OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



OECD

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and 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 80 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 115 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 14 August 2018 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

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

Executive summary

Japan has a relatively large tax treaty network with over 60 tax treaties. Japan has also an established MAP programme and has long-standing and large experience with resolving MAP cases. It has a large MAP inventory, with a modest number of new cases submitted each year and almost 120 cases pending on 31 December 2017. Of these cases, 90% concern allocation/attribution cases. Overall Japan meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Japan is working to address them.

All of Japan'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 on Capital 2014* (*OECD Model Tax Convention*, OECD, 2015). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Approximately 30% 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.
- Approximately 10% of its tax treaties do not contain the equivalent of Article 25(1) to the OECD Model Tax Convention (OECD, 2015), whereby most of these treaties do not contain the equivalent of Article 25(1), first sentence, as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective*, *Action 14 – 2015 Final Report* (*Action 14 final report*, OECD, 2015b) 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 do not contain the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Japan needs to amend and update a certain number of its tax treaties. In this respect, Japan 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, Japan reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations, but has not yet put a plan in place in relation hereto. Furthermore, Japan opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties.

Japan meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme, which is extensively used by taxpayers and Japan's tax administration to prevent disputes. This APA programme also enables taxpayers to request rollbacks of bilateral APAs and such rollbacks are granted in practice.

Japan also meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2016 not received any MAP request concerning the application of anti-abuse provisions (audit settlements are not possible in Japan). It further has in place a documented bilateral consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, although no such cases have surfaced since 1 January 2016. Japan also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, including a specific Q&A on MAP.

Concerning the average time needed to close MAP cases, the MAP statistics for Japan 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	96	58	48	106	27.42
Other cases	9	8	6	11	17.66
Total	105	66	54	117	26.34

* 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, Japan used as the start date the date of receipt of the MAP request or the date of receipt of a notification from another competent authority of a MAP request, and as the end date the date of formal closure of the case (including an agreement reached), which is the latest date on which the closing letter is sent to or is received from the other competent authority concerned.

The number of cases Japan closed in 2016 and 2017 is less than the number of all new cases started in 2016 and 2017. Its MAP inventory as per 31 December 2017 increased as compared to its inventory as per 1 January 2016. During the Statistics Reporting Period, Japan'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 26.34 months. This mainly concerns the resolution of attribution/allocation cases, as the average time to close these cases is thereby considerably longer (27.42 months) than the average time to close other cases (17.66 months). While Japan already added a significant number of new staff to its competent authority over the last years and provided a justified explanation why in a number of cases it took more than 24 months to close them, it is recommended to improve its governance in resolving MAP cases. In that regard, it will be monitored whether these additional resources and suggested improvements to the governance will contribute to a resolution of MAP cases in a more timely, effective and efficient manner.

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

Lastly, Japan in essence meets the Action 14 Minimum Standard as regards the implementation of MAP agreements and its competent authority monitors such implementation. However, where the underlying taxation was made by the treaty partner, Japan requires taxpayers to ask for a rectification of a filed tax return within a period of two months as a prerequisite for implementation. This system bears the risk that not all MAP agreements are implemented.

Introduction

Available mechanisms in Japan to resolve tax treaty-related disputes

Japan has entered into 65 tax treaties on income (and/or capital), 63 of which are in force.[1] These 65 treaties are being applied to 75 jurisdictions.[2] All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 16 of the 65 treaties provide for a mandatory and binding arbitration procedure as a final stage to the mutual agreement procedure.[3]

In Japan, the competent authority function to handle MAP cases is, pursuant to the Act for Establishment of the Ministry of Finance, in conjunction with the Order for Organisation of the Ministry of Finance, delegated to the Commissioner of the National Tax Agency. The Commissioner in turn has on the basis of the Ordinance for Organisation of the Ministry of Finance sub-delegated this competence to the Deputy Commissioner for International Affairs. In practice the competent authority function is performed by the Office of Mutual Agreement Procedures ("**MAP office**") within the National Tax Agency. This competence concerns both attribution/allocation cases and other cases. Where, however, it concerns MAP cases relating to treaty interpretation, the MAP office is assisted by the International Tax Policy Division of the Tax Bureau within Japan's Ministry of Finance.

The MAP office currently employs 44 employees (including the director) and is organised into nine sections. Six of these nine sections are directly involved in handling MAP and APA cases, which in total concerns 28 employees. The other three sections are among others involved in engagement and co-ordination tasks, drafting administrative guidance or participate in the work of the FTA MAP Forum.

Japan has issued guidance on the governance and administration of the mutual agreement procedure ("**MAP**") in the Commissioner's Directive on the Mutual Agreement Procedure ("**MAP guidance**"), which was lastly updated in June 2017. This MAP guidance is in English available at:

www.nta.go.jp/english/00.pdf

In addition to issuing this MAP guidance, in 2017 Japan published Guidance for taxpayers on the mutual agreement procedure in the form of a Q&A ("**Q&A on MAP**"), which touches upon the relevant issues for taxpayers in relation to MAP and is written in an easy-to-read language from the perspective of taxpayers. This Q&A is available at:

www.nta.go.jp/english/03.pdf

Recent developments in Japan

Japan reported it is currently conducting tax treaty negotiations with Colombia, Iceland and Spain, whereby the treaty with Spain concerns the renegotiation of an existing treaty. In addition, Japan signed a new treaty with Belgium in 2016 and with Austria, Denmark, Estonia, Latvia, Lithuania and Russia in 2017. Except for Latvia, all these treaties, however, have not yet entered into force.[4] Furthermore, Japan has signed amending protocols to the existing treaties with the Bahamas (2017) and the United States (2013), which also have not yet into force.

Furthermore, Japan 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. Where treaties will not be modified by the Multilateral Instrument, Japan reported that it strives updating them through future bilateral negotiations. It, however, has not yet a plan in place for such renegotiations. With the signing of the Multilateral Instrument, Japan also submitted its list of notifications and reservations to that instrument.[5] In relation to the Action 14 Minimum Standard, Japan has not made any reservations to article 16 of the Multilateral Instrument (concerning the mutual agreement procedure). It further opted for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process.

Basis for the peer review process

The peer review process entails an evaluation of Japan's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by the assessed jurisdiction, its peers and taxpayers. The questionnaires for the peer review process were sent to Japan and the peers on 29 December 2017.

The period for evaluating Japan's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2017 ("**Review Period**"). While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, Japan opted to provide information and requested peer input on a period starting as from 1 January 2014. Even though this period is taken into account in the analysis in this report, the basis of conclusions only concerns the period starting on 1 January 2016. In addition to the assessment on its compliance with the Action 14 Minimum Standard, Japan also asked for peer input on best practices, which can be accessed on the OECD website.[6] 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 Japan'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 Japan 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 former Czechoslovakia and the former USSR for those jurisdictions to which these treaties are still being by Japan. As it concerns the same tax treaties that are applicable to multiple jurisdictions, each treaty is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Japan's tax treaties regarding the mutual agreement procedure.

In total 19 peers provided input: Australia, Belgium, Canada, the People's Republic of China, Denmark, France, Germany, India, Ireland, Italy, Korea, the Netherlands, the Russian Federation, Singapore, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Out of these 19 peers, 11 had MAP cases with Japan that started on or after 1 January 2016. These peers represent 90% of post-2015 MAP cases in Japan's inventory that started in 2016 or 2017. Generally, all peers indicated having a very good working relationship with Japan's competent authority and the easiness of the communication. They also valued Japan's willingness and constructiveness in resolving MAP cases, although a few voiced some concern on the fact that the resolution of cases can generally only be done during a competent authority meeting and not via written correspondence.

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

- MAP profile[7]
- MAP statistics[8] according to the MAP Statistics Reporting Framework (see below).

Finally, Japan is a very active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Japan provided detailed peer input and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions. Japan also provided peer input on the best practices for a number of jurisdictions that asked for it.

Overview of MAP caseload in Japan

The analysis of Japan'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 Japan, 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	96	58	48	106
Other cases	9	8	6	11
Total	105	66	54	117

General outline of the peer review report

This report includes an evaluation of Japan'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**").[9] Apart from analysing Japan's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Japan. Furthermore, the report depicts the changes adopted and plans shared by Japan 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 Japan 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 Japan has entered into are available at: www.mof.go.jp/english/tax_policy/tax_conventions/international_269.htm. New treaties that have been signed but have not yet entered into force are with Estonia (2017) and Lithuania (2017). These newly negotiated treaties are taken into account in the treaty analysis. Reference is made to Annex A for the overview of Japan's tax treaties.
2. Japan continues to apply the 1977 treaty with former Czechoslovakia to the Czech Republic and the Slovak Republic; the 1962 treaty with the United Kingdom to Fiji; and the 1986 treaty with the former USSR to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.
3. This concerns treaties with Austria, Belgium, Chile, Denmark, Estonia, Germany, Hong Kong, Latvia, Lithuania, the Netherlands, New Zealand, Portugal, Slovenia, Sweden, the United Kingdom and the United States. Reference is made to Annex A for the overview of Japan's tax treaties.
4. The treaties with Austria, Belgium, Denmark and the Russian Federation will replace existing treaties once they enter into force. For the Russian Federation this concerns the replacement of the 1986 treaty with the former USSR that is continued to be applied by both Japan and the Russian Federation.
5. Available at: www.oecd.org/tax/treaties/beps-mli-position-japan.pdf.
6. Available at: http://oe.cd/bepsaction14.

7. Available at: www.oecd.org/tax/dispute/Japan-Dispute-Resolution-Profile.pdf.

8. The MAP statistics of Japan are included in Annexes B and C of this report.

9. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).

Part A

Preventing disputes

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

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

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

Current situation of Japan's tax treaties

2. Out of Japan's 65 tax treaties, 64 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.[1] The remaining treaty does not contain this equivalent, as in this treaty the phrase "shall endeavour to resolve by mutual agreement" is replaced with "may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention and for resolving".

3. In view of the one treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), Japan reported that under its domestic legislation and/or administrative practice there is no obstruction to enter into interpretative MAP agreements, although it has not experienced such a situation so far.

Anticipated modifications

Multilateral Instrument

4. Japan 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 (OECD, 2015) – 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 (OECD, 2015). 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 (OECD, 2015).

5. In regard of the treaty identified above that is considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), Japan listed this treaty as a covered tax agreement under the Multilateral Instrument, but did not make a notification, pursuant to Article 16(6)(d)(i), that it does not contains a provision described in Article 16(4)(c)(i). Therefore, at this stage the Multilateral Instrument will, upon entry into force, not modify the treaty identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

6. Japan further reported that the tax treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) and that will not be modified by the Multilateral Instrument, it intends to update it via bilateral negotiations with a view to be compliant with element A.1. Japan, however, has not yet in place a specific plan for such negotiation. In addition, Japan reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future tax treaties.

Peer input

7. Almost all peers that provided input reported their treaty with Japan meets the requirements under element A.1. For the treaty identified above that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), the relevant treaty partner did not provide peer input.

Conclusion

	Areas for improvement	Recommendations
[A.1]	One out of 65 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	As the treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will at this time not be modified via the Multilateral Instrument, Japan should request the inclusion of the required provision via bilateral negotiations. To this end, Japan should put a plan in place on how it envisages updating this treaty to include the required provision. In addition, Japan 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.

Japan's APA programme

9. Japan has introduced and applied an APA programme since 1987, thereby allowing for unilateral, bilateral and multilateral APAs. The rules relating to APAs are set forth in chapter 6 of the Commissioner's Directive on the operation of transfer pricing ("**Transfer Pricing Directive"**).[3]

10. Where it concerns unilateral APAs, the competence to handle APA requests is assigned to the National Tax Agency, and sub-mandated to the Regional Commissioner of the Regional Tax Bureau's Large Enterprise Examination Division or the District Director of the Examination Group (Corporation) of the Tax Office. Which of these government departments holds competence to handle an APA request is dependent on which department has jurisdiction over the taxpayer submitting the APA request.[4] Contact details for each department are made available online in Japanese and can be found at:

- www.nta.go.jp/taxes/shiraberu/sodan/kobetsu/itenkakakuzeisei/03.htm
- www.nta.go.jp/about/organization/index.htm

11. Where an APA requests concerns bilateral or multilateral APAs, it is the Regional Tax Bureau's Large Enterprise Examination Division that will conduct the initial review of the APA request. However, where such a request is made under the MAP provision of a tax treaty, it is MAP office that will – in co-operation with the Regional Tax Bureau – further handle the request and conduct negotiations with the treaty partner.[5] In this respect, Japan noted that next to the request for a bilateral or multilateral APA, taxpayers are also required to submit a MAP request on the basis of the MAP guidance (see element B.8 for a discussion).

12. Further to the above, Japan reported that a request for an APA has to be submitted on or before the first date of the first fiscal year to which the request relates. Chapter 6, section 3 of Japan's Transfer Pricing Directive further defines in detail what information taxpayers need to include in their APA request, whereas sections 10-15 detail the process for obtaining an APA, including the scheduling of a pre-filing meeting. When Japan has reached an agreement with its treaty partner on the content of a bilateral APA, its competent authority will, pursuant to section 17 of the MAP guidance notify the taxpayer hereof. The taxpayer in turn is obliged to file a tax return in conformity with the APA. Chapter 6, section 7 of the Transfer Pricing Directive notes that an APA is generally applied for a period ranging from three to five years.

13. Since 2006 Japan annually publishes statistics relating to APAs on the website of the National Tax Agency.[6] These statistics *inter alia* relate to the number of APA requests received, the number of cases closed and the inventory of pending APA cases as per year-and. For calendar years 2014-16 Japan reported the following statistics:[7]

Year	Number of bilateral APA requests	Number of APAs granted	Inventory as of year-end
2014	157	147	302
2015	161	106	357
2016	122	116	363

Roll-back of bilateral APAs

14. Japan reported that it allows roll-back of bilateral APAs. The relevant policy hereon is set forth in chapter 6, section 23 of Japan's Transfer Pricing Guidance, which stipulates that taxpayers can request for the roll back of an existing bilateral APA to previous fiscal years. To this end taxpayers need to specify this in the APA request and subsequently also file a MAP request for the same case. A roll-back will be granted where the application to previous fiscal years is considered to be appropriate.

