OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 85 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

As a result, the OECD established the Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already

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

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

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
CGTP	Coordination Group on Transfer Pricing
EU	European Union
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

The Netherlands has a large tax treaty network with over 90 tax treaties and has signed and ratified the EU Arbitration Convention. The Netherlands has an established MAP programme and has long-standing and large experience with resolving MAP cases. It has a large MAP inventory with a very large number of new cases submitted each year and with 350 cases pending on 31 December 2017. Of these case, 34% concern attribution/allocation cases. The outcome of the stage 1 peer review process was that overall the Netherlands met most of the elements of the Action 14 Minimum Standard. Where deficiencies were identified, the Netherlands worked to address them, which has been monitored in stage 2 of the process. In this respect, the Netherlands has solved most of the identified deficiencies.

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

- Approximately 25% 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 include the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Around 10% of its tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, whereby the majority of these treaties do not contain the equivalent of Article 25(1), first sentence, as it read prior to the adoption of the Action 14 Final Report (OECD, 2015), since they do not allow to submit a MAP request to the state of which it is a national, where its case comes under the non-discrimination provision.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, the Netherlands signed, without any reservations on the MAP article, the Multilateral Instrument. Furthermore, the Netherlands opted for part VI of this instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Through this instrument a number of its tax treaties will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, the Netherlands reported that it intends to replace or amend existing tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard. In this respect, the Netherlands is conducting such negotiations or has initiated negotiations with nearly all its treaty partners to bring these treaties in line with Action 14 Minimum Standard. For the remaining treaties it will take such actions once the other negotiations have been finalised to ensure compliance with this part of the Action 14 Minimum Standard.

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

Furthermore, the Netherlands meets almost all of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases. While in its stage 1 peer review report it was identified that the Netherlands has not introduced a bilateral consultation or notification process for those situations in which the Netherlands' competent authority considers the objection raised by taxpayers in a MAP request as not justified, it has since then introduced such process and has clearly and comprehensively documented this in its internal instructions for staff in charge of MAP cases. It further introduced an objection and appeals process at the level of its domestic courts, which can be initiated by taxpayers in cases where the objection raised by them is considered not justified. In addition, the Netherlands has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice both under tax treaties and the EU Arbitration Convention. In its stage 1 peer review report it was identified this guidance, however, does not include information on the relationship between MAP and audit settlements. While the Netherlands indicated in stage 1 that it will publish an updated version of its MAP guidance that inter alia clarify that audit settlements do not preclude access to MAP, such updated version has not been published since then.

Concerning the average time needed to resolve MAP cases, the MAP statistics for the Netherlands 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	106	66	54	118	25.44
Other cases	155	269	192	232	12.86
Total	261	335	246	350	15.63

*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, the Netherlands used as a start date the date of filing of the MAP request and as the end date the date of the closing letter which is drafted upon taxpayer's approval of the agreement reached.

The number of MAP cases the Netherlands closed in 2016 or 2017 is roughly 75% of the number of all new cases started in those years. During these years, MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 15.63 months. This mainly concerns the resolution of other cases, which average is far below the pursued 24-month average. The average time to close attribution/allocation cases is thereby considerably longer (25.44 months) and slightly above the pursued average of 24-months. Although the average time to close MAP cases is below 24 months, the MAP inventory of the Netherlands as per 31 December 2017 increased with 34% as compared to the inventory on 1 January 2016, which results from an increase by 50% in the number of other MAP cases. In this respect, the Netherlands has recently attributed more resources to the competent authority function and took actions to increase the number of closed cases. Nevertheless, the significant increase in the number of MAP cases indicates that even more resources may be needed to cope with this increase and to ensure that the Netherlands continues to resolve MAP cases a timely, effective and efficient manner.

In addition, the Netherlands meets all of the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. The Netherlands' competent authority uses a pragmatic approach to resolve MAP cases in an effective and efficient manner, and the performance indicators used are appropriate to perform the MAP function. In its stage 1 peer review report it was analysed that the organisation of its competent authority function is such that there is a minor risk that the competent authority function is not entirely performed independently from tax administration personnel directly involved in the adjustment at issue. Since then, the Netherlands has worked on measures that eliminated this risk, following which the Netherlands is considered to function independently from this personnel and the audit function of the tax authorities.

Lastly, the Netherlands also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Although the Netherlands does not monitor the implementation of such agreements no issues have surfaced regarding implementation throughout the peer review process.

References

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

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

Introduction

Available mechanisms in the Netherlands to resolve tax treaty-related disputes

The Netherlands has entered into 93 tax treaties on income (and/or capital), 90 of which are in force.[1] These 93 treaties apply to 97 jurisdictions.[2] All 93 treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 42 of these treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.[3]

Furthermore, the Netherlands is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.[4] Furthermore, the Netherlands adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which needs to be implemented in its domestic legislation as per 1 July 2019.[5]

The competent authority function to conduct mutual agreement procedures (MAP) is assigned to the Ministry of Finance, which has been delegated to the Directorate of International Tax and Consumer Tax (IZV) within the Ministry. The organisation of this competent authority function is governed by a decree, which was issued on 29 September 2008 (IFZ2008/248M).[6] The Netherlands also provides information about its competent authority on various websites, such as on the Netherlands' government website and on the website of the EU Joint Transfer Pricing Forum.[7] The Netherlands' competent authority currently consists of 20 full-time equivalents, five of whom are to a large extent dedicated to handle attribution/allocation MAP cases. The other 15 persons handle other MAP cases, next to other work, such as treaty negotiations and policy work.

The government and administration of the mutual agreement procedure in the Netherlands is included in the above-mentioned decree of 29 September 2008 ("**MAP guidance**"), which is available (in Dutch) at:

https://zoek.officielebekendmakingen.nl/stcrt-2008-188-p2-SC87664.html

Developments in the Netherlands since 1 January 2017

Developments relating to the tax treaty network

In the stage 1 peer review report of the Netherlands it is reflected that in 2015 it signed treaties with Kenya and Malawi, which concerns newly negotiated treaties with treaty partners for which there is currently no treaty in existence. Since then the Netherlands has ratified both treaties, but the relevant treaty partners have not yet. In 2015 the Netherlands

entered into an amending protocol to the existing treaty with Zambia, which has entered into force in 2018.

Furthermore, the Netherlands reported that since 1 January 2017 it has signed a new treaty with Algeria (2018), for which currently no treaty is in existence, as well as an amending protocol to the existing treaty with Denmark (2018). Ratification procedures for both the treaty and the protocol have not yet been initiated at the level of either treaty partner. Taking these developments into consideration, the number of tax treaties the Netherlands has entered into is now 93 instead of 92 treaties that was taken as the basis in the stage 1 peer review report.

In addition, the Netherlands reported that by letter of 28 October 2016 its parliament was informed that the Netherlands State Secretary of Finance will incorporate the proposed modifications in the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**") with respect to the Action 14 Minimum Standard without any reservations.[8] On 21 March 2017 the Netherlands State Secretary of Finance sent a second letter to the Netherlands parliament on the Multilateral Instrument, thereby explaining in more detail the choices the Netherlands envisages to make with respect to this instrument. Considering this, the Netherlands signed the Multilateral Instrument on 7 June 2017, to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. It further opted for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. In relation to the Action 14 Minimum Standard, the Netherlands has followed up on its intention and has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).[9] On 19 December 2017 the Netherlands sent the instrument for ratification to its parliament. The Netherlands deposited its instrument of ratification on 29 March 2019. The Multilateral Instrument will for the Netherlands enter into force on 1 July 2019.

For those 16 tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and which will not be modified by the Multilateral Instrument, the Netherlands reported that it is currently conducting negotiations on the replacement or amendment of the treaty with seven treaty partners and that it has requested the initiation of such negotiations with five treaty partners, *inter alia* to bring them in line with the requirements under the Action 14 Minimum Standard. These renegotiations, however, follow from the general renegotiation schedule and are not specifically related to this standard. Furthermore, it reported that it has been approached by one treaty partner with a proposal to bring this treaty in line with the requirements under the Action 14 Minimum Standard, for which it plans to agree. The Netherlands in addition shared that it has been notified by one treaty partner that it will update its notifications under the Multilateral Instrument, following which this treaty will be in line with the requirements under the Action 14 Minimum Standard. For the two remaining treaties, the Netherlands has not put in place a plan for the renegotiation of such treaties, nor conducted any actions to that effect. In this respect, the Netherlands reported that the renegotiation of these treaties only for purposes of that standard is of a low priority, either because for these treaties only minor deviations as regards this standard were identified and/or there are zero or only a small number of MAP cases with these treaty partners. Once the negotiations mentioned above have been completed, the Netherlands, however, reported that it will approach the relevant treaty partners to ensure that the treaties will also be compliant with the requirements under the Action 14 Minimum Standard.

Other developments

The Netherlands reported that since 1 January 2017 the following actions were taken to address the recommendations made in its stage 1 peer review report:

- *Element B.2*: the introduction of a bilateral notification/consultation process to be applied when its competent authority considers that the objection raised by the taxpayer in its MAP request as being not justified, as also the introduction of an objection and appeals procedure at the level of domestic courts, which can be initiated by taxpayers in such cases
- *Element C.4*: the signing of a delegation order to further mandate the competent authority function for corporate tie-breaker cases to the APA/ATR team of the Netherlands tax administration
- *Element C.4*: concerning the involvement of auditors throughout the MAP process, the introduction of the function of country-co-ordinators for auditors and members of the Coordination Group on Transfer Pricing ("**CGTP**"). Furthermore, a guidance note has been issued on the co-operation between the competent authority and the members of the CGTP, as well as to reflect their roles and responsibilities and what process needs to be followed when a member of the CGTP was directly involved in the adjustment that is under consideration in a MAP case

In addition, in the stage 1 peer review report it was also reflected that the Netherlands indicated that it will update its MAP guidance in the course of 2017 to: (i) clarify the relationship between domestic available remedies and MAP, and between audit settlements and MAP, (ii) to clarify that access to MAP would be granted in the case of double taxation resulting from bona fide taxpayer-initiated foreign adjustments and (iii) to include information on multilateral MAP guidance. In this respect, the Netherlands reported that this process has not yet been finalised due to the adoption of Council Directive (EU) 2017/1852 in October 2017. The update to the MAP guidance is foreseen at the latest in July 2019.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of the Netherlands' 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 process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, the Netherlands' implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 5 September 2017. This report identifies the strengths and shortcomings of the Netherlands in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.[10] Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by the Netherlands. In this update report, the Netherlands reflected (i) what steps it has already taken, or are to be taken, to

address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

For the purpose of this report in assessing whether the Netherlands is in line 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 replacement of an existing treaty currently in force. Furthermore, the treaty analysis also takes into account the treaty with former Czechoslovakia, the former USSR and former Yugoslavia for those jurisdictions for which this treaty continued to be applied by the Netherlands. As it concerns three tax treaties that are applicable to multiple jurisdictions, each of these treaties are only counted as one treaty for this purpose. Reference is made to Annex A for the overview of the Netherlands' tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers

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

While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, the Netherlands opted to provide information on a period starting from 1 January 2014 and also requested peer input relating to this period. The period for evaluating the Netherlands' implementation of this standard ranges from 1 January 2016 up to 31 December 2016 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2017 and depicts all developments as from that date until 31 August 2018. Next to the assessment on its compliance with the minimum standard, the Netherlands also addressed best practices[11] and asked for peer input on these best practices.

In total, 21 peers provided input during stage 1: Australia, Austria, Belgium, Canada, the People's Republic of China Denmark, France, Germany, Greece, India, Ireland, Italy, Japan, Korea, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States. In stage 1, these peers represent approximately 90% of post-2015 MAP cases in the Netherlands' inventory that started in 2016. During stage 2, apart from Greece, the same peers provided input on the update report of the Netherlands. Furthermore, also Slovenia provided input during stage 2. For this stage, these peers represent approximately 88% of post-2015 MAP cases in the Netherlands' inventory that started in 2016 or 2017.[12] Broadly, all peers indicated having good working relationships with the Netherlands with regard to MAP, some of them emphasising the joint effort put forth to successfully resolve disputes. Specifically with respect to stage 2, nearly all peers that provided input reported that the update report of the Netherlands fully reflects the experiences these peers have had with the Netherlands since 1 January 2017 and/or that there was no addition to previous input given. A few peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance.

Input by the Netherlands and cooperation throughout the process

During stage 1, the Netherlands provided extensive answers in its questionnaire, which was submitted on time. The Netherlands 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 the Netherlands provided the following information:

- MAP profile[13]
- MAP statistics[14] according to the MAP Statistics Reporting Framework (see below)[15]
- an example of a competent authority agreement
- examples of administrative arrangement relating to the MAP.

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

Finally, the Netherlands is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. The Netherlands provided detailed peer input on other jurisdictions and made some constructive suggestions on how to improve the process with the concerned assessed jurisdictions. The Netherlands also provided peer input on the best practices[16] for a number of jurisdictions that asked for it.

Overview of MAP caseload in the Netherlands

The analysis of the Netherlands' MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2016. For stage 2 the period ranges from 1 January 2017 to 31 December 2017. Both periods are taken into account in this report for analysing the MAP statistics of the Netherlands. The analysis of the Netherlands' MAP caseload relates to the period starting on 1 January 2016 and ending 31 December 2017 (the "**Statistics Reporting Period**"). According to the statistics provided by the Netherlands, 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	106	66	54	118
Other cases	155	269	192	232
Total	261	335	246	350

General outline of the peer review report

This report includes an evaluation of the Netherlands' 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[17]. Apart from analysing the Netherlands' legal framework and its administrative practice, the report also incorporates peer input and responses to such input by the Netherlands, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by the Netherlands to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of the Netherlands relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, which include a general description of the changes in the recent development sections.

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

Notes

1. The tax treaties the Netherlands has entered into are available at: https://verdragenbank.overheid.nl/. New treaties that have been signed but have not yet entered into force are with Algeria (2018), Kenya (2015) and Malawi (2015). Further, the treaty analysis also includes treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands, because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the OECD Model Tax Convention (OECD, 2017). The same applies with respect to the 1964 taxing arrangement within the Kingdom of the Netherlands that is continued to be applied to Aruba. All three treaties are taken into account in the treaty analysis. Reference is made to Annex A for the overview of the Netherlands' tax treaties with respect to the mutual agreement procedure.
2. The Netherlands continues to apply the 1974 treaty with former Czechoslovakia to the Czech Republic and the Slovak Republic, the 1986 treaty with the former USSR to Tajikistan and the1982 treaty with former Yugoslavia to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia.

3. This concerns treaties with Albania, Algeria, Armenia, Bahrain, Barbados, Bermuda, Canada, Croatia, Curacao, Egypt, Estonia, Ethiopia, Georgia, Germany, Ghana, Hong Kong (China), Iceland, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Latvia, Lithuania, Macedonia, Malawi, Moldova, Norway, Poland, Qatar, Russia, Sint Maarten, Slovenia, South Africa, Switzerland, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan and Zambia. See element C.6 of this report for further discussion. Reference is made to Annex A for the overview of the Netherlands' tax treaties that contain an arbitration clause.

4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.

5. Available at: https://eur-lex.europa.eu/eli/dir/2017/1852/oj.

6. www.oecd.org/ctp/transfer-pricing/netherlands-decree-mutual-agreement-procedure-2008.pdf.

7. https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/tpprofile-nl.pdf.

8. Letter of the State Secretary of Finance of 28 October 2016 with reference Kamerstukken II 2016-2017 25 087 no. 135. Available at: https://zoek.officielebekendmakingen.nl/kst-25087-135.html.

9. Available at: www.oecd.org/tax/treaties/beps-mli-position-netherlands.pdf.

10. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-the-netherlands-stage-1-9789264282629-en.htm.

