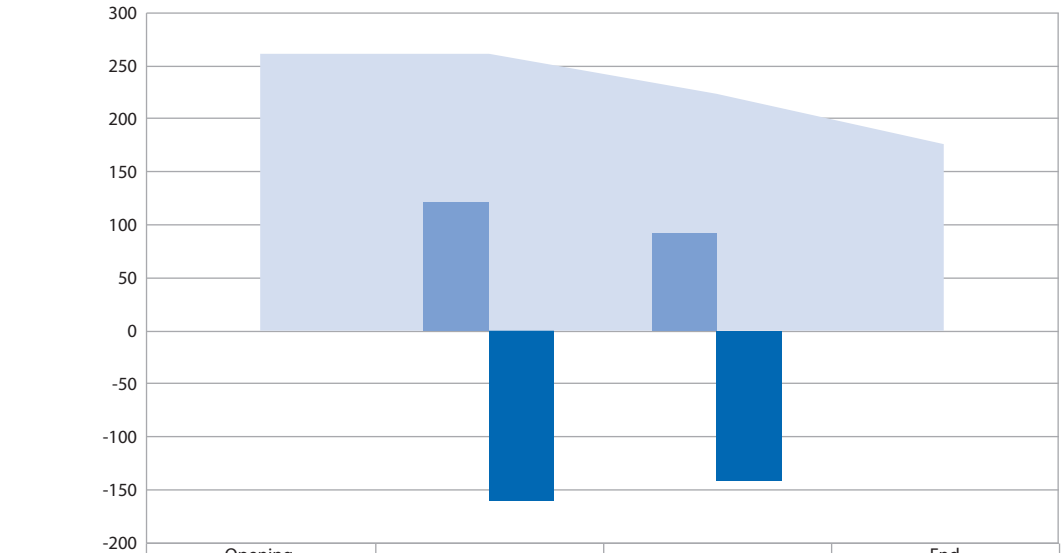
136. The CRA has an internal management tracking system in place to measure performance with respect to MAP. This concerns measuring whether the overall timeframes of issuing a position paper within six months of receipt of a complete MAP request were met, as also the ability to reach an agreement within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

Analysis of Canada's MAP caseload

Global overview

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

Figure C.1. **Evolution of Canada's MAP caseload**

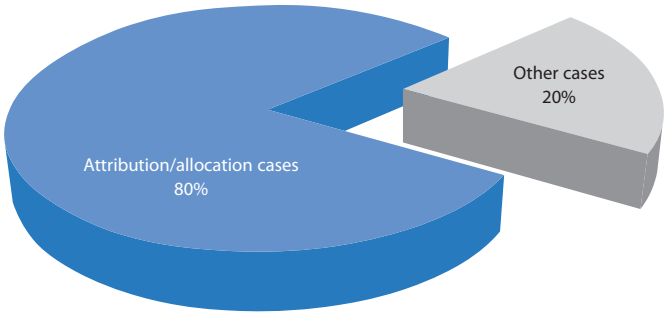


	Opening inventory on 1/1/2016	2016	2017	End inventory on 31/12/2017
Inventory	262	262	224	176
Cases started		122	93	
Cases closed		-160	-141	

138. At the beginning of the Statistics Reporting Period Canada had 262 pending MAP cases, of which 225 were attribution/allocation cases and 37 other MAP cases.[4 5] At the end of the Statistics Reporting Period, Canada had 176 MAP cases in its inventory, of which 141 are attribution/allocation cases and 35 are other MAP cases. Canada's MAP caseload was reduced with 33% during the Statistics Reporting Period, while the caseload of attribution/allocation case decreased by 37% and the number of other cases decreased by 5 % over this period.

139. The breakdown of the end inventory can be shown as follows:

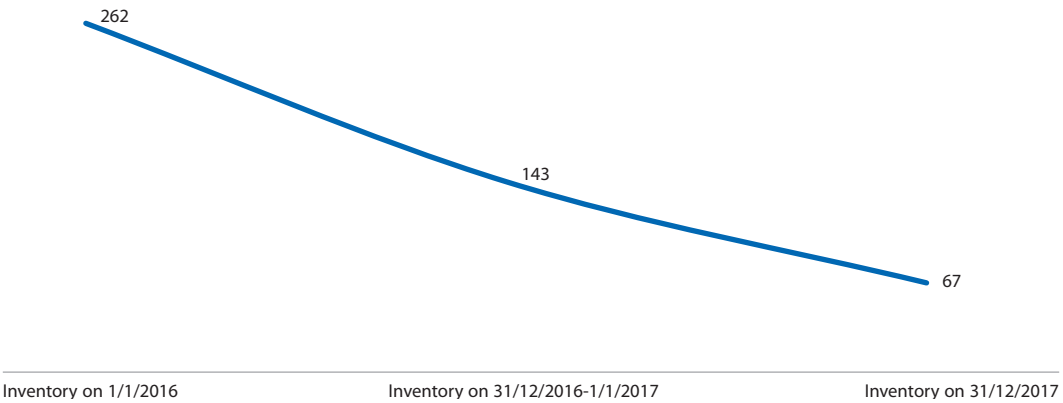
Figure C.2. **End inventory on 31 December 2017 (176 cases)**