Practical application of roll-back of bilateral APAs

15. As mentioned above, Japan annually publishes a report on its APA programme, with the last available report concerning fiscal year 2016 (period running from 1 July 2016 up to 30 June 2017). Concerning the number of roll-back requests, Japan reported the following figures for the period 2014-16:

Year	Number of roll-back requests	Roll-backs granted	Inventory as of year-end
2014	66	38	154
2015	62	30	186
2016	51	45	192

16. Most of the peers that provided input noted having an APA relationship with Japan, some of them also having experiences with Japan on granting of roll-backs of existing bilateral APAs. On the APA relationship in general, one peer noted that it considers that it has with Japan a well-developed bilateral APA programme. Another peer mentioned that it has a strong working relationship with Japan's competent authority and that it valued its experience to prevent tax treaty related disputes with Japan during the review period as very positive. It also highlighted that Japan's competent authority is proactive in its dealings on bilateral APAs and is keen to make progress and to resolve cases in a timely manner. A third peer also valued its relationship with Japan's competent authority in dealing with APA cases, albeit that specific to the financial industry it is in the peer's view challenging to come to an agreement. In regard of this specific peer input, Japan responded that certain cases, including those relating to the financial industry, are challenging due to the complexity of the cases and required expertise, following which Japan's competent authority and also that of the peer are required their best endeavours to overcome differences in views deriving from the nature of the cases. To this Japan added that it believes that both competent authorities will find a common ground and arrive at an acceptable resolution for the cases under review, as was the case for a number of other challenging cases that have been resolved through mutual co-operation and collaboration.

17. Another peer echoed the previous input and noted it has a very positive relationship with Japan's competent authority, whereby contacts are considered easy and frequent, as also that Japan's competent authority provides quick responses. Such contacts take place in various manners such as e-mail, letters and face-to-face meetings, whereby meetings are scheduled once or twice a year. This peer further mentioned that in all pending MAP cases with Japan progress is made in a reasonable time. Lastly, one peer applauded the commitment of Japan's competent authority to APAs in general, including providing of roll-backs, which in the peer's view has prevented many MAP cases from arising in the first place. This peer also expressed its appreciation of the efforts made by Japan's competent authority to pursue principled resolution for APAs in generally a reasonable timeframe. It, however, also identified an area for which it would like to work with Japan to improve. In this peer's view the APA process is most beneficial when there is a significant number of years between the ending of APA negotiations and the fiscal years to which the APA applies. In its experience with Japan this is not always the case, which the peer considered not to be beneficial, as it does not increase certainty for taxpayers and also leads to lengthy renegotiations that ties up the limited available resources at both the level of the peer's and Japan's competent authority. This peer therefore welcomes discussions on this topic with Japan in a co-operative and collaborative manner. To this particular peer input, Japan responded that its competent authority is open to any discussions to improve the effectiveness and efficiency of the measures to resolve and prevent treaty-related disputes in a consistent and principled manner, such with a view to increase certainty for taxpayers.

18. In total 11 peers provided input on their experiences with Japan on providing roll-backs to bilateral APAs. These peers reported that since 1 January 2014 they altogether received approximately 60 roll-back requests concerning bilateral APAs with Japan. For some of these peers it only concerns a limited number of requests, while for a few peers the number of requests is considerable.

19. The peers that only have a limited number of roll-back requests reported that Japan is open to grant roll-backs of bilateral APAs. Three peers particularly noted that Japan was able to provide for a roll-back and that there were no particular issues encountered in the implementation thereof. One of these peers also noted that for a pending roll-back request it is assumed that it will be managed positively by Japan's competent authority. A second peer mentioned that it was able to have adequate discussions with Japan's competent authority on the availability of a roll-back to an existing bilateral APA and that in the past roll-backs were provided in appropriate cases. Furthermore, another peer noted that it has received a request for a roll-back in 2017, which is currently still under discussion, but based on past experiences the peer expects that the roll-back will be provided. Lastly, one peer noted that while it has not received a request for a bilateral APA, or a roll-back request, since 1 January 2014 concerning Japan, it noted that roll-backs are possible.

20. Those peers that have more cases for which taxpayers requested to provide for a roll-back of a bilateral APA also voiced positive experiences with Japan. One peer mentioned that Japan was able to provide for a roll-back in all cases where an APA agreement has been reached and that no problems were encountered concerning the implementation of these roll-backs. This input was echoed by three other peers, which noted not having found any difficulties with the implementation of roll-backs of bilateral APAs in its relationship with Japan. Another peer addressed that the cases where taxpayers requested a roll-back are currently pending and that face-to-face discussions are foreseen in 2018. In this peer's experience Japan is open to considering roll-backs of bilateral APAs in appropriate cases.

Anticipated modifications

21. Japan did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

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

Notes

1. These 64 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic and the treaty with the former USSR that Japan continues to apply to Armenia, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. These 64 treaties also include the newly negotiated treaties with Austria, Belgium, Denmark and the Russian Federation, which will replace the currently existing treaties with these jurisdictions of 1961, 1968, 1968 and 1986 respectively.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
3. Available in English at: www.nta.go.jp/english/07.pdf. Japan has also issued specific guidance for taxpayers to which, pursuant to item 12-7-2 of Article 2 of the Corporations Tax Act, the consolidated taxation system applies. This guidance is available in Japanese and can be found at: www.nta.go.jp/law/jimu-unei/hojin/050428/00.htm. Furthermore, Japan also provides guidance on APAs in relation to the attribution of profits to permanent establishments in the following documents:

   For domestic and foreign corporations: chapters 6 and 7 of the Commissioner's Directive on the operation of auditing, etc. for income attributable to permanent establishments (lastly updated on 15 June 2017). The information is available at (in Japanese):

   www.nta.go.jp/law/jimu-unei/hojin/160630/06.htm
   www.nta.go.jp/law/jimu-unei/hojin/160630/07.htm

   For domestic consolidated corporations: chapter 5 of the Commissioner's Directive on the operation of auditing, etc. for consolidated income attributable to consolidated corporation's permanent establishments located overseas (lastly updated on 15 June 2017). The information is available at (in Japanese): www.nta.go.jp/law/jimu-unei/hojin/160630_2/00.htm;

   For (resident and non-resident) individuals: chapters 5 and 6 of the Commission's Directive on the operation of auditing, etc. for various income attributable to individual's permanent establishments (issued on 31 March 2017). The information is available at (in Japanese):

   www.nta.go.jp/law/jimu-unei/shotoku/shinkoku/170331/05.htm
   www.nta.go.jp/law/jimu-unei/shotoku/shinkoku/170331/06.htm.
4. See chapter 6, section 2 Japan's Transfer Pricing Directive.
5. See chapter 6, section 12/13 of Japan's Transfer Pricing Directive.

6. Available in English at: www.nta.go.jp/english/publication/map_report/index.htm. Statistics on APAs are also available in the annual report of the National Tax Agency. For 2017, these statistics are available in Part III-3 (4). Available at: www.nta.go.jp/english/Report_pdf/2017e_06.pdf.

7. The numbers reported in the table deviate slightly from the numbers included in the annual report issued by Japan's National Tax Agency due to the fact that in the latter the basis is the fiscal year, which in Japan runs from 1 July to 30 June.

References

OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, http://dx.doi.org/10.1787/tpg-2017-en (accessed on 18 July 2018).

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239081-en (accessed on 18 July 2018).

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 the Japan's tax treaties

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

23. Out of Japan's 65 tax treaties, 40 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.[1] In addition, seven of Japan's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as changed by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state.[2]

24. The remaining 18 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	16[3]
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer cannot submit a MAP request irrespective of domestic available remedies and can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	2

25. The 16 treaties mentioned in the first row of the table above are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 11 of those 16 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 (four treaties).
- The relevant tax treaty does not contain a (specific) non-discrimination provision that is equivalent to Article 24 of the OECD Model Tax Convention (OECD, 2015a) (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 (five treaties).[4]

26. For the remaining five treaties, the non-discrimination provision is in three of them almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2015a) and applies both to nationals that are and are not resident of one of the contracting states.[5] In the remaining two treaties, paragraph 1 of the non-discrimination provision also only covers nationals that are resident of one of the contracting states, but by virtue of another paragraph the non-discrimination provision applies to both 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 (OECD, 2015a) is therefore for all five treaties 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, as the two treaties mentioned in the second row of the table above do not allow taxpayers to submit a MAP request irrespective of domestic available remedies, they are also considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

28. In view of the above, section 23 of Japan's MAP guidance stipulates that where a MAP request is submitted with the competent authority of the treaty partner concerning transactions between associated enterprises resident in Japan and the treaty partner and whereby the outcome of the MAP process may affect the taxable profit of the enterprise resident in Japan, that enterprise will be requested, in order to confirm its intention to seek resolution through MAP, whether it has submitted or will submit a MAP request either in

Japan or at the level of the treaty partner if the applicable tax treaty allows so. Where this is the case, the general rules for conducting the MAP process in Japan will apply. Where, however, this is not the case, section 23 of Japan's MAP guidance refers to section 29, which deals with the grounds upon which a MAP process can be terminated. One of these grounds, defined in item 1(b) of that section, is the non-filing of a MAP request by the enterprise resident in Japan in transfer pricing cases. In this respect, Japan reported that it considers it not to be appropriate to proceed with a MAP case against the intention of the taxpayer resident in Japan where this taxpayer has expressed its intention not to seek a MAP resolution, as such proceeding would not align with the spirit and purpose of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). It would also not align with Japan's domestic system of self-assessment, which provides remedies based on taxpayer's will. In practice, after confirming the taxpayer's intention, if necessary through repeated inquiries to the taxpayer, Japan's competent authority will therefore inform the treaty partner of its position and propose to close the case (recognising that the actual closing is only possible if both competent authorities consent herewith). Where the treaty partner wishes to continue MAP consultations, primarily to determine the correct application of the arm's length principle with respect to the taxpayer resident in the treaty partner's state, Japan reported that its competent authority would accept such continuation, but that in practice it will have little relevance as Japan's competent authority would face difficulties in obtaining sufficient information from the taxpayer. In other words, it may then be difficult to come to a mutual understanding in such a situation. Against this background, Japan reported that section 23 of its MAP guidance allows taxpayers an adequate opportunity to execute their right under tax treaties to request for MAP in eligible cases, whereby its competent authority does not deny access to MAP in these cases. Japan therefore considers this practice to be in line with Article 25(1) of the OECD Model Tax Convention (OECD, 2015a).

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

29. Out of Japan's 65 tax treaties, 52 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.[6]

30. The remaining 13 tax treaties that do not contain such a provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	12[7]
Filing period less than three years for a MAP request (two years)	1

31. Where a tax treaty does not contain a specific filing period for MAP requests, Japan reported that its domestic legislation and administrative practice does not provide for such a filing period either and its competent authority would not apply a specific timeframe within which a MAP request should be filed.

Anticipated modifications

Multilateral Instrument

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

32. Japan 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 (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b) 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 (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). 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 (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). 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 (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b)). 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.

33. With the signing of the Multilateral Instrument, Japan opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Japan's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, Japan opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Japan listed 34 of its 65 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all of them the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b).[8]

34. In total, one of the 34 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas 14 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties.[9] Of the remaining 19 treaty partners, 18 listed their treaty with Japan as having a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify these 18 treaties to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b). Furthermore, the remaining treaty partner has not made such a notification. Since the provision of the covered tax agreement does not contain the equivalent of Article 25(1), first sentence, of

the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), it is considered to be incompatible with the first sentence of Article 16(1). Therefore, at this stage the Multilateral Instrument will, upon entry into force, supersede this treaty to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b).

35. In view of the above, for those seven treaties identified in paragraphs 26 and 27 above that are considered not containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), two will 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.[10]

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

36. 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 (OECD, 2015a) – 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 (OECD, 2015a).

37. In regard of the one tax treaty identified in paragraph 16 above that contains a filing period for MAP requests of less than three years, Japan listed this treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner also made such notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify this treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

38. Japan further reported that when the tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), 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. Japan, however, has not yet in place a specific plan for such negotiations, but reported it is currently negotiating with one of the treaty partners where the treaty is not in line with element B.1.

39. With respect to the first sentence of Article 25(1), Japan reported that it will in those bilateral negotiations propose to include the equivalent as amended by the final report on Action 14 (OECD, 2015b). In addition, Japan reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as amended by the final report on Action 14 (OECD, 2015b), in all of its future tax treaties.

Peer input

40. Almost all peers that provided input reported that their tax treaty with Japan meets the requirements under element B.1. One peer for which its treaty with Japan does actually not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), reported that as soon as the Multilateral Instrument will enter into force the treaty will be in line with element B.1. However, for this specific peer the Multilateral Instrument will not modify its treaty with Japan to incorporate the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a). Furthermore, another peer noted that the current treaty in force with Japan does not meet the requirements under element B.1, but that it has signed a new treaty with Japan in 2017 that is fully in line with element B.1, which indeed is the case.

Conclusion

	Areas for improvement	Recommendations
[B.1]	Eight out of 65 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those eight tax treaties: • Seven tax treaties do not contain the equivalent to Article 25(1), first sentence. • One tax treaty 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.	Japan should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: a. As amended in the final report of Action 14 (OECD, 2015b); or b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Japan should request the inclusion of the required provision via bilateral negotiations. To this end, Japan should put a plan in place on how it envisages updating these treaties to include the required provision. Specifically with respect to the treaty with former Czechoslovakia, Japan should, once it enters into negotiations with the jurisdictions to which it applies that treaty, request the inclusion of the required provision. In addition, Japan should maintain its stated intention to include the required provision in all future tax treaties.

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

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

41. 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

42. As discussed under element B.1, out of Japan's 65 treaties, seven currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, 19 of these 65 treaties will, upon entry into force, be modified by the Multilateral Instrument to also allow taxpayers to submit a MAP request to the competent authority of either treaty partner.[11]

43. Japan reported that where its competent authority considers that the objection raised in a MAP request is not justified, or where a MAP request does not include the required information/documentation as set out in its MAP guidance, it will apply a consultation process with the competent authority of the relevant treaty partner. Section 13 of the MAP guidance outlines how Japan's competent authority will operate when it considers the objection raised by the taxpayer in its MAP request as not being justified. In this respect, section 13(2) clearly stipulates that the taxpayer and the other competent authority concerned will be notified when Japan's competent authority will not propose the opening of a MAP in case the taxpayer has not included in its MAP request the required information as outlined in section 6 of the MAP guidance or where the objection raised in the request is considered not to be justified. The notification includes an invitation to the other competent authority concerned to provide its views, which will be taken into account in the final decision on whether or not to proceed with the MAP request. Section 18(2) of the MAP guidance further defines that Japan's competent authority will close the case where the other competent authority concerned has not objected to the proposal not to initiate a MAP case as set out in the notification. Subsequently, Japan's competent authority will notify the taxpayer of this closure.

Practical application

44. Japan reported that since 1 January 2014 its competent authority for none of the MAP requests it received decided that the objection raised by taxpayers in such request as being not justified. The 2016 and 2017 MAP statistics submitted by Japan also show that in none of its MAP cases was closed with the outcome "objection not justified".

45. All peers that provided input indicated not being aware of any cases for which Japan's competent authority denied access to MAP since 1 January 2014. They also reported not having been consulted/notified during the Review Period of a case where Japan's competent authority considered the objection raised in a MAP request as not justified, which is logical as no such instances have occurred in Japan during this period.

Anticipated modifications

46. As previously discussed under element B.1, Japan has signed the Multilateral Instrument, *inter alia* with the intention to modify covered tax agreements to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Where tax treaties will not be modified via the Multilateral Instrument, Japan declared it will apply its bilateral consultation process when its competent authority considers the objection raised in a MAP request not to be justified.

