OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

OECD

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BETTER POLICIES FOR BETTER LIVES

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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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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.

Table of contents

Abbreviations and acronyms 7

Executive summary 9

References 11

Introduction 13

***Part A.* Preventing disputes** 17

[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties 17
[A.2] Provide roll-back of bilateral APAs in appropriate cases 19

References 22

***Part B.* Availability and access to MAP** 23

[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties 23
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process 32
[B.3] Provide access to MAP in transfer pricing cases 34
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions 36
[B.5] Provide access to MAP in cases of audit settlements 38
[B.6] Provide access to MAP if required information is submitted 39
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties . . . 40
[B.8] Publish clear and comprehensive MAP guidance 42
[B.9] Make MAP guidance available and easily accessible and publish MAP profile 45
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP 46

References 49

***Part C.* Resolution of MAP cases** 51

[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties 51
[C.2] Seek to resolve MAP cases within a 24-month average timeframe 54
[C.3] Provide adequate resources to the MAP function 60
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty 68
[C.5] Use appropriate performance indicators for the MAP function 70
[C.6] Provide transparency with respect to the position on MAP arbitration 71

References 72

***Part D.* Implementation of MAP agreements** 73

[D.1] Implement all MAP agreements 73
[D.2] Implement all MAP agreements on a timely basis 74

[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) 75

Reference 78

Summary 79

***Annex A.* Tax treaty network of India** 85

***Annex B.* MAP Statistics Reporting for pre-2016 cases** 93

***Annex C.* MAP Statistics Reporting for Post-2015 cases** 94

Glossary 95

Figures

Figure C.1 Evolution of India's MAP caseload 55
Figure C.2 End inventory on 31 December 2017 (763 cases) 56
Figure C.3 Evolution of India's MAP inventory Pre-2016 cases 56
Figure C.4 Evolution of India's MAP inventory Post-2015 cases 57
Figure C.5 Cases closed during 2016 and 2017 (153 cases) 58
Figure C6 Average time (in months) to close cases in 2016 or 2017 61

Abbreviations and acronyms

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

Executive summary

India has an extensive tax treaty network with over 90 tax treaties. India has an established MAP programme and has significant experience with resolving MAP cases. It has a very large MAP inventory, with a very large number of new cases submitted each year and around 750 cases pending on 31 December 2017. Of these cases, 85% concern allocation/attribution cases. Overall India meets half of the elements of the Action 14 Minimum Standard. Where it has deficiencies, India is working to address several of them.

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

- Approximately 10% of its tax treaties do not contain the equivalent of Article 25(1) to the OECD Model Tax Convention (OECD whereby the majority of these treaties do not contain the equivalent of Article 25(1), first sentence, as it read prior to the adoption of the Action 14 Final Report the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 Final Report (OECD, 2015a), since they do not allow taxpayers to submit a MAP request to the state of which it is a national, where its case comes under the non-discrimination provision
- Approximately 10% 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, India needs to amend and update a certain number of its tax treaties. In this respect, India 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. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, India reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard and has put in place a plan in relation hereto.

India 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 rollbacks of bilateral APAs and such rollbacks are granted in practice.

India further meets some requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in transfer pricing cases and cases concerning the application where treaty anti-abuse provisions are applied. However, for cases concerning the application of domestic anti-abuse provision access to MAP will be given, but discussions in MAP will only focus on the elimination of double

taxation arising from such application and not to issues that do not give rise to double taxation or the question whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. Additionally, access to MAP will be denied for cases where there is no double taxation, which is contrary to the requirements under Article 25(1) of the OECD Model Tax Convention. Furthermore, India does not have in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, although it intends to implement such a process. India also has not yet issued guidance on the availability of MAP and how it applies this procedure in practice. Also there are no rules and specific timelines in place for requesting additional information by the competent authority and for the taxpayer to provide such information, by which there is a risk that access to MAP is limited even when taxpayers have complied with the information and documentation requirements in India, or that such access is only granted with substantial delays. Lastly, India 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. The outcome of this process will prevent taxpayers' access to MAP, if the MAP request is submitted after the process has been finalised. The effects of this process are not clarified in the rules on this administrative dispute settlement/resolution process.

Concerning the average time needed to close MAP cases, the MAP statistics for India 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	594	199	147	646	34.31
Other cases	101	22	6	117	68.70
Total	695	221	153	763	35.66

*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, India used as a *start date* the date of receipt of the MAP request by taxpayers, or if the MAP request was submitted to the other competent authority, the date of receipt of the MAP invocation letter from that competent authority, and as the *end date*: the date of sending of the letter to India's tax authorities in the field to give effect to the MAP agreement entered into between the competent authorities.

The number of cases India closed in 2016 or 2017 is less than the number of all new cases started in those years. Its MAP inventory as per 31 December 2017 increased with approximately 10% as compared to its inventory as per 1 January 2016. Furthermore, during these years, India's competent authority did not close MAP cases 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 35.66 months. While this concerns both type of cases, as both for attribution/allocation cases and other MAP cases the average time was above 24 months, albeit that other cases took significant more time to close them (68.70 months). These statistics indicate that India's competent authority is considered not having adequate resources to conduct the MAP function and that additional resources are necessary to accelerate the resolution of MAP cases, particularly concerning other cases.

Furthermore, India meets most of the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. India's competent authority operates

fully independently from the audit function of the tax authorities and the performance indicators used are appropriate to perform the MAP function. India's policy, however, is not to discuss MAP cases when there is no double taxation.

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

References

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

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

Introduction

Available mechanisms in India to resolve tax treaty-related disputes

India has entered into 96 tax treaties on income (and/or capital), 94 of which are in force.[1] These 96 treaties are being applied to 97 jurisdictions.[2] All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. None of these treaties include an arbitration procedure as a final stage to the MAP process.

The competent authority function is assigned to the Minister of Finance, which has been delegated to the Central Board of Direct Taxes within the Department of Revenue of this Ministry. Within the central board, two teams within the Foreign Tax and Tax Research Division are responsible for handing MAP cases. These are:

- *FT & TR-I Division (headed by Joint Secretary, FT & TR-I)*: seven persons (including the head of division) are responsible for handling MAP and bilateral APA cases concerning treaty partners in North America (including the Caribbean Islands) and Europe.
- *FT & TR-II Division (headed by Joint Secretary, FT & TR-II)*: eight persons (including the head of division) are responsible for handling MAP and bilateral APA cases concerning treaty partners in Africa, Latin America, Asia and Australia.

India has not issued guidance on the governance and administration of the mutual agreement procedure ("**MAP**").

Recent developments in India

India signed on 7 June 2017 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. With the signing of the Multilateral Instrument, India also submitted its list of notifications and reservations to that instrument.[3] In relation to the Action 14 Minimum Standard, India 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] This reservation is in line with the requirements of the Action 14 Minimum Standard.

Where treaties will not be modified by the Multilateral Instrument, India reported that it strives updating them through future bilateral negotiations. In this respect, India has put in place a plan for bringing all the relevant tax treaties in line with the requirements under

the Action 14 Minimum Standard. This plan consists of the following three steps, of which the first two are already completed:

- Identification of treaties that are not in line with the minimum standard
- Identification for the treaties concerned whether the treaty partner is a signatory to the Multilateral Instrument and, if so, whether it has listed its treaty with India as a covered tax agreement
- Approach the relevant treaty partners to initiate bilateral negotiations when the relevant treaties will not be modified by the Multilateral Instrument.

With respect to the last step, India reported that it will first approach treaty partners that are members of the Inclusive Framework, whereby a prioritisation is made for those jurisdictions with which there are MAP cases. Those jurisdictions that are not a member of the Inclusive Framework will be approached once the negotiations with the members of that framework have been finalised. Furthermore, in line with its plan, for the ten treaties concerned, India reported it has already initiated negotiations with four treaty partners and has approached or has been approached by another two treaty partners to initiate such negotiations.

Further to the above, India signed new treaties with Hong Kong (China) and Iran in 2018. The treaty with Hong Kong (China) has already entered into force.

Basis for the peer review process

The peer review process entails an evaluation of India's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by the assessed jurisdiction, its peers and taxpayers. The questionnaires for the peer review process were sent to India and the peers on 29 August 2018.

The period for evaluating India's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 August 2018 ("Review Period"). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of India's implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether India is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaties with states that itself are no longer in existence, but for which jurisdictions these treaties continued to be applied by India. This concerns the 1985 treaty with former Czechoslovakia with respect to the Slovak Republic, the 1989 treaty with Denmark with respect to the Faroe Islands (with Denmark India has in 2013 entered into a new tax treaty), and the 2006 treaty with Serbia and Montenegro with respect to both Serbia and Montenegro. As for the treaty with former Serbia and Montenegro it concerns the same tax

treaty that is being applied to multiple jurisdictions, this treaty is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of India's tax treaties regarding the mutual agreement procedure.

In total 15 peers provided input: Australia, Belgium, Denmark, Germany, Ireland, Italy, Japan, the Netherlands, Norway, Slovenia, Sweden, Switzerland, Turkey, the United Kingdom and the United States. These peers represent approximately 97% of post-2015 MAP cases in India's inventory that started in 2016 or 2017.[5] Furthermore, these peers represent treaty partners that have a high number of MAP cases with India as well as a more moderate caseload. The experiences of these peers in handling and resolving MAP cases with India is generally positive, some of them highlighting the easiness of contacts and the frequency of communications. Furthermore, a number of peers appreciated the willingness of India to resolve cases. Other peers, however, also mentioned difficulties in resolving cases with India, particularly the long time it takes to receive positon papers, the interplay with domestic remedies and the fact that reaching an agreement on a principled basis is sometimes challenging.

India provided informative, albeit limited, answers in its questionnaire, which was submitted on time. However, other information to be provided was only submitted at a later stage and some of this information only very close to the deadline. Furthermore, the explanations given were sometimes very limited, and only references were made to domestic legislations, without any further clarification. In addition, India provided the following information:

- MAP profile[6]
- MAP statistics[7] according to the MAP Statistics Reporting Framework (see below).

India is a member of the FTA MAP Forum and co-operated during the peer review process. It only provided in a few instances peer input during stage 1 and stage 2.

Overview of MAP caseload in India

The analysis of India's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017 ("Statistics Reporting Period"). According to the statistics provided by India, 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	594	199	147	646
Other cases	101	22	6	117
Total	695	221	153	763

General outline of the peer review report

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

A. Preventing disputes

B. Availability and access to MAP

C. Resolution of MAP cases

D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ("Terms of Reference").[8] Apart from analysing India's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by India. Furthermore, the report depicts the changes adopted and plans shared by India to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

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

Notes

1. The tax treaties India has entered into are available at: www.incometaxindia.gov.in. The new treaty that has been signed but has not yet entered into force is with Iran (2018). Reference is made to Annex A for the overview of India's tax treaties regarding the mutual agreement procedure.
2. India continues to apply the 2006 tax treaty with Serbia and Montenegro to both (i) Serbia and (ii) Montenegro.
3. Available at: www.oecd.org/tax/treaties/beps-mli-position-india.pdf.
4. *Ibid*. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, India 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. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework.
6. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.
7. The 2016 and 2017 MAP statistics of India are included in Annexes B and C of this report.
8. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

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

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

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

Current situation of India's tax treaties

2. Out of India'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.[1] One of the remaining two treaties contains a provision that is based on the first sentence of Article 25(3), but omits the word "interpretation". The other treaty does not contain any such provision. Both treaties are therefore considered as not having the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

3. India reported that the absence of Article 25(3), first sentence, of the OECD Model Tax Convention in its tax treaties does not obstruct its competent authority from entering into MAP agreements of a general nature.

Anticipated modifications

Multilateral Instrument

4. India signed the Multilateral Instrument. 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.

5. 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, India listed both as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). Both treaty partners are a signatory to the Multilateral Instrument, listed their treaty with India as a covered tax agreement 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, modify both tax treaties identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Bilateral modifications

6. As after the entry into force of the Multilateral Instrument for the treaties concerned, all of India's 96 tax treaties will contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, there is no need for bilateral modifications. Regardless, India reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

7. Almost all peers that provided input reported that their treaty with India is in line with the requirements under the Action 14 Minimum Standard, which also regards element A.1. One peer specifically mentioned that its treaty with India does not meet the requirement under this element, which concerns one of the two treaties identified above. While this peer noted that its treaty with India will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, that instrument will actually modify this treaty and consequently it will meet the requirement under element A.1.The peer that is a treaty partner to other treaty for which the treaty is considered not to meet the requirement under element A.1 did not provide input.

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 include the required provision.	India should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first 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 this treaty. In addition, India should maintain its stated intention to include the required provision in all future tax treaties.

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

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

8. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.[2] The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The "roll-back" of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

India's APA programme

9. India reported it has implemented an APA programme in 2012, under which it is allowed to enter into unilateral, bilateral and multilateral APAs. The legal basis of this programme is set forth in Articles 92CC and 92CD of the Income Tax Act of 1961. Paragraph 1 of Article 92CC stipulates that India's tax administration is allowed to enter into an APA. The period for which an APA can be entered into is, pursuant to paragraph 4, five years. If a transaction has already taken place, the request must be filed before the first day of the previous year that is relevant to the first year to which the APA relates. If transactions are yet to be undertaken, the APA request should be filed before these transactions will be undertaken.

10. For entering into a bilateral or multilateral APAs, the following basic requirements should be met:

- There is a tax treaty in place between India and the other jurisdiction(s) involved, which contains a MAP provision and the equivalent of Article 9(2) of the OECD Model Tax Convention.
- The other jurisdiction(s) involved also have an APA programme in place.

11. The authority competent to enter into APAs is the Foreign Tax and Tax Research Division of the Central Board of Direct Taxes within the Department of Revenue of the Ministry of Finance. The two teams that within the Foreign Tax and Tax Research Division are responsible for handling MAP cases are also responsible for handling requests for (bilateral) APAs.[3] Where it concerns bilateral or multilateral APAs, the Foreign Tax and Tax Research Division will send the APA requests to the International Taxation Directorate for analysis and the preparation of a position paper on the case. This directorate is part of the Income Tax Department, which is a sub-department of the Central Board of Direct Taxes, under which also the Foreign Tax and Tax Research Divisions reside.

12. Within the International Taxation Directorate there are four dedicated APA teams that work under the supervision of the Principal Chief Commissioner. The prepared positions by these teams are first approved by this commissioner and then sent to Foreign Tax and Tax Research Division for review and further approval. It is this latter division that will eventually prepare the position of India's competent authority, liaise with the other competent authority concerned and enters into negotiations on an APA. If such agreement has been reached and accepted by the taxpayer, it will be sent to the Central Board of Direct Taxes for approval.

13. Further to the above, India in 2012 issued Vide Notification No. 36/2012 (F. No. 133/5/2012-SO(TPL)/S 2005 (E)). On the basis of this notification, rules on APAs were introduced in Rules 10F-10T and 44GA of the Income Tax Rules of 1962 to give effect to the APA programme. These rules *inter alia* pertain to the process of filing a request for an APA, pre-filing consultations, payment of fees, the process for obtaining an APA, the terms and conditions of a signed APA and requirements for filing an annual compliance report. In addition, in 2013 India also published guidance on its APA programme.[4] This guidance includes information on: (i) types of APAs that are available in India, (ii) the authority competent to handle APA cases, (iii) the process for obtaining an APA (including a pre-filing consultation), (iv) legal effects of an APA and (v) withdrawal and renewal of APAs. Furthermore, this guidance also includes the forms taxpayer should complete with their submission of an APA request and a Q&A with information on how India runs its APA programme.

Roll-back of bilateral APAs

14. In 2014 India adopted the Finance (No. 2) Act 2014, pursuant to which legislative changes were introduced to allow roll-backs of bilateral APAs. Pursuant to paragraph 4 of Article 92CC of the Income Tax of 1961 in conjunction with rule 10MA of the Income Tax Rules of 1962, roll-backs can be provided for a fixed period of four years. Rule 10 MA defines that the following requirements should be met for granting a roll-back:

- The covered transactions and the involved associated enterprises are the same for the APA years and the roll-back years.
- The taxpayer has timely filed its tax returns for the years for which a roll-back is requested and has timely filed the report in respect of international transactions.
- The years for which a roll-back has been requested relate to transactions that have been undertaken in those years.
- The taxpayer filed the required form for requesting a roll-back.