Pre-2016 cases

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

Figure C.3. **Evolution of Canada's MAP inventory Pre-2016 cases**



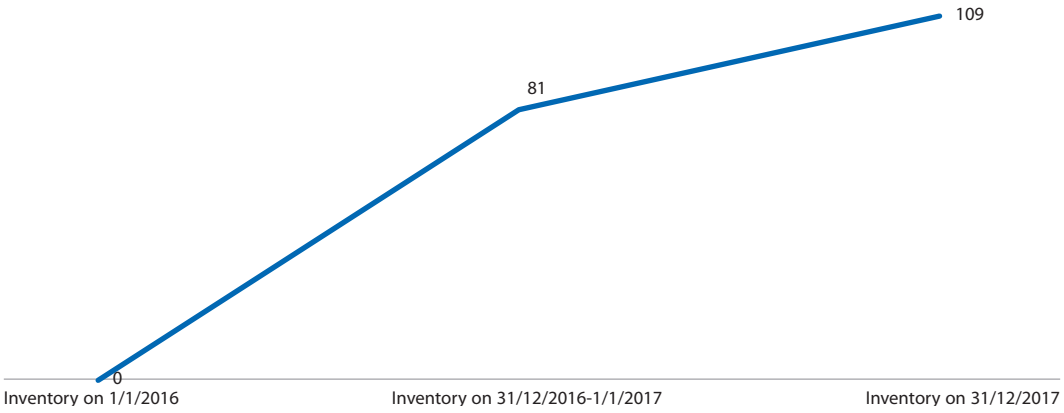
141. At the beginning of the Statistics Reporting Period, Canada's MAP inventory of pre-2016 MAP cases consisted of 262 cases, of which were 225 attribution/allocation cases and 37 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 67 cases, consisting of 51 attribution/allocation cases and 16 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

Pre-2016 cases only	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016+2017)
Attribution/allocation cases	-46%	-58%	-77%
Other cases	-41%	-27%	-57%

Post-2015 cases

142. The following graph shows the evolution of Canada's post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. **Evolution of Canada's MAP inventory Post-2015 cases**



143. In total, 215 MAP cases started during the Statistics Reporting Period, 171 of which concerned attribution/allocation cases and 44 other cases. At the end of this period the total number of post-2015 cases in the inventory was 109 cases, consisting of 90 attribution/allocation cases and 19 other cases. Conclusively, Canada closed 106 post-2015 cases during the Statistics Reporting Period, 81 of them being attribution/allocation cases and 25 of them of them being other cases. The total number of closed cases represents 49% of the total number of post-2015 cases that started during the Statistics Reporting Period. In this respect, the number of attribution/allocation cases closed during this period represents 47% of the number of attribution/allocation post-2015 cases started while the number of other post-2015 cases closed amounts to 57% of the number of cases started.

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

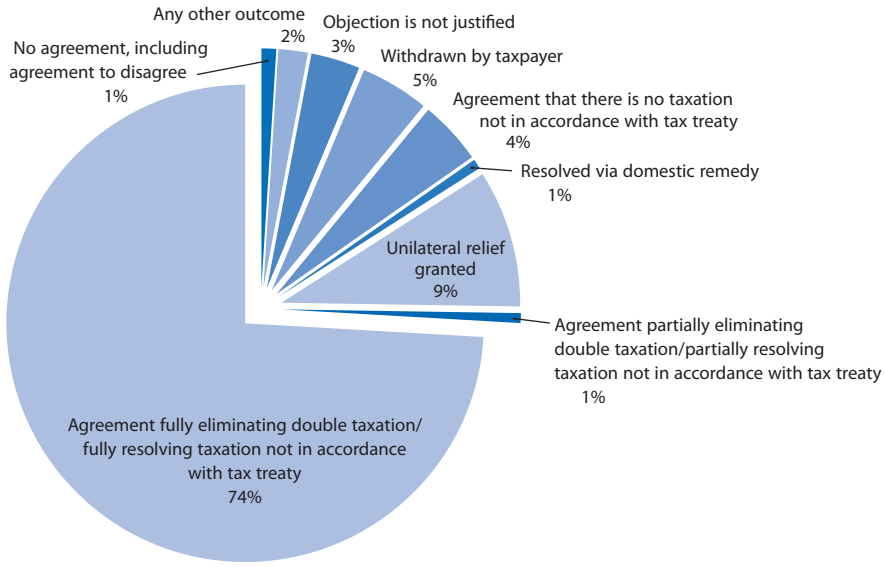
Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution/allocation cases	38%	60%	47%
Other cases	17%	105%	57%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

145. During the Statistics Reporting Period Canada in total closed 301 MAP cases for which the following outcomes were reported:

Figure C.5. **Cases closed during the Statistics Reporting Period (301 cases)**



146. This chart shows that during the Statistics Reporting Period, 223 out of 301 cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

147. In total, 255 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (82%)
- unilateral relief granted (9%).

Reported outcomes for other cases

148. In total, 46 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (33%)
- agreement that there is no taxation no in accordance with tax treaty (22%)
- objection not justified (15%)
- withdrawn by taxpayer (13%).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

149. The average time needed to close MAP cases during the Statistics Reporting Period was 20.91 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	255	22.08
Other cases	46	14.46
All cases	301	20.91

Pre-2016 cases

150. For pre-2016 cases Canada reported that on average it needed 30.19 months to close 174 attribution/allocation cases and 24.55 months to close 21 other cases. This resulted in an average time needed of 29.58 months to close 195 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Canada reported that it uses the following dates:

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

Post-2015 cases

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

152. For post-2015 cases Canada reported that on average it needed 4.65 months to close 81 attribution/allocation cases and 5.97 months to close 25 other cases. This resulted in an average time needed of 4.96 months to close 106 post-2015 cases.