Conclusion

	Areas for improvement	Recommendations
[B.2]	There is a documented process in place to consult the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the consultation process is applied in practice because during the Review Period no such cases have occurred in Japan.	

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

Jurisdictions should provide access to MAP in transfer pricing cases.

47. 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

48. Out of Japan's 65 tax treaties, 12 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, 21 treaties do not contain such equivalent.[12] The remaining 32 treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but deviate from this provision for the following reasons:

- In 31 treaties corresponding adjustments can only be made through MAP.

- In one treaty granting of a corresponding adjustment is optional, as the phrase "shall make an appropriate adjustment" is replaced with "may, where appropriate, make an appropriate adjustment".

49. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Japan's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Japan 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 (OECD, 2015a) is contained in its tax treaties, but only insofar the scope of these treaties cover transfer pricing cases. This is the case for all of Japan's 65 tax treaties, except the five treaties that are limited in scope and only apply to certain categories of income relating to individuals.

50. Article 12 of Japan's Ministerial Ordinance on the Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the application of tax treaties defines the legal basis upon which taxpayers can submit a MAP request. This article does not contain any limitation on the scope of application of MAP. Furthermore, section 3 of Japan's MAP guidance includes examples of cases for which taxpayers are eligible to submit a MAP request. These examples *inter alia* refer to cases on the allocation of income between associated enterprises on the basis of the arm's length principle or the attribution of profits to permanent establishments. Similar examples are included in the response to question 2.10 of Japan's Q&A on MAP.

Application of legal and administrative framework in practice

51. Japan reported that since 1 January 2014, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

52. All peers that provided input indicated not being aware of a denial of access to MAP by Japan since 1 January 2014 on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

53. Japan reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) 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, Japan 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 (OECD, 2015a) – 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 (OECD, 2015a). 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 (OECD, 2015a), 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 (OECD, 2015a). 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 (OECD, 2015a)).

54. Japan has not reserved, pursuant to Article 17(3), the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). In regard of the 53 tax treaties identified in paragraph 48 above that are considered not to contain this equivalent, Japan listed 31 treaties as a covered tax agreement under the Multilateral Instrument, but only for 21 of them made a notification on the basis of Article 17(4) that they do contain a provision described in Article 17(2).[13] Of the relevant treaty partners, one is not a signatory to the Multilateral Instrument and 11 have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Japan already contains the equivalent of Article 9(2). All remaining nine treaty partners also made a notification on the basis of Article 17(4). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, replace the provisions in these nine treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a).

55. Furthermore, for the remaining ten of the 31 tax treaties that Japan listed as covered tax agreements under the Multilateral Instrument and for which it did not make a notification on the basis of Article 17(4), all ten treaty partners are a signatory to the Multilateral Instrument. Of these ten treaty partners, two have, pursuant to Article 17(3), reserved the right not to apply Article 17(2), as they consider their treaty with Japan already to contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a).[14] Therefore, at this stage, the Multilateral Instrument will, upon entry into force, supersede the remaining eight treaties only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	As Japan 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.

56. 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

57. None of Japan's 65 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 Japan 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.

58. Japan reported that it will provide access to MAP in cases relating to the application of a treaty anti-abuse provision or for cases concerning the question whether the application of the domestic anti-abuse provision comes into conflict with the provision of a tax treaty. In this respect, Article 12 of Japan's Ministerial Ordinance on the Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the application of tax treaties defines the legal basis upon which taxpayers can submit a MAP request. This article does not contain any limitation on the scope of application of MAP. Furthermore, while Japan's MAP guidance does not specifically address whether taxpayers have access to MAP concerning the application of domestic or treaty anti-abuse provisions, the response to question 2.10 of Japan's Q&A on MAP addresses that taxpayers may submit a MAP request in such cases.

Practical application

59. Japan reported that since 1 January 2014 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.

60. All peers that provided input indicated not being aware of cases that have been denied access to MAP by Japan since 1 January 2014 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

61. Japan did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	Japan reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP request of this kind from taxpayers during the Review Period. Japan is therefore recommended to follow its policy and grant access to MAP in such cases.	

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

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

62. 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

63. Japan reported that under its domestic law there is no process available allowing taxpayers and the tax administration to enter into a settlement agreement during the course of or after ending of an audit. In practice, it, however, occurs that taxpayers agree with findings of the auditors of the National Tax Agency during an audit. In such situation taxpayers can voluntarily file an amended tax return to reflect these findings. Where taxpayers do not file such amended tax return, these findings will be reflected in an amendment of the tax assessment.

64. Where taxpayers file an amended tax return, for which the legal basis is Article 19(1) of the Act on General Rules for National Taxes, they have to waive their rights to initiate domestic available administrative or judicial remedies with regard to the amounts that are reflected in the amended tax return. In this respect, Japan reported that the voluntary filing of a tax return, however, has no effect on taxpayers' access to MAP for the amount of adjusted income. The same applies when a tax assessment is issued following the conclusion of an audit.

Administrative or statutory dispute settlement/resolution process

65. Japan reported it has no administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Practical application

66. In view of the fact that it is in Japan not officially possible that the taxpayer and the tax administration enter into audit settlements, Japan reported it has since 1 January 2014 not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

67. All peers that provided input indicated not being aware of a denial of access to MAP by Japan since 1 January 2014 in cases where there was an audit settlement between the taxpayer and the tax administration.

Anticipated modifications

68. Japan 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.

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

Legal framework on access to MAP and information to be submitted

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

71. Where a taxpayer has not included all required information in its MAP request, Japan reported that its competent authority will request the taxpayer to supplement the missing information and/or documentation, the basis of which is set forth in section 8 of Japan's MAP guidance. While no specific timeframe is set for requesting this information or for taxpayers to provide this information, Japan noted that it will request them to provide it as soon as possible in order to be able to timely notify the other competent authority of the receipt of the MAP request in line with the reporting timelines under the MAP Statistics Reporting Framework. Taxpayers, however, are allowed to request for additional time to comply with a request for additional information.

72. Where taxpayers ultimately do not submit the required and requested information, even after repeated requests hereto, Japan reported its competent authority may decide not to initiate MAP discussions with the other competent authority concerned. The basis hereof is laid down in section 13 of Japan's MAP guidance. In that situation, the other competent authority will be notified of this intention and invited to provide its views on this decision. If this competent authority does not put forward any objection to this intention, Japan's competent authority will close the case and notify the taxpayer accordingly. Furthermore, in response to questions 1.8, 2.7, 2.12, 2.14 and 2.16 of its Q&A on MAP, Japan emphasised that taxpayers should submit any requested additional information by the MAP office in a timely manner and also that the failure to provide such information in due course may create a serious impediment for resolving the case or may lead to the closure of the case.

73. To ensure that taxpayers include all required information in their MAP request, Japan reported it allows taxpayers to request for a pre-filing meeting. The relevant rules hereon are included in section 5 of its MAP guidance. The response to questions 1.8 and

2.3 of the Q&A on MAP also notes that taxpayers are recommended to have a pre-filing meeting before submitting a MAP request. The response to questions 2.4 and 2.5 further detail the pre-consultation process, including the documents the taxpayer should prepare for such a meeting.

Practical application

74. Japan reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that since 1 January 2014 it has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

75. All peers that provided input indicated not being aware of a limitation of access to MAP by Japan since 1 January 2014 in situations where taxpayers complied with information and documentation requirements.

Anticipated modifications

76. Japan did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	As Japan has thus far not limited access to MAP in eligible cases when taxpayers have complied with Japan'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.

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

Current situation of Japan's tax treaties

78. Out of Japan's 65 tax treaties, 57 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.[15] The remaining eight treaties do not contain a provision that is based on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Anticipated modifications

Multilateral Instrument

79. Japan 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 (OECD, 2015a) – 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 (OECD, 2015a). 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 (OECD, 2015a).

80. In regard of the eight tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), Japan listed two of them 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). All relevant treaty partners are a signatory to the Multilateral Instrument, but only one also made such notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify one of the eight tax treaties identified above to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

81. Japan further reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) 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.7. Japan, however, has not yet in place a specific plan for such negotiations. In addition, Japan reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future tax treaties.

82. Further to the above, Japan also reported that it does not intend to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in its treaties with a limited scope as such inclusion would contradict the purpose of those treaties. When jurisdictions agree on a comprehensive treaty, the intention is to cover all or close to all cases. Against this background, it is Japan's understanding that Article 25(3) should be analysed in the context of the entire tax treaty. If such a tax treaty is only limited to certain items of income and does not contain a provision regarding other items of income, it would in Japan's view not be logical to extend the scope of the MAP article to cases not covered by such a treaty. In addition, Japan believes that the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) to treaties with a limited scope would give the competent authorities the possibility to consult in cases that intentionally have been excluded from the scope of the treaty itself due to policy reasons.

Peer input

83. Almost all peers that provided input reported that their treaty with Japan meets the requirements under element B.7. For the eight treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), the relevant treaty partners did not provide peer input.

Conclusion

	Areas for improvement	Recommendations
[B.7]	Eight out of 65 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Japan 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 (OECD, 2015a) in the one treaty that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Japan should request the inclusion of the required provision via bilateral negotiations. To this end Japan should put a plan in place on how it envisages updating these seven treaties to include the required provision. In addition, Japan 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.

84. 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.

Japan's MAP guidance

85. Japan has included basic information on its MAP process in Article 12 of the Ministerial Ordinance on the Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the application of Tax Treaties. This article stipulates at what moment taxpayers can submit a MAP request, to which governmental agency such a request should be submitted and what basic information needs to be included in a MAP request. It also specifies what information needs to be submitted when a taxpayer intends to submit a request for the initiation of an arbitration procedure where the competent authorities concerned were not able to resolve the case within MAP within the specific period given in a tax treaty containing an arbitration provision.

86. Furthermore, Japan has since 1992 issued specific guidance on MAP, which since 2001 has been laid down in the Commissioner's Directive on the Mutual Agreement Procedure ("**MAP guidance**"). This MAP guidance is in English available at:

www.nta.go.jp/english/00.pdf

87. This MAP guidance consists of six chapters, containing several sub-sections. The six chapters and the main sub-sections are:

Chapter	Content
1. General rules	• Organisation of the competent authority function for MAP in Japan and how it and the relevant other divisions within the National Tax Agency should operate when handling MAP cases.
2. MAP requested in Japan	• Examples for cases taxpayers can submit a MAP request and legal basis for MAP requests • Information and documentation that taxpayers should include in their MAP request • Procedures and time limits to be applied by taxpayers when submitting a MAP request, in particular the manner and form of such request and the usage of pre-filing meetings • Review of the MAP request and initial follow-up • Relationship with domestic available remedies • Initiating MAP discussions with the other competent authority concerned • Role and rights of taxpayers during MAP discussions • Process for implementation of MAP agreements, including any actions to be taken by taxpayers • Ending of MAP cases.
3. MAP initiated by the competent authority of the treaty partner	• Procedures to be applied when a MAP request is received from a competent authority of a treaty partner • Relationship with APA procedures • Process for implementation of MAP agreements • Ending of MAP cases.
4. MAP without a request by taxpayers	• Cases for which a MAP can be initiated without a specific request by taxpayers • Notification of taxpayers when such MAP agreement is reached insofar it affects their tax position.
5. Arbitration	• Procedures to be followed when taxpayers request for the initiation of an arbitration procedure under a tax treaty • Procedures to be followed when the competent authority of the treaty partner proposes the initiation of an arbitration procedure • Implementation of the mutual agreement that implements the arbitration decision • Ending of an arbitration procedure.
6. Administrative procedures for suspension of tax collection	• The possibility for taxpayers to request the suspension of tax collection when cases are dealt with in MAP, the conditions upon which a suspension of tax collection can be granted and the period of suspension.

88. Japan's MAP guidance was lastly updated in June 2017, such to introduce procedures to ensure that non-resident taxpayers also have access to MAP for those of Japan's tax treaties that contain the new version of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In connection herewith, Japan also updated its MAP guidance to add an English translation to the standard MAP application form.

89. Next to issuing specific MAP guidance, Japan also published in June 2017 Guidance for taxpayers on the mutual agreement procedure in the form of a Q&A ("**Q&A on MAP**"),

which touches upon the relevant issues for taxpayers in relation to MAP and is written from the perspective of taxpayers. The document notes that it is issued to complement Japan's MAP guidance and with a view to provide clear MAP guidance to taxpayers, as required by the Action 14 Minimum Standard. This Q&A is in English available at:

www.nta.go.jp/english/03.pdf

90. The Q&A consists of two sections, which cover: (i) an outline of the MAP process (including a flowchart) and (ii) common issues in the proceeding of a MAP. In total they cover 28 questions in relation to MAP. Basically the Q&A contains the same information as is included in the MAP guidance, but is written in an easy-to-read language and in addition also information on:

a. contact information of the competent authority in charge of handling MAP cases

b. the availability of MAP for multilateral disputes

c. steps to be taken by taxpayers once a MAP agreement is reached between Japan's competent authority and the other competent authority concerned.

91. The MAP guidance of Japan described above and this Q&A on MAP include detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.[16]

92. Although the information included in Japan's MAP guidance is detailed and comprehensive, some subjects are not specifically discussed, while some of them are addressed in the Q&A on MAP. This concerns information on:

- whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the consideration of interest and penalties in MAP.

93. Peers did not provide input in relation to Japan's MAP guidance.

Information and documentation to be included in a MAP request

94. Article 12 of Japan's Ministerial Ordinance on the Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the application of tax treaties defines the legal basis upon which taxpayers can submit a MAP request in general. Article 13 of this ordinance contains the basis for MAP requests related to dual residence cases. Articles 12 and 13 also set forth the basic information and documentation taxpayers need to include in their MAP request and further specify that both Japanese resident taxpayers and non-resident taxpayers are eligible to submit a MAP request.[17] The information to be included in a MAP request concerns:

- identification of the taxpayer (name, domicile/residence and tax identification number, etc.)
- facts and basis concerning why the taxpayer believes that there is or will be taxation that is not in accordance with the provisions of the underlying tax treaty

- the fiscal years to which the MAP requests relate to
- the name and domicile/residence of the tax agent (if applicable)
- other information relevant to the case.

95. Furthermore, section 6 of Japan's MAP guidance also details the information taxpayers should include in their MAP request. It is thereby stated that these taxpayers should use the standard form "Application for the Mutual Agreement Procedure". This *inter alia* concerns:

a. identification of the taxpayer(s) covered in the MAP request and affiliated persons

b. the person requesting the initiation of a MAP

c. reasons for the MAP request

d. fiscal years for which the MAP is requested, the amount of taxable income and the amount of tax due

e. whether a request is also made for the suspension of tax collection

f. summary of the facts and circumstances of the case for which a MAP is being requested.

96. The standard form is supplemented with guiding instructions for taxpayers, which provides helpful information on how the form should be completed. The Q&A on MAP also includes in the responses to questions 2.1, 2.6 and 2.7 details on what information taxpayers need to include in their MAP request, whereby a reference is made to this standard form.

97. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance. This agreed guidance is shown below. Section 6 of Japan's MAP guidance, and the response to questions 2.6 and 2.7 of its Q&A on MAP, enumerates which items must be included in a request for MAP assistance (if available). These are checked in the following list:

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

☑ The basis for the request

☑ Facts of the case

☑ Analysis of the issue(s) requested to be resolved via MAP

☑ Whether the MAP request was also submitted to the competent authority of the other treaty partner

☐ Whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes

☐ Whether the issue(s) involved were dealt with previously

☐ A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

98. Further to this specific list, section 6 of Japan's MAP guidance and the response to question 2.7 of its Q&A on MAP also require taxpayers to specify in their MAP request

whether in relation to the case for which a MAP request was filed domestic available remedies have been initiated and, if so, to provide copies of the complaint initiating these remedies. In addition, if it concerns a transfer pricing case, taxpayers should also specify in their MAP request the direct/indirect capital relationship between the parties involved in the transactions under review.

99. Peers did not provide input in relation to the information to be included in a MAP request in Japan.

Anticipated modifications

100. Japan did not indicate that it anticipates any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, while noticing that some of the information is included in its Q&A on MAP, Japan could consider including information on: • whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the consideration of interest and penalties in the MAP. Furthermore, the contact details of Japan's competent authority are not included in its MAP guidance, but are being included in the Q&A on MAP. In that regard, Japan could consider to update its MAP guidance to include the contact information of its competent authority as soon as possible.

[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.

101. 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.[18]

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

102. The MAP guidance of Japan is published in both Japanese and English. The English version can be found at:

www.nta.go.jp/english/00.pdf

103. Next to this MAP guidance, Japan also published a Q&A on MAP in both Japanese and English. The English version can be found at:

www.nta.go.jp/english/03.pdf

104. As regards the accessibility of its MAP guidance and that of the Q&A on MAP, both can easily be found on the website of Japan's National Tax Agency under the International Taxation section or when searching for the term "MAP".

105. Further to the above, the website of the National Tax Agency also includes in the International Taxation Section information on MAP, which concerns the following items: (i) purpose of the MAP process, (ii) legal basis for the procedure, (iii) persons eligible to submit a MAP request, (iv) time limit for submissions of MAP requests, (v) a statement that no fees for MAP are charged, (vi) information and documents to be included in a MAP request, (vii) the standard form for submission of a MAP request, (viii) office in charge of MAP within the National Tax Agency and (ix) operational time for MAP cases.

MAP profile

106. The MAP profile of Japan is published on the website of the OECD. This MAP profile is complete and contains detailed information and explanations for almost all items on how Japan deals with MAP cases. This profile includes external links which provide extra information and guidance where appropriate.

Anticipated modifications

107. Japan did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Japan should ensure that its future updates to the MAP guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.

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

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

108. 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

109. As previously discussed under B.5, it is under Japan'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 Japan's MAP guidance that audit settlements do not preclude access to MAP.

110. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Japan's MAP guidance.

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

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

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

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

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

Anticipated modifications

114. Japan did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These 40 treaties include the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

2. These seven treaties also include the newly negotiated treaties with Austria, Belgium, Denmark and the Russian Federation, which will replace the currently existing treaties with these jurisdictions of 1961, 1968, 1968 and 1986 respectively.

3. These 16 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic.

4. Japan considers that for the sole purpose of the peer review process of the Action 14 Minimum Standard it can accept the analysis made for the five treaties listed in the third bullet, but it does not consider itself to be bound by that analysis for any other purposes, particularly its position on the interpretation of the provisions included in its tax treaties.

5. These three treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic.

6. These 52 treaties include the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

7. These 12 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic.

8. These 34 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic.

9. With respect to the treaty with former Czechoslovakia, which Japan continues to apply to the Czech Republic and the Slovak Republic, the Slovak Republic is one of the treaty partners that made a reservation on the basis of Article 16(5)(a) of the Multilateral Instrument. The treaty is therefore included in the list of 14 treaties. The treaty with former Czechoslovakia will therefore not be modified concerning the Slovak Republic, but only as regards the Czech Republic.

10. Ibid.

11. With respect to the treaty with former Czechoslovakia, which Japan continues to apply to the Czech Republic and the Slovak Republic, the Slovak Republic is one of the treaty partners that made a reservation on the basis of Article 16(5)(a) of the Multilateral Instrument. The treaty with former Czechoslovakia will therefore not be modified concerning the Slovak Republic, but only as regards the Czech Republic and is therefore not included in these 19 treaties.

12. These 21 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic and the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

13. These 31 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic.

14. With respect to the treaty with former Czechoslovakia, which Japan continues to apply to the Czech Republic and the Slovak Republic, the Czech Republic is one of the treaty partners that made a reservation on the basis of Article 17(3) of the Multilateral Instrument. The treaty is therefore included in these two treaties. The treaty with former Czechoslovakia will therefore not be modified concerning the Czech Republic, but only as regards the Slovak Republic and only to the extent that the provision included in this treaty is incompatible with Article 17(1).

15. These 57 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic and the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

16. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

17. It also specifies what information taxpayers need to include in a request for arbitration where the relevant tax treaty includes an arbitration provision and when the competent authorities concerned were not able to resolve the case in MAP within the timeframe specified in that particular tax treaty. This is not further discussed in this element.

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

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).

OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239081-en (accessed on 18 July 2018).

OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241633-en (accessed on 18 July 2018).

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.

115. 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, 2015a), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Japan's tax treaties

116. Out of Japan's 65 tax treaties, 63 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is 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] The remaining two treaties contain a provision that allows competent authorities to conduct a MAP process, but the wording used in those provisions deviate at numerous points from Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) and also the context of those provisions is such that they are not considered being the equivalent of the first sentence of that article.

Anticipated modifications

Multilateral Instrument

117. Japan 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 (OECD, 2015a) – 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 (OECD, 2015a). 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 (OECD, 2015a).

118. 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 (OECD, 2015a), Japan listed one as a covered tax agreement under the Multilateral Instrument, but did for this treaty not make a notification, pursuant to Article 16(6)(c)(i), that it does not contain a provision described in Article 16(4)(b)(i). Therefore, at this stage the Multilateral Instrument will, upon entry into force, not modify the two tax treaties identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

119. Japan further reported that when the tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element C.1. Japan, however, has not yet in place a specific plan for such negotiations. In addition, Japan reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future tax treaties.

Peer input

120. Almost all peers that provided input reported their treaty with Japan meets the requirements under element C.1. For the two treaties identified above that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), the relevant treaty partners did not provide peer input.

Conclusion

	Areas for improvement	Recommendations
[C.1]	Two out of 65 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	As the two treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) will at this time not be modified via the Multilateral Instrument, Japan should request the inclusion of the required provision via bilateral negotiations. To this end, Japan should put a plan in place on how it envisages updating these two treaties to include the required provision. In addition, Japan should maintain its stated intention to include the required provision in all future tax treaties.

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

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

121. 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

122. Statistics regarding all tax treaty related disputes concerning Japan are published on the website of the OECD as of 2007.[2] Japan also annually publishes statistics on MAP and APAs on the website of the National Tax Agency.[3] In respect of the 2016 fiscal year (running from July 2016 up to June 2017), the following items are published:

- number of MAP cases received (including a delineation between MAP cases and requests for bilateral APAs)
- number of MAP cases closed (including a delineation between MAP and APA cases)
- average time to close MAP cases (including a delineation between MAP and APA cases)
- year-end inventory (including a delineation between MAP and APA cases and a specification of cases for the American, Asia/Oceania and Europe region)
- specification of MAP cases with non-OECD economies (including a delineation between MAP and APA cases)
- specification of treaty partners with which MAP cases are pending
- specification of type of transfer pricing MAP cases.

123. The FTA MAP Forum has agreed on rules for reporting of MAP statistics ("**MAP Statistics Reporting Framework**") for MAP requests submitted on or after 1 January, 2016 ("**post-2015 cases**"). Also, for MAP requests submitted prior to that date ("**pre-2016 cases**"), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Japan provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Japan and of which its competent authority was aware.[4] The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annexes B and C respectively[5] and should be considered jointly for an understanding of the MAP caseload of Japan. With respect to post-2015 cases, Japan reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard Japan reported it could match its statistics with all of its MAP partners.

Monitoring of MAP statistics

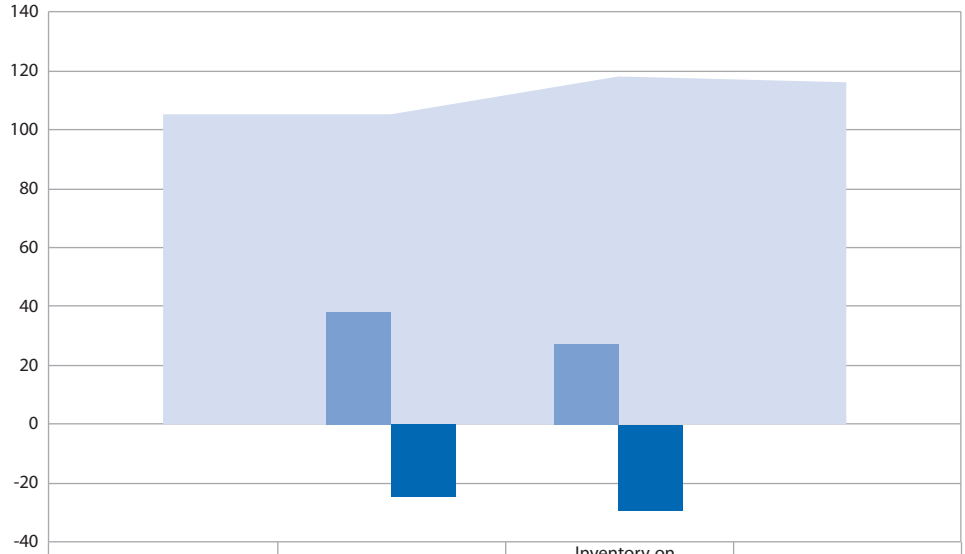
124. Japan reported it has a system in place to monitor its MAP inventory, register new MAP cases and record the outcome of cases. At the end of each month, staff within Japan's competent authority is obliged to report an update of the status of the cases being handled by them.

Analysis of Japan's MAP caseload

Global overview

125. Figure C.1 shows the evolution of Japan's MAP caseload over the Statistics Reporting Period.

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

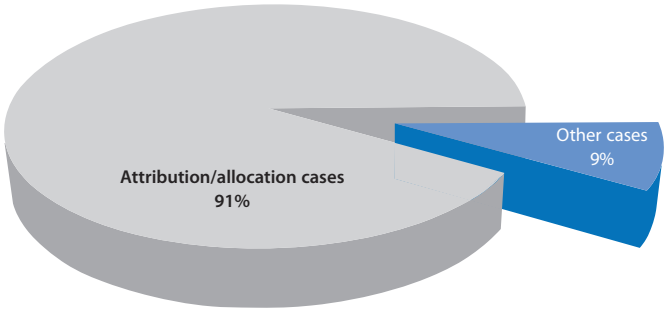


	Inventory on 1/1/2016	Inventory on 1/1/2016	Inventory on 31/12/2016 -1/1/2017	Inventory on 31/12/2017
Inventory	105	105	118	116
Cases started		38	27	
Cases closed		-25	-29	

126. At the beginning of the Statistics Reporting Period Japan had 105 pending MAP cases, of which 96 were attribution/allocation cases and nine other MAP cases.[6] At the end of the Statistics Reporting Period, Japan had 117 MAP cases in its inventory, of which 106 are attribution/allocation cases and 11 are other MAP cases. Japan's MAP caseload has increased 10% during the Statistics Reporting Period, which both concern attribution/allocation cases and other cases.

127. The breakdown of the end inventory can be shown as in Figure C.2.

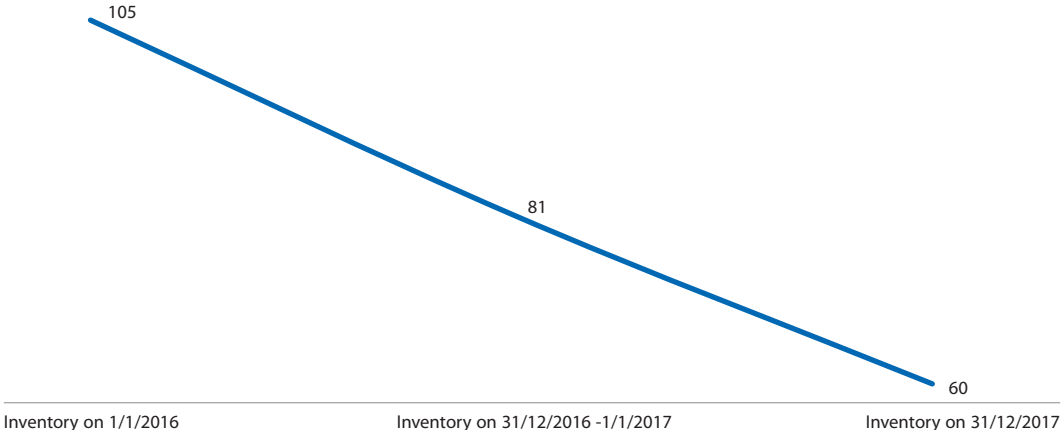
Figure C.2. **End inventory on 31 December 2017 (117 cases)**



Pre-2016 cases

128. Figure C.3 shows the evolution of Japan's pre-2016 MAP cases over the Statistics Reporting Period.

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



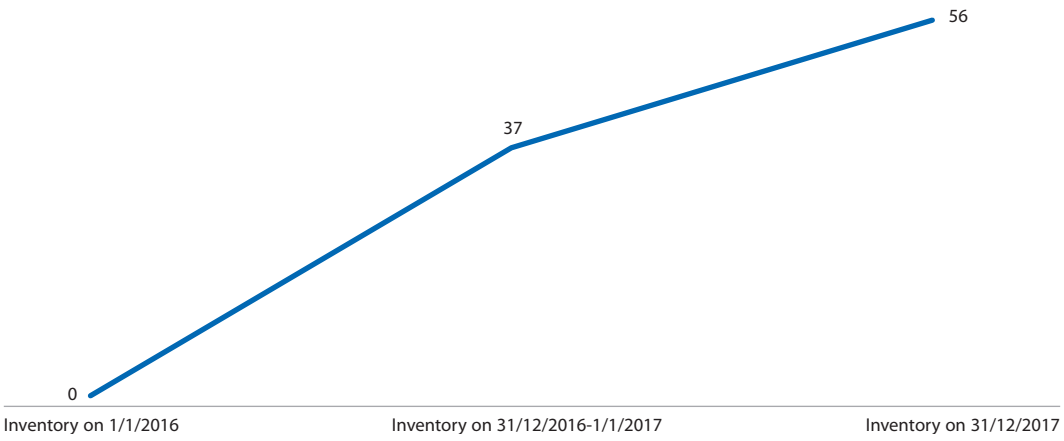
129. At the beginning of the Statistics Reporting Period, Japan's MAP inventory of pre-2016 MAP cases consisted of 105 cases, of which were 96 attribution/allocation cases and nine other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 60 cases, consisting of 55 attribution/allocation cases and five other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

Pre-2016 cases only	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016+2017)
Attribution/allocation cases	-22%	-27%	-43%
Other cases	-33%	-17%	-44%

Post-2015 cases

130. Figure C.4 shows the evolution of Japan's post-2015 MAP cases over the Statistics Reporting Period.

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



131. In total, 65 MAP cases started during the Statistics Reporting Period, 58 of which concerned attribution/allocation cases and seven concerned other cases. At the end of this period the total number of post-2015 cases in the inventory was 57 cases, consisting of 51 attribution/allocation cases and six other cases. Conclusively, Japan closed nine post-2015 cases during the Statistics Reporting Period, which represents approximately 14% of the total number of post-2015 cases that started during the Statistics Reporting Period and which concern seven attribution/allocation cases and two other cases.