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

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

13. Available at: www.oecd.org/tax/dispute/Netherlands-Dispute-Resolution-Profile.pdf.

14. The 2016 and 2017 MAP statistics of the Netherlands are included in Annex B and C of this report.

15. MAP Statistics Reporting Framework, in *Peer Review Documents* (OECD, 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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

17. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective in *Peer Review Documents* (OECD, 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

References

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

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms*, Peer Review Documents, oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).

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, 2017) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of the Netherlands' tax treaties

2. Out of the Netherlands' 93 tax treaties, 91 contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.[1] The remaining two treaties are considered not having this equivalent as the word "interpretation" is missing in both treaties.[2]

3. For those tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, the Netherlands reported that it is its intention to seek for a pragmatic solution with regard to the resolution of MAP cases and further that the absence of the words "interpretation in two of its tax treaties does not constitute an obstacle from entering into a competent authority agreement of a general nature with its treaty partner to clarify the application or the interpretation of the tax treaty.

4. Of the 21 peers that provided input, 12 indicated that their treaty with the Netherlands already is in line with the requirements under the Action 14 Minimum Standard, including element A.1. Furthermore, two peers mentioned that their treaty with the Netherlands meets part of the requirements under this standard, which also concerns element A.1. Two other peers also mentioned that their treaty with the Netherlands does not meet all requirements under this standard, but that they recently renegotiated the applicable treaty and the new treaty will meet all requirements.

5. With respect to the two treaties identified above that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, one treaty partner is one of the 12 peers mentioned above that considered their treaty with the Netherlands already being in line with the requirements under the Action 14 Minimum Standard. The other treaty partner did not provide peer input.

Recent developments

Bilateral modifications

6. The Netherlands signed a new treaty with one treaty partner, for which currently no treaty is in existence. This newly signed treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. The effect of this new treaty has been reflected in the analysis above.

Multilateral Instrument

7. The Netherlands signed the Multilateral Instrument and has introduced it in its parliament on 19 December 2017. After the ratification process was completed, the Netherlands deposited its instrument of ratification on 29 March 2019. The Multilateral Instrument will for the Netherlands enter into force on 1 July 2019.

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

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

Other developments

10. With respect to the remaining treaty identified above that is not in line with element A.1 and that will not be modified by the Multilateral Instrument, the Netherlands reported that in 2017 it has requested the treaty partner to initiate negotiations on an amending protocol to the existing treaty, which *inter alia* also relates to the inclusion of the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Peer input

11. Of the peers that provided input during stage 2, six provided input in relation to their tax treaty with the Netherlands. Of these six peers, one concerns a treaty partner for which the treaty is considered not to be in line with the requirements under element A.1. This peer noted that this treaty will be modified by the Multilateral Instrument, which conforms with the analysis under this element. Concerning the other five peers and insofar relevant for element A.1, two mentioned that they have finalised negotiations with the Netherlands on the replacement of an existing treaty, which will be in line with the Action 14 Minimum Standard. Another peer mentioned that such negotiations are pending, the outcome of which will also be in line with the Action 14 Minimum Standard.

Anticipated modifications

12. The Netherlands did not indicate it anticipates any modifications in relation to element A.1, other than that it intends to seek to include a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	Two out of 93 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these two treaties: • One is expected to be modified by the Multilateral Instrument to contain the required provision • One will not be modified by that instrument to contain the required provision, but for this treaty negotiations are being initiated with a view to include the required provision.	For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention following its entry into force, the Netherlands should continue the current pending negotiations with a view to include the required provision in this treaty.

[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.

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

The Netherlands' APA programme

14. The Netherlands reported that it has implemented an APA programme, under which it is allowed to enter into unilateral, bilateral and multilateral APAs. The legal basis of this programme is the Decree of the Netherlands State Secretary of Finance of 3 June 2014 (DGB2014/3098).[3] This decree includes rules, guidelines and procedures for how taxpayers can request (unilateral, bilateral and multilateral) APAs and how the process of the request up until the conclusion of an APA is conducted. The assignment of competence for entering into APAs is provided by the Decree of the Netherlands State Secretary of Finance of 3 June 2014 (DGB 2014/296M), which stipulates that it is the Large Enterprise division within the tax administration that handles requests for APAs.[4]

15. The Netherlands reported that there are no specific timelines for filing of an APA request and also that it does not charge any fees to taxpayers for a bilateral APA request.

Roll-back of bilateral APAs

16. The Netherlands reported it applies APAs as from the first year covered by the request, irrespective of the date when the competent authorities enter into an APA. Such an APA generally runs for a period ranging from three to five years. Paragraph 5 of the Decree of the Netherlands State Secretary of Finance of 3 June 2014 (DGB2014/3098) allows for roll-back of unilateral, bilateral and multilateral APAs.[5] Criteria for the roll-back are that the facts and circumstances of the roll-back period must be comparable to those of the periods covered by the APA period and both competent authorities involved must agree on granting such roll-back.

Recent developments

17. There are no recent developments for element A.2.

Practical application of roll-back of bilateral APAs

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

18. The Netherlands reported it does not have in place a mechanism that monitors (i) the number of APA requests that concern the roll-back of an existing APA and (ii) the number of cases for which such requests a roll-back was granted. In that regard there is no data available for the period 1 January 2014-31 December 2016 on the number of cases for which taxpayers requested for the roll-back of an APA and in how many cases such roll-back was granted.

19. Most of the peers that provided input reported not having received a request for roll-back of bilateral APAs in the period 1 January 2014-31 December 2016, while some of them reported having received bilateral APAs request during this period. Five peers, however, reported having received roll-back requests concerning the Netherlands. One of these peers mentioned that the Netherlands has been open to the possibility of a roll-back, as also that they were responsive and positive in all discussions and negotiations. Similar input was given two other peers, one of which mentioned it has two roll-back requests pending concerning the Netherlands and that so far there has not been any sign that the Netherlands would have an issue with providing roll-backs of bilateral APAs. The other peer noted it is confident that the Netherlands would provide for a roll-back where both sides agree on an APA. A fourth peer mentioned that it has received two requests for roll-backs with the

Netherlands since 1 January 2014, one of which was resolved and whereby a roll-back was granted. The other request is still under consideration. Lastly, one peer mentioned that it was able to agree with a roll-back of a bilateral APA with the Netherlands, whereby an agreement was reached in a co-operative manner.

Period 1 January 2017-31 December 2017 (stage 2)

20. The Netherlands reported that since 1 January 2017 it received a request for a roll-back in a few instances, which are all still under review and which regard five treaty partners. Furthermore, those requests for roll-back of bilateral APAs that were initiated in the period 1 January 2014-31 December 2016 either have been granted or are still under review.

21. Most peers that provided input during stage 1 stated in stage 2 that the update report provided by the Netherlands fully reflects their experience with the Netherlands since 1 January 2017 and/or there are no additions to the previous input given. Furthermore, three peers specifically provided input relating to element A.2. One of these peers mentioned that they did not receive a request for a roll-back of a bilateral APA since 1 January 2017 concerning the Netherlands. The other two peers mentioned they received such requests, one of which specified that it concerned a roll-back of a multilateral APA to which the Netherlands also is a party. This latter peer mentioned it was able to successfully agreed on such APA with a roll-back, which was confirmed by the Netherlands. None of these three peers, however, concern the five treaty partners the Netherlands referred to above.

Anticipated modifications

22. The Netherlands did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A2]	-	-

Notes

1. These 91 treaties include the treaty with former Czechoslovakia that the Netherlands continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that the Netherlands continues to apply to Tajikistan and the treaty with former Yugoslavia that the Netherlands continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia. Furthermore, these 91 treaties also include the taxing arrangement within the Kingdom of the Netherlands that is continued to be applied to Aruba, and the treaties with Curacao and Sint Maarten. These latter are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands, because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the

OECD Model Tax Convention. The same applies with respect to the taxing arrangement within the Kingdom of the Netherlands that is continued to be applied to Aruba. Therefore these were also taken into account.

2. In the stage 1 peer review report, it was described that all of the Netherlands tax treaties contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. Following the peer review process of other assessed jurisdictions, however, two treaties were identified that do not contain such equivalent. Consequently, the number of treaties not containing this equivalent is two instead of none.

3. Available at: www.rijksoverheid.nl/documenten/besluiten/2014/06/13/besluit-dgb-2014-3098.

4. Available at: www.rijksoverheid.nl/documenten/besluiten/2014/06/13/besluit-dgb-2014-296m.

5. Available at: www.rijksoverheid.nl/documenten/besluiten/2014/06/13/besluit-dgb-2014-3098.

Reference

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

Part B

Availability and access to MAP

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

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

23. 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 Netherlands' tax treaties

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

24. Out of the Netherlands' 93 tax treaties, two treaties contain a provision equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2017) as changed by the Action 14 Final Report (OECD, 2015a) allowing taxpayers to submit a MAP request to the competent authority of either contracting state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. Furthermore, 70 treaties contain a provision equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention (OECD, 2015b) as it read prior to the adoption of that report.

25. The remaining 21 treaties can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, OECD, whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	19*
A variation of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, OECD, whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident and whereby taxpayers can only submit such request when there is *double taxation* not in accordance with the convention.	1
A variation to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

* These 19 treaties include the treaty with former Czechoslovakia that the Netherlands continues to apply to the Czech Republic and the Slovak Republic and the treaty with the former USSR that the Netherlands continues to apply to Tajikistan. Furthermore, these 19 treaties also include the taxing arrangement within the Kingdom of the Netherlands that is continued to be applied to Aruba, and the treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands, because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the OECD Model Tax Convention. The same applies with respect to the taxing arrangement within the Kingdom of the Netherlands that is continued to be applied to Aruba. Therefore these were also taken into account.

26. The 19 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 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons nine of those 19 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not include a non-discrimination provision and only applies to residents of one of the states (two treaties).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (four treaties[1]).
- The treaty concerns a treaty with a jurisdiction that is part of the Kingdom of the Netherlands, whereby residents of both jurisdictions hold the Dutch nationality (three treaties[2]).

27. For the remaining ten treaties, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention and applies both to nationals that are and are not resident of one of the contracting states.[3] The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention is therefore for all nine 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

28. Furthermore, as the treaty mentioned in the second row of the table requires double taxation not in accordance with the convention, while the OECD Model Tax Convention only requires taxation not in accordance with the convention, this treaty is also considered not to be in line with element B.1.

29. The treaty mentioned in the third row of the table above allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this treaty limits such submission, as it requires that a domestic remedy should first be initiated before a case can be dealt with in MAP. This provision reads:

> … the term "irrespective of the remedies provided by the domestic law" means that invoking a mutual agreement procedure cannot replace the domestic remedies, which in any case, must first be resorted to if the dispute is related to an application of … taxes not in conformity with the convention.

30. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though the provision contained in the MAP article is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the final report on Action 14. This treaty is therefore considered not in line with this part of element B.1.

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

31. Out of the Netherlands' 93 treaties, 70 contain a provision 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, which wording is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention.[4]

32. The remaining 23 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
Filing period less than three years for a MAP request (two years)	6
Filing period longer than three years for a MAP request (five years)	3 [a]
No filing period for a MAP request	14 [b]

Notes: a. These three treaties include the treaty with the former Yugoslavia that the Netherlands continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia.

b. This includes the treaty with the former Czechoslovakia that the Netherlands continues to apply to the Czech Republic and the Slovak Republic.

Peer input

33. Of the 21 peers that provided input, 12 indicated that their treaty with the Netherlands already is in line with the requirements under the Action 14 Minimum Standard, including element B.1. Another peer also mentioned that its treaty with the Netherlands does not meet all requirements under this standard, but that they recently renegotiated the applicable treaty and the new treaty will meet all requirements. Furthermore, one peer mentioned that its treaty with the Netherlands meets part of the requirements under this standard, which also concerns element B.1.

34. With respect to the five treaties identified above that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, one treaty partner is one of the 12 peers mentioned above that considered their treaty with the Netherlands already being in line with the requirements under the Action 14 Minimum Standard. Another treaty partner mentioned that its treaty with the Netherlands does not meet the

requirements under element B.1, but that it recently renegotiated this treaty and the new treaty provision will meet these requirements. Furthermore, one treaty partner mentioned that its treaty with the Netherlands meets part of the requirements under this standard, which also concerns element B.1 regarding Article 25(1), first sentence, of the OECD Model Tax Convention, which, however, is not in line with the above analysis. The fourth treaty partner did not provide for a further indication of the status of its tax treaty with the Netherlands in light of the Action 14 Minimum Standard, but only mentioned its choices under the Multilateral Instrument. The fifth and last treaty partner stated that no actions have been taken to bring its treaty with the Netherlands in line with the requirements under the Action 14 Minimum Standard.

35. With respect to the six treaties that do not contain a filing period for MAP requests of at least three years, two peers provided input, one of which mentioned that its treaty with the Netherlands is already in line with the Action 14 Minimum Standard and the other did not provide for a further indication of the status of its tax treaty with the Netherlands in light of the Action 14 Minimum Standard, but only mentioned its choices under the Multilateral Instrument (this concerns the same treaty partner as referred to above).

Practical application

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

36. As noted in paragraphs 29-30 above, in all but one of the Netherlands' tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, the Netherlands reported that taxpayers are in the Netherlands allowed to request MAP assistance and simultaneously seek to resolve the same dispute via domestically available judicial and administrative remedies. Furthermore, the Netherlands will generally discuss the case in MAP even when domestic proceedings are still pending. Paragraph 3 of the MAP guidance also sets forth that taxpayers are allowed to, in line with the wording of Article 25(1) of the OECD Model Tax Convention, request for the initiation of the MAP process when domestic judicial or administrative proceedings are pending. The paragraph further noted that while the formal initiation of the MAP process is, with certain exceptions, dependent on the finalisation of the domestic proceedings, in practice the MAP process is initiated simultaneous with such proceedings.

37. In addition, the Netherlands' competent authority is able to derogate in MAP from decisions of domestic courts. Conclusively, the Netherlands' competent authority can still enter into MAP agreements even if the issue under dispute has already been decided via domestic judicial and administrative remedies and where such agreement deviates from such court decisions. The finalisation of court proceedings thus has no influence on the ability of the Netherlands' competent authority to resolve MAP cases. The same applies with respect to the arbitration procedure, provided that the applicable tax treaty allows the initiation of such procedure regardless of whether domestic court procedures have been finalised.

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

38. With respect to the 14 treaties that do not include a period for filing a MAP request, the Netherlands indicated that under its domestic law there are no time limitations for filing such requests. In other words, the absence of a specific filing period for MAP requests in tax treaties would not prevent the Netherlands from entering into MAP discussions.

Recent developments

Bilateral modifications

39. The Netherlands signed a new treaty with one treaty partner, for which currently no treaty is in existence. It also signed an amending protocol to an existing treaty. The new treaty and the amending protocol contain a provision that is equivalent to Article 25(1), first sentence and second, of the OECD Model Tax Convention as changed by the Action 14 final report. The effect of this new treaty and the amending protocol has been reflected in the analysis above where they have relevance.

Multilateral Instrument

40. The Netherlands signed the Multilateral Instrument and has introduced it in its parliament on 19 December 2017. After the ratification process was completed, the Netherlands deposited its instrument of ratification on 29 March 2019. The Multilateral Instrument will for the Netherlands enter into force on 1 July 2019.

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

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

42. With the signing of the Multilateral Instrument, the Netherlands 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 as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under the Netherlands's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which they are a resident, the Netherlands opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, the Netherlands listed 79 of its 93 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all of them a notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.[5]

43. In total, 27 of the 79 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with the Netherlands under that instrument, 20 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of

Article 16(1) to its existing tax treaties.[6] All remaining 31 treaty partners listed their treaty with the Netherlands as having a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these treaties, modify 31 treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.