Peer input

Period 1 January 2014-31 December 2016 (stage 1)

153. 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 Canada's 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.

154. 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.

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

155. As it will be discussed under element C.3, several peers confirmed that their experience with Canada is that Canada's competent authority seeks to resolve MAP cases in an efficient manner. One peer specifically mentioned that all post-2015 cases with Canada were solved in a timely manner leading to an average cycle time of less than 24 months. Another peer mentioned that two pre-2016 attribution/allocation MAP cases were solved in 2017 and have already been implemented.

Recent developments

156. Canada reported that it constantly revises its internal inventory management system and that new updates are made on a regular basis. Canada further clarified that one of the recent updates related to including additional fields to better reflect the processes of the relevant cases.

157. In addition, Canada further reported that the procedures in place to strive at resolving MAP cases within the target timeframe of 24 months are still in place.

Anticipated modifications

158. 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 Canada's competent authority.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

159. 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 Canada's competent authority

160. 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
- 18 are assigned to the Exchange of information Services team and hold responsibility for administration of procedures, reporting requirements and other tasks.

161. Canada's 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. Canada's 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.

162. Canada reported that, each time a change occurs regarding key 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.[6]

163. With respect to training, the CRA reported that it has internal course material and mandatory training sessions that Canada's competent authority's staff must attend in order to be familiar with the MAP, the *OECD Model Tax Convention* and *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017* (OECD Transfer Pricing Guidelines, OECD, 2017b). 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, Canada's competent authority has access to legal services and treaty experts from other areas within the CRA.

Monitoring mechanism

164. As regards the monitoring of whether the resources provided to the MAP function are adequate, Canada's 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, Canada's 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 Canada's 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.

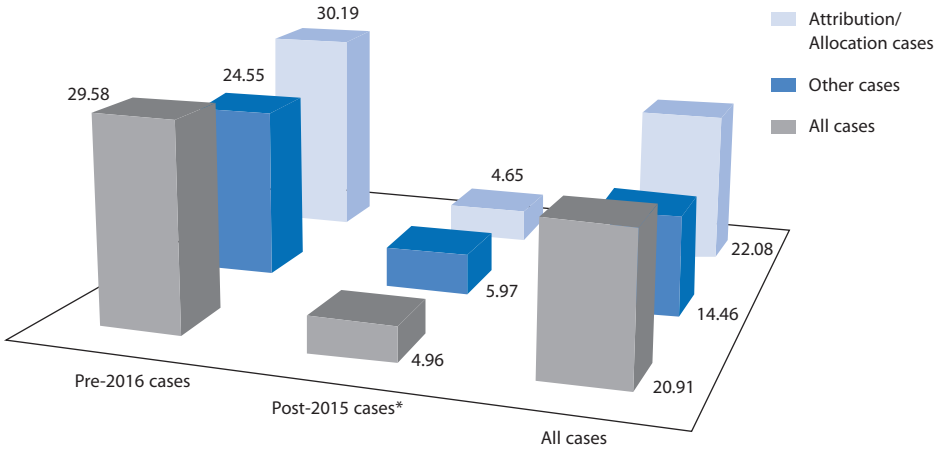
Recent developments

165. Canada reported that it regularly reviews personnel, funding, training and resources and makes changes where necessary to ensure the efficient and effective resolution of MAP cases. Canada further clarified that no additional resources have been allocated to its competent authority since 1 January 2017 and that no organisational changes have been made since that date.

Practical application

166. 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.6. **Average time (in months)**



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

167. Based on these figures, it follows that on average it took Canada 20.91 months to resolve MAP cases. In particular, it took Canada 22.08 months to resolve attribution/allocation cases and 14.46 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.

168. Canada had identified several reasons that could, however, explain delays experienced in 2016 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.

169. 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.

170. Canada reported that it was 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.

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

	2016	2017
Attribution/Allocation cases	20.87	23.58
Other cases	21.71	9.35
All cases	20.97	20.85

172. The 2017 MAP statistics show that Canada increased the average completion time of attribution/allocation cases to 23.58 months, resulting in an average for both 2016 and 2017 of 22.08 months. The average time needed to close other cases decreased from 21.71 months in 2016 to 9.35 months in 2017, and the average time needed to close other cases in both 2016 and 2017 was 14.46 months. The resulting average time needed to close all cases also remained below the pursued average of 24 months and it slightly decreased from 20.97 months in 2016 to 20.85 months in 2017 resulting in an average of 20.91 months for cases closed in 2016 or 2017.

173. Canada's MAP inventory decreased for both types of cases since 1 January 2016, which can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2016/ Start inventory on 01/01/2017	Cases started	Cases closed	End inventory on 31/12/2017	Evolution of total MAP caseload over the two years (2016+2017)
Attribution/ allocation cases	225	98	141	182	73	114	141	-37%
Other cases	37	24	19	42	20	27	35	-5%
Total	**262**	**122**	**160**	**224**	**93**	**141**	**176**	**-33%**

Peer input

Period 1 January 2015-31 December 2016 (stage 1)

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

175. Peers noted that they are frequently in contact (by means of face-to-face meetings, over the phone or via e-mails) with Canada's competent authority, in particular when Canada is for them a significant MAP partner. It was also noted by several peers that Canada's competent authority is responsive in their communication and co-operative to deal with. One peer also mentioned that personnel in Canada are well-trained to handle MAP requests. Furthermore, one peer mentioned that Canada's 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 Canada's 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.