15. The granting of roll-backs can, pursuant to section (3) of rule 10 MA, be limited where a judicial decision has already been rendered by the Income Tax Appellate Tribunal (ITAT) concerning the transaction(s) that is (are) also covered by an APA. If only one or some of the four years for which a roll-back is possible is affected by this decision, then these years are excluded from the roll-back agreement. Furthermore, a roll-back may not be provided if the effect thereof is that the to be reported income in India is reduced or available losses are increased.

16. Further to the above, India reported it charges fees for requesting bilateral APAs as well as for roll-back of such APAs. For bilateral APAs the fees are INR 1 million when the value of the transaction is up to INR 1 billion, INR 1.5 million if the value is between INR 1 billion and INR 1.5 billion, and INR 2 million if the value exceeds INR 2 billion. For roll-back of bilateral APAs the fees is fixed at INR 0.5 million for each request.

17. Circular No. 10 of 10 June 2015 includes information on the possibility of roll-backs of bilateral APAs in India's, which contains 13 Q&As on the conditions to be fulfilled for obtaining such a roll-back. This *inter alia* concerns an explanation of: (a) the requirement that the transactions in roll-back and future years should be the same, (b) why a roll-back is not available if the ITAT already rendered a decision and (c) on the interaction between APAs and MAP. It is also clarified that roll-backs can only be requested for all four years and that it is not possible to ask for a roll-back for only a limited number of years. This, however, is different if the transactions concerned were not entered into in all four relevant years.

Practical application of roll-back of bilateral APAs

18. India reported that since 2016 it publishes statistics on its APA programme on the website of its tax administration.[5] These statistics include information on the number of APA requests received, signed and pending, with a specification per treaty partner, processing times, sectors of the economy and transactions concerned. In this respect, India reported that since 1 January 2016 it has received 134 requests for a bilateral APA, which all have been accepted into the process. Furthermore, 92 of these 134 requests also concern a roll-back. Of these requests, so far three bilateral APAs have been signed, one of which with a roll-back.

19. Nine out of the 15 peers that provided input reported not having any experiences with India since 1 January 2016 concerning bilateral APAs or the roll-back thereof. All remaining six peers reported having such experiences. Two of these six peers reported having since 1 January 2016 received one request for a roll-back of a bilateral APA that concerns India. For one peer the request was received in 2016 and the roll-back was granted in the same year. This peer noted that India is willing to try and deal with all years where double taxation occurred in either the MAP or the APA process. It also mentioned that in its experience India works in a positive manner to prevent treaty disputes, including roll-backs of bilateral APAs. For the other peer the request is still under discussion, but this peer noted it has no experience that a roll-back in India would not be possible. A third peer reported to have two cases concerning roll-back with India since 1 January 2016, one of which was granted and the other one currently pending.

20. Further to the above, two other peers reported having considerable experiences with India concerning the granting of bilateral APAs, including a roll-back thereof. One of these peers reported that it received in 2016 and 2017 nine requests for a roll-back of a bilateral APA between India and this peer. The number of APAs where a roll-back was granted as per 31 December 2017 was ten. Furthermore, this peer noted that under India's regulations it is not possible to grant a roll-back to a fiscal year for which a court decision was issued concerning the issues for which the roll-back was requested. This peer mentioned it had encountered cases where an agreed roll-back could not be applied for some years due to such court decision being rendered. The second peer reported that in January 2015 it reached an agreement on outstanding MAP cases in a framework agreement and on that basis India started in February 2016 to accept requests for bilateral APAs. Since that date it has received 65 requests for bilateral APAs, which has in fact been the fastest growing category in the peer's APA inventory, and eight of such APAs were agreed on with India. The peer further noted that it is currently working with India's competent authority on reaching an agreement in many more cases. Concerning the roll-back of bilateral APAs, this peer noted that approximately 75% of requests for bilateral APAs it received under the treaty with India included a request for roll-back. This peer confirmed that India's competent authority is open to provide for roll-back of bilateral APAs in appropriate cases and that such roll-backs have been granted during the Review Period. Lastly, one peer mentioned that it has received numerous requests for roll-back of bilateral APAs since 1 January 2016. While this peer did not provide input on whether such roll-backs were granted, it noted that India does not permit a roll-back for more than four years as from the first year for which the bilateral APA applies, which in this peer's view can create a discrepancy between outcomes under an APA or a MAP. Furthermore, this peer mentioned that it is India's preference to always make on-site visits to taxpayers in every APA case, before sending a position. In the peer's view this can extend the time that is necessary to come to an agreement. The peer stressed that the decision for an on-site visit should be taken on a case-by-case basis, as it is questionable how useful such visits are. In fact,

the peer mentioned that joint information requests and presentations by taxpayers to all involved competent authorities at the same time speeded up the process and also ensured that the competent authorities received the same information.

Anticipated modifications

21. India did not indicate that it anticipates any modifications in relation to element A.2. It, however, mentioned that its APA programme is gradually maturing, whereby a number of suggestions from taxpayers have been received. In that regard, India reported it is currently examining these suggestions and also the performance of its APA programme. It may be that this leads to modifications of the programme, if needed.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	India should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far.

Notes

1. These 94 treaties include the treaty with former Czechoslovakia that India continues to apply to the Slovak Republic, the former treaty with Denmark that India continues to apply to the Faroe Islands and the treaty with former Serbia and Montenegro that India continues to apply to both (i) Serbia and (ii) Montenegro.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines (OECD, 2017b) for Multinational Enterprises and Tax Administrations.
3. Reference is made to the Introduction for a description.
4. Available at: https://www.incometaxindia.gov.in/booklets%20%20pamphlets/advance-pricing-agreement-guidance-with-faqs-(tpi-43).pdf.
5. Available at: https://www.incometaxindia.gov.in/news/annual-report-2017-18-31-8-2018.pdf. The last available published statistics are for fiscal years 2017-18.

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Part B

Availability and access to MAP

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

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

22. 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 India's tax treaties

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

23. Out of India's 96 tax treaties, 67 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 Final Report (OECD, 2015a), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.[1] None of India's 96 tax treaties currently contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015b), as changed by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either state.

24. The remaining 29 tax treaties can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	28*
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident and whereby the taxpayer can pursuant to a protocol provision not submit a MAP request irrespective of domestic available remedies.	1

*These 28 treaties include the former treaty with Denmark that India continues to apply to the Faroe Islands, and the treaty with former Serbia and Montenegro that India continues to apply to both (i) Serbia and (ii) Montenegro.

25. The 28 treaties mentioned in the first row of the table above are considered not to contain the equivalent of Article 25(1), first sentence, of the 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 23 of those 28 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the states (two treaties).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (21 treaties).[2]

26. The non-discrimination provision in the remaining five treaties is almost identical to Article 24(1) of the OECD Model Tax Convention 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 for these five treaties therefore not clarified by a limited scope of the non-discrimination article, following which they are considered not to be in line with this part of element B.1.

27. Furthermore, the treaty mentioned in the second row of the table incorporates a provision in the protocol to this tax treaty, which reads:

> The expression "irrespective of the remedies provided by the domestic law" means that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, preventively initiated, when the claim is related with an assessment of the taxes not in accordance with this Convention.

28. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law. This tax treaty is therefore also considered not to be in line with this part of element B.1.

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

29. Out of India's 96 tax treaties, 86 contain a provision 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.[3]

30. The remaining ten tax treaties can be categorised as follows:

Provision	Number of tax treaties
No filing period for MAP requests	5
A filing period for MAP requests shorter than three years (two years)	4
A filing period for MAP requests longer than three years (five years)	1

Practical application

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

Access to MAP and domestic remedies

31. As noted in paragraph 27 and 28 above, in all but one of India's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, India reported that if a taxpayer submits a MAP request and simultaneously initiates domestic available remedies, access to MAP would be granted. Access would also be granted if these domestic remedies have been finalised, albeit that India is not able to derogate from decisions of its domestic courts and thus will only seek correlative relief at the level of the treaty partner.

32. One peer provided input on the practice of India to give access to MAP when cases are also pending before domestic courts. This peer noted that for many of its pending MAP with India domestic judicial remedies are simultaneously initiated in India. In this respect, the peer expressed that it would be helpful to have clarity on the circumstances where India's competent authority would not grant access to MAP for a specific case if the taxpayer does not withdraw from the domestic remedies. It also suggested to provide guidance on this issue to taxpayers. The peer further referred to cases in which taxpayers obtained a stay of statutory assessment proceedings from an Indian court, whereby for the case under review the taxpayer also submitted a MAP request at the level of the peer's competent authority. According to the peer, India was not willing to consider the case in MAP unless the taxpayer has withdrawn from the domestic court case in order to lift the stay and examinations can proceed. The peer, however, noted that its view of India's position would differ depending on whether the stay was issued before or after a draft assessment order was issued by India's tax administration. In the peer's view, if there was already a draft assessment order, then access to MAP should be given and India should enter into discussions with a view to resolve the case.

33. India responded to the peer input and mentioned that the peer input it is not clear, as India has clearly stated (reflected in paragraph 31 above) that access to MAP will be given irrespective of domestic remedies. India therefore mentioned that it is unclear what the peer intends to say with its statement, as India is of the view that taxpayers should have the choice to go for either remedy or both remedies together. India also responded to the peer's statement in paragraph 32 that India would not be willing, in an individual case, to give access to MAP until the taxpayer has withdrawn from domestic remedies. In this respect, India stated that its competent authority never requires taxpayers to withdraw from domestic remedies as a prerequisite for granting access to MAP. The particular case the peer is referring to is in India's view an unique case, where the taxpayer concerned has approached India's High Court to stay the assessment proceedings in its entirety and to have a settlement via the MAP process. According to India this is a situation where the taxpayer is trying, via domestic courts, to prevent a tax assessment from being completed, but nevertheless wants a settlement under MAP. India highlighted that if assessment

procedures are stayed, then there would not be a case of double taxation that could be discussed in MAP. In order for the taxpayer to have its case being discussed, India's competent authority has asked to withdraw from the court proceedings. This, however, is not a general prerequisite for access to MAP, but follows from the fact that the underlying taxation could not be established until the court procedure was withdrawn. In India's view this is a unique case and the position taken was to avoid taxpayers from remedy shopping. It therefore concluded that the peer has completely misunderstood the principled approach of India's competent authority in this case.

34. The peer provided a comment on the response given by India. It noted that if the audit proceedings in the case were at a stage where a person could not yet conclude that taxation not in accordance with the provisions of the treaty is probable, then it understands the position of India that the assessment proceedings would need to resume and proceed further before the case could be dealt with in MAP. The peer further noted that if, however, the stay was issued at a moment where the taxpayer could conclude that taxation not in accordance with the treaty is probable (e.g. once a draft assessment order has already been issued), then a stay is not a valid basis for denying access to MAP or otherwise declining to discuss a case (or issue). The peer concluded by stating that its concern is regarding this narrow issue.

35. Taking into account the peer input and India's responses, the particular case that is being referred to concerns a case where there was an issuance of an assessment notice and before a draft assessment order could be issued, the notice was contested in front of India's courts. If the outcome of that process is that a draft assessment order could be issued, India reported that it would then be willing to discuss the case in MAP. Apart from this particular case, as referred to in paragraph 31 above, India's policy is to grant access to MAP irrespective of whether domestic remedies for the same case is pending or are already finalised.

Access to MAP and the requirement of a final tax assessment order

36. One peer provided input and mentioned that it experienced in several cases that India's competent authority takes the position that a final assessment order is required before a case can be accepted into the MAP process and thus that access to MAP can only be granted – or a MAP case can only bilaterally be discussed – once India's tax administration has issued a final assessment order. In the peer's view access to MAP should already be given when a draft assessment order is issued, because at that moment the taxation that is not in accordance with the treaty is probable and no longer merely possible.

37. India responded to this input and mentioned that MAP discussions should only be started when in an individual case a final tax assessment has been issued, such to avoid devotion of time and resources on cases for which the underlying tax has not been finalised or is uncertain. India further reported that its policy, however, is not to deny access to MAP in such circumstances, but to postpone active discussions on the resolution of the case until there is a final assessment order. In view of the explanations given by India, its policy would be in line with the treaty provision, as access to MAP will not be denied in cases where there is no final assessment order.

Access to MAP and the requirement of double taxation/other instances

38. The peer referred to above provided further input on the practice of India to give access to MAP in relation to the requirements under Article 25(1), first sentence, of the OECD Model Tax Convention. It presented two examples where India's competent authority was not willing to discuss the case, for which the peer concluded that such

denials would be characterised as effective denials of access to MAP, although the MAP requests were submitted at the level of the peer's competent authority. These examples can be summarised as follows:

- *Requirements of double taxation*

  Under the peer's treaty with India the requirement is that there is taxation not in accordance with the convention. In practice, however, India's competent authority has stated in face-to-face negotiations that the treaty's preamble, which refers to the avoidance of double taxation, limits the scope of cases that it may resolve in MAP. In that regard, the peer's view is that the scope of the MAP provision relates to all cases where there is, or is a risk on, taxation that is not in accordance with the provisions of the convention, and not limited to cases of double taxation. The peer gave a specific example which it encountered in 2018, where the issue at hand was whether a permanent establishment was in existence in India. India's position paper did not address this issue of MAP access. India's competent authority then stated in face-to-face negotiations that it will not address this case in MAP unless the taxpayer resident in the peer's state establishes that there is double taxation, even if it would be established that there was taxation in contravention of the tax treaty. When India's competent authority declined to discuss the case further, the peer offered to provide its view on the issue in writing in an attempt to maintain the dialogue in the case.

- *Resident requirements for single resident members of a fiscally transparent entity*

  India's competent authority has verbally and informally in writing stated that it will not provide treaty benefits or grant access to MAP with respect to income of fiscally transparent entities that are treated under the peer's domestic legislation as disregarded from its single resident member. The peer understands the views of India's competent authority to be that a single resident member of a fiscally transparent entity does not qualify as a resident under the tax treaty, because such member is not referred to in the precise language of the treaty, which only refers to partnerships wherein one of the partners is a resident in the peer's state. In the peer's view, however, the resident article of its treaty with India may be interpreted to include a single member of a fiscally transparent entity. According to the peer, under its domestic legislation, generally, the tax attributes of a single member of a fiscally transparent entity flow into its owner. If such entity's owner is a resident individual, corporation, partnership, estate or trust (which are entitled to treaty benefits) of the peer, then, in the peer's opinion, this type of entity should also be entitled to treaty benefits and should not be precluded from MAP for this reason. In that regard, the peer's competent authority requested to solve the matter through an interpretative MAP under Article 25(3) of the tax treaty, but India's competent authority responded that an amendment of the treaty would be necessary for this case.

39. The peer concluded by stating that it would very much appreciate a further dialogue with India on possible solutions to the cases discussed above.

40. With respect to this input, India responded by stating that in its view the peer has raised two issues by giving examples of two different cases and has equated those with a situation that would concern an effective denial of access to MAP. In India's view, the issue raised by the peer on the availability of MAP go beyond the terms of a tax treaty is not acceptable, as these are applied in furtherance of the treaty's preamble (setting out the treaty's purpose) and cannot go beyond that. If the treaty's purpose would not be of relevance, India questioned why then under BEPS action 6 it was necessary to create a

minimum standard to amend treaties' preambles. India furthermore mentioned that the specific case the peer is referring to is still under consideration, following which it is premature for the peer to provide comments, in particular since during the last face-to-face meeting both competent authorities decided that the peer would provide its view on the case in writing. Concerning the issue of single resident members of partnerships, India noted that it has made its position very clear and also that the peer even tentatively agreed to India's views. During a follow-up face-to-face meeting the issue was further discussed, but both competent authorities could not reach a solution. In this respect, India mentioned that it is aware that the peer has a similar problem with other treaty partners and that it has entered into a protocol with one of its treaty partners to allow treaty benefits to pass-through-structures. To this end, India reported it has proposed the same solution to the peer and it is therefore unclear why the peer brings this issue up as a matter of effective denying access to MAP. India concluded by stating that in its view the issue is beyond the purview of the peer review of the Action 14 Minimum Standard.