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

Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution/allocation cases	3%	25%	12%
Other cases	0%	50%	25%

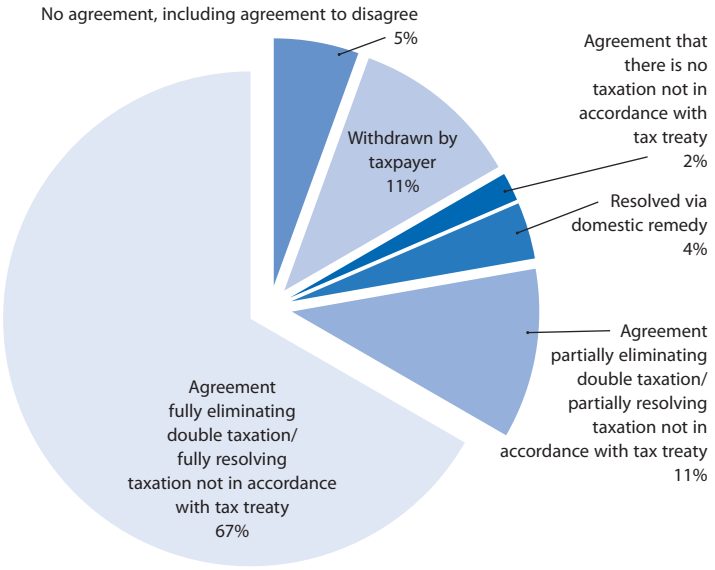
Overview of cases closed during the Statistics Reporting Period

Reported outcomes

133. During the Statistics Reporting Period Japan closed 54 MAP cases for which the outcomes shown in Figure C.5 were reported.

134. Figure C.5 shows that in two-third of the cases (36 cases) that were closed during the Statistics Reporting Period, were reported with the outcome "agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty".

Figure C.5. **Cases closed during the Statistics Reporting Period (54 cases)**



Reported outcomes for attribution/allocation cases

135. In total 48 attribution/allocation 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: 32 cases (67%)
- Agreement partially eliminating double taxation/partially resolving taxation not in accordance with the tax treaty: 6 cases (13%)
- Withdrawn by taxpayers: 6 cases (13%)
- No agreement, including agreement to disagree: 2 cases (4%)
- Resolved via domestic remedy: 2 case (4%)

Reported outcomes for other cases

136. In total, six other cases were closed during the Statistics Reporting Period. In four cases the outcome resulted in an agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty, whereas in the remaining two cases, one was closed with the agreement that there is no taxation not in accordance with the treaty and the other with no agreement reached (including an agreement to disagree).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

137. The average time needed to close MAP cases during the Statistics Reporting Period was 26.34 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	48	27.42
Other cases	6	17.66
All cases	54	26.34

Pre-2016 cases

138. For pre-2016 cases Japan reported that on average it needed 30.64 months to close 41 attribution/allocation cases and 22.62 months to resolve four other cases. This resulted in an average time needed of 29.92 months to close 45 pre-2016 cases.

139. For the purpose of computing the average time needed to resolve pre-2016 cases, Japan reported it used the following dates:

- *Start date*:
  - Where a MAP request is filed in Japan: the date of receipt of the request; or
  - Where a MAP request is filed in the other contracting state concerned, the date on which Japan's competent authority receives a notification by that competent authority.
- *End date*: the date of formal closure of the case (including an agreement reached), which is the latest date on which the closing letter is sent to or is received from the other competent authority concerned.

Post-2015 cases

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

141. For post-2015 cases Japan reported that on average it needed 8.61 months to close seven attribution/allocation cases and 7.74 to close two other cases. This resulted in an average time needed of 8.42 months to close nine post-2015 cases during the Statistics Reporting Period.

Peer input

142. All peers that provided input reported a very good working relationship with Japan's competent authority, also as regards the resolution of MAP cases. Some of these peers also complimented Japan's competent authority in its approach to resolve MAP cases. A number of peers, however, also noted that the limitations in Japan to correspond and exchange positions via e-mail or during conferences impacts the timely resolution of cases, as such resolution is only possible during face-to-face meetings. In a response to this input, Japan reported it is seeking a more efficient and effective approach in communicating with its treaty partners, while ensuring that its information security requirements are met. One of these peers also

mentioned the rotation of personnel as a factor that may impact the timely resolution of MAP cases. Japan mentioned that, in order to ensure the timely resolution of MAP cases, it is making the best endeavours for seamlessly handing over the cases to new officials.

Anticipated modifications

143. As will be further discussed under element C.6, Japan's tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties, to provide that treaty-related disputes will be resolved within a specified timeframe, which should globally improve the time needed to settle MAP cases.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Japan submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Japan contacted all its treaty partners to match its post-2015 statistics with them, and its post-2015 MAP statistics almost fully match those submitted by its treaty partners. Japan's MAP statistics show that during the Statistics Reporting Period it closed 13.6% (nine out of 66 cases) of its post-2015 cases in 8.42 months on average. In that regard, Japan is recommended to seek to resolve the remaining 86.4% of the post-2015 cases pending on 31 December 2017 (57 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.

144. 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 Japan's competent authority

Organisation of the competent authority function

145. The competent authority function in relation to MAP is, pursuant to the Act for Establishment of the Ministry of Finance in conjunction with the Order for Organisation of the Ministry of Finance, delegated to the Commissioner of the National Tax Agency. Article 12(1) of the of the Ministerial Ordinance Implementing the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the Application of Tax Treaties also defines that it is the Commissioner of the National Tax Agency to which taxpayers should submit a MAP request. The competence to handle MAP cases has been further sub-delegated to the Deputy Commissioner for International Affairs within the National Tax Agency, such on the basis of Article 381 of the Ordinance for Organisation of the Ministry of Finance.

146. The competent authority function in Japan is performed by the Office of Mutual Agreement Procedures ("**MAP office**"), such in pursuance to Article 388 and Article 406(2) of the Ordinance for Organisation of the Ministry of Finance. The MAP office is supervised by the Deputy Commissioner for International Affairs within the National Tax Agency. Section 2(1) and 6(1) of Japan's MAP guidance also specifies that taxpayers should submit a MAP request to this MAP office. It thereby is particularly noted that where by mistake

taxpayers send a MAP request to a department other than the MAP office, such department is obliged to forward the request to the MAP office without delay and also to notify the submitting taxpayer accordingly. Japan mentioned that in such a situation its competent authority will consider the MAP request as being rightfully submitted.

147. The competence to handle MAP cases at the level of the MAP office concerns both attribution/allocation cases and other cases. Where, however, it concerns MAP cases relating to treaty interpretation, Japan reported that the MAP office is assisted by the International Tax Policy Division of the Tax Bureau within the Ministry of Finance. Section 2(1) of Japan's MAP guidance, in this respect, also notes that the Tax Bureau of the Ministry of Finance shall deal with the general treaty interpretation.

Staff involved in handling MAP cases

148. Japan reported that currently the MAP office is organised into nine sections that in total employs 44 persons, including the director of the MAP office. Six of these nine sections are directly involved in handling MAP and APA cases, which in total concerns 28 persons. The other three sections are involved in, for example, engagement and co-ordination tasks, drafting administrative guidance and participation in the work of the FTA MAP Forum.

149. During recent years Japan has increased staff involved in MAP, which can be illustrated as follows:

Year	Number of staff
2007	19
2008	23
2009	31
2010	33
2011-14	41
2015	42
2016	43

150. Furthermore, concerning training of the staff in charge of MAP, Japan reported that employees of the MAP office are provided training on international tax issues by the National Tax College, such with a view to obtain basic knowledge and advanced expertise. The curriculum of this training includes modules on the functioning of international tax law (including tax treaties), available examination methods for international transactions, as also rules and practices on international trade. In relation hereto, Japan noted that most persons that are employed in the MAP office were selected from those officials that have finished these trainings. In addition, next to trainings at the level of the National Tax College, Japan reported that within the MAP office also trainings are provided on the processes and procedures in MAP and APA cases. Such trainings are provided when new personnel start working within the MAP office. On a regular basis, experiences in MAP discussions with other competent authorities are also shared with staff working in the MAP office.

Handling MAP cases

151. Section 2(2) of Japan's MAP guidance notes that the MAP office shall endeavour to resolve MAP cases appropriately and immediately, such with the aim to eliminate a situation of taxation that is not in accordance with the provisions of an underlying tax treaty. In this

respect, Japan reported that when a MAP request is submitted, staff in charge of MAP needs to follow specific steps in handling such a request. These steps are as follows:

Analyse whether the request is eligible for MAP.
Send an opening letter to the other competent authority concerned, which will include the necessary information pertaining to the case under review (*inter alia* the name and contact details of the official handling the case, details of the taxpayer that submitted the request and the years for which the request is submitted) and will be sent within four weeks as from the date of receipt of the MAP request.[7]
Prepare and exchange a position paper on the case.
Discuss the case with the other competent authority concerned, including (where necessary) scheduling of face-to-face meetings and informing taxpayers of progress made.
Entering into a tentative MAP agreement with the other competent authority concerned (if possible) and inform the taxpayer hereof, including asking its confirmation on whether it can accept this agreement.
Upon receiving the taxpayer's consent, enter into a formal agreement concerned, such by an exchange of letters.
Notify the taxpayer of the entering into the formal agreement and subsequently inform the related division within the National Tax Agency hereof.

152. Further to the above, sections 7 and 8 of Japan's MAP guidance stipulate that where the MAP office receives a MAP request, it shall notify the related divisions of the National Tax Agency thereof, thereby providing a copy of the MAP request and asking to take measures to retain the tax returns of the taxpayer submitting the MAP request. The MAP office hereby ensures that MAP agreements can be implemented, once reached (see element D.1 for a discussion). Where a MAP request is submitted with the competent authority of the treaty partner, section 22 of Japan's MAP guidance notes that the MAP office also has to inform the relevant department within the National Tax Agency and ask for measures to retain the tax returns. In that regard, *inter alia* also the following information has to be provided: (i) name of the treaty partner, (ii) date of receipt of the notification of the MAP request, (iii) whether the request concerns taxation (of a non-resident taxpayer) in Japan and details of that taxpayer and (iv) the specific subject of the request.

153. In addition, section 15 of Japan's MAP guidance notes that the MAP office will, if the taxpayer requests so, update the taxpayer on the status of its MAP case, such to the extent that it does not interfere with the process.

Resolving MAP cases

154. Japan reported that in processing MAP cases, staff in charge of MAP is obliged to take into account the Commentary to the OECD Model Tax Convention (OECD, 2015a) and the OECD Transfer Pricing Guidelines. Staff also has to abide to the procedures and rules set forth in Japan's MAP guidance.

155. In addition, Japan reported that concerning the process of resolving MAP cases the content of a position paper has to be approved by the Director of the MAP office before it is communicated to the other competent authority concerned. Where a face-to-face meeting is organised, the persons in charge of handling the MAP cases have to internally discuss the case with the Deputy Commissioner of Internal Affairs, following which a mandate will be issued on the basis of which the cases that are discussed during such a meeting can be resolved. Where the MAP agreement is within the mandate, no formal approval afterwards is necessary. Where a MAP agreement is negotiated that is not within the given mandate, Japan reported that formal approval is necessary from the Deputy Commissioner before it can be formalised with the other competent authority concerned.

156. Japan further reported that in order to be able to resolve MAP cases within an average of 24 months, its competent authority has been making efforts at various levels. This, among others, concerns: (i) the exchange of position papers earlier on in the process, (ii) increased scheduling of face-to-face meetings, (iii) setting the date and the agenda of the next face-to-face meeting as early as possible and (iv) to monitor MAP/APA cases on their progress before and during face-to-face meetings. In regard of the number of face-to-face meetings, Japan noted that there has already been a significant increase in such meetings in the period 2014-17. These numbers are as follows:

- 2014: 33 meetings with more than 12 jurisdictions (in total 123 meeting days)
- 2015: 33 meetings with more than 12 jurisdictions (in total 130 meeting days)
- 2016: 45 meetings with more than 13 jurisdictions (in total 161 meeting days)
- 2017: 39 meetings with more than 13 jurisdictions (in total 143 meeting days).

157. Furthermore, in order to provide for a more effective and efficient MAP process, Japan also reported it has agreed with those treaty partners where it has a substantial number of MAP and APA cases on working procedures. For those jurisdictions that have less experience with handling MAP cases, Japan noted that its competent authority provides technical assistance with a view to facilitate MAP discussions between Japan and these jurisdictions.

158. Another element in improving the resolution of MAP cases in a timely and principled manner is that Japan uses interpreters during face-to-face meetings with other competent authorities. While Japan acknowledged that this may be time-consuming, it stressed that in its view this process will reduce the risk of miscommunications and misunderstandings, especially concerning technical discussions. Japan therefore believes that in the end this may reduce the time needed to resolve MAP cases.

Monitoring mechanism

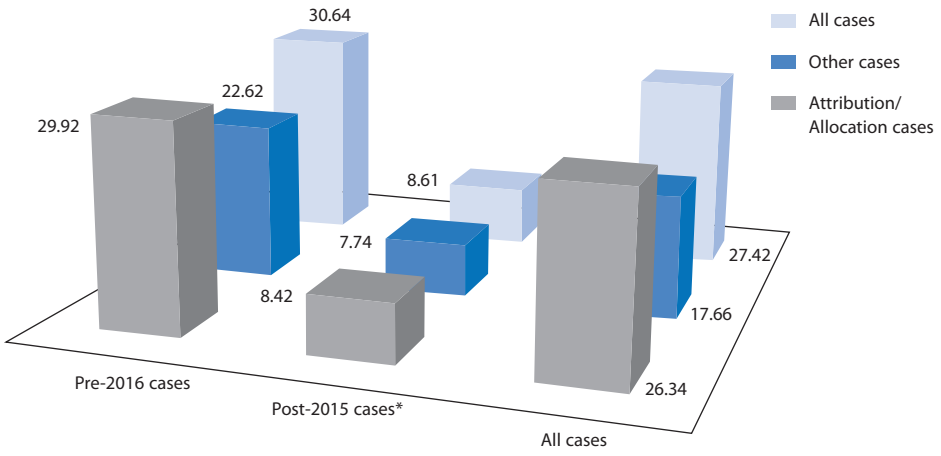
159. In terms of allocating resources to the competent authority function, Japan reported that its MAP office requests annually the necessary budget for the subsequent year. Regardless hereof, Japan also reported that there has been sufficient budget available for performing the MAP functioning, such in terms of travelling, hiring translators and organising face-to-face meetings with other competent authorities.