44. In view of the above, for those 12 treaties identified in paragraphs 26-30 above that are considered not containing the equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, five are included in the list of 31 treaties that 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.[7]

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

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

46. In regard of the six tax treaties identified in paragraph 32 above that contain a filing period for MAP requests of less than three years, the Netherlands listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), for all a notification that it does not contain a provision described in Article 16(4)(a)(ii). Of the relevant six treaty partners, three are not a signatory to the Multilateral Instrument. The three remaining treaty partners listed their tax treaty with the Netherlands as a covered tax agreement and also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, the Multilateral Instrument will, upon on entry into force for these treaties, modify three of the six to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Other developments

47. With respect to the six treaties identified above that are not in line with element B.1 regarding the first sentence of Article 25(1) of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, the Netherlands reported that it is in negotiations with two treaty partners and further that in 2017 and 2018 it has requested three treaty partners to initiate negotiations on the replacement of an existing treaty, which *inter alia* will also take into account the requirements under the Action 14 Minimum Standard. For the remaining treaty, the Netherlands reported it will approach this treaty partner once the other negotiations have been finalised.

48. With respect to the three treaties identified above that are not in line with element B.1 regarding the second sentence of Article 25(1) of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, the Netherlands reported that it has in 2017 has requested two treaty partners to initiate negotiations on the replacement of

an existing treaty, which *inter alia* will also take into account the requirements under the Action 14 Minimum Standard. For the remaining treaty, the Netherlands reported it will approach this treaty partner once the other negotiations have been finalised.

49. With respect to the treaty identified above that is not in line with element B.1 regarding the first and second sentence of Article 25(1) of the OECD Model Tax Convention and that will be modified by the Multilateral Instrument only as regards the second sentence, the Netherlands reported that it has been approached by one treaty partner to bring the treaty in line with element B.1, which the Netherlands intends to accept.

Peer input

50. Of the peers that provided input during stage 2, six provided input in relation to their tax treaty with the Netherlands, of which four are signatory to a treaty with the Netherlands that is considered not to be in line with the requirements under element B.1. Of these four peers, one mentioned that it has finalised negotiations with the Netherlands on the replacement of the existing treaty, which will be in line with the requirements under the Action 14 Minimum Standard. Another peer provided similar input, albeit that with this treaty partner the negotiations on the replacement of the existing treaty is still pending. Furthermore, one of these four mentioned that its treaty with the Netherlands will be modified by the Multilateral Instrument with respect to Article 25(1), first sentence, of the OECD Model Tax Convention, which conforms with the analysis under this element. The last peer mentioned that following its reservation under the Multilateral Instrument, the treaty with the Netherlands will not be modified as regards Article 25(1), first sentence, of the OECD Model Tax Convention. Under this treaty the existence of a protocol provision affects the submission of MAP requests irrespective of domestic available remedies. This peer clarified that it is currently engaged in a comprehensive process to align its domestic provision with the Action 14 Minimum Standard, which also takes into account the requirements under element B.1. The peer further noted this process has priority and as soon as it has been completed, it will pursue bilateral contacts to address the treaty deviations at issue, which also comprises the Netherlands.

51. Concerning the remaining two peers for which the treaty with the Netherlands is considered to be in line with the requirements under element B.1, one of them only provided input in relation to element B.1. This peer mentioned that it has finalised negotiations with the Netherlands on the replacement of the existing treaty, which will be in line with the requirements under the Action 14 Minimum Standard, allowing taxpayers to submit a MAP request to the competent authority of either contracting state.

Anticipated modifications

52. The Netherlands reported it will seek to include Article 25(1) of the OECD Model Tax Convention in all of its future treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	11 out of 93 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report or as amended by that final report. Of these 11 tax treaties: • Four are expected to modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. • Seven will not be modified or superseded by that instrument to include the required provision. With respect to these seven treaties: - Six are included in the list of treaties for which negotiations are envisaged, scheduled or pending - For the remaining treaty no actions have been taken but will be taken once the other negotiations have been finalised.	For the remaining seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, the Netherlands should: Continue the current pending negotiations, or initiate the planned negotiations with six treaty partners with a view to include the required provision in this treaty. Follow its stated intention to request the inclusion of the required provisions in the remaining treaty once the other negotiations have been finalised. For all seven treaties this concerns either a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention as it read prior to or as amended in the Action 14 final report.
	Five out of 93 tax treaties do not contain a provision based on Article 25(1), second sentence, of the OECD Model Tax Convention, allowing 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. Of these five treaties: • Two are expected to modified by the Multilateral Instrument to include the required provision. • Three will not be modified by that instrument to include the required provision. With respect to these three treaties: - Two are included in the list of treaties for which negotiations are envisaged, scheduled or pending - For the remaining treaty no actions have been taken, but will be taken once the other negotiations have been finalised.	For the remaining three treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention the Netherlands should: • Continue the current pending negotiation with two treaty partners with a view to include the required provision in this treaty. • Follow its stated intention to request the inclusion of the required provisions in the remaining treaty once the other negotiations have been finalised.
	One out of 93 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report or as amended by that final report, and also not the second sentence, allowing 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. This treaty is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, but not as regards the first sentence of that article. For the first sentence, negotiations are envisaged, scheduled or pending.	With respect to the first sentence of Article 25(1) of the OECD Model Tax Convention, the Netherlands should continue the current pending negotiations to include the required provision for this treaty. This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to or as amended in the final report on Action 14.

[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).

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

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

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

Domestic bilateral consultation or notification process in place

54. As discussed under element B.1, two of the Netherlands' 93 tax treaties currently contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, 31 of these 93 treaties will, upon entry into force for these treaties, be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, also allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

55. The Netherlands reported that it until 1 January 2017 did not have a bilateral consultation or notification process in place which allows the other competent authority to provide its views on the case when the Netherlands' competent authority that received the MAP request considers the objection raised by the taxpayer not to be justified. The Netherlands, however, indicated that it intends to implement a notification and/or consultation process to address this.

Recent developments

56. In 2017 the Netherlands implemented a bilateral consultation/notification process to be applied in those situations where its competent authority considers that the objection raised by the taxpayer in its MAP request not to be justified, but only insofar the applicable tax treaty does not allow the filing of a MAP request in either contracting state. The introduced process requires that when case handlers within its competent authority arrive

at the conclusion that the objection is not justified it should notify or consult the other competent authority concerned about this view, thereby shortly explaining the relevant considerations that led to this decision. While the Netherlands introduced both a notification and consultation process, in practice the notification process is used, as the consultation process is only used when the position of the other competent authority concerned is important for the final judgment on whether the objection raised is justified.

57. Concerning the application of the process, internal documents have been prepared by the Netherlands' competent authority. This concerns (i) an internal process document that describes each step of the MAP process, the timing of the steps and the actions to be taken during these steps and (ii) email instructions for MAP case handlers to be used in the notification/consultation process and (iii) a sample letter for notifying/consulting the other competent authority. Furthermore, the competent authority also uses an internal documentation system, which keeps track of internal workflows and functions as an archive. In the internal process document it is also described that a decision on whether the objection raised by the taxpayer is justified should be made within eight weeks upon receipt of the MAP request, provided that the MAP request contains all required information and documentation. Where the decision is that the objection is not justified, the Netherlands' competent authority will notify/consult the other competent authority concerned of the decision and also inform the taxpayer hereof.

58. In 2017 a domestic court ruled that such decision constitutes a decree of a public body, as defined in the Netherlands' General Act on Administrative Law, for which taxpayers should have the right to appeal. Accordingly, the Netherlands has introduced right of objection against such decisions, for which a request should be submitted with the Netherlands' competent authority within six weeks as of the date of the decision. If such objection is considered unfounded, taxpayers subsequently have a right to initiate domestic judicial remedies, the outcome of which may cause that access to MAP should be granted. In other words, that the decision "objection not justified" is judged to be incorrect and that for the particular case the MAP process should be initiated (provided that no unilateral solution is possible).

Practical application

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

59. The Netherlands reported that in the period 1 January 2014-31 December 2016 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. From the 2016 MAP statistics provided by the Netherlands, it follows that during that year the Netherlands' competent authority did not consider any objection raised by the taxpayer as not justified. However, these statistics also show that there was one case closed with the outcome "denied access". The Netherlands reported that the reason for this decision was because there was no violation of the treaty. At the time of reporting, the Netherlands reported it was not aware that the case should have been classified as an objection not justified instead of denied access to MAP. Regardless, the other treaty partner was not notified due to the fact that at that time the Netherlands had not yet implemented a bilateral consultation and/or notification process.

60. All but one peer that provided input indicated not being aware of any cases for which the Netherlands' competent authority in the period 1 January 2014-31 December 2016 considered the objection raised in a MAP request as not justified. The remaining peer noted

that they were aware of four cases in which the Netherlands' competent authority denied access to MAP under the peer's tax treaty with the Netherlands without being notified or consulted. For three of these four cases was the MAP request submitted in 2012 and denied access in 2015, whereas for the fourth the MAP request was submitted in 2014 and denied access in 2015. This peer noted, however, that the reasons for denying access were reasons which in its view would not have required a notification or consultation, as in this peer's view such notification or consultation is only required where a competent authority considers the objections raised by a taxpayer as not justified. The reasons mentioned by the Netherlands and the peer for denying access was that in one case the person that submitted the MAP request was not a resident of either contracting state and in three cases because the person that submitted the MAP request did not provide the necessary information.

Period 1 January 2017-31 December 2017 (stage 2)

61. The Netherlands reported that since 1 January 2017 its competent authority decided in eight cases that the objection raised by taxpayers in their MAP request was not justified. The Netherlands further mentioned that in all these cases such decision was made because the tax levied did not lead to a violation of the terms of the treaty, as also that all treaty partners were notified of this decision. In seven cases this was done by using the notification/consultation process and in one case this was done during the process of matching MAP statistics.

62. Most peers that provided input during stage 1 indicated that also since 1 January 2017 they are not being aware of any cases for which the Netherlands' competent authority considered the objection raised in a MAP request as not justified. Concerning the eight cases where the Netherlands arrived as such conclusion, all relevant peers provided input and confirmed having been notified by the Netherlands' competent authority.

Anticipated modifications

63. The Netherlands did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

65. Out of the Netherlands' 93 tax treaties, 70 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is made by the other treaty partner.[8] Furthermore, 20 treaties do not contain such a provision.[9] The remaining three treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but are not considered being equivalent thereof for the following reasons:[10]

- in one treaty a corresponding adjustment can only be made through the mutual agreement procedure
- in one treaty the granting of a corresponding adjustment is only optional, as the word "shall" is replaced by "may"
- in one treaty the last sentence of Article 9(2), allowing competent authorities to consult together, is not fully contained.

66. The Netherlands is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.

67. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in the Netherlands' tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, the Netherlands indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, such regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in its tax treaties. Paragraphs 1.1, 2.4.1 and 3 of its MAP guidance also reflect that the MAP provisions in the Netherlands' tax treaties also apply to discuss transfer pricing cases, following which the inclusion of the equivalent of Article 9(2) of the OECD Model Tax Convention is not a prerequisite to deal with transfer pricing cases in MAP.

Recent developments

Bilateral modifications

68. The Netherlands signed a new treaty with one treaty partner, for which currently no treaty is in existence. This new treaty contains a provision that is equivalent to Article 9(2) second sentence, of the OECD Model Tax Convention. The effect of this new treaty has been reflected in the analysis above.

Multilateral Instrument

69. The Netherlands signed the Multilateral Instrument and has introduced it in its parliament on 19 December 2017. After the ratification process was completed, the Netherlands deposited its instrument of ratification on 29 March 2019. The Multilateral Instrument will for the Netherlands enter into force on 1 July 2019.

70. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax

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

71. The Netherlands has not reserved, pursuant to Article 17(3), the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 23 tax treaties identified in paragraph 64 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, the Netherlands listed 18 as a covered tax agreement under the Multilateral Instrument and for six of these 18 treaties did it make a notification on the basis of Article 17(4) that they do not contain a provision described in Article 17(2).

72. With regard to those six treaties, three treaty partners are not a signatory to the Multilateral Instrument, whereas two have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with the Netherlands already contains the equivalent of Article 9(2). The remaining treaty partner also made a notification on the basis of Article 17(4). Therefore, at this stage, one of the 23 tax treaties identified above will be replaced by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

73. With regard to the remaining 12 treaties for which the Netherlands did not make a notification on the basis of Article 17(4), two treaty partners are not a signatory to the Multilateral Instrument[11], whereas one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with the Netherlands already contains the equivalent of Article 9(2).[12] Therefore, at this stage, the remaining nine treaties will, upon its entry into force for this treaty, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in this treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1).[13]

Practical application of legal and administrative framework in practice

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

74. The Netherlands reported that it has in the period 1 January 2014-31 December 2016 not denied access to MAP on the basis that the case concerned a transfer pricing case.

75. All peers that provided input indicated not being aware of denial of access to MAP by the Netherlands in the period 1 January 2014-31 December 2016 on the basis that the case concerned was a transfer pricing case.

Period 1 January 2017-31 December 2017 (stage 2)

76. The Netherlands reported that since 1 January 2017 it has also not denied access to MAP on the basis that the case concerned a transfer pricing case.

77. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Netherlands fully reflects their experience with the Netherlands since 1 January 2017 and/or there are no additions to the previous input given. In addition, one of them clarified that access to MAP has been granted in all cases, while another peer mentioned that it has no cases with the Netherlands for which access was denied.

Anticipated modifications

78. The Netherlands did not indicate that it anticipates any modifications in relation to element B.3.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

79. 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

80. None of the Netherlands' 93 tax treaties allows competent authorities to restrict access to MAP for cases when an 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, the domestic law and/or administrative processes of the Netherlands do not include a provision allowing its competent authority to limit access to the MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

81. The Netherlands reported it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty to be within the scope of the MAP. The Netherlands holds the view that the presence of a punishable act should not block a taxpayer's access to MAP or the continuation of that procedure. The MAP guidance of the Netherlands, however, does not specify whether taxpayers have access to MAP in such cases or in cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met.

Recent developments

82. There are no recent developments for element B.4.

Practical application

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

83. The Netherlands reported that most of the MAP cases its competent authority is involved in concern adjustments made at the level of its treaty partner. In other words, the related MAP request will in most cases be made at the level of the treaty partner, which then has to decide on the acceptance of the request, also in anti-abuse cases.

84. The Netherlands further reported that in the period 1 January 2014-31 December 2016 it has not denied access to MAP for cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

85. All peers that provided input indicated not being aware of a denial of access to MAP by the Netherlands in relation to the application of a treaty and/or domestic anti-abuse provisions in the period 1 January 2014-31 December 2016.

Period 1 January 2017-31 December 2017 (stage 2)

86. The Netherlands reported that since 1 January 2017 it has also 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 conflict with the provisions of a tax treaty.

87. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Netherlands fully reflects their experience with the Netherlands since 1 January 2017 and/or there are no additions to the previous input given. In addition, one of them clarified that access to MAP has been granted in all cases, while another peer mentioned that it has no cases with the Netherlands for which access was denied.

Anticipated modifications

88. The Netherlands did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

89. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to the MAP in such cases unless they were already resolved via an administrative or a statutory disputes 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

90. The Netherlands reported that under its domestic law it is possible that taxpayers and the tax administration enter into a settlement agreement during the course of or after ending of an audit. It further reported that its competent authority will not preclude access to MAP in cases where the issues presented by the taxpayer in that request have already been resolved through an audit settlement between the taxpayer and the Netherlands' tax administration. The MAP guidance of the Netherlands, however, does not include information on whether taxpayers can request MAP for cases for which it entered into an audit settlement with the tax authorities.