41. Lastly, with respect to the issue raised by the peer as discussed in paragraph 38, India stated that it is always willing to discuss any issue in MAP and always has done so. In India's view it is even surprising that the peer wants to discuss the two issues brought forward further, but at the same time already draws a conclusion that India is effectively denying access to MAP in these issues.

42. With respect to the first example given, the peer provided a comment to India's response. It mentioned that it disagrees that it is premature to provide comments on the case where India has declined in face-to-face negotiations to discuss a case until the taxpayer resident in the peer's state established actual double taxation. The peer further noted that its competent authority offered to provide its views in writing in an attempt to continue the dialogue in the case and that it would be pleased if India would reassess its stated position. Nevertheless, the peer concluded that until such reassessment is made, there is a risk that India will effectively deny access to MAP to this case and for cases concerning similarly situated taxpayers.

43. With the peer it has to be admitted that the wording used in Article 25(1) of the OECD Model Tax Convention as incorporated in India's treaties does not only concern cases of double taxation, but all instances where there is (a risk on) taxation that comes into conflict with the provisions of the applicable tax treaty. India's interpretation to limit access to MAP for cases where there is double taxation is contrary to the treaty wording and leads to an effective denial to the MAP process even when the requirements under the MAP provision have been met.

44. With respect to the second example given, the peer also provided a comment to India's response. It specified that it has solved this issue with other treaty partners through an interpretative MAP agreement under Article 25(3) of the applicable treaty. Since these treaties are similarly worded as the treaty with India, the peer believes the issue could be solved in a similar manner and not that it is solely possible to solve the issue through a protocol. In the peer's view, such route would be a much less efficient way of addressing the issue. While the issue is clear, it appears to be more of a general interpretative nature than pertaining to a specific individual case and therefore do not fall in the ambit of analysing whether access to MAP is given in eligible cases.

Access to MAP in case of advance rulings

45. One peer provided input on access to MAP in cases of advance rulings in India. The peer mentioned that it understands that India's tax administration can issue certain

administrative rulings (e.g. the authority for advance rulings (AARs)), which can be granted by an authority that is independent from the examination function within India. The peer also noted that entering in such rulings would have as a consequence that the AAR cannot be adjusted by a MAP agreement that is not consistent with the content of the ruling. The peer indicated it would appreciate further clarity on the interplay between these rulings and the MAP process, as in its view the understood practice in India may operate as an effective barrier to MAP.

46. India responded to the peer's input and mentioned that the AAR is not a statutory dispute resolution body, but instead an independent judicial authority that issues advance rulings on tax matters. It further clarified that such rulings can only be challenged in courts and as such it is a judicial proceeding that cannot be discussed in MAP. For that reason India's competent authority would not grant access to MAP. India added to this that so far no taxpayer has request for MAP assistance for cases for which an AAR ruling was obtained.

47. Taking the input from the peer and India's response into account, and similar as to the issue concerning the requirement of double taxation, the treaty between India and the peer incorporate Article 25(1) of the OECD Model Tax Convention as it read prior to the amendment of the Action 14 final report. Pursuant to this provision, taxpayers can file a MAP request when they consider there is, or will be, taxation not in accordance with the provisions of the tax treaty. Obtaining an AAR ruling is not a basis upon which access to MAP should not be granted, all the more since it would deprive the taxpayer from obtaining relief at the level of the treaty partner.

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

48. For those five tax treaties mentioned in paragraph 30 above that do not contain a filing period for MAP requests, India reported that there are no restrictions in its domestic law nor that there is any administration practice that puts a time limit on the period during which a MAP request should be filed. In fact, India will give access to MAP regardless of whether it relates to closed tax years, even if it concerned years that were closed long ago.

Anticipated modifications

Multilateral Instrument

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

49. India signed the Multilateral Instrument. 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 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 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Where only one of the treaty partners made such a notification, article 16(4)(a)(i) of the Multilateral Instrument will supersede this treaty only to the extent that the provision

contained in that treaty is incompatible with Article 16(1) (containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report). Furthermore, Article 16(4)(a)(i) will for a tax treaty not take effect 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.

50. With the signing of the Multilateral Instrument, India 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.[4] In this reservation, India 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 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 introduction and application of such process will be further discussed under element B.2.

51. In view of the above, following the reservation made by India, those six tax treaties identified in paragraphs 26-28 above that are considered not containing the equivalent of Article 25(1), first sentence, of the 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

52. 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.

53. In regard of the four tax treaties identified in the table of paragraph 30 above that contain a filing period for MAP requests of less than three years, India listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). All four treaty partners are a signatory to the Multilateral Instrument, listed their treaty with India as a covered tax agreement and also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, all four tax treaties will be modified by the Multilateral Instrument, upon entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

54. India further reported that for those six tax treaties that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report and will not be modified by the Multilateral

Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1 for which it has a plan in place. In line with this plan, India has initiated negotiations with three of the six treaty partners and further approached or has been approached by two treaty partners to initiate such negotiations to bring the relevant treaties in line with the requirements under element B.1.

55. With respect to the first sentence of Article 25(1), India reported that it will in those bilateral negotiations propose to include the equivalent as it read prior to the adoption of the Action 14 final report. In addition, India reported it will seek to include this equivalent in all of its future tax treaties.

Peer input

56. Almost all peers that provided input reported that their treaty with India is in line with the requirements under the Action 14 Minimum Standard, which also regards element B.1. One of these peers noted that its treaty with India will be modified by the Multilateral Instrument to allow the submission of MAP requests to either competent authority, which, however, does not correspond with the above analysis.

57. Concerning the first sentence of Article 25(1), one peer specifically mentioned that its treaty with India does not meet the requirement under element B.1, which concerns one of the six treaties referred to in paragraphs 26-28 above. This peer noted that its treaty with India will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, which is in line with the performed analysis. Another peer, whose treaty with India also is included in the list of six treaties referred to in paragraphs 26-28, noted that its treaty with India is not in line with this part of element B.1, but that in practice it has not caused any problems. The peers to the remaining four of the six treaties did not provide input or did not indicate that their treaty is not in line with this part of element B.1.

58. Concerning the second sentence of Article 25(1), one peer mentioned its treaty with India does not contain a filing period for MAP requests, but as both jurisdictions have signed the Multilateral Instrument, this peer concluded that a three-year period will apply for the submission of MAP request when that instrument has entered into force for this specific treaty.

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 OECD Model Tax Convention and provides that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.	India 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 this treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.
	This treaty is expected to be modified by the Multilateral Instrument to include a filing period of at least three years and bilateral negotiations have been initiated with a view to include Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.	Concerning Article 25(1), first sentence, of the OECD Model Tax Convention, India should continue bilateral negotiations to include a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

	Areas for improvement	Recommendations
[B.1]	Five 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. None of these treaties are expected to be modified by the Multilateral Instrument to include the required provision, but for four of these five treaties bilateral negotiations have been initiated or are about to be initiated with a view to include Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.	India should continue pending negotiations with four of the five treaty partners to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent. For the remaining treaty partner, India should, in accordance with its plan, also request the inclusion of the required provision via bilateral negotiations. For all five treaties this concerns a provision either: a. as amended in the Action 14 final report; or b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.
	Three 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 that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. These treaties are expected to be modified by the Multilateral Instrument to include a filing period of at least three years.	India 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 these three tax 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.
	-	In addition, India should maintain its stated intention to include the equivalent of Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report in all future tax treaties.
	Access to MAP will be denied in certain cases, even when the requirements for initiating a MAP case under the treaty provision that is equivalent to Article 25(1) of the OECD Model Tax Convention are met. This in particular concerns cases where no double taxation occurred but where there may be taxation not in accordance with the convention.	India should ensure that access to MAP is given in all eligible cases where the requirements under Article 25(1) of the OECD Model Tax Convention have been met. In particular, India should not limit such access in cases where there is no occurrence of double taxation but may be taxation not in accordance with the convention.

[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).

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

i. of either treaty partner; or, in the absence of such provision,

ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases,

jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

Domestic bilateral consultation or notification process in place

60. As discussed under element B.1, out of India's 96 treaties, none currently contain 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 India'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.

61. India reported that it has not introduced a documented bilateral consultation or notification process for those situations where its competent authority would consider the objection raised in a MAP request as not being justified.

Practical application

62. India reported that since 1 January 2016 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016 and 2017 MAP statistics submitted by India show that in 2017 one MAP case was closed with the outcome "objection not justified". This, however, concerned a decision made by India's treaty partner and not by its own competent authority.

63. All peers that provided input indicated not being aware of any cases for which India's competent authority denied access to MAP since 1 January 2016. They also reported not having been consulted/notified during the Review Period of a case where India's competent authority considered the objection raised in a MAP request as not justified, which can be clarified by the fact that no such instances have occurred in India during this period.

64. Furthermore, one peer mentioned it is not aware that India has implemented a bilateral process that would require its competent authority consult or notify the peer's competent authority before the decision is made to deny access to MAP. This peer noted that taxpayers that submit a MAP request in India would also inform the peer's competent authority of that fact, following which this competent authority would proactively request information about the acceptance status of the case from India's competent authority, be it during scheduled meetings and/or telephone conferences.

Anticipated modifications

65. India indicated that it intends to introduce a bilateral notification process to be applied in those situations where its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. In that regard, India specified that in the agreed minutes to the recent revisions of amendments of tax treaties, reference was made to the implementation of a bilateral notification process and that it intends to take action for all remaining treaties in a similar manner.

Conclusion

	Areas for improvement	Recommendations
[B.2]	All 96 tax treaties do not contain a provision equivalent to Article 25(1) 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 partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	India should without further delay introduce a documented notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, once introduced, India should apply that process in practice for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

67. Out of India's 96 tax treaties, 69 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner.[5] Furthermore, 23 treaties do not contain a provision that is equivalent to or based on Article 9(2). The remaining four treaties contain a provision that is based on Article 9(2), but deviate from this provision for the following reasons:[6]

- In three treaties the granting of a corresponding adjustment is only optional, as the phrase "… shall make an appropriate adjustment" is replaced by "…. may consult together with a view to reach an agreement on the adjustment of profits".
- In one treaty corresponding adjustments can only be made through an agreement between the competent authorities.

68. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in India's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, India indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, such regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in its tax treaties. In this respect, India reported that on 27 November 2017 it issued a press release to clarify that access to MAP is available in those cases where the applicable tax treaty does not contain such equivalent. More specific, it is stated that it has been decided by the Central Board of Direct Taxes to accept transfer pricing MAP and APA cases regardless of whether the second paragraph of Article 9(2) is contained in India's tax treaties.

69. Previously, India made a reservation to Article 25 of the OECD Model Tax Convention, stipulating that in India's view there would not be access to MAP for cases of economic double taxation arising from transfer pricing adjustments if Article 9(2) is not contained in its tax treaties. With the 2017 update to the OECD Model Tax Convention this reservation has been withdrawn.

Application of legal and administrative framework in practice

70. India reported that since 1 January 2016, it has not denied access to MAP on the basis that the case concerned is a transfer pricing case.

71. All peers that provided input indicated not being aware of a denial of access to MAP by India since 1 January 2016 on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

72. India reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, India signed the Multilateral Instrument. 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).

73. India has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 27 treaties identified in paragraph 67 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, India listed all of them as a covered tax agreement under the Multilateral Instrument and included three in the list of treaties for which India has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Furthermore, India did not make a notification on the basis of Article 17(4) for the remaining 24 treaties.

74. Of the relevant 24 treaty partners, ten are not a signatory to the Multilateral Instrument, whereas two have not listed their treaty with India under that instrument. Of the remaining 12 treaty partners, three have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with India already contains the equivalent of Article 9(2). Therefore, at this stage, nine of the 27 tax treaties identified above will, upon its entry into force for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).[7]

75. One peer noticed its treaty with India does not have the full equivalent of Article 9(2) of the OECD Model Tax Convention, but that access to MAP will be given in all cases and that the treaty will be modified by the Multilateral Instrument to include such equivalent. This peer's treaty is among the nine treaties referred to above that will be superseded by the Multilateral Instrument to the extent of incompatibility.

Conclusion

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

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

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

76. 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

77. None of India's 96 tax treaties allow competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of India do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

78. India reported that it will provide access to MAP in cases relating to the application of a treaty anti-abuse provision. Concerning the application of India's domestic general anti-avoidance rules, sections 90(2) and 90A(2) of the Income Tax Act of 1961 determines that relief of double taxation should be given if so provided under the applicable tax treaty. Sections 90(2A) and 90A(2A) of that act refers to the domestic general anti-avoidance rule as a reason for not granting relief of double taxation. As in India's view these sections would override treaty provisions, it constitutes a reason for not granting access to MAP. In light of the requirements under the Action 14 Minimum Standard, India, however, reported it would give access to MAP for cases concerning the question whether the application of the domestic anti-abuse provision comes into conflict with the provision of a tax treaty. India also reported that such cases then can be a subject matter of MAP discussions, possibly resulting in an agreement that would lead to relief given by India. These discussions would only pertain to the issue of double taxation that is a consequence of invocation of domestic anti-abuse provisions and whether correlative relief should be granted under the provisions of the relevant tax treaty, but not the grounds upon which India decides to invoke these provisions.

Practical application

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

80. All peers that provided input indicated not being aware of cases that have been denied access to MAP by India since 1 January 2016 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

81. India did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

<table>
<tr><th></th><th>Areas for improvement</th><th>Recommendations</th></tr>
<tr><td rowspan="2">[B.4]</td><td colspan="2">India reported that it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. India is therefore recommended to follow its policy and grant access to MAP in such cases.</td></tr>
<tr><td>Access to MAP will be given regarding issues resulting from the application of a domestic law anti-abuse provision, however, such discussions in MAP will only focus on the elimination of double taxation arising form such application and not to issues that do not give rise to double taxation or the question whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.</td><td>India should change its policy to effectively allow access to MAP for issues concerning the question whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty, and be willing to discuss such issues when being accepted into the MAP process, including where there is no double taxation but there is taxation that is not in accordance with the provisions of a tax treaty.</td></tr>
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[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.

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

Legal and administrative framework

Audit settlements

83. India reported that under its domestic law no process is available allowing taxpayers and the tax administration to enter into a settlement agreement during the course of or after ending of an audit.

Administrative or statutory dispute settlement/resolution process

84. India reported it has in place a statutory dispute settlement process that is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer. Chapter XIXA of the Income Tax Act of 1961 includes the relevant rules for this process. Pursuant to Article 245B, the Income Tax Settlement Commission ("**ITSC**") was established and is placed outside the tax administration, thereby functioning as an independent body. The ITSC has, pursuant to paragraph 4(a) of Article 245D, the authority to settle disputes between the taxpayer and the tax administration, and consists of at least a chairman and a number of vice-chairman. Furthermore, ITSC comprises various benches, which consist of one chairman, a vice-chairman and two other members. Any member of the ITSC is appointed by the Central Government and, on the basis of paragraph 3 of Article, should be of integrity and outstanding ability, thereby also having special knowledge of and experience with direct taxation and business accounts.

85. Article 254C, paragraph 1, of the Income Tax Action of 1961 stipulates that taxpayers may request with the ITSC a settlement of a case concerning his income tax position at any stage of the assessment process, but only if his case exceeds a certain threshold of tax and interest payable. To this end, the request should include a full and true disclosure of its income that has not been disclosed with the assessing officer of the tax administration, as also details regarding the manner in which such income has been derived and the additional tax that is payable on such income. Upon receipt of the request, the ITSC shall provide a hearing with the taxpayer, to give him the opportunity to explain why his request should be accepted into the process.

86. If the taxpayer's request is accepted, then the ITSC shall, pursuant to Article 254D), paragraph 2B, request from the tax administration a report stating its position on the case under review. On the basis of that report the ITSC shall take a final decision on whether the case shall be further dealt with in the settlement process. In such a situation, the ITSC will

consider all facts and evidence and on that basis it may pass an order of settlement, which determines the additional income and the tax/interest payable on such income. The order of settlement has to be taken within 18 months as from the date of the submission of the request, whereby, pursuant to Article 245BD the decision shall be made by majority voting if the members do not agree on the decision to be made. In addition, Article 245I stipulates that every order by the ITSC shall be final and cannot be reopened in any other proceedings. Pursuant to Article 254L the settlement order has to be considered as a judicial proceeding.