Practical application

MAP statistics

160. As discussed under element C.2, Japan did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average, as it needed 26.34 months to close all MAP cases. This primarily concerns attribution/allocation cases, as the average time to close other MAP cases was 17.66 months. The average time to resolve MAP cases in 2016 and 2017 can be illustrated by Figure C.6.

Figure C.6. **Average time (in months) to close cases in 2016-17**



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

161. Japan also provided the median time taken for MAP cases closed in 2016 and 2017. These medians are as follows:

	Closed in 2016	Closed in 2017	Closed in 2016	Closed in 2017
Average	26.63	33.70	3.65	9.02
Median	26.01	34.03	3.65	11.18

162. Taking these figures into account, the median for closed cases in 2016 and 2017 (both pre-2016 and post-2015 cases) is 25.36 months.

163. Given the fact that on average it took Japan 26.34 months to close MAP cases during the Statistics Reporting Period, which foremost concerned attribution/allocation cases. With regard to the average timeframe for resolving MAP cases, Japan provided a number of justified reasons why the average is above 24 months. In this respect, Japan reported that in a substantial number of cases that were closed on average above 24 months or were pending longer than 24 months, it took more than one year to initiate discussions and to schedule face-to-face meetings. The related figures presented by Japan are as follows:

	Closed in		Closed > 2 years		Initiation > 1-year		Percentage	
	2016	2017	2016	2017	2016	2017	2016	2017
Adjustment Japan	6	10	3	6	2	1	67%	17%
Adjustment treaty partner	19	19	10	9	6	5	60%	56%
Total	25	29	13	15	8	6	62%	40%

	Pending on 31/12		Pending > 2 years		Initiation > 1-year		Percentage	
	2016	2017	2016	2017	2016	2017	2016	2017
Adjustment Japan	17	10	9	6	4	4	45%	67%
Adjustment treaty partner	101	106	44	52	31	34	70%	65%
Total	118	116	53	58	35	38	66%	65%

164. Further to the above, Japan noted that in total 13 of the 25 cases closed cases in 2016, and for 15 of the 29 cases resolved in 2017, took on average longer than 24 months to close them. Primary reasons hereof were: (i) pursuing domestic remedies alongside a MAP case, (ii) a late exchange of position papers and (iii) a limited number of face-to-face meetings with certain jurisdictions due to a lack of resources at the level of their competent authorities. With respect to the second reason, Japan clarified that almost 90% of its MAP inventory as per 31 December 2017 consisted of foreign initiated transfer pricing cases. For these cases receipt of a position paper is very important for Japan's competent authority in order to be able to prepare for and to proceed with MAP discussions. Japan further stressed that with some jurisdictions it is very difficult in receiving any position papers, or position papers that are well-prepared.

165. In addition, Japan clarified that for three of the 25 cases closed in 2016 and four of the 29 cases closed in 2017, it on average took more than 48 months to resolve, whereby in most of these cases it took almost two years to receive a position paper from the other competent authority concerned. If these cases were not taken into account in the computation of the average, the average time to close MAP cases would be 21.80 months in 2016 (25.70 months now) and 22.52 months in 2017 (26.89 months now).

Peer input

General

166. Of the 19 peers that provided input on Japan's implementation of the Action 14 Minimum Standard, 16 provided input on their contacts with Japan's competent authority in general and as regards the resolution of MAP cases. However, most of these peers also mentioned that most of the cases being dealt with concern APAs (including roll-backs) rather than MAP cases. In total ten of the 16 peers considered Japan to be an important partner in relation to MAP and APAs.

Contacts and relationship with Japan's competent authority

167. All ten peers that consider their MAP relationship with Japan to be important reported having a long established relationship with Japan's competent authority in preventing and resolving cases. Most peers thereby mentioned being in frequent contact with Japan, which they consider to be easy and generally takes place via letters and e-mails. One peer in particular noted that it has a positive, productive and professional working relationship with Japan and that they jointly have developed a communication protocol, as also some other administrative procedures, with a view to maximise the effectiveness in resolving MAP cases. This peer also held the view that Japan has very formal processes to manage MAP cases, which it considered to provide certainty in managing these cases. Another peer considered its MAP relationship with Japan to be successful and that their competent authorities are regular in contact with each other via e-mail and fax. A third peer emphasised that it views its MAP relationship with Japan as being one of the most important ones and noted that the contacts with Japan's competent authority are without any difficulty, as also that it enjoys an active and engaged relationship with this competent authority. In addition, a fourth peer noted that it considers the co-operation and communication with Japan's competent authority as good and prospering. Lastly, one peer qualified its relationship with Japan's competent authority as robust, productive and co-operative, reflecting their countries' deep, longstanding commercial and cultural ties. This peer's inventory with Japan primarily concerns APA cases. In that regard, the peer applauded Japan's competent authority's

longstanding commitment to APAs as being the most direct and viable means for preventing disputes and providing taxpayers with certainty. This peer further noted that it recognises and appreciates the fact that Japan shares the peer's commitment to the goal of continuous improvement that underlies the Action 14 Minimum Standard and the strategic plan of the FTA MAP Forum

168. Also the six peers for which the MAP relationship with Japan is of less importance all noted to have a very good or strong working relationship with Japan's competent authority. Some of them appreciated the easiness of contacts. One peer thereby noted that the ease of contact with Japan's competent authority is high. Another peer noted that contacts with this authority normally take place via e-mail, whereby the references and contact details of the official handling the specific case are usually made available in the relevant correspondence. This peer, however, also considered that the indication of an e-mail address/fax number in Japan's MAP profile would speed up and ease communications. While the e-mail address is not reflected in this MAP profile, a fax number is available.

Scheduling face-to-face meetings

169. Both the peers for which the MAP relationship with Japan is of major or of less importance mentioned that they have regular face-to-face meetings with Japan's competent authority to discuss and resolve MAP/APA cases, mostly once or twice a year. Some of those peers with a high inventory with Japan reported that they meet with Japan's competent authority two or three times a year, one of them reporting meeting at least three times a year.

170. One of the peers for which the MAP relationship with Japan is of less relevance further noted that face-to-face meetings usually take three days per meeting. After each of such meetings, a subsequent meeting is held at managerial level to discuss the results of the meeting and to agree on the steps that need to be taken in advance of the next face-to-face meeting. Another peer reported a similar process. Furthermore, one peer also mentioned that in 2017 it held a trilateral competent authority meeting to which Japan was also an attendant, where one multilateral MAP case was discussed and resolved. Afterwards this peer held a bilateral meeting with Japan's competent authority to discuss MAP and APA cases.

Handling and resolving MAP cases – major MAP partners

171. A number of peers for which the MAP relationship with Japan is important provided specific input on handling and resolving MAP cases by Japan's competent authority. In this respect, one peer noted that the distance and language restraints between the two jurisdictions imply that discussions on MAP/APA cases tend to be restricted to face-to-face meetings, which are scheduled each six months. This peer, however, also noted that nevertheless some progress is possible via an exchange of faxes in the period between meetings, for which there are named contact points in Japan's competent authority that reply promptly to any request from the peer's side.

172. In addition, this peer reported that while sometimes there are strong differences of opinion in certain cases, particularly concerning the financial industry, all pending cases were resolved through an open and regular dialogue and following a collaborative approach, as also the shared objective to eliminate double taxation. Where it concerns cases not relating to the financial industry, this peer noted that its experience with Japan's competent authority in resolving MAP cases is much more positive and that all pending MAP/APA cases were resolved within a 24-month period. On this specific point, Japan reacted by stating that

certain cases, including relating to the financial industry, are challenging for reasons of complexity and expertise requirements. The competent authorities of Japan and its treaty partners are required to use their best endeavours to overcome differences in views deriving from the nature of the cases. Japan, however, believes that both competent authorities will find a common ground and an acceptable resolution for those cases, as was the case for other challenging cases that have been resolved through mutual co-operation and collaboration.

173. Another peer reported in its experience Japan's competent authority is very proactive in their efforts to prevent treaty disputes and further that it is well-resourced and has processes/systems in place to manage treaty disputes. This peer also mentioned that Japan also has a very formal system in place, which provides certainty of administrative details on how it deals with MAP cases. While this peer noted positive experiences in its MAP relationship with Japan, it also stressed that the rotation policy for staff within Japan's National Tax Agency – and thus also within the MAP office – can be disruptive for resolving MAP cases. It added that this can be overcome by a good transfer of cases to new staff. The peer further mentioned that negotiations of MAP cases by Japan's competent authority are limited to face-to-face meetings, whereby e-mails and faxes only serve as means to exchange position papers and to facilitate an exchange of information. It also emphasised that telephone conferencing is generally not accepted for MAP negotiations. Concerning the input on the rotation policy for staff, Japan noted that in order to ensure the timely resolution of MAP cases, Japan is making the best endeavours for seamlessly handing over the cases to new officials.

174. A third peer reported that it generally has very positive experiences with Japan's competent authority in discussing and negotiating MAP cases during the Review Period. This peer further noted that Japan takes taxpayers' unhindered access to MAP with the utmost seriousness. However, in that regard this peer also reported that it experienced several instances where Japan's competent authority held the view that an adjustment involving significant transfer pricing consequences (and therefore resulting in double taxation) was of a domestic nature and on that basis not appropriate for being resolved in MAP. Although Japan's competent authority has constantly expressed a willingness to accept such cases into MAP, this peer mentioned that it was only for the narrow purpose of providing the peer's competent authority the opportunity to provide for relief of double taxation. Allowing taxpayers full access to MAP in such cases (e.g. the willingness to discuss the case into full) for the purposes of substantive analysis, negotiation and resolution thereof is in this peer's view the best and most appropriate way of making use of the MAP process. In a response to the input given by this peer, Japan mentioned it would like to stress that its competent authority has not limited access to MAP irrespective of its view on whether a MAP request has been made in reference to taxation of a domestic nature in light of whether or not it is not in accordance with the provisions of the applicable tax treaty. If a MAP request is filed, Japan reported that its competent authority will always consult the treaty partner's competent authority to know its views and to seek a resolution of the case through mutual co-operation and collaboration in light of the spirit and purpose of the underlying treaty.

175. Other peers generally voiced positive input concerning the resolution of MAP cases by Japan's competent authority, or reported not being aware of any impediments in (timely) resolving of MAP cases. One peer noted that they are keeping increased input (in terms of working hours, negotiations and resources) to improve the resolution of their mutual MAP cases. Another peer noted that Japan's competent authority endeavours to resolve MAP cases in a reasonable timeframe. A third peer observed that MAP cases with Japan are resolved at a good pace and that face-to-face meetings have been successful in resolving their pending MAP cases.

Handling and resolving MAP cases – other MAP partners

176. The six peers for which the MAP relationship with Japan is of less importance, all applauded Japan's co-operation in handling and resolving MAP cases. One peer noted that it was in contact with Japan's competent authority in between meetings and that it is very responsive in its communications and extremely co-operative to deal with. A second peer stressed that although most cases it has with Japan are complex with substantial amounts at stake, for all cases a solution can be found during face-to-face meetings, albeit that for some cases two meetings are necessary. This peer further complimented Japan for having well-trained personnel to handle MAP cases, as also that they share and appreciate Japan's pragmatic orientation to resolve cases within the pursued average of 24 months. Another peer noted that while it had no MAP cases during the Review Period, it agreed with Japan on two bilateral APAs during this period. In this peer's view, Japan's competent authority is very competent, very efficient and solution-oriented. A similar comment was made by a different peer, who currently has no MAP cases pending with Japan, but noted that as per 2014 it held several face-to-face meetings with Japan's competent authority to resolve their mutual cases.

177. Furthermore, one peer specifically noted that Japan's competent authority is very meticulous and detailed oriented. Even when there is a change in staff dealing with MAP, its competent authority continues to work seamless and effective. This peer, however, also voiced some criticism in that as a general observation, negotiations with Japan require comprehensive discussions without a demonstrated progress or a clear path to a negotiated settlement.

178. A second peer noted that there have not been relevant impediments in resolving MAP cases with Japan, although it referred to one case where a notification letter was sent by Japan's competent authority, but not an application of the MAP request submitted in Japan.

Suggestions for improvement

179. Four peers for which the MAP relationship with Japan is important made suggestions for improvement, three of which made such suggestions in general and one made detailed suggestions. The first of the three peers suggested that for transfer pricing cases it would be valuable if Japan's competent authority would also have economists available. Furthermore, this peer suggested that telephone or videoconferencing (with interpreters) would be welcomed for discussing and resolving MAP cases next to face-to-face meetings. A second peer also suggested that next to face-to-face meetings, Japan's competent authority could resort to a regular exchange of views via e-mail or letters to improve the (timely) resolution process of MAP cases. The third peer made a similar suggestion and mentioned that in its contacts with Japan's competent authority faxes are used for exchanging positions, for which it considered that it would be better to use additional and more efficient communication methods, such as e-mail.

180. The fourth peer made as a general suggestion for improvement to create consistency of communication on both procedural and substantive matters at each level of their tax administrations/competent authority: case handlers, managers, senior management or executives. This peer stressed that in its experience such consistency at all levels will facilitate resolution of individual MAP/APA cases and also will lead to a better management of the overall inventory of pending cases. To this the peer added that robust channels of communication between case handlers and managers will in its view ensure that cases are initiated, discussed and resolved in an efficient manner, as also that frequent

and fulsome discussions between senior management/executives can contribute to ensure that principles and practical resolution of cases can be reached when they need to be elevated to a higher level in the organisation. This peer further mentioned it appreciates that Japan's competent authority is open to discuss substantive issues that are common in many cases, although some of these can be technical. In the peer's view, such discussions will foster a sharing of knowledge and experience and will also lead to a more consistent and efficient resolution of MAP and APA cases. To that effect, the peer also expressed its appreciation of the willingness of Japan's competent authority to discuss using so-called reference sets of comparable companies in those cases where it concerns presenting common fact patterns and transfer pricing issues. The peer estimated that the majority of cases that it discusses with Japan's competent authority concerns such common fact patterns and transfer pricing issues. In addition, the peer believes such reference sets would provide a useful tool to promote an efficient and consistent resolution of MAP and APA cases with Japan. To that effect, the peer expressed its appreciation to discuss these and other ideas to improvement of the current practices with Japan to resolve cases.