Administrative or statutory dispute settlement/resolution process

91. The Netherlands reported that it does not have an administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Recent developments

92. There are no recent developments for element B.5.

Practical application

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

93. The Netherlands reported that it has in the period 1 January 2014-31 December 2016 not denied access to MAP in 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. It, however, also reported that its competent authority does not register whether in a MAP case an audit settlement has already been entered into.

94. All peers that provided input indicated not being aware of a denial of access to MAP by the Netherlands in the period 1 January 2014-31 December 2016 in case where there was already an audit settlement between the taxpayer and the tax administration.

Period 1 January 2017-31 December 2017 (stage 2)

95. The Netherlands reported that since 1 January 2017 it has also not denied access to the MAP for cases where the issue presented by the taxpayer has already been resolved through an audit settlement between the taxpayer and the tax administration.

96. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Netherlands fully reflects their experience with the Netherlands since 1 January 2017 and/or there are no additions to the previous input given. In addition, one of them clarified that access to MAP has been granted in all cases, while another peer mentioned that it has no cases with the Netherlands for which access was denied.

Anticipated modifications

97. The Netherlands 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.

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

Legal framework on access to MAP and information to be submitted

99. The information and documentation the Netherlands requires that taxpayers include in a request for MAP assistance are discussed under element B.8.

100. The Netherlands reported that upon receipt of such request its competent authority will assess whether the taxpayer has provided all required information, and, if necessary, request additional information from the taxpayer within two months upon receipt of the MAP request. Taxpayers are given the opportunity to supplement the necessary information within a reasonable timeframe, whereby the length of this timeframe is determined by the Netherlands' competent authority taking into account the extent and nature of missing information. In general, such period will be four weeks. If a taxpayer does not supplement the additional information required within the given timeframe, a reminder will be sent

including a new deadline for submitting the additional information. This reminder will also include a statement that if the information is not submitted within the new deadline, the consequence may be that the objection raised in the MAP request is considered as not being justified. This policy and practice is outlined in paragraphs 2.5, 4.1 and 4.2.2 of its MAP guidance.

101. The Netherlands further specified that the process for analysing a MAP request and requesting for additional information are laid down in an internal process document that describes each step of the MAP process, the timing of the steps and the actions to be taken during these steps. This also concerns the process to be followed for deciding on whether the MAP request should be accepted and how to proceed if such request does not contain all required information and documentation.

Recent developments

102. In case the Netherlands' competent authority decides that not all required information is submitted, it will close the case with the outcome "objection not justified". As was already described under element B.2, in 2017 a domestic court ruled that such decision constitutes a decree of a public body to which taxpayers should have the right to appeal. Such right of objection and appeal has been introduced, also pertaining to cases where the decision "objection not justified" is made on the ground that taxpayers have not complied with information and documentation requirements. Connected herewith, the Netherlands decided to change the term for requesting additional information – as reflected above – from two months to eight weeks.

Practical application

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

103. The Netherlands reported that in the period 1 January 2014-31 December 2016 it has limited access to MAP in eight cases on the grounds that taxpayers did not comply with the information and documentation requirements as set out in its MAP guidance. This concerned one case in 2014, six cases in 2015 and one case in 2016.

104. All peers that provided input indicated not being aware of a limitation of access to MAP by the Netherlands in the period 1 January 2014-31 December 2016 in situations where taxpayers complied with information and documentation requirements set out in the MAP guidance. One peer, however, noted that it is aware that the Netherlands has denied access to MAP in three cases, but such denial was based on the fact that not all required information and documentation was submitted.

Period 1 January 2017-31 December 2017 (stage 2)

105. The Netherlands reported that since 1 January 2017 it has not limited access to MAP on the grounds that information in the MAP request was not the information or documentation required by its competent authority.

106. Most peers that provided input during stage 1 stated in stage 2 that the update report provided by the Netherlands fully reflects their experience with the Netherlands since 1 January 2017 and/or there are no additions to the previous input given. In addition, one of them clarified that access to MAP has been granted in all cases, while another peer mentioned that it has no cases with the Netherlands for which access was denied.

Anticipated modifications

107. The Netherlands did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

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

Current situation of the Netherlands' tax treaties

109. Out of the Netherlands' 93 tax treaties 87 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties.[14] The remaining six treaties do not include the second sentence of Article 25(3) of the OECD Model Tax Convention.

110. Of the peers that provided input, 12 indicated that their treaty with the Netherlands already is in line with the requirements under the Action 14 Minimum Standard, including element B.7. Furthermore, one peer mentioned that its treaty with the Netherlands meets part of the requirements under this standard, which also concerns element B.7. Two other peers also mentioned that their treaty with the Netherlands does not meet all requirements under this standard, but that they recently renegotiated the applicable treaty and the new treaty will meet all requirements.

111. With respect to the six treaties identified above that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, two peers provided input. One of these peers, however, did not provide for a further indication of the status of its tax treaty with the Netherlands in light of the Action 14 Minimum Standard, but only mentioned its choices under the Multilateral Instrument. The other peer mentioned its treaty does not meet the Action 14 Minimum Standard as regards element B.7, but also mentioned that the Multilateral Instrument may address this issue. This treaty is part of the four treaties that for element B.7 will be modified by this instrument, as will be further discussed below.

Recent developments

Bilateral modifications

112. The Netherlands signed new a treaty with one treaty partner, for which currently no treaty is in existence and which contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. The effect of this new has been reflected in the analysis above where they have relevance.

Multilateral Instrument

113. The Netherlands signed the Multilateral Instrument and has introduced it in its parliament on 19 December 2017. After the ratification process was completed, the Netherlands deposited its instrument of ratification on 29 March 2019. The Multilateral Instrument will for the Netherlands enter into force on 1 July 2019.

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

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

Other developments

116. With respect to the two treaties identified above that re not in line with element B.7 and will not be modified by the Multilateral Instrument, the Netherlands reported it is currently in negotiations with the relevant treaty partners on the replacement of an existing treaty, which *inter alia* will also take into account the requirements under the Action 14 Minimum Standard.

Peer input

117. Of the peers that provided input during stage 2, six provided input in relation to their tax treaty with the Netherlands. Two of these peers are signatory to the treaty with the Netherlands that is considered not to be in line with the requirements under element B.7. Of these two peers, one mentioned that its treaty with the Netherlands will be modified by the Multilateral Instrument, which conforms with the analysis under this element. The

other peer mentioned that it is currently examining internal measures to align its domestic provisions to the Action 14 Minimum Standard, after which it will pursue bilateral contacts, which also comprises the Netherlands.

118. Concerning the four other peers for which the treaty is considered to be in line with the requirements under element B.7, two mentioned that it has finalised negotiations with the Netherlands on the replacement of the existing treaty, the content of which will be meet the requirements under this element. Another peer provided similar input, albeit that with this treaty partner the negotiations on the replacement of the existing treaty is still pending. The fourth peer noted that there have not been contacts or any actions with the Netherlands to bring the treaty in line with the Action 14 Minimum Standard.

Anticipated modifications

119. The Netherlands reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	Six out of 93 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these six treaties: • Four are expected to be modified by the Multilateral Instrument to contain the required provision • Two will not be modified by that instrument to contain the required provision but for these treaties negotiations are currently pending with a view to include the required provision.	For the remaining two 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 following its entry into force, the Netherlands should continue the current pending negotiations with a view to include the required provision in these two 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.

120. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

The Netherlands' MAP guidance

121. The Netherlands has issued rules, guidelines and procedures relating to the MAP function in a decree of the Netherlands' State Secretary of Finance of 29 September 2008 (IFZ2008/248M) This guidance is available at (in Dutch):

https://zoek.officielebekendmakingen.nl/stcrt-2008-188-p2-SC87664.html

122. This document sets out the availability and practical application of the MAP under the tax treaties the Netherlands entered into and the EU Arbitration Convention. It also describes the approach of the Netherlands on using arbitration where MAP does not lead to the elimination of double taxation within a certain timeframe. More specifically, the Netherlands' MAP guidance contains information on:

a. contact information of the competent authority or the office in charge of MAP cases
b. the manner and form in which the taxpayer should submit its MAP request
c. the specific information and documentation that should be included in a MAP request
d. how the MAP functions in terms of timing and the role of the competent authorities
e. when MAP becomes available under tax treaties and in what cases access to MAP will not be granted
f. information on availability of arbitration (including the EU Arbitration Convention)
g. access to MAP in transfer pricing cases and for multi-year resolution of cases
h. the process of implementation of MAP agreements
i. rights and role of taxpayers in the process
j. availability of suspension of tax collection
k. consideration of interest and penalties in a MAP
l. relationship between MAP and the APA programme.

123. The above-described MAP guidance of the Netherlands includes detailed and comprehensive information on the availability and the use of MAP and how its competent authority conducts the process in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.[15] Although this information is comprehensive, four subjects are not specifically discussed in the Netherlands' MAP guidance. This regards whether access to MAP would be granted in: (i) cases concerning bona fide taxpayer-initiated foreign adjustments and (ii) multilateral MAPs and (iii) cases concerning the application of anti-abuse provisions and where there is an audit settlement. Furthermore, the MAP guidance also does not address the relationship between domestic available remedies and MAP.

Information and documentation to be included in a MAP request

124. The Netherlands' MAP guidance includes in paragraph 2.5 a detailed list of what information taxpayers should include in their MAP request, next to the requirement that the request should be in writing and directed to the right government institution.

125. 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 guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.[16] In light of this list, the requirements in the Netherlands on what information and documentation should be included in a MAP request are checked below:

- ☑ identity of the taxpayer(s) covered in the MAP request
- ☑ the basis for the request
- ☑ facts of the case
- ☑ analysis of the issue(s) requested to be resolved via MAP
- ☑ whether the MAP request was also submitted to the competent authority of the other treaty partner
- ☑ whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
- ☑ 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
- ☐ whether the issue(s) involved were dealt with previously.

126. In addition to the above list, the Netherlands also requires that taxpayers specify in their MAP request on which tax treaty the request is based on, the fiscal years under review and to provide copies of the tax assessment(s).

127. The Netherlands also has entered into a mutual agreement with Germany, Japan and the United Kingdom on what information should be included in a MAP request in order to have the two-year deadline for the arbitration procedures under these treaties commence.

Recent developments

128. There are no recent developments for element B.8.

Anticipated modifications

129. During stage 1 of the peer review process, the Netherlands indicated that it will update its MAP guidance in the course of 2017 and further that it is working on a dedicated government website that includes information about treaty partners, applicable tax treaties, dispute resolution procedures and competent authority agreements entered into with treaty partners.

130. With the launch of stage 2 of the process, the Netherlands mentioned that it is still in the process of updating its MAP guidance, which delay is caused by the adoption of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. Issuing of new MAP guidance is now foreseen by the latest on 1 July 2019. This update will also take into account the information taxpayers should include in their MAP request. Furthermore, with respect to the to be developed dedicated website, the Netherlands reported that this is currently of a low priority.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

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

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

131. 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[17] further promotes the transparency and dissemination of the MAP programme.

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

132. The MAP guidance of the Netherlands is published (in Dutch) and can be found at:

https://zoek.officielebekendmakingen.nl/stcrt-2008-188-p2-SC87664.html

133. Furthermore, an unofficial English translation of this guidance can be found at:

www.oecd.org/ctp/transfer-pricing/netherlands-decree-mutual-agreement-procedure-2008.pdf

134. As regards its accessibility, the MAP guidance can easily be found on the government website of the Ministry of Finance, such by searching for "double taxation" or "mutual agreement procedure". The website then directly links to the relevant webpage where the public guidance on MAP can be found.

MAP Profile

135. The MAP profile of the Netherlands is published on the website of the OECD.[18] This MAP profile is complete and comprehensive. It also includes external links which provides extra information and guidance.

Recent developments

136. There are no recent developments for element B.9.

Anticipated modifications

137. The Netherlands indicated that once it has updated its MAP guidance, it will accordingly update the MAP profile.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

138. 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, it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the previous mentioned processes.

MAP and audit settlements in the MAP guidance

139. As previously discussed under element B.5, the Netherlands will grant access to MAP where the issue presented by the taxpayer has already been resolved through an audit settlement between the taxpayer and the Netherlands' tax administration. The Netherlands' MAP guidance, however, does not provide information on whether taxpayers have access to MAP in case of audit settlements.

140. All peers that provided input raised no issues regarding the public availability of information relating to access to MAP and audit settlements in the Netherlands.

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

141. As previously discussed under element B.5, the Netherlands 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.

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

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

143. As the Netherlands does not have an internal administrative or statutory dispute settlement/resolution process available, there is no need for notifying treaty partners of such process.

Recent developments

144. There are no recent developments for element B.10. The Netherlands has not followed-up on the recommendation to update its MAP guidance to clarify the relationship between MAP and audit settlements. In this respect, it reported that with the envisaged update to the MAP guidance in 2019 the relationship between audit settlements and MAP will also be addressed. The Netherlands reiterated that the absence of any guidance in this respect has not caused any difficulty.

Anticipated modifications

145. The Netherlands indicated that with the envisaged update to the MAP guidance in 2019 the relationship between audit settlements and MAP will also be addressed. The Netherlands reiterated that the absence of any guidance in this respect has not caused any difficulty.

Conclusion

	Areas for improvement	Recommendations
[B.10]	MAP guidance does not include information on the relationship between MAP and audit settlements.	The Netherlands should without further delay include in its MAP guidance a section clarifying the relationship between access to MAP and audit settlements, thereby stating that audit settlements do not preclude access to MAP.

Notes

1. Ibid for the treaty with the former USSR that the Netherlands continues to apply to Tajikistan.

   In the stage 1 peer review report, it was described that five of the Netherlands tax treaties fall into this category. Following the peer review process of other assessed jurisdictions, however, one treaty was identified that should not fall into this category, as the non-discrimination provision contained in this treaty also covers nationals that are not a resident of the contracting states. Consequently, the number of treaties in this category is four instead of five.

2. Ibid for the taxing arrangement within the Kingdom of the Netherlands that is continued to applied to Aruba, and the treaties with Curacao and Sint Maarten.

   In the stage 1 peer review report, it was described that two of the Netherlands tax treaties fall in this category. However, this should be three, as the taxing arrangement within the Kingdom of the Netherlands that is continued to applied to Aruba also falls into this category.

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

4. These 70 treaties include the treaty with the former USSR that the Netherlands continues to apply to Tajikistan, and the taxing arrangement within the Kingdom of the Netherlands that is continued to be applied to Aruba, and the treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands, because only the

Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the OECD Model Tax Convention. The same applies with respect to the taxing arrangement within the Kingdom of the Netherlands that is continued to be applied to Aruba. Therefore these were also taken into account.

5. These 79 treaties include the treaty with former Czechoslovakia that the Netherlands continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that the Netherlands continues to apply to Tajikistan and the treaty with former Yugoslavia that the Netherlands continues to apply to Bosnia and Herzegovina, Kosovo Montenegro and Serbia.

6. These 27 treaties include the treaty with the former USSR that the Netherlands continues to apply to Tajikistan and these 20 treaties include the treaty with former Yugoslavia that the Netherlands continues to apply to Bosnia and Herzegovina, Kosovo Montenegro and Serbia, but only as regards Serbia, as Bosnia and Herzegovina, Kosovo and Montenegro are not signatories to the Multilateral Instrument, as well as with former Czechoslovakia that the Netherlands continues to apply to the Czech Republic and the Slovak Republic. This, however, only applies to the Slovak Republic, as the Czech Republic did not make such a reservation and therefor the Multilateral Instrument will modify this treaty as regards the Czech Republic.

7. Ibid as regards the treaty with former Czechoslovakia that the Netherlands continue to apply to the Czech Republic and the Slovak Republic, whereby the Multilateral Instrument will only have an effect as regards the Czech Republic and therefore is not taken into account in the list of four treaties.