87. In relation to MAP, India specified that after the commission has settled the dispute it would not be possible anymore to obtain relief from double taxation through MAP. In such situation, access to MAP would thus be denied.

Practical application

88. India reported it has since 1 January 2016 not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through its statutory settlement process. However, no MAP requests were received by its competent authority in such situations.

89. All peers that provided input indicated not being aware of a denial of access to MAP by India since 1 January 2016 in cases where there was an audit settlement between the taxpayer and the tax administration or in cases that were already resolved via its statutory dispute settlement process.

Anticipated modifications

90. India 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.

91. 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

92. As will be discussed under element B.8, India has not yet issued any MAP guidance. Concerning the information to be included in a MAP request, India reported that taxpayers need to complete a specific form when submitting a MAP request (form No. 34F). In this

form, basic information on the taxpayer needs to be presented and a specification on why the taxpayer believes there is taxation not in accordance with the treaty. It further requires that taxpayers provide all necessary documents pertaining to the request, without making a specification in this regard.

93. Where a taxpayer has not included all required information in its MAP request, India reported its competent authority has no restrictions in requesting additional information or documents. India thereby generally a 15-30 day time period for requesting such information. There, however, is no specific timelines given to taxpayers within which they have to present the required information. While there are no further rules of procedure on how the MAP process is further continued in those situations where not all relevant information is contained in a MAP request, India reported that if taxpayers submit form No. 34F, the MAP case will be accepted into the process regardless of whether additional information is requested. In other words, the requesting and submission of such additional information may affect the (timely) resolution of the MAP case, but would not lead to a limitation of taxpayers' access to MAP.

Practical application

94. India reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as required by its domestic law. It further reported that since 1 January 2016 it has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

95. All peers that provided input indicated not being aware of a limitation of access to MAP by India since 1 January 2016 in situations where taxpayers complied with information and documentation requirements.

Anticipated modifications

96. India did not indicate that it anticipates any modifications in relation to element B.6, other than – as will be further discussed under element B.8, that it will introduce MAP guidance in which it will be clarified what information should be included in a MAP request.

Conclusion

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

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

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

97. 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 India's tax treaties

98. Out of India's 96 tax treaties, 91 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.[8] The remaining five treaties do not contain a provision that is based on, or equivalent to, Article 25(3), second sentence, of the OECD Model Tax Convention.

Anticipated modifications

Multilateral Instrument

99. India signed the Multilateral Instrument. 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.

100. In regard of the five tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, India listed all as a covered tax agreement under the Multilateral Instrument and for all made a notification, pursuant to Article 16(6)(d)(ii), that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant five treaty partners, one is not a signatory to the Multilateral Instrument. The remaining four treaty partners also made a notification on the basis of Article 16(6)(d)(ii). Therefore, at this stage, four of the five tax treaties identified above will be modified by the Multilateral Instrument upon entry into force for these treaties, to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

101. India reported that for the remaining tax treaty that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument, it contacted the relevant treaty partner to update its notifications under the Multilateral Instrument, for which it is expected that the treaty will be modified to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. If done so, all of India's tax treaties will be modified by the Multilateral Instrument and there is no need for bilateral modifications. India further reported that where such modification will not be made by the treaty partner, it will in accordance with tis plan approach the relevant treaty partner to initiate bilateral

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

Peer input

102. Almost all peers that provided input reported that their treaty with India is in line with the requirements under the Action 14 Minimum Standard, which also regards element B.7. Of the five treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, one peer provided input with respect to this element. This peer specifically mentioned that its treaty with India does not meet the requirement under element B.7, but that the treaty will be modified by the Multilateral Instrument to include such equivalent, which is in line with the above analysis.

Conclusion

	Areas for improvement	Recommendations
[B.7]	Five 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. Four of these five treaties are expected to be modified by the Multilateral Instrument to include the required provision, whereas for the fifth treaty, the treaty partner has been approached to update its notifications under the Multilateral Instrument to enable a modification of that treaty.	India should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those four 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 fifth treaty, no actions are necessary by India, as the required modification to the treaty will be ensured via the Multilateral Instrument after the treaty partner updated its notifications under that instrument. In addition, India should maintain its stated intention to include the required provision in all future tax treaties.

[B.8] Publish clear and comprehensive MAP guidance

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

103. 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.

India's MAP guidance

104. India has not issued guidance on the MAP process and how it applies that process in practice.

105. Information on the MAP process in India is included in rules 44G and 44H of the Income Tax Rules of 1962. Rule 44G grants the taxpayer the right to submit a MAP request where it believes that there will be taxation not in accordance with the provisions of the tax treaty. Rule 44H subsequently relates to the operation of the MAP process in India. Rule 44G,

however, only regards cases where the actions of a treaty partner may lead to taxation that is not in accordance with the treaty. There are no rules in place concerning MAP cases where the taxpayer is of the opinion that the challenged taxation is due to actions taken by India.

106. One peer provided input to this element and reported being aware of rule 44G, for which it noted that this rule narrowly only applies to requests that are related to tax assessments made at the level of the treaty partner. In that regard, the peer encouraged India to consider issuing rules, guidelines or procedures that also cover other instances that may lead to a MAP case, such as relating to tax assessments at the level of India. While the peer noted that MAP guidance is under preparation in India, it concluded that the lack of information on the MAP process may unintentionally limit access to MAP in India. This peer therefore recommends India to publish robust, comprehensive and clear rules, guidelines, or procedures regarding the MAP process. In relation thereto, it also suggested that when such guidance has been issued, it should be published and easy accessible for all taxpayers, especially given the volume of audit activity in India that historically has resulted in MAP cases with the peer.

107. Further to the above and in relation to the issuing of MAP guidance, the peer also mentioned that it would like to better understand the relationship between domestic judicial proceedings and the MAP process, as many of its pending MAP cases with India are also being under consideration by India's courts. In the peer's view it would be helpful to have clarity on the circumstances in which India would not grant access to MAP, especially for taxpayers seeking MAP assistance in India.

Information and documentation to be included in a MAP request

108. 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. This agreed guidance is shown below.

109. With respect to Form No. 34F, which taxpayers should use in India for the submission of a MAP request, the information to be included in this form is checked in the following list:

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

110. Further to the above, Form No. 34 F also requires that the contact details of the tax administration of the treaty partner are specified as well as the date of notice that gave rise to the claimed taxation that is in the taxpayer's view not in accordance with the provisions of the tax treaty.

111. Concerning the information to be included in a MAP request, one peer (which is the same peer for which input was reflected above) provided input. This peer mentioned that the to be prepared MAP guidance by India should specify the information taxpayers need to include in a MAP request, as currently it understands that access to MAP could be limited if the taxpayer does not provide that competent authority with sufficient information (see for a discussion hereof element B.6).

Anticipated modifications

112. India indicated that it is committed to introduce detailed and robust MAP guidance, for which it envisages it will be published before 31 March 2019.

Conclusion

	Areas for improvement	Recommendations
[B.8]	MAP guidance is not available. Domestic legislative rules on MAP only relate to instances where taxation that is not in accordance with the tax treaty is caused by actions at the level of the treaty partner.	India should without further delay introduce clear and comprehensive MAP guidance. This guidance should in any case include (i) contact details of the competent authority or office in charge of MAP cases and (ii) manner and form in which the taxpayer should submit its MAP request (see below). It should also address both the instances where the challenged taxation by the taxpayer is due to actions by either India or its treaty partner. Furthermore, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, India could consider including information on: • whether MAP is available in: (i) transfer pricing cases, (ii) cases concerning the application of anti-abuse provisions, (iii) audit settlements, (iv) multilateral disputes and (v) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • whether or not it is possible that tax collection can be suspended during the period a MAP case is pending • the consideration of interest and penalties in MAP • the process for implementing MAP agreements. In addition, as discussed under element B.6, India's MAP guidance could also provide further details regarding in what timeframe taxpayers are expected to comply with requests for additional information and documentation for a consideration of their MAP request.

	Areas for improvement	Recommendations
[B.8]	No MAP guidance is available on what information taxpayers should include in their MAP request.	India should include in its to be published MAP guidance information on the manner and form in which taxpayers should submit their MAP request. In particular, the following items could be included: • 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.

[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.

113. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.[9]

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

114. As noted under element B.8, India has not issued MAP guidance. Information on India's MAP process is included in several rules of its domestic legislation, but there is no central information available on this process and on which rules apply during this process.

MAP profile

115. The MAP profile of India is published on the website of the OECD since September 2016 and has recently been updated. This MAP profile is complete, but only contains basic information on the MAP process in India and additional information is not always provided for.

Anticipated modifications

116. India did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.9]	MAP guidance has not been issued and is therefore not publically available.	India should, when it has issued its MAP guidance, make this guidance without further delay publically available and easily accessible.
	The published MAP profile is complete, but information included is limited, due to the fact that no MAP guidance is made available and there are limited domestic rules relating to MAP.	India should update its MAP profile once it has issued MAP guidance in order to have more detailed information on India's MAP programme.

[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.

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

MAP and audit settlements in the MAP guidance

118. As previously discussed under element B.5, it is under India's domestic law not possible that taxpayers and the tax administration enter into audit settlements. In that regard, there is no need to address in MAP guidance that such settlements do not preclude access to MAP.

119. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in India's MAP guidance, which can be clarified by the fact that such settlements are not possible in India.

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

120. As previously mentioned under element B.5, India has in place an statutory dispute settlement process that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer. However, since India has not introduced MAP guidance, the effects of this process with respect to MAP are not addressed in such guidance.

121. Next to the rules put on place in India's Income Tax Act of 1961, by which the Income Tax Settlement Commission was established and formal rules on the process before this commission were introduced, India also introduced further rules of procedure on the operation of the settlement procedure. These rules are set forth in Part IX-A of the Income Tax Rules of 1962 and relate to: (i) which procedures taxpayers have to follow when filing for a settlement application, in particular which forms need to be used, (ii) disclosure of the application form to the tax administration and (iii) levying of fees. Furthermore a specific section is introduced that details the rules that apply during the settlement process, which *inter alia* concerns: (a) language of the commission, (b) signing of notices, (c) procedure for filing a settlement application, (d) report by the tax administration, (e) preparation of documents and affidavits, and (f) hearing sessions.

122. While the Income Tax Rules of 1962 nor the rules laid down in the Income Tax Act of 1961 specifically address the effects of the settlement process before the Income Tax Settlement Commission on taxpayers' rights under the MAP process, section 245I of the Income Tax Act of 1961 stipulates that every order by the ITSC shall be final and cannot be reopened in any other proceedings. Such other proceedings would include the MAP process under India's tax treaties. In that regard, there is no particular need to specifically address the effects of the settlement process on MAP in the Income Tax Act of 1961 or the Income Tax Rules of 1962.

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

123. India reported that none of its treaty partners were notified of the existence of its statutory dispute settlement process. Information on this process is also not included in India's MAP profile.

124. All peers that provided input reported not being aware of an statutory dispute settlement process in India nor having been notified of the existence of such process.

Anticipated modifications

125. India did not indicate that it anticipates any modifications in relation to element B.10, other than that it will introduce in its to be issued MAP guidance the effects of the dispute settlement process on the MAP process.

Conclusion

	Areas for improvement	Recommendations
[B.10]	Effects of the statutory dispute settlement process on MAP are not addressed in the MAP guidance, as such guidance is not yet available.	India should, when it introduces MAP guidance, follow its stated intention to clarify the effects on MAP when the case was resolved through its statutory dispute settlement process.
	Treaty partners were not notified of the existence of a statutory dispute settlement process.	India should notify all of its treaty partners on the existence of its statutory dispute settlement process.

Notes

1. These 67 treaties include the former treaty with Denmark that India continues to apply to the Faroe Islands, and the treaty with former Serbia and Montenegro that India continues to apply to both (i) Serbia and (ii) Montenegro.

2. These 21 treaties include the former treaty with Denmark that India continues to apply to the Faroe Islands, and the treaty with former Serbia and Montenegro that India continues to apply to both (i) Serbia and (ii) Montenegro.

3. These 86 treaties include the former treaty with Denmark that India continues to apply to the Faroe Islands, the treaty with former Czechoslovakia that India continues to apply to the Slovak Republic and the treaty with former Serbia and Montenegro that India continues to apply to both (i) Serbia and (ii) Montenegro.

4. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, India 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 India's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-india.pdf.

5. These 69 treaties include the former treaty with Denmark that India continues to apply to the Faroe Islands, and the treaty with former Serbia and Montenegro that India continues to apply to both (i) Serbia and (ii) Montenegro.

6. These 23 treaties include the treaty with former Czechoslovakia that India continues to apply to the Slovak Republic.

7. These nine treaties include the treaty with former Czechoslovakia that India continues to apply to the Slovak Republic.

8. These 91 treaties include the former treaty with Denmark that India continues to apply to the Faroe Islands, the treaty with former Czechoslovakia that India continues to apply to the Slovak Republic and the treaty with former Serbia and Montenegro that India continues to apply to both (i) Serbia and (ii) Montenegro.

9. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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

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Part C

Resolution of MAP cases

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

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

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

Current situation of India's tax treaties

127. Out of India's 96 tax treaties, 94 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 considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.[1]

128. For the remaining two tax treaties the following analysis is made:

129. One tax treaty contains a provision that is based on Article 25(2), first sentence, but is not considered being the equivalent thereof as the structure and wording deviates. This concerns the fact that the phrase "if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution" is missing and that the objective of the mutual agreement procedure is to resolve cases of *double taxation* instead of cases *not in accordance with the provisions* of the underlying tax treaty.

130. One tax treaty contains a provision that is based on Article 25(2), first sentence, but this provision includes additional wording that stipulates that the competent authority that received the MAP request should notify the competent authority of the other state hereof within a time limit of three years from the due date or the date of filing a tax return in that

other state, whichever is later. As such an obligation may prevent that cases are effectively dealt with in MAP, the treaty is considered not having the full equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Practical application

131. In addition to the above, one peer provided specific input relating to India's willingness to seek to resolve MAP cases. In this respect, it mentioned that India is not willing to accept MAP requests and resolve MAP cases when the case does not relate to double taxation. This particular input was discussed under element B.1 (paragraph 38). This peer further mentioned that its competent authority and that of India fundamentally differently interpret some provisions of their tax treaty. This concerns Article 5 (Permanent Establishment), Article 7 (Attribution of Profits) and Article 12 (Royalties and Fees for Included Services). Specifically with respect to the existence of a permanent establishment, the peer noted that the competent authorities have different views on the evidence an employee of the tax administration must provide to have a conclusion that a permanent establishment is in existence will be sustained in MAP. In fact, in the absence of convincing evidence that would support such a conclusion on the basis of the explicit elements that are set forth in Article 5, India puts the obligation on taxpayers to substantiate that no permanent establishment is in existence in that state.

132. India's response to the first issue was also included in element B.1 (paragraphs 40-41). It also responded to the second issue by stating that it is clarified that existence of a permanent establishment is a question of fact. If the taxpayer claims that there is no such establishment in existence, it has to demonstrate the same. India also noted that peers cannot put specific conditions on India to resolve cases in a certain manner.

133. The peer that provided this input gave a reaction to India's response. It mentioned that it agrees with India that the existence of a permanent establishment is a question of fact. The peer, however, also believes the burden of establishing this fact lies with the tax authority that made the adjustment and the competent authority that defended such adjustment. In that regard, the peer expressed the opinion that it feels that India's competent authority has effectively sought to reverse this burden and, instead, put the onus on the taxpayer (or on the other competent authority) to *disprove* the existence of a permanent establishment (i.e. to prove a negative). The peer disagrees with this approach on the grounds that it does not comport with a fair interpretation of the treaty or with the expectations on competent authorities to explain and justify the actions taken by their tax administrations to their competent authority counterparts.