181. For the peers for which the MAP relationship with Japan is of less importance, three peers made suggestions for consideration or for further improving the resolution of MAP cases. One peer considers regular face-to-face meetings to discuss MAP and bilateral APA cases to be an efficient manner to make progress, which could work even better if such meetings are combined with follow-up actions, such as (video) conference calls. This peer therefore suggested to make more use of such follow-up actions or to make use of alternative venues for meetings, such as at the OECD in advance or after meetings. The second peer suggested that for future negotiations, detailed agendas can be exchanged in advance in order to enable negotiations to demonstrate progress. The third peer noted that electronic communication with Japan's competent authority can be somewhat challenging, as Japan only accepts confidential information to be communicated by fax. To this end, the peer suggested that Japan could be open to exchange encrypted e-mails about their mutual pending cases.

182. In a response to the input provided on dealing with cases outside or in between face-to-face meetings, Japan mentioned it is seeking a more efficient and effective approach in communicating with its treaty partners while ensuring its information security requirements are met.

183. In addition, Japan made a general response that it is open to any discussions to improve the effectiveness and efficiency of the measures to resolve and prevent treaty-related disputes in a consistent and principled manner with a view to increasing certainty for taxpayers.

Anticipated modifications

184. Japan did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	As Japan closed MAP cases in 26.34 months on average, there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016. This may indicate that Japan's competent authority is not adequately resourced, especially because of the fact that the governance within its competent authority is not conducive to ensure that post-2015 cases are resolved within the pursued average.	While Japan has added a significant number of staff to its competent authority, also noting that its competent authority conducts a high number of face-to-face meetings per year, and as it has given a justified explanation on the overstep of the 24-month average, it should nevertheless ensure that the governance within its competent authority enables that the resources available are adequately used in order to resolve MAP cases in a timely, efficient and effective manner. This, as also suggested by some peers, in particular concerns the discussion and progressing of cases outside face-to-face meetings, such, for example, via e-mail correspondence, faxes or conference calls, thereby taking into account that any change should comply with domestic information security requirements.

[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.

185. 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

186. Japan reported that where a MAP request concerns taxation levied by Japan, the staff handling the case has to request the department within the National Tax Agency that holds jurisdiction over this taxpayer for documents that explain the details of such taxation and to gather those facts that are relevant for the case under review. This enables the MAP office to prepare a position on the case. In relation to the resolution of MAP cases, Japan reported that the MAP office is separated from those departments within the National Tax Agency that are involved in the examination and assessment of taxpayers. These departments are only involved in MAP cases as a source of information, but are not involved in handling and resolving them. This is also reflected in section 2(3) of Japan's MAP guidance, which notes that the MAP office may exchange opinions with the related divisions within the National Tax Agency. Where it concerns taxes imposed by local governments, section 2(3) notes that the MAP office should consult with the Ministry of Internal Affairs and Communicate in advance.

187. Japan reported that when its competent authority reaches an agreement with the other competent authority concerned on how to resolve a MAP case, there is no approval requirement from other departments of the National Tax Agency. In this respect, Japan reported that the Deputy Commissioner for International Affairs is delegated full authority to enter into MAP agreements.

188. In regard of the above, Japan 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, since only the MAP office is competent to handle and resolve MAP cases, and as this office is placed within the National Tax Agency and not within the Ministry of Finance, Japan reported that the process for negotiating MAP agreements is also not influenced by policy considerations.

Practical application

189. Peers generally reported no impediments in Japan 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. One peer specifically mentioned that it is not being aware that staff in charge of the MAP in Japan is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

Anticipated modifications

190. Japan 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, Japan 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 Japan 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.

191. For ensuring that each case is considered on its individual merits and will be resolved in a principled and consistent manner, it is essential that any performance indicators for the competent authority function and for the staff in charge of MAP processes are appropriate and not based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue.

Performance indicators used by Japan

192. Japan reported that on an annual basis the National Tax Agency sets objectives for the coming fiscal year. These objectives are included in a Result Evaluation Implementation Plan, which is published each June. In October of each year the National Tax Agency publishes a self-evaluation report titled "Result Evaluation Report", which includes

an analysis on whether the objectives have been attained.[8] The National Tax Agency's evaluation plan includes a specific objective for the MAP office: to resolve MAP cases in a principled and timely manner. To this end and with a view to ensure a precise evaluation, Japan reported that quantitative indicators are being used as reference. These, for example, concern MAP cases started, closed and their average resolving time.

193. Japan further reported that each government official sets its own qualitative objectives at the beginning of an evaluation period, which concerns two periods per year: April-September and October-March. In setting these objectives, officials have to ensure that they are consistent with the organisational goals of the National Tax Agency, their own position and the tasks assigned to them. In this respect, Japan pointed out that officials have to avoid setting quantitative objectives, as it may become a norm for officials and may also affect taxpayers' rights and obligations. When setting these objectives, officials have to consult with their evaluators, who in turn will provide instructions and advice to ensure that the objectives set are appropriate for each official.

194. In Japan, Government officials are twice per year evaluated on their performance and ability under the National Public Services Act, as also on the basis of the specific objectives set for each official. These officials are furthermore evaluated on the basis of their actions taken during the evaluation period and on the basis of qualitative criteria. These *inter alia* concern: ethics (e.g. responsibilities of the official, fairness and equitability in administration), issue identification and resolution, technical knowledge, performance (e.g. accuracy, planning and efficiency), co-operation and co-ordination (e.g. interaction with other departments and other officials).

195. The Final Report on Action 14 (OECD, 2015b) includes examples of performance indicators that are considered appropriate. These indicators are shown below and for Japan presented in the form of a checklist:

- ☐ 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).

196. In relation to these examples, Japan reported that the consistency performance indicator aligns with the *ethics* evaluation criteria discussed above (e.g. fairness and equitability in administration). While the other examples are not used as such evaluation criteria, Japan explained that they are indirectly taken into account in evaluating the performance of staff in charge of MAP.

197. Furthermore, Japan emphasised that none of the objectives for government officials relate to the amounts of sustained audit adjustments or the amount of tax revenue that is maintained. The same applies to the objectives set by the National Tax Agency for the MAP office.

Practical application

198. Peers generally provided no specific input relating to this element of the Action 14 Minimum Standard. One peer noted that it is not aware of the use of performance indicators by Japan that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Anticipated modifications

199. Japan 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, Japan 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. Japan reported that it has no domestic law limitations for including MAP arbitration in its tax treaties and that its policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties.

202. Furthermore, Japan was a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument. In that regard, Japan opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.[9] Pursuant to Article 26(4) Japan reserved the right not to apply part VI to seven treaties that are part of the 16 treaties mentioned below that already provide for a mandatory and binding arbitration procedure.

Practical application

203. Up to date, Japan has incorporated an arbitration clause in 16 of its 65 treaties as a final stage to the MAP. These clauses can be specified as follows:

- equivalent of Article 25(5) of the OECD Model Tax Convention (OECD, 2015a): 15 treaties
- mandatory and binding arbitration: one treaty

204. These arbitration provisions are either included in the treaty itself, or in a protocol provision that is supplemented with rules for conducting the arbitration procedure and defining the cases eligible for arbitration. Furthermore, Japan has entered into administrative

agreements or memoranda of understanding with six of the 16 treaty partners to further detail the practical application of the arbitration procedure, which are based on the Sample Mutual Agreement on Arbitration as included in the Annex to the 2014 version of the Commentary to Article 25 of the OECD Model Tax Convention (OECD, 2015a).

205. Further to the above, Japan included a most-favoured nation clause in one tax treaty, which stipulates that where the treaty partner agrees to include an arbitration provision in one of its tax treaties it will subsequently start negotiations with Japan to also include such a provision in its treaty with the latter.

206. Concerning the practical application of arbitration under Japan's tax treaties, Article 12(3) of Japan's Ministerial Ordinance on the Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the application of tax treaties includes information on when taxpayers can submit a request for the initiation of an arbitration procedure under a tax treaty and what information needs to be included in such a request. In addition, sections 34 to 42 of Japan's MAP guidance include detailed information on *inter alia*: (a) what procedures to be followed when a taxpayer has requested for the initiation of an arbitration procedure under Japan's tax treaties, or when the treaty partner has initiated such a procedure, (b) the information taxpayers should include in their request for the initiation of an arbitration procedure and (c) the process for implementing the mutual agreement that implements the arbitration decision.

207. Peers did not provide input in relation to element C.6.

Anticipated modifications

208. Japan did not indicate that it anticipates any modifications in relation to element C.6, but noted that it is currently in the process of analysing the effect of the reservations and objections made by signatories to the Multilateral Instrument in relation to the scope of the mandatory and binding arbitration provision.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 63 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic and the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2016.
3. Available in English at: www.nta.go.jp/english/publication/map_report/index.htm. These statistics are up to and include fiscal year 2017 (running from July 2016 to June 2017).

4. Japan's 2016 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016. See for a further explanation Annexes B and C.

5. For post-2015 cases, if the number of MAP cases in Japan'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, Japan reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).

6. For pre-2016 and post-2015 Japan follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that "an attribution/allocation MAP case is a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention (OECD, 2015)); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention (OECD, 2015)), which is also known as a transfer pricing MAP case".

7. Where it is Japan's competent authority that receives an opening letter, it will not sent out an opening letter itself. In this respect, Japan reported that it will only notify the name and contact details of the official handling the MAP case.

8. The most recent report is in Japanese available at: www.mof.go.jp/about_mof/policy_evaluation/nta/index.html.

9. An overview of the Japan's position on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-Japan.pdf.

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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.

209. 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

210. Article 70 of the Act on General Rules for National Taxes contains Japan's rules for amending a taxpayer's taxable income. The timeframe for making such adjustments, ranges, depending on the specific situation under review, from three to nine years as from the date of the filing of the tax return. In this respect, Japan reported that its domestic legislation includes different rules for upward and downward adjustments to a taxpayer's taxable income. This concerns:

- *Upward adjustments*: the general rule of Article 70 applies concerning the time limits to implement a MAP agreement
- *Downward adjustments*: item 2 of Article 71(1) of the Act on General Rules for National Taxes provides for an exception to Article 70 and stipulates that the National Tax Agency can amend a taxpayer's taxable income in certain prescribed situations and for reasons specified in a cabinet order. Such amendment can then be made within three years as from the date when these situations/reasons occurred. As will be discussed below, one of the reasons specified in the Cabinet Order is an agreement under the MAP article of a tax treaty. As a consequence, there is *de facto* no time limit for implementing MAP agreements entailing a downward adjustment to be made by Japan. This rule applies thus also regardless of whether a treaty includes the equivalent of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015).

211. Further to the above, Japan explained that it uses a self-assessment system for filing of tax returns and determining the amount of tax to be paid. Concerning the implementation of MAP agreements, a distinction is therefore made between the situation where the taxation subject of MAP discussions is levied by Japan or its treaty partner. This is as follows:

- Where the taxation at issue is initiated by Japan's treaty partner, the tax return filed under the self-assessment system can only be amended on the basis of a MAP agreement and following a taxpayer's request of the adjustment of this return.

Article 23 of the Act on General Rules for National Taxes allows taxpayers to make a request hereto after the expiry of the due date for filing of a tax return in certain prescribed circumstances. One of these circumstances is a specified cabinet order. In this respect, item 4 of Article 6 of the Cabinet Order for Enforcement of the Act on General Rules for National Taxes defines a MAP agreement as such a circumstance. In such a situation a taxpayer has to file a request for an amendment of its tax return within two months as from the date of that agreement. Upon receipt of this request, the competent department within the National Tax Agency will, pursuant to Article 23 of the Act on General Rules for National Taxes – or in case of transfer pricing, Article 7 of the Implementing Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the Application of Tax Treaties – make an adjustment to the filed tax return so as to reflect the MAP agreement. Section 17 of Japan's MAP guidance stipulates that the MAP office will inform the taxpayer and the relevant department within the National Tax Agency when it has reached a tentative MAP agreement. The MAP office will thereby ask the taxpayer for his written consent to the proposed agreement. To this end, a specific form titled "Notification that a mutual agreement has been reached" should be used. Upon receipt of this consent, Japan's competent authority will formalise the tentative agreement with the other competent authority concerned and exchange closing letters. Afterwards, Japan's competent authority will notify the taxpayer and the relevant department within the National Tax Agency hereof, the latter being instructed to implement the agreement upon receipt of the taxpayer's request for an amended of the filed tax return (see above).

- Where the taxation at issue is initiated by Japan, the National Tax Agency can amend a taxpayer's taxable income under item 2 of Article 71(1) of the Act on General Rules for National Taxes as explained in paragraph 210 above. Section 17 of Japan's MAP guidance stipulates that the MAP agreement entered into will, pursuant to Article 26 of the Act on General Rules for National Taxes, be notified to the taxpayer and to the relevant departments within the National Tax Agency that holds responsibility over the taxpayer, the latter being instructed to implement the agreement by an ex-officio adjustment.[1]

212. Concerning the process and steps to be taken for implementation of MAP agreements when the MAP request was submitted in Japan, Japan's MAP guidance includes the following information in addition to the information described above:

a. Section 28: where the MAP request was submitted with the treaty partner, the MAP agreement will be notified to the relevant department of the National Tax Agency, which will subsequently implement the agreement.

b. Section 41: the rules for implementing MAP agreements as laid down in sections 16, 17 and 28 also apply where a MAP agreement has been reached as a follow-up to the outcome of the arbitration procedure.

213. The responses to questions 2-17 and 2-18 of Japan's Q&A on MAP also includes information on the process and steps to be taken for implementation of MAP agreements, which is similar to the information included in sections 16 and 17 of Japan's MAP guidance.

Practical application

214. Japan reported that since 1 January 2014 it has reached the following number of MAP agreements:

Year	MAP agreements
2014	29
2015	21
2016	21
2017	21

215. In view of these MAP agreements, all required an implementation by Japan. In this respect, Japan reported that all of them, once accepted by taxpayers, have been implemented. Japan, however, has no system in place that monitors the actual implementation of MAP agreements.

216. Japan further reported that the requirement for taxpayers to request for an amendment of a filed tax return within two months as from the date of a MAP agreement had in no situation impacted the implementation of such agreements.

217. All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2014 that was not implemented by Japan. One of these peers noted that it has since 1 January 2014 one MAP case with Japan, which is still pending. In that regard it reported not being aware of any impediments to the implementation of MAP agreements in Japan.

Anticipated modifications

218. Japan did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	When the underlying taxation is initiated in the other jurisdiction concerned, there is a risk that not all MAP agreements will be implemented because of the requirement for taxpayers to file a request for an amendment of its filed tax return within a period of two months as from the date of that agreement as a prerequisite for having a MAP agreement implemented.	As it has done thus far, Japan should continue to implement all MAP agreements if the conditions for such implementation are fulfilled. Additionally, Japan should closely monitor whether the requirements for taxpayers to request for an amendment of its filed tax return within a period of two months as from the date of that agreement results in obstructions in practice concerning the implementation of MAP agreements, where the underlying taxation was made by the other jurisdiction concerned. Where this is the case, Japan should consider amending this process with a view to enable the implementation of all MAP agreements.
		In addition, to ensure that all MAP agreements continue to be implemented if the conditions for such implementation are fulfilled, Japan could introduce a tracking system.