8. These 70 treaties include the treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands, because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the OECD Model Tax Convention. Therefore these were also taken into account.

9. These 20 treaties include the treaty with former Czechoslovakia that the Netherlands continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that the Netherlands continues to apply to Tajikistan and the treaty with former Yugoslavia that the Netherlands continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia. Furthermore, these 20 treaties also include the taxing arrangement within the Kingdom of the Netherlands that is continued to be applied to Aruba. For this treaty the reciprocal legislation as described in the previous footnote also applies.

10. In the stage 1 peer review report, it was described that in total 22 of the Netherlands tax treaties do not contain the equivalent of Article 9(2) of the OECD Model Tax Convention. Following the peer review process of other assessed jurisdictions and with the correction of the initial treaty analysis of the Netherlands, however, two additional treaties were identified that do not contain such equivalent, while for another one, such provision is actually contained in an amending protocol. Consequently, the number of treaties not containing such equivalent is 23.

11. These two treaties include the treaty with the former USSR that the Netherlands continue to apply to Tajikistan.

12. With respect to the treaty with former Czechoslovakia, which the Netherlands 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 mentioned regards this treaty. 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).

13. These nine treaties include the treaty with former Yugoslavia that the Netherlands continues to apply to Bosnia and Herzegovina, Kosovo Montenegro and Serbia, but only as regards Serbia, since Bosnia and Herzegovina, Kosovo and Montenegro are not signatories to the Multilateral Instrument.

14. These 87 treaties include the treaty with former Czechoslovakia that the Netherlands continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that is continued to be applied to Tajikistan and the treaty with former Yugoslavia that is continued to be applied to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia. Furthermore, these 87 treaties also include the taxing arrangement within the Kingdom of the Netherlands that is continued to be applied to Aruba and the treaties with Curacao and Sint Maarten. These latter are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the OECD Model Tax Convention. Therefore these were also taken into account. The same applies with respect to the 1964 taxing arrangement within the Kingdom of the Netherlands that is continued to applied to Aruba.

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

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

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

18. www.oecd.org/tax/dispute/Netherlands-Dispute-Resolution-Profile.pdf.

References

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

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

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

Part C

Resolution of MAP cases

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

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

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

Current situation of the Netherlands' tax treaties

147. All of the Netherlands' 93 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

148. Of the 21 peers that provided input, 12 indicated that their treaty with the Netherlands already is in line with the requirements under the Action 14 Minimum Standard, including element C.1. Furthermore, two peers mentioned that their treaty with the Netherlands meets part of the requirements under this standard, which also concerns element C.1. Two other peers also mentioned that their treaty with the Netherlands does not meet all requirements under this standard, but that they recently renegotiated the applicable treaty and the new treaty will meet all requirements.

Recent developments

149. The Netherlands signed a new treaty with one treaty partner, for which currently no treaty is in existence. This treaty contains a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. The effect of this new has been reflected in the analysis above.

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.1]	-	-

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

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

152. 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

153. Statistics regarding all tax treaty related disputes concerning the Netherlands are published on the website of the OECD as of 2007.[1] The Netherlands also publishes MAP statistics regarding transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.[2]

154. 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. The Netherlands provided their MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving the Netherlands and of which its competent authority was aware. The statistics discussed below include both post-2015 and pre-2016 cases and the full statistics are attached to this report as Annex B and C respectively.[3] It should be noted that the statistics for both reporting periods should be considered jointly for an understanding of the MAP caseload of the Netherlands. With respect to post-2015 cases, the Netherlands reported having reached out to all its MAP partners with a view to have their MAP statistics matching.

155. For the year 2016, the Netherlands indicated that it could match its statistics with almost all of its MAP partners except for three (representing together less than 5% of the Netherlands' end inventory of post-2015 MAP cases). Two of the three MAP partners did not respond to such requests and with the remaining MAP partner there were ongoing discussions regarding the year in which some MAP cases are to be reported. For the year 2017, the Netherlands also indicated that it reached out to all its MAP partners and that it was able to match the MAP statistics. When there were mismatches, these could be reconciled.

156. A number of peers provided input on the matching of MAP statistics with the Netherlands. All of these peers confirmed that they were able to match their statistics with the Netherlands, one of them noting that contacts during the matching exercise were fruitful and led to a good result. Furthermore, one peer mentioned that while MAP statistics could be matched for 2016 and 2017, there is a discrepancy in these statistics for a pre-2016 case, as this case was only notified to the peer's competent authority in 2018, while the MAP request was submitted in the Netherlands in 2015.

157. Based on the information provided by the Netherlands' MAP partners, its post-2015 MAP statistics for 2016 and 2017 actually match those of its treaty partners as reported by the latter. The possible mismatch of a 2018 case is due to a different classification for pre-2016 cases between the Netherlands and the peer, but this is not further taken into account in the analysis below.

Monitoring of MAP statistics

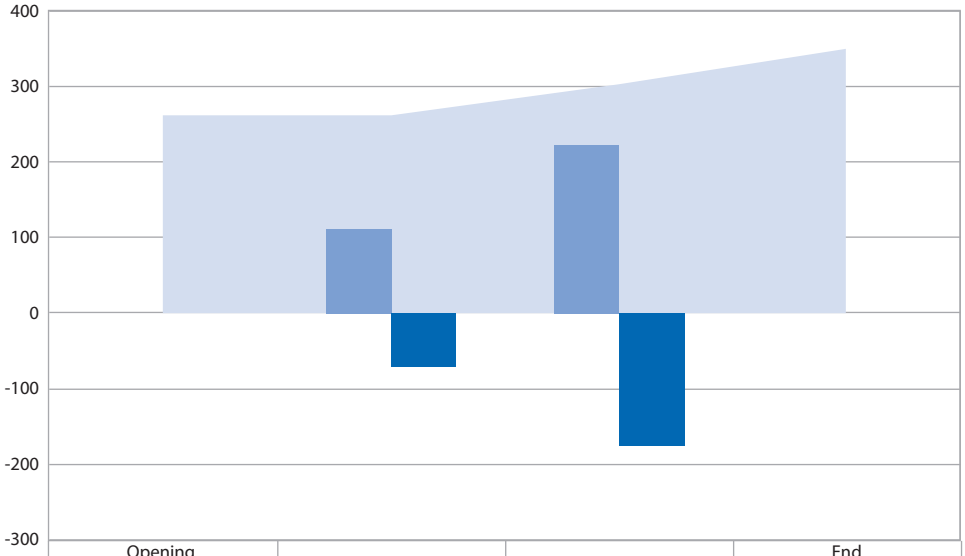
158. The Netherlands reported it does not have a system in place that communicates, monitors, and manages with its treaty partners the MAP caseload, but in 2016 it introduced a new registration system for MAP cases to monitor the process in more detail and to be able to report statistics under the MAP Statistics Reporting Framework.

Analysis of the Netherlands' MAP caseload

159. The analysis of the Netherlands' MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017.

160. The following graph shows the evolution of the Netherlands' MAP caseload over the Statistics Reporting Period:

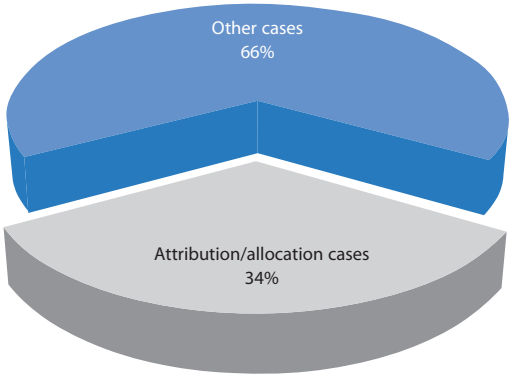
Figure C.1. **Evolution of the Netherlands' MAP caseload**



	Opening inventory on 1/1/2016	2016	2017	End inventory on 31/12/2017
Inventory	261	261	303	350
Cases started		112	223	
Cases closed		-70	-176	

161. At the beginning of the Statistics Reporting Period the Netherlands had 261 pending MAP cases, of which 110 are attribution/allocation cases and 144 other MAP cases.[4] [5] At the end of the Statistics Reporting Period, the Netherlands had 350 MAP cases in inventory, of which 118 are attribution/allocation cases and 232 other MAP cases. Consequently, the Netherlands' pending MAP cases have increased by 34% during the Statistics Reporting Period. This increase can be broken down into an increase by 11% for attribution/allocation cases and an increase by 50% for other cases. The breakdown of the end inventory can be illustrated as follows:

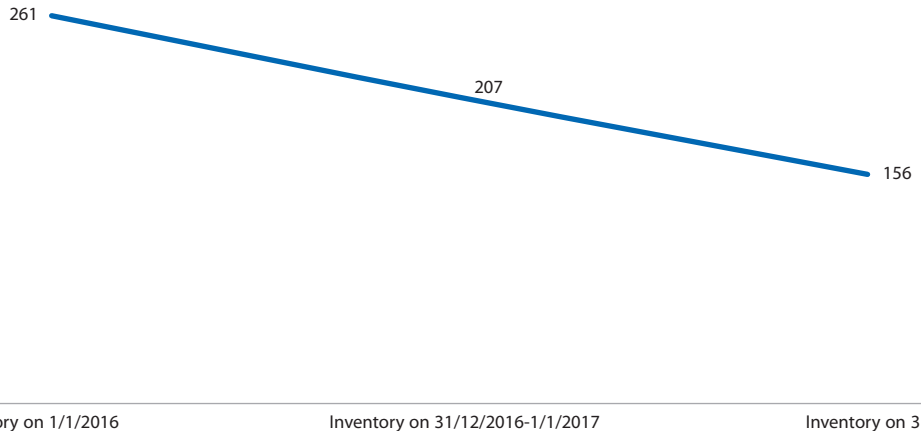
Figure C.2. **End inventory on 31 December 2017 (350 cases)**



Pre-2016 cases

162. The following graph shows the evolution of the Netherlands' pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. **Evolution of the Netherlands' MAP inventory Pre-2016 cases**



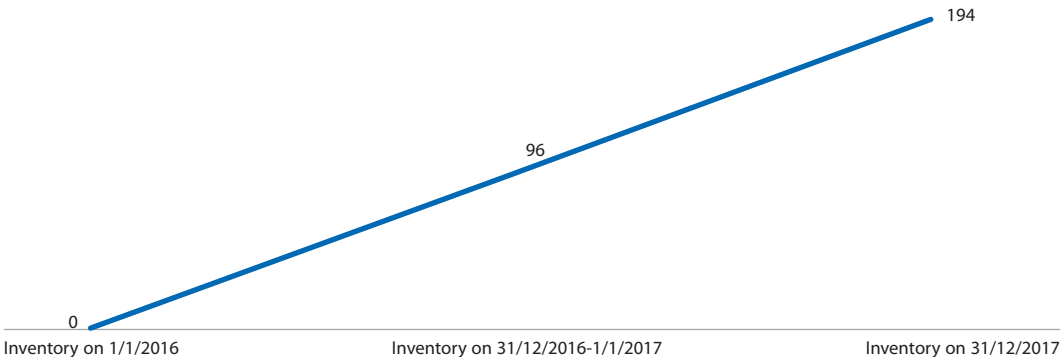
163. At the beginning of the Statistics Reporting Period, the Netherlands' MAP inventory of pre-2016 MAP cases consisted of 261 cases, 106 of which were attribution/allocation cases and 155 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 156 cases, consisting of 70 attribution/allocation cases and 86 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016+2017)
Attribution/allocation cases	-12%	-25%	-34%
Other cases	-26%	-25%	-45%

Post-2015 cases

164. The following graph shows the evolution of the Netherlands' post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. **Evolution of the Netherlands' MAP inventory Post-2015 cases**



165. In total, 335 MAP cases started during the Statistics Reporting Period, 66 of which concerned attribution/allocation cases and 269 other cases. At the end of this period the total number of post-2015 cases in the inventory was 194 cases, consisting of 48 attribution/allocation cases and 146 other cases. Conclusively, the Netherlands closed 141 post-2015 cases during the Statistics Reporting Period, 18 of them being attribution/allocation cases and123 other cases. The total number of closed cases represent 42% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

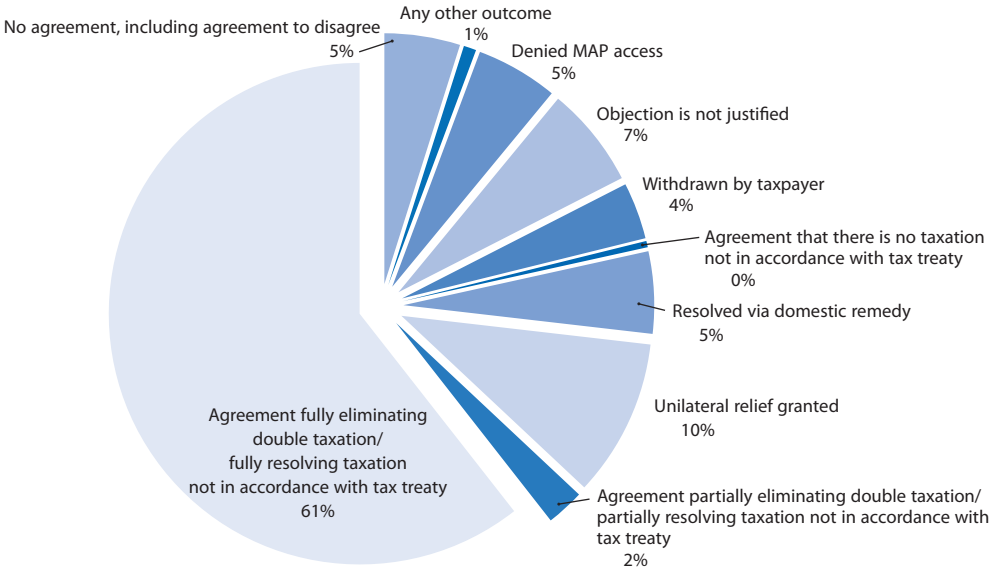
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution/allocation cases	4%	40%	27%
Other cases	17%	60%	46%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

167. During the Statistics Reporting Period the Netherlands in total closed 246 MAP cases for which the following outcomes were reported:

Figure C.5. **Cases closed during the Statistics Reporting Period (246 cases)**



168. This chart shows that during the Statistics Reporting Period 149 out of 246 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

169. In total, 54 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (67%)
- unilateral relief granted (11%)
- resolved via domestic remedy (7%)
- no agreement including agreement to disagree (6%).

Reported outcomes for other cases

170. In total, 192 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (59%)
- unilateral relief granted (10%)

- objection not justified (8%)
- denied MAP access (6%)
- resolved via domestic remedy (5%)
- no agreement including agreement to disagree (5%).

Average timeframe needed to resolve MAP cases

All cases resolved during Statistics Reporting Period

171. The average time needed to resolve MAP cases during the Statistics Reporting Period was 15.63 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	54	25.44
Other cases	192	12.86
All cases	**246**	**15.63**

172. The Netherlands explained that their attribution/allocation MAP inventory contains old cases especially with regard to some specific countries. The Netherlands' competent authority has experienced that for some countries it can take a long time to receive a position paper and/or the negotiation of an agreement can be burdensome and as a result the resolution of the MAP case takes more time than the 24 months from the start date. In addition, the Netherlands reported that attribution/allocation MAP cases can be very complex and thus the resolution of these cases is difficult and time consuming.

Pre-2016 cases

173. For pre-2016 cases, the Netherlands reported that on average it needed 33.77 months to resolve attribution/allocation cases and 26.75 months to resolve other cases. This resulted in an average time needed of 29.15 months to close pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, the Netherlands used:

- *start date*: the date a MAP request received by the Netherlands' competent authority is complete
- *end date*: the date of the closing letter which is drafted upon taxpayer's approval of the agreement reached.