134. In view of the above, India further clarified that it has neither denied access to MAP in cases concerning the question on whether a permanent establishment is in existence, nor has it refused to resolve such cases once they have been accepted into the process by the treaty partner. For the particular case the peer referred to, India clarified that India took the position the taxpayer has to prove it has no permanent establishment in India, because the taxpayer also had conceded in discussions with India's competent authority that it did have such establishment in India. In India's view, this conflicting position of the taxpayer frustrated the process and the resolution of the case.

Anticipated modifications

Multilateral Instrument

135. India signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), 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(2), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(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)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

136. In regard of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, India listed all as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(c)(i), a notification that they do not contain a provision described in Article 16(4)(b)(i). Both treaty partners are a signatory to the Multilateral Instrument and listed their treaty with India as a covered tax agreement. However, only one of these treaty partners also made a notification on the basis of Article 16(6)(c)(i). Therefore, at this stage, one of the two tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Bilateral modifications

137. India reported that for the remaining tax treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument, it contacted the relevant treaty partner to update its notifications under the Multilateral Instrument, for which it is expected that the treaty will be modified to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention. If done so, all of India's tax treaties will be modified by the Multilateral Instrument and there is no need for bilateral modifications. India further reported that where such modification will not be made by the treaty partner, it will in accordance with tis plan approach the relevant treaty partner to initiate bilateral negotiations. Regardless, India reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

138. Almost all peers that provided input reported that their treaty with India is in line with the requirements under the Action 14 Minimum Standard, which also regards element C.1. The relevant treaty partners to the two treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, did not provide input.

Conclusion

	Areas for improvement	Recommendations
[C.1]	Two out of 96 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. One of these treaties is expected to be modified by the Multilateral Instrument to include the required provision, whereas for the remaining treaty, the treaty partner has been approached to update its notifications under the Multilateral Instrument to enable a modification of that treaty.	India should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention in the one treaty that currently does 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, no actions are necessary by India, as the required modification to the treaty will be ensured via the Multilateral Instrument after the treaty partner updated its notifications under that instrument. In addition, India should maintain its stated intention to include the required provision in all future tax treaties.
	The competent authority does not seek to resolve MAP cases in which there is no double taxation.	India should seek to resolve all MAP cases that are accepted into the MAP process and that meet the requirements under Article 25(1) and (2) of the OECD Model Tax Convention as incorporated in India's tax treaties. In that regard, India should not refuse discussions in MAP with the other competent authority concerned on the grounds that there is no double taxation.

[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).

139. 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

140. Statistics regarding all tax treaty related disputes concerning India are published on the website of the OECD as of 2016.[2]

141. The FTA MAP Forum has agreed on rules for reporting of MAP statistics ("**MAP Statistics Reporting Framework"**) for MAP requests submitted on or after January 1, 2016 ("**post-2015 cases"**). Also, for MAP requests submitted prior to that date ("**pre-2016 cases"**), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. India provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving India and of which its competent authority was aware.[3] 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 Annex C respectively and should be considered jointly for understanding of the MAP caseload of India.[4] With respect to post-2015 cases, India reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, based on the information provided by India's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

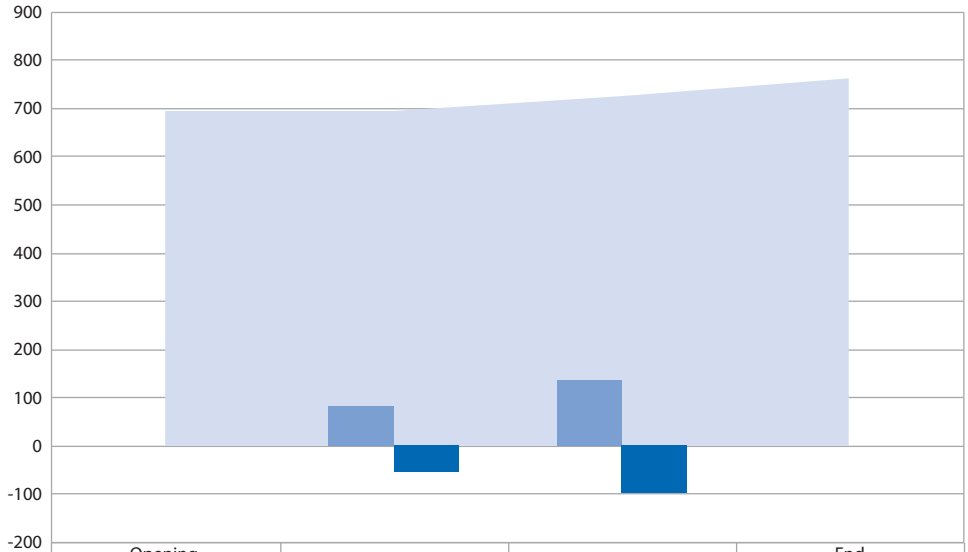
142. India reported that both competent authorities monitor their MAP inventories, whereby case handles maintain the relevant dates in an internal database that keeps track of the number of cases and time taken to resolve case.

Analysis of India's MAP caseload

Global overview

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

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

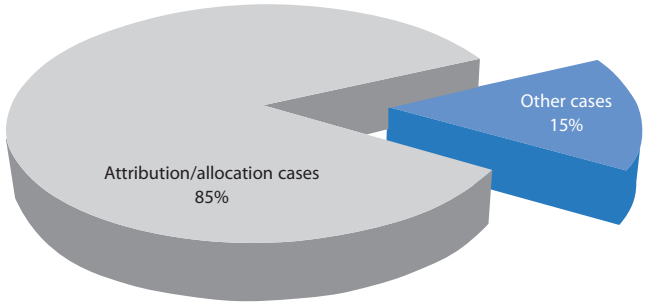


	Opening inventory on 1/1/2016	2016	2017	End inventory on 31/12/2017
Inventory	695	695	725	763
Cases started		85	136	
Cases closed		-55	-98	

144. At the beginning of the Statistics Reporting Period India had 695 pending MAP cases, 594 of which were attribution/allocation cases and 101 other MAP cases.[5] At the end of the Statistics Reporting Period, India had 763 MAP cases in its inventory, of which 646 are attribution/allocation cases and 117 are other MAP cases. Consequently, India's MAP statistics have increased by 10% during the Statistics Reporting Period. This increase can be broken down into an increase by 9% for attribution/allocation cases and an increase by 16% for other cases.

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

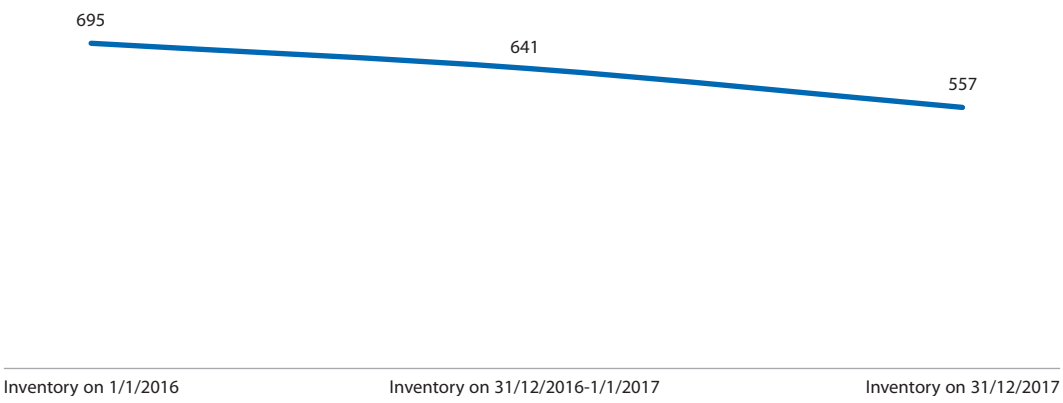
Figure C.2. **End inventory on 31 December 2017 (763 cases)**



Pre-2016 cases

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

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



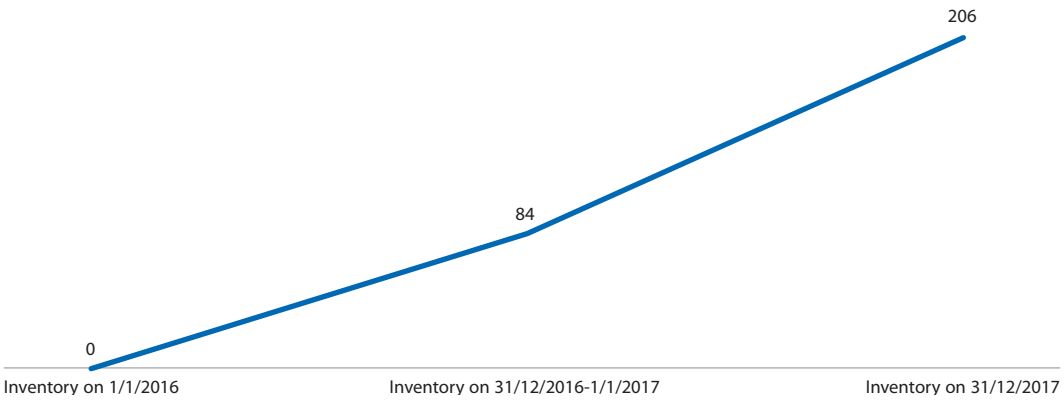
147. At the beginning of the Statistics Reporting Period, India's MAP inventory of pre-2016 MAP cases consisted of 695 cases, 594 of which were attribution/allocation cases and 101 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 557 cases, consisting of 460 attribution/allocation cases and 97 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	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	-9%	-15%	-23%
Other cases	-3%	-1%	-4%

Post-2015 cases

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

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



149. In total, 221 MAP cases started during the Statistics Reporting Period, 199 of which concerned attribution/allocation cases and 22 other cases. At the end of this period the total number of post-2015 cases in the inventory was 206 cases, consisting of 186 attribution/allocation cases and 20 other cases. Conclusively, India closed 15 post-2015 cases during the Statistics Reporting Period, 13 of them being attribution/allocation cases and two other cases. The total number of closed cases represent 7% of the total number of post-2015 cases that started during the Statistics Reporting Period.

150. 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.

	% 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	1%	10%	7%
Other cases	0% (no cases closed)	13%	9%

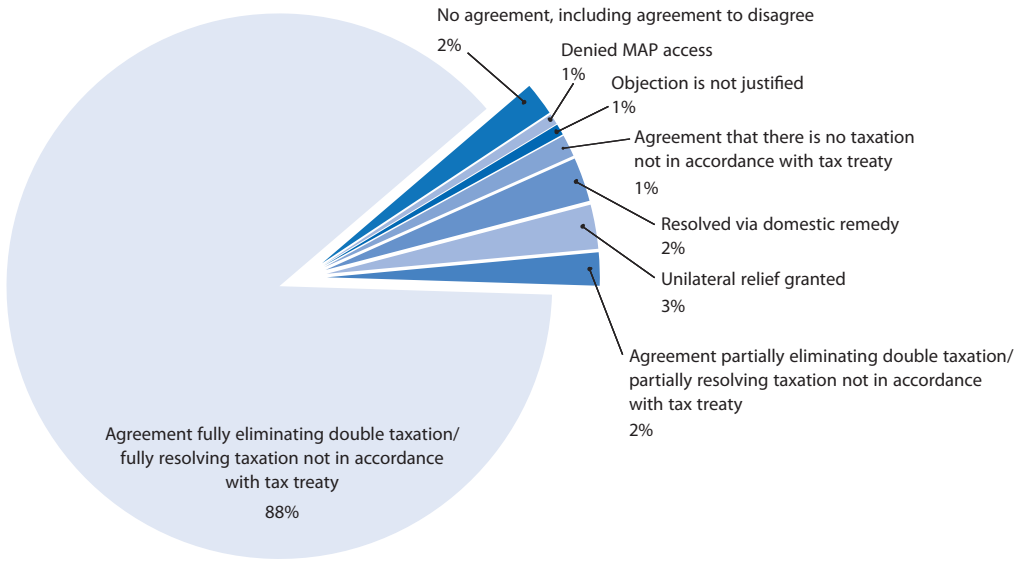
Overview of cases closed during the Statistics Reporting Period

Reported outcomes

151. During the Statistics Reporting Period India in total closed 153 MAP cases for which the outcomes shown in Figure C.5 were reported.

152. Figure C.5 shows that during the Statistics Reporting Period, 135 of the 153 cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Figure C.5. **Cases closed during 2016 and 2017 (153 cases)**



Reported outcomes for attribution/allocation cases

153. In total, 147 attribution/allocation cases were closed during the Statistics Reporting Period. In 90% of the cases the reported outcome was "Agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty". In the remaining 10% of the cases the reported outcomes were:

- unilateral relief granted
- resolved via domestic remedy
- agreement partially eliminating double taxation/partially resolving taxation not in accordance with the tax treaty
- no agreement, including agreement to disagree
- agreement that there is no taxation not in accordance with the tax treaty.

Reported outcomes for other cases

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

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (three cases)
- access denied (one case)
- objection not justified (one case)
- agreement that there is no taxation not in accordance with the tax treaty (one case).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

155. The average time needed to close MAP cases during the Statistics Reporting Period was 35.66 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	147	34.31
Other cases	6	68.70
All cases	153	35.66

Pre-2016 cases

156. For pre-2016 cases India reported that on average it needed 36.88 months to close attribution/allocation cases and 101.25 months to close other cases. This resulted in an average time needed of 38.74 months to close 138 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, India reported that it uses the following dates:

- Start date: the date of receipt of the MAP request by taxpayers, or if the MAP request was submitted to the other competent authority, the date of receipt of the MAP invocation letter from that competent authority.
- End date: the date of sending of the letter to India's tax authorities in the field to give effect to the MAP agreement entered into between the competent authorities.

Post-2015 cases

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

158. For post-2015 cases, India reported that on average it needed 7.81 months to close attribution/allocation cases and 3.59 months to close other cases. This resulted in an average time needed of 7.25 months to close 15 post-2015 cases.

Peer input

159. The peer input in relation to resolving MAP cases will be discussed under element C.3. Specifically concerning the timely resolution of MAP cases, some peers reported that India's competent authority is responsive and easy to contact, as also that they are willing to resolve cases, also on a timely basis. However, a number of peers, in particularly those that have a significant number of MAP cases with India or experiences in resolving such cases with them, mentioned that it takes a long time before position papers are being issued by India's competent authority and that this causes delay in the timely resolution of MAP cases.

Anticipated modifications

160. India did not indicate that it anticipates any modifications in relation to element C.2, but with respect to its MAP caseload and the number of cases resolved, India reported that in its view, despite a high number of cases in its MAP inventory, India has taken significant steps towards the resolution of MAP cases. It further mentioned that India is commented to endeavour to resolve post-2015 cases in an average timeframe of 24 months. It also noted that the resolution of MAP cases is a two-way street and unless the competent authorities concerned come to a point of agreement, it is not possible for a jurisdiction to resolve cases.

Conclusion

	Areas for improvement	Recommendations
[C.2]	India submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by India's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. India's MAP statistics show that during the Statistics Reporting Period it closed 7% (15 out of 221 cases) of its post-2015 cases in 7.25 months on average. In that regard, India is recommended to seek to resolve the remaining 93% of its post-2015 cases pending on 31 December 2017 (206 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

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

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

161. 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 India's competent authority

162. Under India's tax treaties, the competent authority function is assigned to the Minister of Finance. This has been delegated to the Central Board of Direct Taxes within the Department of Revenue of this Ministry. Within the central board, two teams within the Foreign Tax and Tax Research Division are responsible for handing MAP cases. These are:

- *FT & TR-I Division (headed by Joint Secretary, FT & TR-I)*: seven persons (including the head of division) are responsible for handling MAP and bilateral APA cases concerning treaty partners in North America (including the Caribbean Islands) and Europe.
- *FT & TR-II Division (headed by Joint Secretary, FT & TR-II)*: eight persons (including the head of division) are responsible for handling MAP and bilateral APA cases concerning treaty partners in Africa, Latin America, Asia and Australia.