176. 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 in stage 1 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. In stage 2, Canada clarified that it is willing to engage in MAP and other treaty related discussions on the margins of other meetings where the Canadian delegate has the proper authorities and responsibilities. However, it reported that this remains impractical to commit to such an approach more broadly for the same reasons as indicated in stage 1.

177. Another peer indicated that it would be useful to have more contact details (email addresses and fax number) available to come in contact with Canada's competent authority. Canada responded that it notes the updates to contact information provided via the Global Forum on Transparency and Exchange of Information for Tax Purposes' Competent Authorities Database. Canada further suggested the use of the Global Forum's updated template for contact information to encourage more detailed contact information, which Canada reported having provided. In addition, Canada clarified that the use a shared database which would contain the broadest combination of competent authority related information.

178. 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.

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

179. Five peers reported that the information provided in Canada's update report and summarised above fully reflects their experience with Canada since 1 January 2017 or that there were no additions to the previous input given in stage 1. Two peers specifically referred to the input given in stage 1, one of them clarifying that its relationship with Canada is professional and efficient. The other peer stated that the resources of Canada's competent authority seem to be adequate.

180. Several peers mentioned having been frequently in contact with Canada. One peer reported that it continues to have a good treaty relationship with Canada and has encountered no issues with regard to access, resolution or implementation of MAP. One peer mentioned that the resolution of attribution/allocation cases with Canada was facilitated by the use of different means of communication and that several meeting were held via telephone conferences with satisfactory outcomes, finding a solution for the MAP cases at stake. One peer reported that there has been a first meeting held in 2017 with Canada's competent authority and that the environment to resolve the cases was professional and friendly. This peer further reported that Canada's competent authority appears to have adequate resources. One last peer referred to frequent and relevant discussions with Canada's competent authority, which allows an efficient resolution of the MAP cases.

Anticipated modifications

181. Canada indicated that it does not anticipate any modification with respect to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	-

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

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

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

Functioning of staff in charge of MAP

183. Canada's competent authority is the only office to which taxpayers can make a request for competent authority assistance to resolve specific cases of taxation not in accordance with a convention, 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). Canada's 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.

184. 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 and the OECD Transfer Pricing Guidelines. To this end, the director of Canada's 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 Canada's 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.

185. 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 Canada's 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.

Recent developments

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

Practical application

Period 1 January 2015-31 December 2016 (stage 1)

187. One taxpayer expressed concern about the fact that Canada's 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, Canada's competent authority does not share its position with the TSO and if Canada's 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 Canada's competent authority is fully independent.

188. 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.

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

189. Five peers mentioned that the information provided in Canada's update report fully reflects their experience with Canada since 1 January 2017. One peer stated that Canada's competent authority appeared to be independent and free of any influence by policy considerations. Two peers reported not having encountered any difficulty related to the

independence of Canada's competent authority. The other peers did not comment or did not report any difficulty related to element C.4.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

191. 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

192. Canada's 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 Canada's competent authority to ensure the positions taken in MAP are consistent and that the output is of a high-standard.

193. The Action 14 Final Report (OECD, 2015) 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)
- ☑ 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).

194. Furthermore, Canada does not use performance indicators based on amounts or assignments that need to be achieved by Canada's 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 Canada's 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.

Recent developments

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

Practical application

Period 1 January 2015-31 December 2016 (stage 1)

196. Several peers noted that the personnel working in Canada's 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 Canada's 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 Canada's competent authority.

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

197. Five peers mentioned that the information provided in Canada's update report fully reflects their experience with Canada since 1 January 2017. The other peers did not comment or did not report any difficulty related to element C.5.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

199. 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

200. Canada reported that 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.

201. 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.

Recent developments

202. Canada signed the Multilateral Instrument and has initiated the ratification process, for which completion foreseen in the beginning of 2019. With the signing of that instrument, Canada also opted for part VI, which includes a mandatory and binding arbitration provision. The effect of this opting in is also further discussed below.

Practical application

203. Canada has included an arbitration clause in 21 of its 96 tax treaties. These arbitration clauses can be categorised as follows:

- 18 treaties provide a voluntary and binding arbitration procedure.
- Two treaties contain an arbitration clause that is based on Article 25(5) of the OECD Model Tax Convention. Under these treaties, 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, the scope of the arbitration procedure is for one of these two treaties limited to issues of fact relating to Articles 5, 7 and 9 of the OECD Model Tax Convention, or any other provision subsequently agreed by the competent authorities. In the other treaty, the scope of the arbitration procedure is limited to issues arising under Article 4 (only relating to individuals), 5, 7, 9, 12 (insofar related to transactions of related persons) and 14, or any other articles subsequently agreed by the competent authorities. For this treaty, the contracting states entered into an agreement regarding the application of the arbitration procedure that entered into force in 2017.[7]
- One treaty provides for a mandatory and binding arbitration procedure. For this treaty, the competent authorities also entered into an agreement regarding the application of the arbitration procedure.[8]

204. One peer provided input and 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.

205. In addition, with respect to the effect of part VI of the Multilateral Instrument on Canada's tax treaties, there are next to Canada in total 28 signatories to this instrument that also opted for part VI. Concerning these 28 signatories, Canada listed 21 as a covered tax agreement under the Multilateral Instrument and all of these 21 treaty partners also listed their treaty with Canada under that instrument.