Post-2015 cases

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

175. For post-2015 cases, the Netherlands reported that on average it needed 8.80 months to close 18 attribution/allocation cases and 5.08 months to close 123 other cases. This resulted in an average time needed of 3.77 months to close 15 post-2015 cases.

Peer input

176. All peers that provided input to the Netherlands' compliance with the minimum standard reported a good working relationship with the competent authority of the Netherlands and also that contact with them is easy and that the Netherlands is solution-oriented. Several peers provided input on the resolving of MAP cases by the Netherlands. This will be further discussed in element C.3.

177. Peers further indicated that cases are generally resolved within a reasonable period, although not all cases are resolved within the targeted 24-month period, as especially complex cases may take longer or counterparties may not respond promptly to requests by the Netherlands. One peer specifically noted that the Netherlands aims at finishing pending cases in a timely manner. Another peer reported that their MAP cases with the Netherlands take a long time to resolve because both competent authorities need substantial time to react to each other's positions.

Recent developments

178. The Netherlands reported that the 2016 introduced internal registration system for MAP cases has been updated to align with the rules under the MAP Statistics Reporting Framework, which concerns the measuring of the relevant dates within the MAP process, a labelling of outcomes and the processing of cycle times for individual MAP cases based on the to be recorded dates. Furthermore, the Netherlands reported that its internal registration system is currently being further updated to include alerts regarding the necessary steps to be taken and upcoming deadlines.

179. Further to the above, in the stage 1 peer review report the Netherlands was under element C.2 recommended to seek to resolve the remaining 85% of its post-2015 MAP cases that were pending on 31 December 2016 (96 cases), such within a timeframe that results in an average timeframe of 24 months for all post-2015 cases. In this respect, the Netherlands reported that more personnel was assigned to handle MAP cases and that organisational changes were introduced regarding the MAP process, which especially concerns the handling of other MAP cases. In total six persons were appointed to handle other MAP cases, which devote 50% of their time in dealing which such cases. Besides these six persons, other personnel within the International Tax Division also work on handling other MAP cases on a country-specific basis. Concerning attribution/allocation cases, the Netherlands reported that there are now five employees that almost full-time work on handling such MAP cases.

180. Apart from changes in the number of personnel that handle MAP cases, the Netherlands also pointed to the fact that several face-to-face meetings were scheduled with treaty partners with a view to close a batch of similar other MAP cases at the same time. In 2017 the number of such meetings was doubled as compared to 2016 (18 vs. 10 meetings). Additionally, with its most important MAP partners the Netherlands aims at scheduling at least one face-to-face meeting per year. In 2017 such meetings took place with 13 treaty partners.

181. As follows from the MAP statistics discussed above, the Netherlands has during 2016 and 2017 closed its MAP cases within the pursued average of 24 months. In 2016 it closed 14% of the post-2015 cases started in that year. By the end of 2017, the Netherlands closed in total 42% of the post-2015 cases that started in 2016 and 2017. While the actions described above have resulted in an increase in the number of closed MAP cases, its MAP inventory has increased by 34% since 1 January 2016.

182. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Netherlands fully reflects their experience with the Netherlands since 1 January 2017 and/or there are no additions to the previous input given. Specific input on the resolution of MAP cases will be further discussed under element C.3.

Anticipated modifications

183. As will be discussed in element C.6, the Netherlands' tax treaty policy is to provide for mandatory and binding arbitration in its bilateral tax treaties, as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

184. Adequate resources including personnel, funding and training are necessary to properly perform the competent authority function and to ensure that MAP cases are resolved in a timely, efficient and effective manner.

Description of the Netherlands' competent authority

185. Under the tax treaties the Netherlands has entered into, the competent authority function is assigned to the Ministry of Finance, which has been delegated to the International Tax Department of the International Tax and Consumer Tax Directorate within the Netherlands Ministry of Finance. The Netherlands reported that this department currently consists of 20 full time-employees and most of them are involved in handling MAP cases. In total five persons are to a large extent dedicated to handle attribution/allocation cases as well as requests for bilateral and multilateral APAs. All other personnel within the department also handle MAP cases and are involved in other activities as well, such as treaty negotiations and policy work.

186. The Netherlands further reported that employees of the Netherlands' tax administration assist the competent authority in handling MAP cases. This applies to both attribution/allocation cases as well as other cases. For other cases the assistance is more of an informative nature and for attribution/allocation cases the assistance consists of providing information as well as giving advice (further discussed under element C.4).

187. Specifically with respect to MAP cases that concern the application of the corporate tiebreaker rule under tax treaties[6], the Netherlands has, by decree of 12 November 2015 (IZV/2015/832), delegated the competent authority function to the Director Large Business of the Netherlands tax administration.[7] In practice, the APA/ATR team of the Netherlands' tax administration handles MAP cases concerning the corporate tiebreaker rule under tax treaties. The primary workforce of this team consists of handling requests for APAs and ATRs, but the Netherlands reported that the team can be flexible in their amount of time dedicated to handling corporate tiebreaker requests. The Netherlands does not, however, have an estimate on how much time employees of the APA/ATR team allocates to handling these MAP cases.

Monitoring mechanism

188. The Netherlands indicated that it is of the opinion that the resources currently available are adequate to ensure MAP cases are on average resolved within the targeted time frame of 24 months. In that regard, the Netherlands reported to have a framework in place to monitor the time necessary for resolving MAP cases. This framework has been updated in 2016 to be able to report MAP statistics on the basis of the MAP Statistics Reporting Framework and also to monitor progress in cases in more detail.

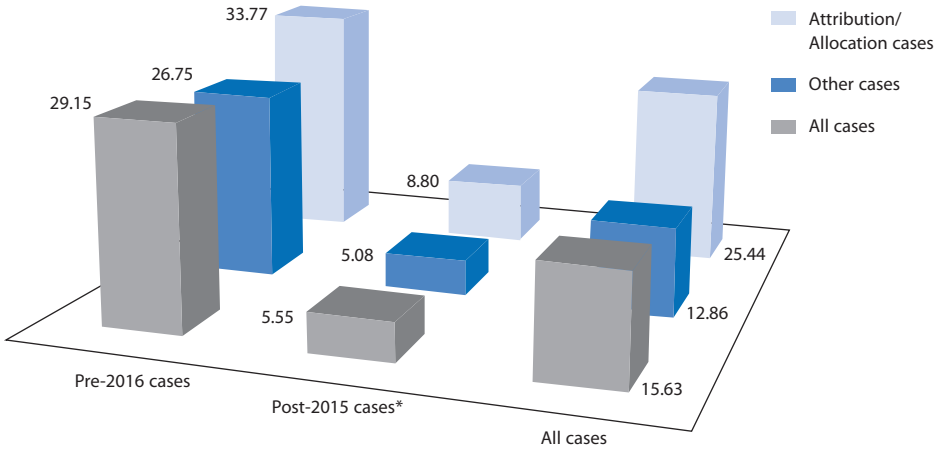
Recent developments

189. As discussed under element C.2, more personnel was assigned to handle MAP cases, organisational changes were introduced the handling of other MAP cases and more face-to-face meetings were scheduled, which resulted in an increase in the number of closed cases. Furthermore, the Netherlands reported also having issued an internal process document that describes each step of the MAP process, the timing of the steps and the actions to be taken during these steps. This, for example, concerns the analysis of a MAP request, issuing of position papers and actions to be taken when a MAP agreement is reached. In addition, the Netherlands also reported that its competent authority uses an internal documentation system, which keeps track of internal workflows and functions as an archive.

Practical application

190. As discussed under element C.2, in 2016 and 2017 the Netherlands closed its MAP cases within the pursued 24-month average, as the average is 15.63 months. However, a discrepancy exists between the average time taken to close attribution/allocation cases and other cases. This can be shown by the following graph:

Figure C.6. **Average time (in months)**



*Post-2015 cases only concern cases started and closed during 2016 or 2017.

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

	2016	2017
Attribution/Allocation cases	34.38	22.31
Other cases	19.12	10.29
All cases	22.17	13.02

192. The stage 1 peer review report of the Netherlands analysed the 2016 statistics and showed an average of 22.02 months. It was on that basis concluded that it closed MAP cases within the pursued average of 24 months. However, there was also a discrepancy identified between attribution/allocation cases and other MAP cases, as for attribution/allocation cases it took the Netherlands more than 24 months to resolve them, for which it was concluded that this may indicate that additional resources specifically dedicated to attribution/allocation cases may be necessary to accelerate their resolution.

193. With the final submission of the 2016 statistics, however, the average time to resolve MAP cases was slightly modified, which numbers are shown in the above table.[8] The 2017 statistics show that the Netherlands decreased the average completion time of MAP cases to 13.02 months, resulting in an average for both years of 15.63 months. In particular, the Netherlands successfully decreased the average completion time for attribution/allocation case to be below 24-months. As analysed in element C.2, the MAP inventory of the Netherlands, however, substantially increased since 1 January 2016. This can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2016/ Start inventory on 01/01/2017	Cases started	Cases closed	End inventory on 31/12/2017	Evolution of total MAP caseload over the two years (2016+2017)
Attribution/ allocation cases	106	24	14	116	42	40	118	11%
Other cases	155	88	56	187	181	136	232	50%
Total	261	112	70	303	223	176	350	34%

194. The increase in the number of MAP cases with 34% (89 cases) mainly regards other cases, which increased by 50% (77 cases). This indicates that more resources may be necessary to cope with this increase and to ensure that for the current and future MAP cases the Netherlands continues to resolve them within the pursued average of 24 months.

Peer input

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

195. Peers that provided input to the Netherlands' compliance with the Action 14 Minimum Standard reported a good working relationship with its competent authority. This concerns both peers that have a large MAP inventory with the Netherlands as well as peers with a relatively modest MAP inventory.

196. In terms of communications during the MAP process, peers indicated that the contacts with the Netherlands' competent authority are frequent and via different channels, such as written correspondence, telephone and e-mail. Its competent authority is considered easily accessible and no problems were reported as regards contacting the Netherlands' competent authority. In fact, a number of peers reported that contact details of staff in charge of the particular MAP case are indicated in the relevant documents. One peer particularly stated that the Netherlands is very easy to contact and that communication is fluid and timely. Furthermore, two peers, for whom the MAP relationship is important also specified that at regular interval face-to-face meetings are scheduled to discuss pending MAP cases, one of them noting that these generally take place twice a year. Other peers, which have less pending MAP cases also mentioned that face-to-face meetings with the Netherlands are held, most of them noting that such meetings are held at least once a year.

197. On the material side of handling MAP cases, peers generally reported that the Netherlands is responsive in their communications. One peer particularly noted that the Netherlands is focused on finishing pending cases in a timely manner and another commented on how the use of email and phone calls has improved the timeliness of resolving MAP cases. Other peers commented that they considered that there were no impediments to the MAP process and that they had a positive experience dealing with the Netherlands' competent authority. They all considered that the Netherlands promptly answers questions through different means of communication and have been efficient in handling and resolving MAP cases. One peer specifically mentioned that the Netherlands competent authority was always prompt and responsive and consistently meets promised due dates. It also mentioned it has consistently worked together with the Netherlands' competent authority to resolve MAP cases in a timely and principled manner. It specifically noted that their past MAP inventory consisted of a number of complex technical and factual issues on which their competent authorities were able to resolve MAP cases in a principled manner.

198. Further to the above, as regards the resolution of cases, one peer mentioned that discussions are carried out in an efficient manner, as also that the Netherlands' competent authority was keen to finish pending cases in a timely manner, such via promptly answering to questions raised and through different means of communications. This input was echoed by a second peer, who mentioned that the Netherlands is co-operative and responsive, as well as that dealings with its competent authority was professional and efficient. This peer also mentioned it was satisfied with the timeliness of the resolution of the pending MAP case. A third peer mentioned that the Netherlands is collaborative and solution-orientated, which in the peer's view is a sound basis for discussing and resolving MAP cases, which all have been solved within 24 months. Another peer provided similar input, thereby also stressing that the Netherlands' competent authority has been receptive to discussing cases and attempting to reach solutions. Lastly, one peer mentioned that it values its MAP relationship with the Netherlands, whereby a long pending dispute was resolved in 2014. This peer also mentioned that it has observed that the Netherlands has deployed adequate resources to the MAP function.

199. Three peers also voiced some criticism on their experiences with the Netherlands in resolving MAP cases. One of these peers mentioned that its experiences with the Netherlands has been limited. As regards APA cases, the peer stated that Netherlands' competent authority has been very responsive and communication was prompt and effective, but as regards non-attribution/allocation cases it has not received any response to communications, which led to frustrations for the individual taxpayer that submitted the MAP request. The second peer responded that while communications via email are without any difficulty, cases take a long time to resolve with the Netherlands because both competent authorities take a long time to react to each other's positions. It also mentioned that position papers issued by the Netherlands competent authority are very short and not always complete from the peer's perspective. The third peer was one of the peers for which the input was already reflected above, and which is positive as regards the communications and the willingness of the Netherlands to resolve cases. This peer, however, noted that meeting targeted timeframes for *inter alia* issuing position papers is often challenging, whereby the Netherlands' competent authority as also that of itself do not always meet these targets, albeit that in most cases progress is made in a reasonable time.

200. In regard of the above, peers generally reported no items for improvement regarding providing adequate resources for the MAP function in the Netherlands. One peer mentioned that it believes that the two competent authorities can uphold their shared commitments under the Action 14 Minimum Standard by continuing, and fostering, consistent, direct

communications at the analyst and management level, with a view to improve the efficiency with which cases are resolved. It also mentioned that an increased use of telephone calls, for example, would be helpful in this respect. Two other peers provided for suggestions for improvement, one of them stating that an increased communication and correspondence with respect to MAP cases would be beneficial, and the other suggested that more resources should be attributed to the resolution of MAP cases.

Period 1 January 2017-31 December 2017 (stage 2)

201. Most peers that provided input during stage 1 stated in stage 2 that the update report provided by the Netherlands fully reflects their experience with the Netherlands since 1 January 2017 and/or there are no additions to the previous input given. Six peers provided specific input on their experiences with the Netherlands concerning the resolution of MAP cases since that date.

202. One peer mentioned that during stage 1 it noted that there was a lack of communication with respect to MAP cases. This peer noted that since 1 January 2017 such communication has improved and that all pending MAP cases were resolved. Furthermore, another peer mentioned that its pending MAP cases with the Netherlands are resolved in a timely and efficient way. This peer also pointed to the fact that it has a specific type of other MAP cases that regularly occur and which can be resolved quickly. Concerning attribution/allocation cases, this peer reported that their resolution is facilitated through several means of communications as well as via a compromised and solution-orientated approach. Similar input was given by another peer, who mentioned that it continues to have a positive and good working relationship with respect to the timely resolution of MAP cases with the Netherlands. It particularly noted that the Netherlands' competent authority continues to be professional and efficient.

203. Further to the above, one peer mentioned that during 2017 a face-to-face meeting was scheduled through which several cases could be resolved, as also that another such meeting is foreseen for 2018. Another peer provided similar input and noted that for attribution/allocation cases a face-to-face meeting was organised in 2017, with a view to reduce the number of pending MAP cases, and through which several cases were resolved. For other MAP cases, the peer noted that several cases were closed since 1 January 2017.