163. Next to the persons in charge of handling MAP and bilateral APA cases in both divisions, there are approximately 30 staff assistants that provide support in *inter alia* maintenance of files and organising meetings with taxpayers and other competent authorities. Next to the support staff there are also four teams that assist both divisions in fact finding and preparing position papers for bilateral APA requests. These teams are each headed by an APA commissioner and are assisted by approximately ten persons that provide administrative support.

164. Further to the above, India reported that once a MAP request is received, it will be analysed by its competent authority on whether (i) the request is in line with the requirements under its domestic legislation and the applicable tax treaty, and (ii) the objection raised in the request is justified. If the MAP request is accepted, then India's competent authority will analyse whether the case can be resolved unilaterally. If this is not the case, the bilateral phase of the MAP will be initiated. Likewise, when India's competent authority is notified of a MAP request by another competent authority, it will examine the validity of the request and if it is considered to be valid, it will notify the other competent authority via a MAP invocation and acceptance letter.

165. Concerning the preparation of position papers, India explained that once it prepares a position, information on the case under review will be requested from the local tax authorities that are responsible for the taxpayer. This particularly concerns documents that are relevant to the adjustment made to the taxpayer's position which is subject of the MAP case, provided that the adjustment was made by India. When position papers have been exchanged, or otherwise throughout the process, India reported that it will use several means of communication to reach an agreement, which can be via email or telephone, or through face-to-face meetings. With respect to the latter, India explained that its standard practice is to have reciprocal visits with treaty partners, which are being held frequently. For example, the number of meetings in 2016 and 2017 was eight and eleven respectively.

166. Concerning the training of staff in charge of MAP, India clarified that staff is provided with domestic and international training on various issues related to MAP.

Monitoring mechanism

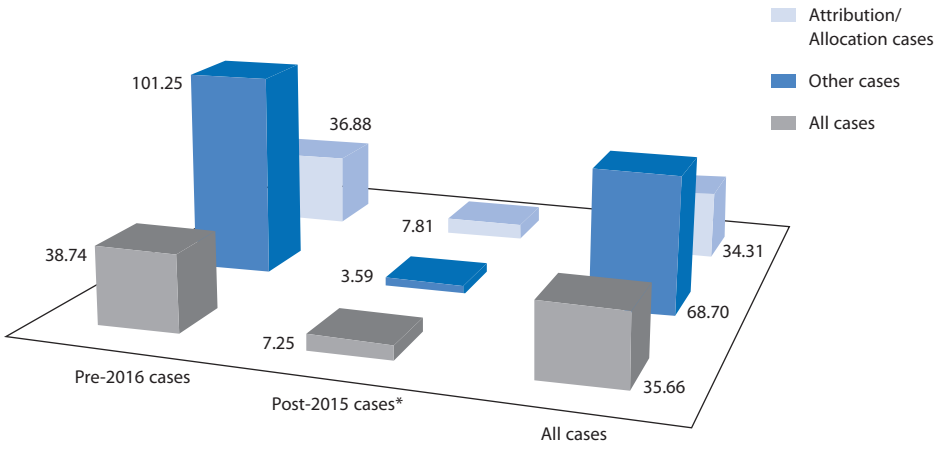
167. In terms of allocating resources to the competent authority function, India reported that its competent authority is funded by annual budgetary provisions, which are approved by Parliament. It is the Central Board of Direct Taxes that monitors whether the available resources for the MAP function are sufficient. Over the past years the number of persons handling MAP cases have been increased from seven to 15 persons, for which India reported it considers that the current available resources are sufficient.

Practical application

MAP statistics

168. As discussed under element C.2 India did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average, as the average is 35.66 months. While the average time taken to close other cases is significantly higher (68.70 months) than the average time needed for attribution/allocation cases (34.31 months), the average time for both type of cases is above the 24-month period. The averages can be shown by the following graph:

Figure C6. **Average time (in months) to close cases in 2016 or 2017**



169. Based on these figures, it follows that on average it took India 35.66 months to close MAP cases during the Statistics Reporting Period. In this respect, India reported that one of the reasons why MAP cases could on average not be resolved within 24 months is that the competent authority of its treaty partners do not timely invoke the MAP process. According to India this can even lead to an initiation of a MAP cases a year after the other competent authority has received and accepted the MAP request, which affected the average completion time as India could not deal with the case until it has been notified.

Peer input

Handling and resolving MAP cases

170. All but three of the 15 peers that provided input reported having experiences with India in handling and resolving MAP cases. The remaining 12 peers can be split in peers that have a limited number of pending MAP cases or experiences with India, and peers that have a large number of MAP cases with India.

171. The first group consist of five peers, of which four provided constructive input on their experiences with India concerning the handling and resolution of MAP cases. One of these peers noted its MAP relationship with India is relatively new, whereas the other peers' experience regards a number of years. Most of the cases these peers have with India concern attribution/allocation cases. One peer in particular reported that it considers the relationship with India's competent authority to be constructive and that it is engaging positively in dialogue despite differences in views, as also that there is good communication between the competent authorities. This communication has improved in recent years, such by using mail, teleconferences and face-to-face meetings, which in the peer's view has significantly expedited the negotiation process and because of that both competent authorities now work in a more collaborative manner. Furthermore, this peer reported that the MAP cases are handled efficiently and that India's competent authority is very active in managing cases within a reasonable timeframe. The second peer also mentioned it has positive, albeit limited, dealings within India's competent authority and that correspondence on pending cases continue. The third peer mentioned, that it has only one case pending with India, which was initiated in 2018. This peer noted that India's competent authority timely confirmed the receipt of the opening letter and is currently preparing their position paper. It concluded that until now the co-operation with India is fine. The last peer voiced some criticism on its experiences with India in resolving MAP cases. It particularly noted that contacts have been scarce in the past, as there were a few other MAP cases in which contacts with India's competent authority used to be difficult and also timely solution for pending MAP cases could not be obtained. Furthermore, since India did until 2017 not accept transfer pricing cases into the MAP process, this peer only recently opened MAP cases of this kind with India. For these cases, as also for other MAP cases, the peer reported that India's competent authority started to respond timely.

172. The second group consist of seven peers. Their input generally is positive, but they also put forward some criticism on the functioning of India's competent authority. In this respect, one peer noted that India is an important MAP partner for them and that during the Review Period it resolved eight attribution/allocation cases (three pre-2016 cases and five post-2015 cases). It further mentioned that India's competent authority is very co-operative and willing to negotiate. A second peer mentioned that also for them India is one of the most important MAP partners, with a substantial number of MAP cases submitted each year and around 50 MAP cases pending as per the end of the Review Period. It is this peer's experience that both competent authorities contact each other without any difficulty

and further that face-to-face meetings are held at least twice a year, whereby MAP cases are resolved in good relationship and in a constructive way. Similar input was given by a third peer, who mentioned that since multinational companies have operations in both countries, India is an important MAP partner for them. While the number of MAP cases is relatively low, the amounts at stake are significant. Concerning this peer's experience with India in resolving MAP cases, it reported that in general it has a good relationship with India, as it is easy to contact its competent authority, there is frequent communication via email and face-to-face meetings are on average held once per two years. This peer also considered that staff in charge of MAP in India is well-trained to handle MAP requests. Nevertheless, this peer also mentioned that it can take a long time before India's competent authority provides a position paper, even if the case under review concerns adjustments that were imposed by India's tax administration. Furthermore, this peer noted that in those cases where MAP is initiated concomitantly with domestic remedies, there may be a risk that taxpayers will not accept any MAP agreement reached, as the MAP process is not put in abeyance until domestic proceedings have finalised. This input was echoed by another peer, who next to reflecting positive input also referred to difficulties in obtaining position papers from India's competent authority in due time for Indian-based adjustments. This peer also referred to a MAP case where its competent authority and that of India tentatively reached an agreement. The taxpayer was required to withdraw from pending judicial remedies in India as a prerequisite for implementation. However, in India the court did not accept the withdrawal for a specific fiscal year and rendered a decision on the case, following which the taxpayer was left without a solution, as the decision did not solve the case at hand. In the peer's view this is a highly unsatisfactory outcome. While the peer did not criticised the fact that India's competent authority is bound by court decisions, it believes that in such situation there should be a mechanism that where competent authorities reach an agreement before the court has rendered the decision and the taxpayer withdraws from the pending court case, such withdrawal should be accepted. Lastly, one peer also put forward that it is difficult to receive a response from India's competent authority on an issued position paper, but also that it is rather difficult to get into contact with this competent authority, although for attribution/allocation cases a considerable improvement was experienced since 2017.

173. Further to the above, two peers provided detailed input on their experiences with India in handling and resolving MAP cases. One of those peers reported that India is one of its most significant MAP partners, whereby there are a substantial number of attribution/allocation cases. Concerning communications with India's competent authority, this peer mentioned that they are frequent via email and telephone and that regularly bi-annual face-to-face meetings are scheduled. The peer concluded that a very good working relationship has been developed over the years, albeit that there are some differences of principle that can create challenges in resolving some cases. In more detail and as regards the resolution of cases this peer made the following observations:

- Attribution/allocation cases: negotiations with India's competent authority can sometimes become entrenched due to India's preference to apply domestic transfer pricing rules over the OECD Transfer Pricing Guidelines. In this respect, two examples were given, namely that (i) India has shown a preference for using an average of the results in a range rather than using an interquartile range and (ii) India is only willing to take into account the results of a year that is subject to an audit, albeit that recent experience of the peer is that there has been an acceptance to look at multiple years of results in some instances.

- Other cases: in certain cases India's competent authority has not provided a response to a position paper issued by the peer, but instead preferred to rely on assertion at face-to-face meetings based on the views of the tax administration personnel when discussing the relevant tax in dispute.

174. In addition, like also mentioned by other peers, this peer mentioned that there have been delays in receiving a small number of position papers from India's competent authority, which regards both attribution/allocation cases and other MAP cases. This peer, whilst recognising that India is by no means the only jurisdiction to have some delays, referred to instances where there have been significant delays in providing position papers which impede progress. The peer, however, also noted that in one other case India's competent authority was prompt in responding and that the case under review was closed shortly thereafter. The improvement in the working relationship over the review period has led to more effective resolution of allocation/attribution cases, although there remains impediments to progress on the effective resolution of other MAP cases.

175. The second peer mentioned it has an active relationship with India's competent authority, which is concerned to be a critical MAP partner for this peer, both for attribution/allocation cases as for other cases. In terms of communication, this peer mentioned that formal meetings are held at least twice a year and that communications at manager and staff level are frequent throughout the year, such related to scheduling, reconciliation of inventory and other matters. Concerning the resolution of MAP cases, the peer's input differentiates between attribution/allocation and other cases, which is:

- Attribution/allocation cases: the relationship with India regarding these type of cases have been productive in recent years on several fronts, although it has been difficult to overcome substantive differences of views in certain areas. To enable the resolution of MAP cases, the peer's and India's competent authority reached in January 2015 an agreement on a systematic approach under which 200 cases have been resolved. The peer noted that the framework has been applauded within the OECD and by other jurisdictions as a novel and significant step forward in the resolution of tax treaty disputes. The peer further mentioned that since the agreement has been reached, its competent authority was able to resolve with India outside that framework over 125 cases relating to other issues. This peer also pointed to the fact that its competent authority and that of India consistently work together to resolve attribution/allocation cases in a timely and principled manner, as also to communicate on a regular basis; that is at least once a month. That said, this peer further noted that there have been significant numbers of cases arising out of adjustments made by India falling outside the framework for which position papers have not been timely received. According to the peer, in some situations India's competent authority explained that it was unable to proceed due to the given issue at stake being the subject of litigation. Whether for this or other reasons, the peer concluded that timely receipt of a position paper is necessary for resolving MAP cases with India in a principled manner within the pursued average of 24 months.
- Other cases: other than for attribution/allocation cases, there has been minimal progress in resolving other type of cases in a principled manner. In more detail, the peer reported significant difficulties in timely obtaining position papers, which experience is similar as the input of other peers reflected above. Hence in numerous cases this peers did not timely receive position papers from India's competent authority, even though the timing of sending of these papers had been agreed upon between the competent authorities. Furthermore, when such position papers are

(timely) provided, they do in the peer's view not include any indication that India's competent authority has considered, as a neutral party, whether the adjustment is justified. Instead, according to the peer it seem to reiterate the analysis and conclusion of the tax administration official in charge of the case and the peer's competent authority does generally not observe an attempt in these position papers to consider or outline areas of possible exploration for principled compromise or resolution. For this the peer concluded that these obstacles create significant challenges in resolving MAP cases with India in a principled manner within the pursued average of 24 months.

176. Concerning the (timely) issuing of position papers, this peer mentioned that the timing the invocation of the MAP process may be impacting the timing for resolving MAP cases. In that regard, this peer reported that due to the fact that India's competent authority has not timely provided position papers for adjustment made by India, there has been a great impact on the time needed to resolve MAP cases. For this reason the peer's competent authority typically requests position papers from India's competent authority in their mutual MAP cases, as 98% of its attribution/allocation and all but one of the other cases follow from an adjustment made by India. To this the peer added that it is difficult to ascertain the basis for the adjustment without supporting information by India's competent authority. The peer further specified that on average its MAP cases with India have been in the inventory over four years, whereby India has not consistently provided position papers and for which the peer reported it feels this has directly impeded the timely resolution of these cases.

Suggestions for improvement

177. A number of peers made suggestions for improvement. One peer mentioned it would be an improvement if a face-to-face meeting would be scheduled once a year. Two other peers suggested that more frequent communications and a more timely response to position papers would be beneficial. One of these peers further mentioned that it would be helpful that a response would be given to position papers, in particular other MAP cases. Two other peers made more in-depth suggestions for improvement by India in resolving MAP cases. The first peer noted that India's competent authority should:

- Ensure that position papers are exchanged in due time prior to face-to-face meetings, such to ensure that such meetings are productive
- For attribution/allocation cases:
  - provide more details why certain comparables are accepted or rejected,
  - show a greater willingness to adhere to the OECD Transfer Pricing Guidelines instead of to India's domestic law and to consider other OECD endorsed methodologies in addition to cost-plus.

178. This peer also touched upon two other issues. First, it mentioned that it is its understanding that where their competent authorities reach an agreement, there is no mechanism in place that MAP agreements can be applied to future years where the facts and circumstances of the case have remained the same. In this peer's view having such mechanism in place would be helpful and would avoid that new MAP request have to be submitted for future years if India's tax administration has not followed the principle that was established by the competent authorities in the MAP agreement. Second, the peer referred to the interplay between domestic remedies and MAP, an issue that has been brought forward by other peers as well (see discussions above). The case referred

to, however, is slightly different, as in this case India's court rendered a decision before the case was dealt with in MAP As the court decision resolved the case, the taxpayer subsequently withdraw its MAP request. The peer's competent authority, however, was not timely made aware hereof in either position papers or discussions, which it considered to be unfortunate. The moment the peer became aware of this outcome, it concluded that there was no basis for MAP discussions anymore and therefore suggested to close the case, to which India's competent authority agreed after some discussion. In the peer's view, as a matter of good practice, it would be highly preferable that India's competent authority was in a position to explain these circumstances at the beginning of MAP discussions to avoid devoting time and resources.

179. The second peer mentioned in a general sense that both its own and India's competent authority recognise their obligation to endeavour to resolve MAP cases, and that in that regard it is hopeful that a faithful adherence to the Action 14 Minimum Standard along with consist and open dialogue on substantive issues, will contribute to the resolution of the hundreds of pending MAP cases between their jurisdictions in a principled, efficient and effective manner. Especially concerning attribution/allocation case, the peer noted that the significant number of cases resolved in recent years reflects a productive relationship. While it is aware of resource constraints in India's competent authority, and while it values how quickly it resolves attribution/allocation cases, it expressed that it would very much appreciate the opportunity to explore ways in which to achieve the goal of resolving MAP cases within the pursued average of 24 months. This in particular concerns those cases that are eligible for the framework agreement entered into between this peer's and India's competent authority. The peer noted that India's competent authority is currently reviewing proposals made by the peer's competent authority and looks forward to a further dialogue on this. In more detail to the timely resolution of MAP cases in practice, the peer also recommended more regular email and telephone conservation. It further suggested to increase the number of face-to-face meetings from two to three times a year to resolve the rapidly growing MAP inventory. The peer also noted that it believes that a more faithful adherence to intervening agreements and steps, which were agreed upon between their competent authorities during negotiations, will significantly contribute to the timely resolution of their mutual MAP cases. Lastly, the peer suggested that India considers to increases staff in charge of MAP cases, which the peer deems necessary to achieve a more timely resolution of MAP (and APA) cases.