206. For these 21 treaties, Canada has already included an arbitration provision in six treaties, five of which contain a voluntary and binding arbitration procedure and one a provision that is based on Article 25(5) of the OECD Model Tax Convention. For this latter treaty, Canada, pursuant to Article 26(4) of the Multilateral Instrument, reserved the right

not to replace the arbitration provision in these treaties with part VI. For the remaining five tax treaties that contain an arbitration provision and the other 15 that do not contain such a provision, Canada reported the effect of part VI is dependent on both Canada's and the treaty partners' notifications and that a final determination of such effect can only be made when the Multilateral Instrument is in force between the relevant treaty partners.

Anticipated modifications

207. Canada did not indicate that it anticipates any modifications in relation to element C.6.

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.
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; or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention, which is also known as a transfer pricing MAP case".
5. With the final submission of the 2016 statistics the number of cases in start inventory was modified compared to the stage 1 report.
6. Available at: www.cra-arc.gc.ca/tx/nnrsdnts/cmp/wh-eng.html.
7. The agreement can be found at www.fin.gc.ca/treaties-conventions/uk-ru-1-eng.asp and information about its entry into force can be found at https://www.fin.gc.ca/treaties-conventions/notices/uk-ru-1-entry-entree-eng.asp.
8. This Memorandum of Understanding can be found at www.cra-arc.gc.ca/tx/nnrsdnts/2010brtrtnm-eng.html.

References

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

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

OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264241633-en.

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

208. 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

209. 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, 2017). 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.

210. 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.

211. 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 Canada's 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 programme 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.

212. 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).

Recent developments

213. Canada reported that since 1 January 2017 the Appeals or tax service office in charge of the implementation of a MAP agreement has now been required to provide Canada's competent authority with the date on which the MAP agreement is implemented. Canada clarified that this date is then filled in its monitoring system, which enables its competent authority to track the implementation of MAP agreements where necessary.

Practical application

Period 1 January 2015-31 December 2016 (stage 1)

214. 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.

215. 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, Canada's 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 programme 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.

216. 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 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.

217. 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 Canada's competent authority by a revocation of the Canadian-initiated adjustment. Canada's 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.

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

218. Canada reported that it has implemented 94% of the MAP agreements that it needed to implement and that the remaining cases are in the final stages of being implemented. Five peers mentioned that the information provided in Canada's update report fully reflects their experience with Canada since 1 January 2017. Five peers mentioned not being aware of any issues encountered in the implementation of MAP agreements in Canada. The other peers did not comment on element D.1.

Anticipated modifications

219. Canada reported that the updated MAP guidance currently under preparation contains information on the possibility for taxpayers to file a waiver to keep fiscal years open in Canada which may be necessary to implement a MAP agreement. Canada further reported that the revised MAP guidance will also include a link to the relevant form to file a waiver.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

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

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

220. 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

221. After a verbal MAP agreement has been reached with the other competent authority concerned, the first step in the implementation process is that Canada's 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, Canada's 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, Canada's 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 Canada's competent authority.

222. 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. Canada further reported

that its competent authority has no authority to prioritise the implementation or assign a deadline for implementation to the service in charge of implementation.

Recent developments

223. Canada reported that there are no recent developments relating to element D.2 apart from the introduction of the tracking mechanism described under element D.1 and reiterated that Canada is committed to implement MAP agreements on a timely basis.

Practical application

Period 1 January 2015-31 December 2016 (stage 1)

224. 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 between 1 January 2015 and 31 December 2016. 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 Canada's 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.

225. 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, Canada's competent authority would eventually intervene to ensure agreements are implemented.

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

226. 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 2017. Canada clarified that delays may occur if the taxpayer fails to provide its consent to the MAP agreement timely or if the service in charge of implementing MAP agreements has other priorities. Five peers mentioned that the information provided in Canada's update report fully reflects their experience with Canada since 1 January 2017. Three peers mentioned not being aware of delays encountered in the implementation of MAP agreements in Canada. One of these peers mentioned that two pre-2016 attribution/allocation MAP cases were solved in 2017 and have already been implemented. The other peers did not comment on element D.2.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

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

Legal framework and current situation of Canada's tax treaties

229. As discussed under element D.1 Canada's domestic law does not allow Canada's competent authority to implement MAP agreements if domestic time limits have passed and if they have not been overridden by a tax treaty. Furthermore, Canada has made a reservation in the Commentary on Article 25 of the OECD Model Tax Convention 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.

230. Out of Canada's 96 tax treaties, 15 treaties contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that 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 contain such equivalent, but contain 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 for Article 9(1) and Article 7(2) setting a time limit the time during which a contracting party can make a primary adjustment. In addition, one treaty includes a variation to Article 25(2), second sentence, of the OECD Model Tax Convention, whereby the actual implementation of a MAP agreement is dependent on the fact that such agreement is reached within a certain term. While this provision is considered not being the equivalent of that second sentence, the treaty 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 also considered being equivalent to the alternative provisions for Article 9(1) and Article 7(2), setting a time limit during which a contracting party can make a primary adjustment.