[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.

219. 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

220. As discussed under element D.1, Japan uses a two-track system for implementation of MAP agreements, such depending on whether the taxation that is subject of the MAP case was levied in Japan or at the level of the treaty partner. In the first situation a MAP agreement can be implemented via an ex-officio adjustment of the filed tax return. In the second situation a MAP agreement will be implemented via a taxpayer's request for an amendment of its filed tax return.

221. Further to the above, Japan's MAP guidance discusses the steps to be followed by taxpayers and the National Tax Agency in order to have MAP agreements implemented. This guidance, however, does not further describe the timing process for such implementation. In this respect, Japan noted that it has no fixed deadline for implementing MAP agreements. In practice, where a taxpayer has filed a request of an amendment of its filed tax return, Japan noted that implementation will be completed within approximately two months as from the date of receipt of such request. Where the agreement is to be implemented via an ex-officio assessment, Japan reported that implementation will be completed within approximately two weeks as from the date of the notification of the MAP agreement by the MAP office to the relevant department within the National Tax Agency.

Practical application

222. Japan reported that all MAP agreements that were reached on or after 1 January 2014, once accepted by taxpayers, have been (or will be) timely implemented and that no cases of noticeable delays have occurred.

223. All peers that provided input have not indicated experiencing any problems with Japan regarding the implementation of MAP agreements reached on a timely basis.

Anticipated modifications

224. Japan 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, Japan 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.

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

Current situation of Japan's tax treaties

226. As discussed under element D.1, Japan's domestic legislation does not includes a statute of limitation for implementing MAP agreements when it concerns downward adjustment and a period of three to nine years for upward adjustments, unless overridden by tax treaties.

227. Out of Japan's 65 tax treaties, 47 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.[2] Of these 47 tax treaties 22 also contain the alternative provision for Article 9(1), setting a time limit for making primary adjustments. Additionally, 13 tax treaties do not contain such equivalent or the alternative provisions.[3]

228. For the remaining five treaties the following analysis is made:

- In two treaties, the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015) is included, as also the alternative provisions for Article 9(1), but is supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states (e.g. "except such limitations as apply for the purposes of giving effect to such an agreement"). Although Japan uses no statute of limitations for implementing MAP agreements, such statute of limitation may be in existence in the domestic legislation of the treaty partner. These two treaties therefore are considered not having the full equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).
- One treaty also contains Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), but a protocol provision introduces a time limit for implementation of MAP agreements at the level of the treaty partner. As this may obstruct the full implementation of a MAP agreement notwithstanding domestic time limits in both states, both treaties are considered not having the full equivalent of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015).

- Two treaties do not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), but do contain the alternative for Article 9(1) setting a time limit for imposing primary adjustments.

Anticipated modifications

Multilateral Instrument

229. Japan 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 (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). 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 (OECD, 2015). Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to 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.

230. In regard of the 18 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), Japan listed nine as covered tax agreements under the Multilateral Instrument and for all of them made a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii). All relevant nine treaty partners are a signatory to the Multilateral Instrument, but only six also made such notification, whereas two made a reservation on the basis of Article 16(5)(a) and one did not list its treaty with Japan under Article 16(6)(c)(ii). [4] Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify six of the 18 tax treaties identified above to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

231. Japan further reported that when tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or both alternatives provided for in Articles 9(1) and 7(2) 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. Japan, however, has not yet in place a specific plan for such negotiations, but reported it is currently negotiating with one of the treaty partners where the treaty is not in line with element D.3. In addition, Japan reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or both alternatives in all of its future tax treaties.

Peer input

232. Most of the peers that provided input reported that their treaty with Japan meets the requirements under element D.3. For those seven peers that provided input and where the treaty does not contain the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), six reported their treaty does not contain this second sentence. Of these six peers, one noted that its treaty does contain the alternative provision to Article 9(1), which indeed is the case. None of the six peers reported that there are ongoing contacts or negotiations with Japan or that they were contacted by Japan, to amend the treaty with a view to incorporate the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Four of these six peers mentioned that their treaty with Japan will be modified by the Multilateral Instrument in order to bring the treaty in line with element D.3. At this stage, however, only three of the four relevant treaties will indeed be modified via the Multilateral Instrument.

Conclusion

	Areas for improvement	Recommendations
[D.3]	18 out of 65 tax treaties do contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these number: • 16 contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor any of the alternative provisions. • Two do not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and only the alternative provision provided in Article 9(1).	Japan 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 (OECD, 2015) in those six treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining 12 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 (OECD, 2015) following its entry into force, Japan should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, Japan should put a plan in place on how it envisages updating these 12 treaties to include the required provision or the alternatives. In addition, Japan 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.

Notes

1. Where the MAP agreement entails a refund of withholding taxes withheld by Japan, certain procedures are in place if such taxes were withheld by a withholding agent. If the withholding tax was voluntarily withheld, the agent needs to request a refund via a specific form. In other cases, Japan will automatically refund the tax to the withholding agent. See in this regard, the response to question 2.18 of the Q&A on MAP.

2. These 47 treaties include the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

3. These 13 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic.

4. These six treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic, as both the Czech Republic and the Slovak Republic made such a notification.

Reference

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239081-en (accessed on 18 July 2018).

Summary

	Areas for improvement	Recommendations
Part A. Preventing disputes		
[A.1]	One out of 65 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	As the treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will at this time not be modified via the Multilateral Instrument, Japan should request the inclusion of the required provision via bilateral negotiations. To this end, Japan should put a plan in place on how it envisages updating this treaty to include the required provision. In addition, Japan should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	-	Japan 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]	Eight out of 65 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those eight tax treaties: • Seven tax treaties do not contain the equivalent to Article 25(1), first sentence. • One tax treaty 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.	Japan should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: a. As amended in the final report of Action 14 (OECD, 2015b); or b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Japan should request the inclusion of the required provision via bilateral negotiations. To this end, Japan should put a plan in place on how it envisages updating these treaties to include the required provision. Specifically with respect to the treaty with former Czechoslovakia/, Japan should, once it enters into negotiations with the jurisdictions to which it applies that treaty, request the inclusion of the required provision. In addition, Japan should maintain its stated intention to include the required provision in all future tax treaties.

	Areas for improvement	Recommendations
[B.2]	There is a documented process in place to consult the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the consultation process is applied in practice because during the Review Period no such cases have occurred in Japan.	
[B.3]	-	As Japan has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	Japan reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP request of this kind from taxpayers during the Review Period. Japan is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	-	-
[B.6]	-	As Japan has thus far not limited access to MAP in eligible cases when taxpayers have complied with Japan's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Eight out of 65 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Japan 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 (OECD, 2015a) in the one treaty that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Japan should request the inclusion of the required provision via bilateral negotiations. To this end Japan should put a plan in place on how it envisages updating these seven treaties to include the required provision. In addition, Japan should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, while noticing that some of the information is included in its Q&A on MAP, Japan could consider including information on: • whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the consideration of interest and penalties in the MAP. Furthermore, the contact details of Japan's competent authority are not included in its MAP guidance, but are being included in the Q&A on MAP. In that regard, Japan could consider to update its MAP guidance to include the contact information of its competent authority as soon as possible.

	Areas for improvement	Recommendations
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Japan should ensure that its future updates to the MAP guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	-	-
Part C. Resolution of MAP cases		
[C.1]	Two out of 65 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	As the two treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) will at this time not be modified via the Multilateral Instrument, Japan should request the inclusion of the required provision via bilateral negotiations. To this end, Japan should put a plan in place on how it envisages updating these two treaties to include the required provision. In addition, Japan should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	Japan submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Japan contacted all its treaty partners to match its post-2015 statistics with them, and its post-2015 MAP statistics almost fully match those submitted by its treaty partners. Japan's MAP statistics show that during the Statistics Reporting Period it closed 13.6% (nine out of 66 cases) of its post-2015 cases in 8.42 months on average. In that regard, Japan is recommended to seek to resolve the remaining 86.4% of the post-2015 cases pending on 31 December 2017 (57 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	As Japan closed MAP cases in 26.34 months on average, there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016. This may indicate that Japan's competent authority is not adequately resourced, especially because of the fact that the governance within its competent authority is not conducive to ensure that post-2015 cases are resolved within the pursued average.	While Japan has added a significant number of staff to its competent authority, also noting that its competent authority conducts a high number of face-to-face meetings per year, and as it has given a justified explanation on the overstep of the 24-month average, it should nevertheless ensure that the governance within its competent authority enables that the resources available are adequately used in order to resolve MAP cases in a timely, efficient and effective manner. This, as also suggested by some peers, in particular concerns the discussion and progressing of cases outside face-to-face meetings, such, for example, via e-mail correspondence, faxes or conference calls, thereby taking into account that any change should comply with domestic information security requirements.
[C.4]	-	As it has done thus far, Japan 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 Japan would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Japan should continue to use appropriate performance indicators.
[C.6]	-	-

	Areas for improvement	Recommendations
Part D. Implementation of MAP agreements		
[D.1]	When the underlying taxation is initiated in the other jurisdiction concerned, there is a risk that not all MAP agreements will be implemented because of the requirement for taxpayers to file a request for an amendment of its filed tax return within a period of two months as from the date of that agreement as a prerequisite for having a MAP agreement implemented.	As it has done thus far, Japan should continue to implement all MAP agreements if the conditions for such implementation are fulfilled. Additionally, Japan should closely monitor whether the requirements for taxpayers to request for an amendment of its filed tax return within a period of two months as from the date of that agreement results in obstructions in practice concerning the implementation of MAP agreements, where the underlying taxation was made by the other jurisdiction concerned. Where this is the case, Japan should consider amending this process with a view to enable the implementation of all MAP agreements. In addition, to ensure that all MAP agreements continue to be implemented if the conditions for such implementation are fulfilled, Japan could introduce a tracking system.
[D.2]	-	As it has done thus far, Japan should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	18 out of 65 tax treaties do contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these number: • 16 contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor any of the alternative provisions. • Two do not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and only the alternative provision provided in Article 9(1).	Japan 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 (OECD, 2015) in those six treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining 12 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 (OECD, 2015) following its entry into force, Japan should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, Japan should put a plan in place on how it envisages updating these 12 treaties to include the required provision or the alternatives. In addition, Japan 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 Japan

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

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

			Action 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC	Arbitration	
			B.1		B.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?			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?				
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) 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?	If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Egypt	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A
Estonia	N	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Fiji	Y	N***	i	N/A	i***	i	N	N	N	N	N	N/A
Finland	Y	N**	i	N/A	i***	i	Y	N**	Y	Y	N	N/A
France	Y	O **	Y	N/A	i**	i	Y	Y	Y	Y	N	N/A
Georgia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Germany	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Guernsey	Y	O	Y	N/A	N/A	i	Y	Y	Y	N	N	N/A
Hong Kong (China)	Y	O **	Y	N/A	i	i	Y	Y	Y	Y	Y	i
Hungary	Y	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
India	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Indonesia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Ireland	Y	O **	i	N/A	i***	i	Y	N**	Y	Y	N	N/A
Israel	Y	O	Y	N/A	i**	i	Y	Y	Y	Y	N	N/A
Italy	Y	N	i	N/A	i***	i	Y	N**	Y	Y	N	N/A

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

			Action 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC	Arbitration	
			B.1		B.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?			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?				
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) 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?	If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Philippines	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Poland	Y	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Portugal	Y	O	Y	N/A	i**	i	Y	Y	Y	Y	Y	i
Qatar	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Romania	Y	N	i	N/A	i***	i	Y	N**	Y	Y	N	N/A
Russia*	N	E	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Saudi Arabia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Singapore	Y	O	Y	N/A	i**	i	Y	Y	Y	Y	N	N/A
Slovak Republic	Y	N	i	N/A	i***	i	Y	N**	Y	Y	N	N/A
Slovenia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
South Africa	Y	O	Y	N/A	i**	i	Y	Y	Y	Y	N	N/A
Spain	Y	N	i	N/A	i	i	Y	N	Y	Y	N	N/A
Sri Lanka	Y	N	i	N/A	i	i	N	N	Y	N	N	N/A
Sweden	Y	O **	Y	N/A	i	i	Y	Y	Y	Y	Y	i
Switzerland	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Tajikistan	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A

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

* A tax treaty between Japan and the treaty partner is currently in force. This treaty will be replaced by the newly signed treaty, once it enters into force. For purposes of the treaty analysis, the newly negotiated treaty is taken into account.

** Treaties will be modified upon entry into force of the Multilateral Instrument.

*** Treaties will be modified upon entry into force of 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 the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for pre-2016 cases

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	96	0	0	1	0	1	16	3	0	0	0	75	26.45
Others	9	0	0	0	0	0	2	0	0	1	0	6	27.84
Total	105	0	0	1	0	1	18	3	0	1	0	81	26.62

Note: As two cases (one for Attribution/Allocation, one for others) requested before 1 January 2016 were recognised by Japan in 2017, the numbers of pre-2016 cases in MAP inventory on 1 January 2016 have been modified.

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	75	0	0	4	0	1	13	0	0	2	0	55	35.03
Others	6	0	0	0	0	0	1	0	0	0	0	5	6.97
Total	81	0	0	4	0	1	14	0	0	2	0	60	33.69

Annex C

MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for post-2015 cases

2016 MAP Statistics														
			Number of post-2015 cases closed during the reporting period by outcome											
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	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	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
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	34	0	0	1	0	0	0	0	0	0	0	33	3.65
Others	0	4	0	0	0	0	0	0	0	0	0	0	4	0.00
Total	0	38	0	0	1	0	0	0	0	0	0	0	37	3.65

2017 MAP Statistics														
			Number of post-2015 cases closed during the reporting period by outcome											
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	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	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
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	33	24	0	0	0	0	0	3	3	0	0	0	51	9.44
Others	4	4	0	0	0	0	0	1	0	1	0	0	6	7.74
Total	37	28	0	0	0	0	0	4	3	1	0	0	57	9.02

Notes: As a case requested to a treaty partner in 2016 was recognised by Japan in 2017, the numbers of post 2015 cases in MAP inventory on 1 January 2017 have been modified.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
Transfer Pricing Directive	Commissioner's Directive on the operation of transfer pricing
MAP guidance	Commissioner's Directive on the Mutual Agreement Procedure
MAP office	Office of Mutual Agreement Procedures of the International Operation Division within the National Tax Agency
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority's inventory pending resolution on 31 December 2015
Post-2015 cases	MAP cases received by a competent authority from the taxpayer on or after 1 January 2016
Q&A on MAP	Guidance for taxpayers on the mutual agreement procedure in the form of an Q&A
Review Period	Period for the peer review process that started on 1 January 2014 and ended on 31 December 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

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OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Japan (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.

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

Consult this publication on line at ***https://doi.org/10.1787/9789264304307-en***.

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