Responses to peer input

180. India provided a response to the input given, for which it mentioned it has been seen and understood. It also noted that India appreciates the input given and are especially happy that some peers have effusively appreciated all the efforts made by India to make its MAP programme more efficient and effective. It may be mentioned that two peers, who are important MAP partners, have not submitted peer inputs perhaps due to being occupied. India further mentioned that it is not closing its eyes to all the criticism that has also been made by some of its peers. However, some of the criticisms are unwarranted and uncalled for. In this respect, India mentioned that the inking of a framework agreement with the last peer mentioned above, is ample proof of India's willingness to find innovative ways to find resolutions to disputes.

181. Specifically in relation to the peer input reflected in paragraphs 173-174 above, India responded to the input given by this peer. As regards domestic transfer pricing rules, India has explained that this is due to the interaction of its domestic law and the OECD Transfer Pricing Guidelines. However, recent amendments to Indian domestic law mean the Indian

competent authority will be able to adopt more flexible approaches. As regards delays in issuing position papers, India accepts the criticism that there have been delays at times to issue position papers. Despite a decent workforce handling MAP cases, the resources do get stretched at times.

Final considerations

182. The average timeframe for resolving MAP cases in India is above the pursued average of 24 months (35.66 months), which both regards attribution/allocation cases (34.31 months) and other MAP cases (68.70). In this respect, India mentioned that it is committed to resolve MAP cases in a timely and a principled manner, which in its view is recognised by all its treaty partners. As an example hereof, India referred to its commitment not to deny access to MAP and that it over the last four years has successfully resolved MAP cases, in particular with one treaty partner where it entered into a framework agreement that enabled the resolution of approximately 180 pending cases with that treaty partner. While the concerned peer indeed reported that it was under this framework agreement indeed successful for a high number of cases, not all peers shared the conclusion that India is committed to resolve cases in a timely and principled manner. In fact, although several peers reported positive experience in handling and resolving MAP cases with India, those peers that have either large inventories with India or significant experience also put forward substantial criticisms on India's approach towards resolving MAP cases. This among others concerns the significant time it takes to resolve MAP cases due to absence or significant delays in providing or responding to position papers by India's competent authority. Other criticism put forward the position of the tax administration is followed, without a willingness to come to a principled resolution of the case.

Anticipated modifications

183. India indicated that since there is an increase in the number of requests for bilateral APAs, there is a possibility of enhancing and increasing staff in charge of handling such cases. There, however, are no modifications anticipated in respect of staff in charge of MAP cases.

Conclusion

	Areas for improvement	Recommendations
[C.3]	MAP cases were not closed within 24 months on average, as the average was 35.66 months, which both regards attribution/allocation cases (34.31 months) and other cases (68.70 months). Furthermore, the MAP inventory increased since 1 January 2016. This state of play indicates that the competent authority is not adequately resourced to ensure that post-2015 cases are resolved within the average of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016).	While it is acknowledged that India has made efforts to ensure a more effective and efficient resolution of MAP cases, India should ensure that it provides adequate resources to the MAP function, which in particular regards other cases. In that regard, India should hire additional personnel to ensure that MAP cases are resolved in a timely, effective and efficient manner. Such addition of resources should enable India to: • issue position papers in a timely manner when the adjustment underlying the MAP case is made by India and respond to position papers issued by the other competent authority concerned in due time prior to face-to-face meetings, and complete any follow-up work after a tentative MAP agreement has been reached • communicate more frequently and hold face-to-face meetings with the other competent authorities concerned on status of the case and discuss the impact of domestic court procedures on the MAP case, in particular when such procedures would lead to a closure of the MAP case.

[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.

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

Functioning of staff in charge of MAP

185. As previously discussed under element C.3, India reported that where a MAP request is received by its competent authority the request is analysed on whether it can be accepted. If so and if no unilateral solution can be found, a position paper will be prepared and shared with the other competent authority concerned. In this respect India reported that the two teams (Joint FT & TR-I and FT & TR-II) within the Foreign Tax and Tax Research Division are responsible for handing MAP cases prepare position papers on the case. Each team has a joint secretary to the government of India, which have been delegated to the competent authority for the jurisdictions it has. Both teams are themselves responsible for preparing position papers and there is no further approval outside the competent authority.

186. Further to the above, India reported that when its competent authority reaches an agreement with the other competent authority concerned, such MAP agreement is final and no further approval is necessary outside the competent authority. In this respect and concerning the independent functioning of staff in charge of MAP from the audit department, India reported that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment at issue. Furthermore, India reported that the process for negotiating MAP agreements is also not influenced by policy considerations. Where policy issues arise from a MAP case, India specified that the matter will be referred to the policy division of the Central Board of Direct Taxes.

Practical application

187. Peers that provided input generally reported no impediments in India to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy.

188. However, as was already discussed under element C.3, two peers put forward criticism on the authority of staff in charge of MAP in India to resolve MAP cases in accordance with the terms of the applicable tax treaty absent any direction of the tax administration personnel that made the adjustments at issue. The first peer mentioned that in certain cases, but by no means in all cases, India's competent authority has not provided a response to a position paper issued by the peer, but instead preferred to rely on assertion at face-to-face meetings based on the views of the tax administration personnel

when discussing the relevant tax in dispute. The second peer noted that when India's competent authority (timely) issues position papers, they do not include any indication that India's competent authority has considered, as a neutral party, whether the adjustment is justified. Instead, according to the peer it seems to reiterate the analysis and conclusion of the tax administration official in charge of the case and the peer's competent authority does generally not observe an attempt in these position papers to consider or outline areas of possible exploration for principled compromise or resolution. For this the peer concluded that these obstacles create significant challenges in resolving MAP cases with India in a principled manner within the pursued average of 24 months.

189. As already reflected under element C.3 above, India provided a response to the input given, for which it mentioned it has been seen and understood. It also noted that India appreciates the input given and are especially happy that some peers have effusively appreciated all the efforts made by India to make its MAP programme more efficient and effective. It may be mentioned that two peers, who are important MAP partners, have not submitted peer inputs perhaps due to being occupied. India further mentioned that it is not closing its eyes to all the criticism that has also been made by some of our peers. However, some of the criticisms are unwarranted and uncalled for.

190. In more detail, India responded to the criticism of one peer that that its competent authority is unwilling to come to a principled resolution of MAP cases, and also to that of another peer that India's competent authority sometimes relies on the arguments made by the examination authorities in making additions to income. In relation to the first peer, India considers these comments are unsubstantiated allegations and India disapproves such baseless comments. India noted that its competent authority is always open to principled resolution of cases and the fact that its competent authority agrees with the additions made by the examination authority in a case, does not mean that the competent authority is not neutral. In more detail. India holds the position that such a perception by peers cannot be a point of criticism especially when the adjustment by the examination authority has been made in accordance with law and on sound principles.

191. In particular response to the input by the last two peers discussed in paragraphs 173 and 175 and summarised in paragraph 188 above, India responded that the issues raised by one of these peers echoes the views of taxpayers in their arguments. It also mentioned that there is hardly any independent examination of the matters, as per the provisions of the treaty. India further stated that on numerous occasions it has observed that the peer's competent authority takes the consent of and confirmation from the taxpayers before making their arguments and before agreeing to a resolution, and even go to the extent of sharing position papers with taxpayers. Despite these observations, India mentioned it did not raise these issues in their peer review report for the sake of maintaining the cordial professional relationship that has been developed over the last few years. In this respect, India stated that such a relationship is crucial to resolving MAP cases that involve very complicated issues. However, India stressed it felt compelled to make these points now to ward off all unwarranted and uncalled criticism.

192. Further to the above, India pointed out that for nearly all of its pending MAP cases the MAP request was submitted at the level of the treaty partner. Consequently, India was not in a position to determine whether unilateral relief can be granted for adjustments made by India's tax administration. Regardless, India noted that when a MAP agreement was reached regarding such adjustments, this in more than 95% of the cases resulted in a deviation from the initial adjustment, proving in India's view that its competent authority can operate independently.

193. With respect to the responses given by India, one peer provided for a reaction, which is the second peer referred to in paragraph 188 above. This peer mentioned that it disputes India's response that is reflected in paragraph 191 above, as its competent authority carefully develops its position in a MAP case based on the applicable treaty provision and the relevant facts and circumstances. The peer further mentioned it is committed to consult with India's competent authority in good faith to come to principled outcomes. In that regard, it also specified its competent authority has in several instances proactively issued position papers to India's competent authority with the view of advancing cases that involve adjustments made by India and for which India's competent authority has not issued position papers itself. The peer also noted it will convey its understanding of India's position in its dialogue with the taxpayer concerned, such to enable the latter to fully analyse the case and to gather additional potentially relevant information.

Anticipated modifications

194. India did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

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

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

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

195. 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 India

196. India reported that it does not use quantitative performance indicators to evaluate staff in charge of MAP, particularly because of the complexities that are involved in each MAP case. The same applies to targets set for staff in charge of MAP. In India, staff is evaluated on the basis of a number of parameters, which include progress made on MAP cases, and contributions made in various areas of their work, such as analysing and resolving MAP cases. In that regard, India reported that no performance indicators are used that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

197. The Action 14 final report includes examples of performance indicators that are considered appropriate. These indicators are for India checked below:

- ☐ 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).

Practical application

198. Peers that provided input reported not being aware of the use of performance indicators by India that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Anticipated modifications

199. India did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

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

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

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

200. 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

201. India reported that it does not support the inclusion of arbitration in tax treaties as a final stage to the MAP process, as in its view such processes are against a jurisdiction's sovereignty in tax matters. In this respect, in the Commentary of non-members to the 2017 OECD Model Tax Convention India reserved the right not to include paragraph 5 of Article 25 in its tax treaties. India's position on MAP arbitration is also reflected in its MAP profile.

Practical application

202. India has not incorporated in its tax treaties an arbitration clause as a final stage to the MAP.

Anticipated modifications

203. India did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 94 treaties include the former treaty with Denmark that India continues to apply to the Faroe Islands, the treaty with former Czechoslovakia that India continues to apply to the Slovak Republic and the treaty with former Serbia and Montenegro that India continues to apply to both (i) Serbia and (ii) Montenegro.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2017.
3. India's 2016 MAP statistics were corrected in the course of the peer review process and deviate from the 2016 published MAP statistics. See for a further explanation Annex B and Annex C.
4. For post-2015 cases, if the number of MAP cases in India's inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, India reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. For pre-2016 and post-2015 India 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".

References

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

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Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

204. 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

205. India reported that it does not have a domestic statute of limitation for both upward and downward adjustments regarding the implementation of MAP agreements. In other words, regardless of whether a tax treaty contains the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), India reported it will always implement MAP agreements.

206. Concerning the process for implementing MAP agreements, India reported that once such agreement is reached and closing letters between the competent authorities have been exchanged, the local tax administration in India will be informed in writing of the said agreement with instructions to implement it. In this respect, rule 44H of the Income Tax Rules 1962 details the process for implementing MAP agreements. Paragraph 3 stipulates that the MAP agreement has be communicated in writing to the Principal Chief Commissioner of the Income Tax Department with instructions to implement the agreement. Paragraph 4 further stipulates that a MAP agreement should be given effect by the local tax administration, provided that the taxpayer has accepted the agreement and has withdrawn from any appeals that were initiated regarding the same issues for which a MAP was conducted.

207. India reported that the actual implementation of MAP agreements is monitored at the level of the local tax offices. Where the local tax office is requested to implement a MAP agreement, it is also asked to report back to India's competent authority to confirm implementation. By doing so, India's competent authority can keep track on whether all MAP agreements have been implemented.

208. India further reported that all MAP agreements that were reached on or after 1 January 2016, once accepted by taxpayers, have been (or will be) implemented.

209. All but two peers that provided input reported not being aware of any impediments to the implementation of MAP agreements in India. One of these peers specified that it has not reached a MAP agreement with India since 1 January 2016 and thus has no experience

with respect to the implementation of such agreements. Of the two remaining peers, one noted that the many MAP cases it has resolved with India have not yet been implemented, but will be as soon as possible, which mainly stems from the fact that the agreements were reached in 2018. The second peer mentioned that on occasion there has been some misunderstandings about what has been agreed between the competent authorities, despite that such agreement has been documented in the minutes of a meeting. This peer indicated it would like to explore possible solutions on this issue.

Anticipated modifications

210. India did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	As it has done thus far, India should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.

[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.

211. 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

212. As discussed under element D.1, India reported it has a specific system in place for the implementation of MAP agreements. Pursuant to paragraph 4 of rule 44(H) of the Income Tax Rules of 1962, a MAP agreement shall be implemented within 90 days as from the date of the notification of the agreement to the local tax administration if the requirements for implementation are fulfilled. In this respect, India reported that the moment its competent authority enters into a MAP agreement, it is notified to the local tax administration. The latter will then reach out to the taxpayer to convey its acceptance of the agreement. If so, the taxpayer has to withdraw from any domestic court procedures as a prerequisite for implementation. If more than one taxpayer is involved in the case, all of them need to withdraw from such procedures. It is only when both steps have been completed, that the MAP agreement will be implemented. The actual time for implementation may vary for individual cases, but generally MAP agreements are implemented within 90 days as from the date of notifying the local tax administration of the MAP agreement reached. In a few cases, delays, however, may occur when completing all the steps.

Practical application

213. India reported that all MAP agreements that were reached on or after 1 January 2016, once accepted by taxpayers, have been (or will be) timely implemented and that no cases of noticeable delays have occurred.

214. Almost all peers that provided input reported not being aware of any impediments to the implementation of MAP agreements in India on a timely basis. Two peers, however, reported difficulties concerning the timely implementation of MAP agreements in India. One of these peers mentioned that when its competent authority reaches an agreement with India's competent authority, it takes a long time before it is clear that taxpayers in India have accepted the agreement and (if applicable) withdraw from all possible legal proceedings. In this peer's view, the time between reaching an agreement and implementation tends to be long. The second peer mentioned that it did not encounter any delays regarding the implementation of MAP agreements its competent authority entered into with India since 1 January 2016, but that MAP agreements in earlier cases are still pending implementation.

Anticipated modifications

215. India did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

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

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

216. 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.

Current situation of India's tax treaties

217. As discussed under element D.1, India does not have a statute of limitation for implementing MAP agreements.

218. Out of India's 96 tax treaties, 86 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention stipulating that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.[1] Furthermore, six treaties do not contain such equivalent nor the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments.

219. For the remaining four treaties the following analysis is made:

- In one treaty a time limit is set for the implementation of MAP agreements, which is ten years from the due date or the date of filing of the tax return. As this may obstruct the full implementation of a MAP agreement notwithstanding domestic time limits in both states, the treaty is considered not having the equivalent of the second sentence of Article 25(2) of the OECD Model Tax Convention.
- In one treaty the second sentence of Article 25(2) of the OECD Model Tax Convention is contained, but whereby the implementation is made dependent on the notification of a MAP request within a period of five years from the end of the taxable year to which the case relates, which may cause that a MAP agreement cannot be implemented due to a non-timely notification. The treaty is therefore considered not having the equivalent of the second sentence of Article 25(2).
- In one treaty no provision on the implementation of MAP agreements is contained, but in a protocol provision it is stipulated that if the mutual agreement procedure has been introduced within a period of five years as of the moment the tax assessment became final, then any MAP agreement shall be implemented notwithstanding domestic time limits of the treaty partners. As, however, this provision sets a timing for the introduction of a MAP request, there is a risk that a MAP agreement cannot be implemented due to a non-timely introduction. This treaty therefore is also considered not having the equivalent of the second sentence of Article 25(2) of the OECD Model Tax Convention.
- In one treaty the second sentence of Article 25(2) is not contained, but the treaty contains the alternative provision for Article 9(1).

Anticipated modifications

Multilateral Instrument

220. India signed the Multilateral Instrument. 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 will for a tax treaty 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.