231. For the remaining 36 tax treaties the following analysis is made:

- In 21 treaties neither the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention is contained nor the alternative provision provided for in Article 9(1) and Article 7(2). One of these 21 treaties contain a variation to the second sentence of Article 25(2), but is considered not being equivalent thereof, as 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, five of these 21 treaties contain a provision setting a time limit for making corresponding adjustments, which, however, is not considered being equivalent to the alternative provisions provided for in Article 9(1) and Article 7(2).
- In 15 treaties the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention is not contained and only contain the alternative provision in Article 9(1). In one of these 15 treaties a variation to the second sentence of Article 25(2) is contained, but is considered not being equivalent thereof, as 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.

232. Based on the above, all 36 tax treaties are considered neither to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions for Article 9(1) and Article 7(2).

233. Furthermore, for the two treaties mentioned above that stipulate that the implementation of MAP agreements is dependent on the timely notification of a MAP request by competent authorities, 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.

234. Several peers 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.

Recent developments

Multilateral Instrument

235. Canada signed the Multilateral Instrument and has introduced this instrument in parliament in June 2018.

236. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Article 16(4)(b)(ii) of the Multilateral Instrument does not take effect if one or both of the treaty partners has, pursuant Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP

agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

237. Canada has, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, of the Multilateral Instrument. Therefore, at this stage the Multilateral Instrument will not modify any of the 36 treaties identified above to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Other developments

238. As is described in the Introduction, Canada reported it is in negotiations with three treaty partners on the replacement of the existing treaty currently in force. These three concern treaty partners to those treaties that are among the 36 tax treaties that neither contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention nor the alternative provisions for Article 9(1) and Article 7(2).

239. For the remaining 33 treaties that are not in line with the requirements under this element and for which no bilateral negotiations are pending, Canada has put in place a plan for bringing these treaties in line with that Action 14 Minimum Standard. Eleven of these treaties will be addressed in phase I of this plan, whereby for one bilateral negotiations are envisaged to be initiated shortly.

Peer input

240. The majority of peers with which the treaty with Canada is not in line with the requirements under element A.1 and will not be modified by the Multilateral Instrument did not provide input. One peer noted that even though their treaty with Canada will not be modified by the Multilateral Instrument for this element, it implements MAP agreements irrespective of domestic time limits and it is aware of a procedure in Canada enabling Canada to achieve the same outcome. Another peer noted that it has proposed in the context of ongoing bilateral negotiations with Canada to add the second sentence of Article 25(2), of the OECD Model Tax Convention. A third peer noted that it did not list the tax treaty between itself and Canada as a covered tax agreement in the Multilateral Instrument but that it is planning to negotiate a protocol to their treaty that will implement the Action 14 Minimum Standard. Furthermore, one peer also acknowledged that this element will not be modified the Multilateral Instrument and that it has not received any request from Canada on updating this treaty in this respect. Last, a peer noted that as a result of reservations to the Multilateral Instrument made by itself and Canada it intends to enter into bilateral negotiations with Canada in order to meet all the elements of the Action 14 Minimum Standard.

Anticipated modifications

241. For the remaining 21 treaties that are not in line with element B.1 and will not be modified by the Multilateral Instrument and for which no bilateral negotiates are envisaged, scheduled or pending, Canada reported that it will approach the treaty partners to bring these treaties in line with element D.3 when the prioritised negotiations as described above have been finalised.

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, nor the alternative provisions in both Article 9(1) and Article 7(2). None of these treaties will be modified by the Multilateral Instrument to include the required of the second sentence. With respect to these 36 treaties: • For three treaties negotiations are currently pending • 11 are included in the list of treaties for which negotiations are envisaged, scheduled or pending • For the remaining 21 no actions have been taken, but are included in the plan for renegotiations.	Canada should continue negotiations with three treaty partners for which on the inclusion of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions in both Article 9(1) and Article 7(2). Furthermore, Canada should: • Follow-up on its plan to initiate bilateral negotiations for 11 treaty partners to include the required provision or be willing to accept the inclusion of both alternative provisions • Also request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions in the remaining 21 treaties in accordance with its plan for renegotiation.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	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. Both treaties are expected to be modified by the Multilateral Instrument to contain the required provision.	Canada should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	One out of 96 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to or as amended by the Action 14 final report. This treaty will not be modified by the Multilateral Instrument to include the required provision. For this treaty bilateral negotiations are envisaged, scheduled or pending.	Canada should follow-up on its plan to initiate bilateral negotiations or continue such negotiations with respect to the treaty partner concerned to include the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. As amended in the final report of Action 14; or b. As it read prior to the adoption of final report of Action 14.
	69 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these 69 treaties: • 47 are expected to be modified by the Multilateral Instrument to include the required provision, for six of them once Canada updated its notifications under that instrument • 22 will not be modified by that instrument to include the required provision. With respect to these 22 treaties: - For two negotiations are envisaged, scheduled or pending - For the remaining 20 no actions have been taken, but are included in the plan for renegotiations.	Canada should as quickly as possible update its notifications and accordingly ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in those 47 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for these treaties. For the remaining 22 treaties, Canada should: • Continue discussions or negotiations with two treaty partners on the inclusion of the required provision • Also request the inclusion of the required provision via bilateral negotiations in the remaining 20 treaties in accordance with its plan for renegotiations.