204. Lastly, one peer specified that it considers the MAP relationship with the Netherlands to be strong and that the use of emails, teleconferencing and face-to-face meetings have proved to be very useful in achieving to a timely resolution of MAP cases. It also noted that the Netherlands is a principled treaty partner, but is willing to be pragmatic to seek in attribution/allocation cases an equitable arm's length outcome. The peer further mentioned that the Netherlands' competent authority proactively engages in MAP discussions, such for example, by sending a position paper in respect of a case where the adjustment was made at the level of the peer. The peer also presented the example where the Netherlands constructively engaged with its competent authority to resolve a potential dispute of a sensitive nature. Specifically regarding the corporate tiebreaker MAP cases, the peer mentioned that the delegation of the competent authority function to the APA/ATR team has gone well from the peer's perspective. The peer highlighted that nearly all such cases are resolved within the agreed timeframe of six months, albeit that in one case the APA/ATR team considered they had the necessary authority to deal with the case and therefore referred the case back to the Ministry of Finance. The Netherlands responded to this latter input and specified that the case under review concerned a request for the determination of a taxpayer's corporate residence in advance. Since such cases are not MAP cases and are

not within the mandate of the APA/ATR team, the Netherlands reported that the case was for that reason correctly referred to the Ministry of Finance. Furthermore, since the taxpayer did not proceed with its request, there was no need to resolve the case in question with the relevant peer.

Anticipated modifications

205. The Netherlands indicated it would review whether the delegated competence for corporate tiebreaker MAP cases was formally further mandated to the APA/ATR-team of the Netherlands' tax administration. This mandate will be further arranged to ensure these MAP cases are handled by this team within the legal framework of the delegated competent authority.

Conclusion

	Areas for improvement	Recommendations
[C.3]	The MAP caseload, particular regarding other cases, has increased substantially since 1 January 2016. While actions have been taken and more resources have been allocated to resolve MAP cases, which resulted in a significant higher amount of MAP cases resolved, the increase in the MAP inventory indicates that the competent authority may not be adequately resourced to cope with this increase.	The Netherlands should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner, particularly to cope with the significant increase in the number of other MAP cases.

[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.

206. 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 at issue or absent any policy considerations, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

207. The Netherlands reported that staff in charge of MAP has the authority to resolve the MAP cases in accordance with the terms of the applicable treaties and that it can enter into MAP agreements without approval of any department other than the competent authority. It is common practice for the Netherlands' competent authority to consult personnel within the Netherlands tax administration on the initial position taken in a certain case (e.g. the rationale behind a transfer pricing adjustment). This initial position, however, is not binding for staff in charge of MAP when preparing position papers, discussing cases and entering into MAP agreements. Specifically with respect to attribution/allocation cases, the Netherlands reported that the Coordination Group on Transfer Pricing of the Netherlands tax administration ("**CGTP**") of the Netherlands tax administration advises the competent

authority when assessing a MAP request and preparing a position paper. The CGTP is within the Netherlands' tax administration responsible for co-ordinating transfer pricing matters and for enforcing the Netherlands' transfer pricing legislation.

208. Nevertheless, the Netherlands reported that in all cases, its competent authority makes for each case under review an individual assessment on how to handle the case and is not dependent on the approval or the directions of the tax administration personnel directly involved in the adjustments at issue or any other government institution, nor is it influenced by policy considerations, when entering into MAP agreements. However, as will be discussed under the peer input below, regarding attribution/allocation cases, audit personnel of the Netherlands' tax administration (often) attend competent authority meetings and participate in discussions to resolve MAP cases. While this may not per se cause its competent authority to enter into MAP agreements dependent on the approval or direction of the personnel of the Netherlands' tax administration directly involved in the adjustment, there is a risk that this personnel is or becomes involved in the decision-making process or that it could be perceived by treaty partners that the Netherlands' competent authority is dependent on approval or direction of this personnel.

209. Further to the above, as previously discussed under element C.3, the Director Large Enterprises of the Netherlands' tax administration is the delegated competent authority for handling MAP cases relating to disputes on residence status of corporate taxpayers. In practice, it is the APA/ATR team that handles such cases and which falls within the Directorate Large Enterprises. As the Directorate Large Enterprises includes the audit department of the Netherlands tax administration, there is no full assurance that the APA/ATR-team of the Netherlands' tax administration can operate separately from the tax administration personnel directly involved in the adjustments at issue.

Recent developments

210. In the stage 1 peer review report of the Netherlands it was concluded that with respect to attribution/allocation cases there is a close relationship between the Netherlands' competent authority and the CGTP in handling and resolving MAP cases, for which a minor risk was identified that personnel of the Netherlands tax administration directly involved in the adjustment at issue, are or become involved in the decision-making process. For this reason the Netherlands was recommended to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue. In follow-up to this recommendation, the Netherlands reported that at the level of the CGTP country-co-ordinators for auditors/members were introduced by the end of 2016. These co-ordinators are tasked to oversee all attribution/allocation MAP cases with a specific treaty partner, act as a liaison between the auditors at the local tax offices and the Ministry of Finance and guards the quality and consistency in handling MAP cases with each treaty partner. Their role is also to objectively and independently review the case under review and render an adviser to the Ministry of Finance. The Netherlands further reported that an internal guidance note has been authorised that details the co-operation between the competent authority and the CGTP, the respective roles and responsibilities, as also the necessary steps to be taken in MAP cases where members of the CGTP were directly involved in the adjustment at issue. In case of the latter, specific measures are put in place to avoid that the country-co-ordinator becomes involved in the MAP discussions. These are that:

- If a country-co-ordinator or a member of the CGTP was directly involved in the adjustment at issue in a MAP case, this will be notified to the competent authority. The competent authority will then decide whether a different person than the country-co-ordinator will be assigned to the case to render advise throughout the MAP process.
- The attending of a country-co-ordinator or a member of the CGTP, which was directly involved in the adjustment at issue in a MAP case, during a face-to-face meeting will in advance be communicated to the other competent authority concerned. The co-ordinator respectively the member will only attend the meeting for fact-finding purposes. If during the course of the meeting the other competent authority requests that the co-ordinator/member leaves the meeting, such request will be respected.

211. Further to the above, the Netherlands reported that the number of attribution/allocation cases for which the underlying adjustment is made by the Netherlands' tax administration is fairly low, as the majority of cases concern an adjustment made at the level of the treaty partner. In other words, the number of cases where these measures are to be effectively used are relatively little. In any case, with the introduction of these measures and the rules put in place, the Netherlands has followed-up the recommendation made and there is now sufficient guarantee that its competent authority can in all cases operate independently and take decisions in MAP cases without being dependent on the approval or direction of the tax administration personnel who made the adjustments at issue.

212. Concerning the handling of corporate tiebreaker MAP cases, the stage 1 peer review report concluded that the delegation to handle such cases to the Director Large Enterprises of the tax administration bears the risk that the tax administration personnel directly involved in the adjustments at issue and the decision making process of handling these MAP cases become intertwined and as such may influence the process of resolving these cases. For this reason the Netherlands was recommended to: (i) ensure that corporate tiebreaker MAP cases are handled by personnel that have the authority to resolve these cases without being dependent on the approval or the direction of the tax administration personnel directly involved in the adjustments at issue and (ii) follow-up its stated intention to analyse whether the team that handles these MAP cases in practice also is within the legal framework of the delegated competent authority and make (legal) changes, if necessary. In this respect, the Netherlands reported that it has in 2017 further mandated the competent authority function for handling corporate tiebreaker cases to the APA/ATR team within the Netherlands tax administration. With the issuing of this delegation order, the recommendation has been followed-up and the risk of intertwining of the competent authority function and the audit function has been mitigated.

Practical application

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

213. Peers that provided input generally reported no impediments in the Netherlands 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, however, noted that the Netherlands' competent authority occasionally gets in touch with the relevant auditors from the Netherlands' tax administration during competent authority meetings, and also attends these meetings. Other peers noted that they considered that the personnel in the Netherlands' competent authority department have sufficient authority to resolve MAP cases.

Period 1 January 2017-31 December 2017 (stage 2)

214. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Netherlands fully reflects their experience with the Netherlands since 1 January 2017 and/or there are no additions to the previous input given.

Anticipated modifications

215. The Netherlands did not indicate that it expected any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

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

Performance indicators used by the Netherlands

217. The Netherlands reported that it strives at resolving MAP cases within an average of 24 months. As of 2016 a framework is in place to monitor for each case the time necessary to resolve such cases. This framework also measures the time between the receipt of a MAP request and the sending of a position paper to the other competent authority. While this information is being measured, it is not being used as a target or performance indicator of staff in charge of MAP. In general, the performance of staff in charge of MAP is based on general performance indicators that apply to all personnel within the Ministry of Finance and within the entire Netherlands' government.

218. The Action 14 Final Report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These are:

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

219. In this respect, the Netherlands reported they do not use any of these performance indicators to evaluate its staff in charge of MAP processes. It further mentioned that it also does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue.

Recent developments

220. There are no recent developments for element C.5.

Practical application

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

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

Period 1 January 2017-31 December 2017 (stage 2)

222. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Netherlands fully reflects their experience with the Netherlands since 1 January 2017 and/or there are no additions to the previous input given.

Anticipated modifications

223. The Netherlands did not indicate that it expected any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

224. 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

225. The Netherlands reported that there are no domestic law limitations for including MAP arbitration provisions in tax treaties. In fact, since the 1990s the Netherlands' tax treaty policy is to incorporate a (mandatory and binding) arbitration procedure as a supplement to MAP for the resolution of tax treaty related disputes. This policy is specified

in paragraph 2.17 of the Memorandum on the Netherlands' tax treaty policy of 11 February 2011, as well as in paragraph 1.2.2 of its MAP guidance. These documents stipulate that the policy of the Netherlands is to incorporate an arbitration clause based on article 25(5) of the OECD Model Tax Convention in all of its tax treaties.

226. Furthermore, the Netherlands is a signatory to the EU Arbitration Convention and has adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive needs to be implemented in the Netherlands' domestic legislation as per 1 July 2019.

227. In addition, the Netherlands also was actively involved in the past in developing the arbitration provision currently included in Article 25(5) of the OECD Model Tax Convention.

Recent developments

228. Since 1 January 2017 the Netherlands signed a treaty with a treaty partner for which currently no treaty is in existence. This treaty contains an arbitration provision that is modelled after Article 25(5) of the OECD Model Tax Convention and is included in the specification below.

229. Furthermore, the Netherlands signed the Multilateral Instrument and has deposited its instrument of ratification on 29 March 2019. The Multilateral Instrument will for the Netherlands enter into force on 1 July 2019. With the signing of that instrument, the Netherlands also opted for part VI, which includes a mandatory and binding arbitration provision. The effect of this opting in is also further discussed below.

Practical application

230. The Netherlands has incorporated arbitration clauses in 42 tax treaties. These 42 arbitration clauses can be specified as follows:

- In 14 treaties the arbitration clause is based on Article 25(5) of the OECD Model Tax Convention.[9]
- In 28 treaties the arbitration clause provides for a voluntary and binding arbitration procedure.

231. Furthermore, the Netherlands has included in four treaties a most-favoured nation clause concerning the inclusion of an arbitration provision. In one treaty this concerns the automatic inclusion of such provision, whereas in three treaties this concerns entering into negotiations for the inclusion of an arbitration provision, should the Netherlands' treaty partner include an arbitration provision in a tax treaty with a third state. The Netherlands reported that for these four treaties the relevant conditions have since 1 January 2017 not been fulfilled.

232. With respect to the effect of part VI of the Multilateral Instrument on the Netherlands' tax treaties, there are next to the Netherlands in total 28 signatories to this instrument that also opted for part VI. Concerning these 28 signatories, the Netherlands listed 19 as a covered tax agreement under the Multilateral Instrument and all of these 19 treaty partners also listed their treaty with the Netherlands under that instrument.

233. For these 19 treaties, the Netherlands has already included an arbitration provision in six treaties. For three of these six treaties the Netherlands has, pursuant to Article 26(4), reserved the right not to replace the arbitration provision with part VI of the Multilateral

Instrument. For the three other treaties, the Netherlands reported that it expects that part VI of the Multilateral Instrument will replace the existing arbitration provisions.

234. For the remaining 13 tax treaties, the Netherlands reported it expects that part VI of the Multilateral Instrument will apply and introduce a mandatory and binding arbitration procedure in 12 treaties.

Anticipated modifications

235. The Netherlands did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to fiscal year 2017.
2. Available at: http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. The statistics made available on the website of the EU Joint Transfer Pricing forum are up to fiscal year 2016.
3. For post-2015 cases, if the number of MAP cases in the Netherlands' inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five, the Netherlands' reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
4. For pre-2016 and post-2015 the Netherlands follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that "an attribution allocation MAP case is a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case."
5. In the stage 1 peer review report of the Netherlands, the reported number of pending MAP cases as per 1 January 2016 was 254 cases, consisting of 110 attribution/allocation cases and 144 other cases. With the submission of the 2017 MAP statistics this number has been changed into 261 pending cases, consisting of 106 attribution/allocation cases and 155 other cases. The corrected figures are taken into account in this version of the peer review report. Reference is made to Annex B for an overview.
6. This concern cases where a person, other than an individual, is considered a resident of both contracting states and whereby the competent authorities shall determine by mutual agreement of which state that person shall be deemed to be a resident for the purposes of the applicable tax treaty.

7. Decree of the Netherlands State Secretary of Finance of 12 November 2015 (IZV/2015/832). Available at: https://zoek.officielebekendmakingen.nl/stcrt-2015-41010 (accessed on 10 September 2017).

8. The initial reported MAP statistics by the Netherlands for 2016 showed an average time to close MAP cases of 22.20 months.

9. These 14 treaties include the treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the OECD Model Tax Convention. Therefore these were also taken into account.

References

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

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

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

236. 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

237. The Netherlands reported that it will implement all agreements reached in MAP discussions regardless of whether the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) is contained, requiring that all MAP agreements are implemented notwithstanding domestic remedies. Although not all of the Netherlands' tax treaties contain this second sentence, the Netherlands reported that there is no domestic statute of limitation for implementing MAP agreements.

238. In practice, the Netherlands' tax administration will implement MAP agreements via an official reduction of the taxable amount in the tax assessment. In principal the tax administration has a five year period to make such reduction in a given tax assessment. However, pursuant to paragraph 6.1 of the Decree of the Netherlands State Secretary of Finance of 10 December 2009 (CPP2009/2461M) such time limit is waived for implementing MAP agreements, as under this paragraph the period of five years may be extended for implementing such agreements. As reiterated in paragraph 6.2 of the decree, the Netherlands will implement all MAP agreements reached and makes appropriate adjustments to the tax assessed in transfer pricing cases, if required.

239. With respect to taxpayers' position regarding the implementation process of MAP agreements, the Netherlands reported that it allows the taxpayer concerned to either accept or reject the outcome of a MAP. This applies both to agreements reached as the result of the MAP, as also to any agreements reached following the decision of an arbitration panel as a final stage to the MAP. In case of a rejection, the MAP agreement would not be implemented and the taxpayer is at liberty to pursue domestic remedies, if still available. In case of acceptance, taxpayers are required to withdrawn from such remedies, if pending.

240. The process, however, is different if the agreement is reached after the arbitration procedure under the EU Arbitration Convention. Under this convention, if the competent authorities are unable to reach agreement within a period of two years, they are obliged to establish an advisory commission that has to render an opinion on the case under review within six months. Subsequently, within six months of receiving the commission's advice

the competent authorities concerned must take a final decision on the case that eliminates double taxation. The measures taken by the competent authorities may differ from the advisory commission's opinion, but they must in all cases result in double taxation being eliminated. If the competent authorities cannot reach such final decision, the advisory commission's opinion will become binding on the competent authorities. In this respect, the Netherlands has included in paragraph 7.1 of its MAP guidance that taxpayers are in such situation considered to be bound by the opinion as well. Consequently, such binding opinion will be implemented by the Netherlands regardless of the taxpayer's acceptance.

Recent developments

241. There are no recent developments for element D.1.

Practical application

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

242. The Netherlands reported that all MAP agreements reached since 1 January 2014 and once accepted by taxpayers have been (or will be) implemented and that it is not aware of any MAP agreements that were not implemented in the period 1 January 2014-31 December 2016. The Netherlands, however, reported it has no mechanism in place that keeps track of the actual implementation of all MAP agreements.