221. In regard of the ten tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), India listed all of them as a covered tax agreements under the Multilateral Instrument, but only for seven treaties did it make a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant seven treaty partners, two are not a signatory to the Multilateral Instrument, whereas two made a reservation on the basis of Article 16(5)(a) and one did not make a notification pursuant to Article 16(6)(c)(ii). The remaining two treaty partners made such a notification. Therefore, at this stage, two of the ten tax treaties identified above will be modified by the Multilateral Instrument upon entry into force for these treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

222. India further reported that for those eight tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or both alternatives provided for in Articles 9(1) and 7(2), and will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3, for which it has put a plan in place. In line with this plan, India has initiated negotiations with two of the eight treaty partners and further approached or has been approached by two treaty partners to initiate such negotiations to bring the relevant treaties in line with the requirements under element D.3. In addition, India has been notified by one treaty partner that it will withdraw its reservation under the Multilateral Instrument with respect to element D.3. If done so, the expected impact hereof is that India's treaty with this treaty partner will be modified by that instrument. Regardless, India reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

223. Almost all peers that provided input reported that their treaty with India is in line with the requirements under the Action 14 Minimum Standard, which also regards element D.3. Concerning the ten treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions, two peers provided input regarding element D.3. One of them mentioned it had sent a proposal to India for an amending protocol to the treaty with a view to bring the treaty in line with all requirements under the Action 14 Minimum Standard. The other peer mentioned it is working on updating its notifications under the Multilateral Instrument to meet the requirement under element D.3.

Conclusion

	Areas for improvement	Recommendations
[D.3]	10 out of 96 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2). With respect to these treaties: • Two are expected to be modified by the Multilateral Instrument to include the required provision. • One treaty will be modified by the Multilateral Instrument once the treaty partner has withdrawn its reservation and updated its notifications under that instrument. • Bilateral negotiations have been initiated or about to be initiated with four treaty partners.	India should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in those three 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 and when one of the relevant treaty partners has updated its notifications under that instrument. For four of the seven remaining treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention following its entry into force, and which do also not contain both alternative provisions, India should continue bilateral negotiations with a view to include the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. For the remaining three treaties, India should, in accordance with its plan, request the inclusion the equivalent of Article 25(2), second sentence, of the OECD Model Tax or be willing to accept the inclusion of both alternative provisions.
		In addition, India should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Note

1. These 86 treaties include the former treaty with Denmark that India continues to apply to the Faroe Islands, the treaty with former Czechoslovakia that India continues to apply to the Slovak Republic and the treaty with former Serbia and Montenegro that India continues to apply to both (i) Serbia and (ii) Montenegro.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	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 include the required provision.	India should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first 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 this treaty. In addition, India should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	-	India should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far.
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 OECD Model Tax Convention and provides that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty is expected to be modified by the Multilateral Instrument to include a filing period of at least three years and bilateral negotiations have been initiated with a view to include Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.	India 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 this treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. Concerning Article 25(1), first sentence, of the OECD Model Tax Convention, India should continue bilateral negotiations to include a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.
	Five 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. None of these treaties are expected to be modified by the Multilateral Instrument to include the required provision, but for four of these five treaties bilateral negotiations have been initiated or are about to be initiated with a view to include Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.	India should continue pending negotiations with four of the five treaty partners to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent. For the remaining treaty partner, India should, in accordance with its plan, also request the inclusion of the required provision via bilateral negotiations. For all five treaties this concerns a provision either: a. as amended in the Action 14 final report; or b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.1]	Three 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 that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. These treaties are expected to be modified by the Multilateral Instrument to include a filing period of at least three years.	India 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 these three tax 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.
	-	In addition, India should maintain its stated intention to include the equivalent of Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report in all future tax treaties.
	Access to MAP will be denied in certain cases, even when the requirements for initiating a MAP case under the treaty provision that is equivalent to Article 25(1) of the OECD Model Tax Convention are met. This in particular concerns cases where no double taxation occurred but where there may be taxation not in accordance with the convention.	India should ensure that access to MAP is given in all eligible cases where the requirements under Article 25(1) of the OECD Model Tax Convention have been met. In particular, India should not limit such access in cases where there is no occurrence of double taxation but may be taxation not in accordance with the convention and in cases where.
[B.2]	All 96 tax treaties do not contain a provision equivalent to Article 25(1) 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 partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	India should without further delay introduce a documented notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, once introduced, India should apply that process in practice for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.
[B.3]	-	As India has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	India reported that it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. India is therefore recommended to follow its policy and grant access to MAP in such cases.	
	Access to MAP will be given regarding issues resulting from the application of a domestic law anti-abuse provision, however, such discussions in MAP will only focus on the elimination of double taxation arising form such application and not to issues that do not give rise to double taxation or the question whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.	India should change its policy to effectively allow access to MAP for issues concerning the question whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty, and be willing to discuss such issues when being accepted into the MAP process, including where there is no double taxation but there is taxation that is not in accordance with the provisions of a tax treaty.
[B.5]	-	-
[B.6]	-	As India has thus far not limited access to MAP in eligible cases when taxpayers have complied with India's information and documentation requirements for MAP requests, it should continue this practice.

	Areas for improvement	Recommendations
[B.7]	Five 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. Four of these five treaties are expected to be modified by the Multilateral Instrument to include the required provision, whereas for the fifth treaty, the treaty partner has been approached to update its notifications under the Multilateral Instrument to enable a modification of that treaty.	India should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those four 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 fifth treaty, no actions are necessary by India, as the required modification to the treaty will be ensured via the Multilateral Instrument after the treaty partner updated its notifications under that instrument. In addition, India should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	MAP guidance is not available. Domestic legislative rules on MAP only relate to instances where taxation that is not in accordance with the tax treaty is caused by actions at the level of the treaty partner.	India should without further delay introduce clear and comprehensive MAP guidance. This guidance should in any case include (i) contact details of the competent authority or office in charge of MAP cases and (ii) manner and form in which the taxpayer should submit its MAP request (see below). It should also address both the instances where the challenged taxation by the taxpayer is due to actions by either India or its treaty partner. Furthermore, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, India could consider including information on: • whether MAP is available in: (i) transfer pricing cases, (ii) cases concerning the application of anti-abuse provisions, (iii) audit settlements, (iv) multilateral disputes and (v) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • whether or not it is possible that tax collection can be suspended during the period a MAP case is pending • the consideration of interest and penalties in MAP • the process for implementing MAP agreements. In addition, as discussed under element B.6, India's MAP guidance could also provide further details regarding in what timeframe taxpayers are expected to comply with requests for additional information and documentation for a consideration of their MAP request.

	Areas for improvement	Recommendations
[B.8]	No MAP guidance is available on what information taxpayers should include in their MAP request.	India should include in its to be published MAP guidance information on the manner and form in which taxpayers should submit their MAP request. In particular, the following items could be included: • 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.
[B.9]	MAP guidance has not been issued and is therefore not publically available.	India should, when it has issued its MAP guidance, make this guidance without further delay publically available and easily accessible.
	The published MAP profile is complete, but information included is limited, due to the fact that no MAP guidance is made available and there are limited domestic rules relating to MAP.	India should update its MAP profile once it has issued MAP guidance in order to have more detailed information on India's MAP programme.
[B.10]	Effects of the statutory dispute settlement process on MAP are not addressed in the MAP guidance, as such guidance is not yet available.	India should, when it introduces MAP guidance, follow its stated intention to clarify the effects on MAP when the case was resolved through its statutory dispute settlement process.
	Treaty partners were not notified of the existence of a statutory dispute settlement process.	India should notify all of its treaty partners on the existence of its statutory dispute settlement process.
Part C: Resolution of MAP cases		
[C.1]	Two out of 96 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. One of these treaties is expected to be modified by the Multilateral Instrument to include the required provision, whereas for the remaining treaty, the treaty partner has been approached to update its notifications under the Multilateral Instrument to enable a modification of that treaty.	India should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention in the one treaty that currently does 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, no actions are necessary by India, as the required modification to the treaty will be ensured via the Multilateral Instrument after the treaty partner updated its notifications under that instrument.
	The competent authority does not seek to resolve MAP cases in which there is no double taxation.	India should seek to resolve all MAP cases that are accepted into the MAP process and that meet the requirements under Article 25(1) and (2) of the OECD Model Tax Convention as incorporated in India's tax treaties. In that regard, India should not refuse discussions in MAP with the other competent authority concerned on the grounds that there is no double taxation.

	Areas for improvement	Recommendations
[C.2]	India submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by India's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. India's MAP statistics show that during the Statistics Reporting Period it closed 7% (15 out of 221 cases) of its post-2015 cases in 7.25 months on average. In that regard, India is recommended to seek to resolve the remaining 93% of its post-2015 cases pending on 31 December 2017 (206 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	MAP cases were not closed within 24 months on average, as the average was 35.66 months, which both regards attribution/allocation cases (34.31 months) and other cases (68.70 months). Furthermore, the MAP inventory increased since 1 January 2016. This state of play indicates that the competent authority is not adequately resourced to ensure that post-2015 cases are resolved within the average of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016).	While it is acknowledged that India has made efforts to ensure a more effective and efficient resolution of MAP cases, India should ensure that it provides adequate resources to the MAP function, which in particular regards other cases. In that regard, India should hire additional personnel to ensure that MAP cases are resolved in a timely, effective and efficient manner. Such addition of resources should enable India to: • issue position papers in a timely manner when the adjustment underlying the MAP case is made by India and respond to position papers issued by the other competent authority concerned in due time prior to face-to-face meetings, and complete any follow-up work after a tentative MAP agreement has been reached. • communicate more frequently and hold face-to-face meetings with the other competent authorities concerned on status of the case and discuss the impact of domestic court procedures on the MAP case, in particular when such procedures would lead to a closure of the MAP case.
[C.4]	-	As it has done thus far, India should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that India would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, India should continue to use appropriate performance indicators.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	As it has done thus far, India should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.
[D.2]	-	As it has done thus far, India should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.

	Areas for improvement	Recommendations
[D.3]	10 out of 96 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2). With respect to these treaties: • Two are expected to be modified by the Multilateral Instrument to include the required provision. • One treaty will be modified by the Multilateral Instrument once the treaty partner has withdrawn its reservation and updated its notifications under that instrument. • Bilateral negotiations have been initiated or about to be initiated with four treaty partners.	India should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in those three 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 and when one of the relevant treaty partners has updated its notifications under that instrument. For four of the seven remaining treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention following its entry into force, and which do also not contain both alternative provisions, India should continue bilateral negotiations with a view to include the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. For the remaining three treaties, India should, in accordance with its plan, request the inclusion the equivalent of Article 25(2), second sentence, of the OECD Model Tax or be willing to accept the inclusion of both alternative provisions. In addition, India should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Annex A

Tax treaty network of India

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

			Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
			Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)			Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence? (Note 4)			
Treaty partner	DTC in force?		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Austria	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Bangladesh	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Belarus	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Belgium	Y	N/A	O	ii*	2 years	i**	i	Y	Y	Y	N*	N
Bhutan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Botswana	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Brazil	Y	N/A	O	ii	5 years	i	i	Y	Y	Y	Y	N
Bulgaria	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Canada	Y	N/A	O	ii*	2 years	Y	i	Y	ii	Y	Y	N
China (People's Republic of)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Colombia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Croatia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Cyprus [a]	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Czech Republic	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Denmark	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Egypt	Y	N/A	O	i	N/A	i	i	Y	N*	Y	Y	N
Estonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N

			Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
			Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)			Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence? (Note 4)			
Treaty partner	DTC in force?		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Ethiopia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Faroe Islands	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Fiji	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Finland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Former Yugoslav Republic of Macedonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
France	Y	N/A	N	Y	N/A	i**	i	Y	Y	Y	Y	N
Georgia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Germany	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Greece	Y	N/A	N	i	N/A	i**	i	N	N	N*	N*	N
Hong Kong (China)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Hungary	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Iceland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Indonesia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Iran	N	2/17/2018	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Ireland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N

			Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
			Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)			Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence? (Note 4)			
Treaty partner	DTC in force?		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Israel	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Italy	Y	N/A	N	ii*	2 years	i	i	Y	N	Y	Y	N
Japan	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Jordan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Kazakhstan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Kenya	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Korea	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Kuwait	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Kyrgyzstan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Libya	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N
Lithuania	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Malaysia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Malta	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Mauritius	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Mexico	Y	N/A	O	Y	N/A	Y	i	N**	N	Y	Y	N

			Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
			Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)			Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence? (Note 4)			
Treaty partner	DTC in force?		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Mongolia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Montenegro	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Morocco	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Mozambique	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Myanmar	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Namibia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Nepal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Netherlands	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
New Zealand	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Norway	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Oman	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Philippines	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N
Poland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Qatar	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Romania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Russia	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N

			Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
			Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)			Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence? (Note 4)			
Treaty partner	DTC in force?		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Saudi Arabia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Serbia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Singapore	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Slovak Republic	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Slovenia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
South Africa	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Spain	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Sri Lanka	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Sudan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Sweden	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Switzerland	Y	N/A	N	Y	N/A	Y	i	Y	N	Y	Y	N
Syrian Arab Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Chinese Taipei	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Tajikistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Tanzania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Thailand	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N

			Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	**Column 2**		**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**
			Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)			Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence? (Note 4)			
Treaty partner	DTC in force?		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Trinidad and Tobago	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Turkey	Y	N/A	O	i	N/A	Y	i	Y	N	Y	Y	N
Turkmenistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Uganda	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Ukraine	Y	N/A	N	Y	N/A	i	i	Y	Y	Y	N	N
United Arab Emirates	Y	N/A	O	ii*	2 years	i**	i	Y	Y	Y	Y	N
United Kingdom	Y	N/A	O	i	N/A	Y	i	Y	N*	Y	N*	N
United States	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Uruguay	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Uzbekistan	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Viet Nam	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Zambia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N

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 Reporting for 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	594	0	0	0	0	2	48	1	0	0	0	543	27.5
Others	101	0	0	0	0	0	2	0	1	0	0	98	108.3
Total	695	0	0	0	0	2	50	1	1	0	0	641	31.9

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	543	0	0	0	0	2	78	0	0	3	0	460	42.7
Others	98	0	0	0	0	0	1	0	0	0	0	97	80.0
Total	641	0	0	0	0	2	79	0	0	3	0	557	43.1

Notes: There is a discrepancy between the number of pre-2016 MAP cases in India's inventory as per 31 December 2016 and 1 January 2017.

- The reported number of MAP cases pending on 31 December 2016 was 568, which consists of 499 attribution/allocation cases and 69 other cases.
- The reported number of MAP cases pending on 1 January 2017 was 641, which consists of 543 attribution/allocation cases and 98 other cases.

In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of pre-2016 cases pending on 1 January 2016 was corrected.

Annex C

MAP Statistics Reporting for 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	78	0	0	0	0	0	0	0	1	0	0	77	6.6
Others	0	7	0	0	0	0	0	0	0	0	0	0	7	0.0
Total	0	85	0	0	0	0	0	0	0	1	0	0	84	6.6

Note: In the absence of information about the date of receipt of taxpayer's MAP request to the other competent authority and about the date of intimation by the other competent authority to the taxpayer, the date of invocation letter from the other competent authority has been taken as Start Date and the date of intimation of closure of MAP by Indian competent authority to the other competent authority has been taken as "Milestone 1" as well as "End Date".

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	77	121	0	0	0	4	0	6	2	0	0	0	186	7.9
Others	7	15	1	1	0	0	0	0	0	0	0	0	20	3.6
Total	84	136	1	1	0	4	0	6	2	0	0	0	206	7.3

Notes: There is a discrepancy between the number of post-2015 MAP cases in India's inventory as per 31 December 2016 and 1 January 2017, which regards only attribution/ allocation cases. The reported number of attribution/allocation cases pending on 31 December 2016 was 70, while the reported number on 1 January 2017 was 77. In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of post-2016 cases initiated in 2016 was corrected.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 15 July 2014
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2016 and that ended on 30 August 2018
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that 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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Making Dispute Resolution More Effective – MAP Peer Review Report, India (Stage 1)

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.

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