	Areas for improvement	Recommendations
[B.1]	Three out of 96 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention 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 Of these three treaties: • Two are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, but not to include the equivalent of the first sentence Article 25(1) as amended by the Action 14 final report • One will not be modified by that instrument to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report One of these treaties is included in the list of treaties for which actions are envisaged, scheduled or pending. For the other two treaties no actions have been taken, but are included in the plan for renegotiations.	Canada should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in the two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for these treaties. Furthermore, for two of these treaties Canada should: • Follow-up on its plan to initiate bilateral negotiations or continue such negotiations with respect to one treaty partner to include the required provision. • Also request the inclusion of the required provision for the other treaty partner in accordance with its plan for renegotiations. In both instances this concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. As amended in the Action 14 final report; or b. As it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision. For the remaining treaty, Canada should request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. As amended in the Action 14 final report; or b. As it read prior to the adoption of the Action 14 final report; and • 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.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[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. Of these 14 treaties: • 13 are expected to be modified by that instrument to contain the required provision, for one of them once Canada updated its notifications and one once the relevant treaty partner updates its notifications under that instrument • One will not be modified by that instrument. For this treaty no actions have been taken, but is included in the plan for renegotiations.	Canada should as quickly as possible update its notifications and accordingly ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those 13 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For the remaining treaty, Canada should request the inclusion of the required provision in accordance with its plan for renegotiations.
[B.8]	-	-
[B.9]	-	-

	Areas for improvement	Recommendations
[B.10]	The MAP guidance does not include clear information on the relationship between MAP and audit settlements.	Canada should follow its stated intention to clarify that taxpayers are not precluded access to MAP in cases 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.
Part C: Resolution of MAP cases		
[C.1]	-	-
[C.2]	-	-
[C.3]	-	-
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-
[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, nor the alternative provisions in both Article 9(1) and Article 7(2). None of these treaties will be modified by the Multilateral Instrument to include the required of the second sentence. With respect to these 36 treaties: • For three treaties negotiations are currently pending • 11 are included in the list of treaties for which negotiations are envisaged, scheduled or pending • For the remaining 21 no actions have been taken, but are included in the plan for renegotiations.	Canada should continue negotiations with three treaty partners for which on the inclusion of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions in both Article 9(1) and Article 7(2). Furthermore, Canada should: • Follow-up on its plan to initiate bilateral negotiations for 11 treaty partners to include the required provision or be willing to accept the inclusion of both alternative provisions • Also request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions in the remaining 21 treaties in accordance with its plan for renegotiation.

Annex A

Tax treaty network of Canada

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	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? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provsion?	
	Y = yes N = signed pending ratification	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no	if yes i-Art. 25(5) ii-mandatory other iii - voluntary
Algeria	Y	O	ii	2-years	Y	i	Y	ii	Y	Y	N	N/A
Argentina	Y	O	ii*	2-years	Y	i	Y	iii	Y	Y	N	N/A
Armenia	Y	O	ii	2-years	Y	i	Y	iii	Y	Y	N	N/A
Australia	Y	O	i	N/A	Y	i	Y	N	N*	Y	N	N/A
Austria	Y	O	ii*	2-years	i	i	Y	N	Y	N*	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	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? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provsion?	
Azerbaijan	Y	O	ii	2-years	Y	i	Y	Y	Y	Y	N	N/A
Bangladesh	Y	O	ii	2-years	i	i	Y	iii	Y	Y	N	N/A
Barbados	Y	O	ii*	2-years	i	i	Y	iii	Y	Y	N	N/A
Belgium	Y	O	ii*	2-years	i	i	Y	ii	Y	N*	N	N/A
Brazil	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A
Bulgaria	Y	O	ii*	2-years	Y	i	Y	iii	Y	Y	N	N/A
Cameroon	Y	O	ii*	2-years	i	i	Y	N	Y	Y	N	N/A
Chile	Y	O	i	N/A	Y	i	Y	ii	Y	N*	Y	iii
China (People's Republic of)	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A
Colombia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Côte d'Ivoire	Y	O	ii	2-years	Y	i	Y	ii	Y	N	N	N/A
Croatia	Y	O	ii*	2-years	i	i	Y	N	Y	Y	N	N/A
Cyprus [a]	Y	O	ii*	2-years	i	i	Y	iii	Y	Y	N	N/A
Czech Republic	Y	O	ii*	2-years	Y	i	Y	iii	Y	Y	N	N/A
Denmark	Y	O	i	N/A	i	i	Y	iii	Y	Y	N	N/A
Dominican Republic	Y	O	ii	2-years	i	i	Y	iii	Y	Y	N	N/A
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	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	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? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provsion?	
Estonia	Y	O	ii*	2-years	Y	i	Y	iii	Y	Y	N	N/A
Finland	Y	O	Y	N/A	Y	i	Y	iii	Y	Y	N	N/A
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	N/A
Germany	Y	O	ii	2-years	i	i	Y	N	Y	Y	Y	iii
Greece	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Guyana	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A
Hong Kong (China)	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Hungary	Y	O	ii*	2-years	Y	i	Y	iii	Y	Y	N	N/A
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	N/A
Indonesia	Y	O	ii*	2-years	i	i	Y	iii	Y	N	N	N/A
Ireland	Y	O	ii*	2-years	Y	i	Y	iii	Y	N*	Y	iii
Israel	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
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	N/A
Japan	Y	O	ii*	2-years	i	i	Y	ii	Y	Y	N	N/A
Jordan	Y	O	ii	2-years	Y	i	Y	iii	Y	Y	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	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? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provsion?	
Kazakhstan	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	N/A
Korea	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Kuwait	Y	O	ii	2-years	Y	i	Y	ii	Y	Y	N	N/A
Kyrgyzstan	Y	O	ii	2-years	Y	i	Y	iii	Y	Y	N	N/A
Latvia	Y	O	ii*	2-years	Y	i	Y	iii	Y	Y	N	N/A
Lebanon	N	N	ii	2-years	Y	i	Y	N	Y	Y	N	N/A
Lithuania	Y	O	ii*	2-years	Y	i	Y	iii	Y	Y	N	N/A
Luxembourg	Y	O	ii*	2-years	Y	i	Y	ii	Y	Y	N	N/A
Madagascar	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Malaysia	Y	O	ii*	2-years	i	i	Y	N	Y	N*	N	N/A
Malta	Y	O	ii*	2-years	i	i	Y	iii	Y	Y	N	N/A
Mexico	Y	O	Y	N/A	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	N/A
Namibia	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Netherlands	Y	O	ii*	2-years	i	i	Y	iii	Y	Y	Y	iii
New Zealand	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	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? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provsion?	
Nigeria	Y	O	ii*	2-years	Y	i	Y	ii	Y	Y	N	N/A
Norway	Y	O	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Oman	Y	O	ii	2-years	Y	i	Y	N	Y	Y	N	N/A
Pakistan	Y	O	ii*	2-years	i	i	Y	N	Y	N*	N	N/A
Papua New Guinea	Y	O	ii	2-years	Y	i	Y	iii	Y	Y	N	N/A
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	N/A
Poland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Portugal	Y	O	ii*	2-years	Y	i	Y	ii	Y	N*	N	N/A
Romania	Y	O	ii*	2-years	Y	i	Y	iii	Y	Y	N	N/A
Russia	Y	O	ii*	2-years	Y	i	Y	ii	Y	Y	N	N/A
Senegal	Y	O	ii*	2-years	i	i	Y	ii	Y	Y	N	N/A
Serbia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Singapore	Y	O	ii*	2-years	i	i	Y	N	Y	N*	N	N/A
Slovak Republic	Y	O	ii*	2-years	Y	i	Y	iii	Y	Y	N	N/A
Slovenia	Y	N	ii*	2-years	Y	i	Y	ii	Y	Y	N	N/A
South Africa	Y	O	ii*	2-years	Y	i	Y	iii	Y	Y	Y	iii
Spain	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	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? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provsion?	
Sri Lanka	Y	O	ii	2-years	i	i	Y	iii	Y	Y	N	N/A
Sweden	Y	N	i	N/A	Y	i	Y	N	Y	Y	N	N/A
Switzerland	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	i
Chinese Taipei	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Tanzania	Y	O	ii	2-years	Y	i	Y	iii	Y	Y	N	N/A
Thailand	Y	O	ii	2-years	i	i	Y	ii	Y	Y	N	N/A
Trinidad and Tobago	Y	O	ii	2-years	Y	i	Y	iii	Y	Y	N	N/A
Tunisia	Y	O	ii*	2-years	i	i	Y	iii	Y	Y	N	N/A
Turkey	Y	O	iv**	N/A	Y	i	Y	iii	Y	Y	N	N/A
Ukraine	Y	O	ii*	2-years	Y	i	Y	iii	Y	Y	N	N/A
United Arab Emirates	Y	O	ii	2-years	Y	i	Y	iii	Y	Y	N	N/A
United Kingdom	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
United States	Y	O	i	N/A	i	i	Y	N	Y	Y	Y	ii
Uzbekistan	Y	O	ii	2-years	Y	i	Y	iii	Y	Y	N	N/A
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	N/A
Zambia	Y	O	ii	2-years	i	i	Y	iii	Y	Y	N	N/A
Zimbabwe	Y	O	iv	N/A	Y	i	Y	iii	Y	Y	N	N/A

Note: a. 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 recognises 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 recognised 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.

Legend

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

Annex B

MAP Statistics pre-2016 cases

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	225	0	3	3	14	0	79	2	2	0	1	121	27.77
Others	37	0	0	4	1	0	3	0	7	0	0	22	25.57
Total	262	0	3	7	15	0	82	2	9	0	1	143	27.49

Note: The number of attribution/allocation pre-2016 cases in inventory on 1 January 2016 was corrected since the publication of the 2016 MAP statistics to reclassify two cases that were incorrectly classified as post-2015 cases started in 2016.

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	121	0	0	3	0	0	65	0	1	1	0	51	33.79
Others	22	0	0	1	0	0	3	0	0	2	0	16	22.01
Total	143	0	0	4	0	0	68	0	1	3	0	67	32.86

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	98	0	0	2	1	0	34	0	0	0	0	61	1.46
Others	0	24	0	2	0	0	2	0	0	0	0	0	20	7.22
Total	0	122	0	2	2	1	2	34	0	0	0	0	81	2.02

Note: The number of attribution/allocation post-2015 cases started in 2016 was corrected since the publication of the 2016 MAP statistics to reclassify two cases that were incorrectly classified as post-2015 cases started in 2016 but that were pre-2016 cases.

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	61	73	0	0	0	9	0	30	0	0	0	5	90	7.33
Others	20	20	0	5	1	3	0	9	0	3	0	0	19	5.74
Total	81	93	0	5	1	12	0	39	0	3	0	5	109	6.81

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 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

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OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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

Consult this publication on line at ***https://doi.org/10.1787/67dba2bb-en***.

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