243. All peers that provided input reported not being aware of any impediments to the implementation of MAP agreements in the Netherlands in the period 1 January 2014-31 December 2016. One peer, however, mentioned it has not reached a MAP agreement with the Netherlands that required an implementation during this period. Furthermore, one peer specifically mentioned that in its impression MAP agreements (before the look-back period) have been implemented timely and correctly.

Period 1 January 2017-31 December 2017 (stage 2)

244. The Netherlands reported that all MAP agreements that were reached on or after 1 January 2017, once accepted by taxpayers, have been (or will be) implemented and that there were no cases where such agreements were not implemented.

245. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Netherlands fully reflects their experience with the Netherlands since 1 January 2017 and/or there are no additions to the previous input given. Two peers, however, reported that since 1 January 2017 there were no MAP agreements reached with the Netherlands that required an implementation. Furthermore, one peer specified that it is not aware of any MAP agreement that has not been implemented by the Netherlands since 1 January 2017, whereas another peer noted that the seven MAP agreements it entered into with the Netherlands since that date have all been implemented.

Anticipated modifications

246. As discussed under element C.2, the internal registration and monitoring system for MAP cases is currently in the process of being revised to include alerts for necessary actions and upcoming deadlines in the MAP process. One of these alerts regards the required communication with the tax administration once a MAP case is closed. In more detail, the Netherlands specified that the case handler that closes a MAP case will then also be alerted to check whether the tax administration has been informed of the MAP agreement reached.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

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

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

247. 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

248. The Netherlands reported that its competent authority presents the MAP agreement reached to the taxpayer concerned in writing as soon as possible. Subsequently, the taxpayer must notify (in writing) the competent authority about whether he accepts this agreement, after which instructions will be sent to the tax administration for implementation of the agreement. While the Netherlands further reported that its domestic legislation and/or administrative framework does not include a timeline for implementation of MAP agreements reached, it also indicated that MAP agreements are implemented within a reasonable period.

Recent developments

249. There are no recent developments for element D.2.

Practical application

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

250. The Netherlands reported that all MAP agreements reached in the period 1 January 2014-31 December 2016, once accepted by taxpayers, have been (or will be) implemented on a timely basis and that no cases of noticeable delays have occurred.

251. All peers that provided input reported not being aware of any impediments in the period 1 January 2014-31 December 2016 concerning to the implementation of MAP agreements in the Netherlands on a timely basis.

Period 1 January 2017-31 December 2017 (stage 2)

252. The Netherlands reported that all MAP agreements that were reached on or after 1 January 2017, once accepted by taxpayers, have been (or will be) implemented on a timely basis.

253. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Netherlands fully reflects their experience with the Netherlands since

1 January 2017 and/or there are no additions to the previous input given. One peer noted that the seven MAP agreements it entered into with the Netherlands since 1 January 2017 have all been implemented and that no highlighted delays have occurred regarding their implementation.

Anticipated modifications

254. The Netherlands did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

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

Legal framework and current situation of the assessed jurisdiction's tax treaties

256. As discussed under element D.1, the Netherlands has, pursuant to its domestic legislation, no statute of limitations for implementing MAP agreements.

257. Out of the Netherlands' 93 tax treaties, 70 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.[1] Furthermore, one treaty does not contain such equivalent, but contains in the MAP article an alternative provision that limits the time during which a contracting state can make a primary adjustment. This provision is considered equivalent to the alternative treaty provisions for Article 9(1) and Article 7(2) setting a time limit for making primary adjustments.

258. For the remaining 22 treaties the following analysis is made:[2]

- 19 contain neither the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention nor the alternative provisions provided for in Article 9(1) and 7(2), setting a time limit for making primary adjustments

- One treaty contains the second sentence of Article 25(2) of the OECD Model Tax Convention, but this provision 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"). This treaty therefore is considered not having the full equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention
- One treaty stipulate that the contracting states are not obliged to implement a MAP agreement reached after the expiration of five years, calculated as from the end of the taxable year in issue. As this treaty provision puts a time limitation on the implementation of MAP agreements, it is considered not being equivalent to Article 25(21), second sentence, of the OECD Model Tax Convention
- One treaty contains a variation to the provision of Article 25(2), second sentence, of the OECD Model Tax Convention where the actual implementation of a MAP agreement is dependent on the notification of a MAP request to the other competent authority involved within a certain term. As this notification requirement may cause that a MAP agreement cannot be implemented, the treaty therefore is considered not having the full equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

259. Of the 21 peers that provided input, 12 indicated that their treaty with the Netherlands already is in line with the requirements under the Action 14 Minimum Standard, including element D.3. Furthermore, one mentioned that its treaty with the Netherlands meets part of the requirements under this standard, which also concerns element A.1.

260. With respect to the 22 treaties identified above that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternative provisions, seven provided input. Two other peers also mentioned that their treaty with the Netherlands does not meet all requirements under this standard, including element D.3, but that they recently renegotiated the applicable treaty and the new treaty will meet all requirements. Furthermore, two peers are part of the 12 treaty partners mentioned above who considered that their treaty with the Netherlands is in line with the requirements under the Action 14 Minimum Standard. One of these peers, however, noted that the treaty language differs from the OECD Model Tax Convention regarding element D.3. The fifth peer did not provide for a further indication of the status of its tax treaty with the Netherlands in light of the Action 14 Minimum Standard, but only mentioned its choices under the Multilateral Instrument. Of the remaining two peers, one acknowledged that its treaty with the Netherlands is not in line with the requirements under element D.3, but both did not further specify whether any actions were taken to amend the treaty with a view to meet the requirements under this element.

Recent developments

Bilateral modifications

261. The Netherlands signed a new treaty with one treaty partner, for which currently no treaty is in existence. This treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. The effect of this new treaty has been reflected in the analysis above.

Multilateral Instrument

262. The Netherlands signed the Multilateral Instrument and has introduced it in its parliament on 19 December 2017. After the ratification process was completed, the Netherlands deposited its instrument of ratification on 29 March 2019. The Multilateral Instrument will for the Netherlands enter into force on 1 July 2019.

263. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Article 16(4)(b)(ii) of the Multilateral Instrument does will for a tax treaty not take effect if one or both of the treaty partners has, pursuant Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

264. In regard of the 22 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), the Netherlands listed 20 as a covered tax agreement under the Multilateral Instrument and for 18 did it make a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 18 treaty partners, four are not a signatory to the Multilateral Instrument, whereas two made a reservation on the basis of Article 16(5)(a).[3] All remaining treaty 12 partners also made a notification on the basis of Article 16(6)(c)(ii). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these treaties, modify 12 of the 22 treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.[4]

Other developments

265. With respect to the remaining ten treaties identified above as not being in line with element D.3 and that will not be modified by the Multilateral Instrument, the Netherlands reported that it is currently in negotiations with five treaties partners on the amendment of the existing tax treaty and that it has approached in 2017 and 2018 three treaty partners to initiate negotiations on the amendment of the existing treaty, which *inter alia* also relates to the inclusion of the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Furthermore, the Netherlands reported that it has been notified by one treaty partner that it will update its notifications under the Multilateral Instrument, following which the treaty will be in line with the requirements under element D.3.

Peer input

266. Of the peers that provided input during stage 2, six provided input in relation to their tax treaty with the Netherlands. Four of these peers are signatory to the treaty with the Netherlands that is considered not to be in line with the requirements under element D.3. Two mentioned that it has finalised negotiations with the Netherlands on the replacement of the existing treaty, the content of which will be meet the requirements under this element. Another peer provided similar input, albeit that with this treaty partner the negotiations on the replacement of the existing treaty is still pending. The fourth peer mentioned that it is currently examining internal measures to align its domestic provisions to the Action 14 Minimum Standard, after which it will pursue bilateral contacts, which also comprises the Netherlands.

267. Concerning the two other peers for which the treaty is considered to be in line with the requirements under element D.3, they did not provided specific input on this element.

Anticipated modifications

268. For the remaining treaty that is considered not to be in line with element D.3, is the treaty with the former USSR that the Netherlands continues to apply to Tajikistan and for which such negotiations are not necessary. Regardless, the Netherlands reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention in all of its future treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	22 out of 93 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor the alternative provisions provided for in Article 9(1) and Article 7(2).). Of those 22 treaties: • 12 are expected to be modified by the Multilateral Instrument to include the required provision • One will be modified by the Multilateral Instrument once the treaty partner has updated its notifications under that instrument • Nine will not be modified by that instrument to include the required provision. With respect to these nine treaties: - Eight are included in the list of treaties for which negotiations are envisaged, scheduled or pending. - For the remaining treaty no actions have been taken or are planned to be taken.	For eight of the remaining nine 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, the Netherlands should continue negotiations with these treaty partners to include the required provision or be willing to accept the inclusion of both alternatives Specifically with respect to the treaty with the former USSR that continues to be applied to Tajikistan and the treaty with the former Yugoslavia that is continued to be applied to Bosnia and Herzegovina, Montenegro, and Serbia, the Netherlands should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.

Notes

1. These 70 include the taxing arrangement within the Kingdom of the Netherlands that is continued to be applied to Aruba, and treaties with Curacao and Sint Maarten. These latter are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the OECD Model Tax Convention. The same applies with respect to the 1964 taxing arrangement within the Kingdom of the Netherlands that is continued to applied to Aruba. Therefore these were also taken into account.

   In the stage 1 peer review report, it was described that 67 of the Netherlands tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Following the peer review process of other assessed jurisdictions and a re-analysis of the Netherlands' tax treaty network (including newly signed treaties or amending protocols), however, it follows that this should be 70 treaties.

2. These 22 treaties include the treaty with former Czechoslovakia that the Netherlands continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR the Netherlands continues to apply to Tajikistan and the treaty with former Yugoslavia that the Netherlands continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia.

   In the stage 1 peer review report, it was described that 25 of the Netherlands' tax treaties do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Following the peer review process of other assessed jurisdictions and a re-analysis of the Netherlands' tax treaty network (including newly signed treaties or amending protocols), however, it follows that this should be 22 treaties.

3. These four treaty partners include Tajikistan for which the Netherlands continues to apply treaty with the former USSR.

4. These 12 treaties include the treaty with former Czechoslovakia that the Netherlands continues to apply to the Czech Republic and the Slovak Republic, such for both treaty partners. These 12 treaties also include the treaty with former Yugoslavia that the Netherlands continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, but only as regards Serbia, because Bosnia and Herzegovina, Kosovo and Montenegro are not signatories to the Multilateral Instrument.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Two out of 93 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these two treaties: • One is expected to be modified by the Multilateral Instrument to contain the required provision • One will not be modified by that instrument to contain the required provision, but for this treaty negotiations are being initiated with a view to include the required provision.	For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention following its entry into force, the Netherlands should continue the current pending negotiations with a view to include the required provision in this treaty.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	11 out of 93 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report or as amended by that final report. Of these 11 tax treaties: • Four are expected to modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. • Seven will not be modified or superseded by that instrument to include the required provision. With respect to these seven treaties: - Six are included in the list of treaties for which negotiations are envisaged, scheduled or pending - For the remaining treaty no actions have been taken but will be taken once the other negotiations have been finalised.	For the remaining seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, the Netherlands should: • Continue the current pending negotiations, or initiate the planned negotiations with six treaty partners with a view to include the required provision in this treaty. • Follow its stated intention to request the inclusion of the required provisions in the remaining treaty once the other negotiations have been finalised. For all seven treaties this concerns either a provision that is equivalent to Article 25(1), first sentence of the 2015 OECD Model Tax Convention as it read prior to or as amended in the Action 14 final report.
	Five out of 93 tax treaties do not contain a provision based on Article 25(1), second sentence, of the OECD Model Tax Convention, allowing 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. Of these five treaties: • Two are expected to modified by the Multilateral Instrument to include the required provision. • Three will not be modified by that instrument to include the required provision. With respect to these three treaties: - Two are included in the list of treaties for which negotiations are envisaged, scheduled or pending - For the remaining treaty no actions have been taken, but will be taken once the other negotiations have been finalised.	For the remaining three treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention the Netherlands should: • Continue the current pending negotiation with two treaty partners with a view to include the required provision in this treaty. • Follow its stated intention to request the inclusion of the required provisions in the remaining treaty once the other negotiations have been finalised.

	Areas for improvement	Recommendations
[B.1]	One out of 93 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report or as amended by that final report, and also not the second sentence, allowing 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. This treaty is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, but not as regards the first sentence of that article. For the first sentence, negotiations are envisaged, scheduled or pending.	With respect to the first sentence of Article 25(1) of the OECD Model Tax Convention, the Netherlands should continue the current pending negotiations to include the required provision for this treaty. This concerns a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to or as amended in the final report on Action 14.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	Six out of 93 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these six treaties: • Four are expected to be modified by the Multilateral Instrument to contain the required provision • Two will not be modified by that instrument to contain the required provision but for these treaties negotiations are currently pending with a view to include the required provision.	For the remaining two 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 following its entry into force, the Netherlands should continue the current pending negotiations with a view to include the required provision in these two treaties.
[B.8]	-	-
[B.9]	-	-
[B.10]	MAP guidance does not include information on the relationship between MAP and audit settlements.	The Netherlands should without further delay include in its MAP guidance a section clarifying the relationship between access to MAP and audit settlements, thereby stating that audit settlements do not preclude access to MAP.
Part C: Resolution of MAP cases		
[C.1]	-	-
[C.2]	-	-
[C.3]	The MAP caseload, particular regarding other cases, has increased substantially since 1 January 2016. While actions have been taken and more resources have been allocated to resolve MAP cases, which resulted in a significant higher amount of MAP cases resolved, the increase in the MAP inventory indicates that the competent authority may not be adequately resourced to cope with this increase.	The Netherlands should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner, particularly to cope with the significant increase in the number of other MAP cases.
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-

	Areas for improvement	Recommendations
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-
[D.3]	22 out of 93 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor the alternative provisions provided for in Article 9(1) and Article 7(2).). Of those 22 treaties: • 12 are expected to be modified by the Multilateral Instrument to include the required provision • One will be modified by the Multilateral Instrument once the treaty partner has updated its notifications under that instrument • Nine will not be modified by that instrument to include the required provision. With respect to these nine treaties: - Eight are included in the list of treaties for which negotiations are envisaged, scheduled or pending. - For the remaining treaty no actions have been taken or are planned to be taken.	For eight of the remaining nine 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, the Netherlands should continue negotiations with these treaty partners to include the required provision or be willing to accept the inclusion of both alternatives Specifically with respect to the treaty with the former USSR that continues to be applied to Tajikistan and the treaty with the former Yugoslavia that is continued to be applied to Bosnia and Herzegovina, Montenegro, and Serbia, the Netherlands should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.

Annex A

Tax treaty network of the Netherlands

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

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	**Column 2**	**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority	Is Art. 25(1), second sen-tence included? If no, please state reasons		Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MTC?	Is Art. 25(3) first sen-tence included?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provsion?	
Austria	Y	N	i	N/A	i**	i	Y	N*	Y	Y	N	N/A
Azerbaijan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Bahrain	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Bangladesh	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Barbados	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Belarus	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belgium	Y	O	Y	N/A	Y	i	Y	Y	Y	N	N	N/A
Bermuda	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	iii
Bosnia and Herzegovina	Y	O	ii	5-years	i	i	Y	N	Y	Y	N	N/A
Brazil	Y	O	ii	5-years	i	i	Y	N	Y	N	N	N/A
Bulgaria	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Canada	Y	O	ii*	2-years	i	i	Y	iii	Y	Y	Y	iii
China (Peoples' Republic of)	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Croatia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Curaçao	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Czech Republic	Y	N*	i	N/A	i	i	Y	N*	Y	Y	N	N/A
Denmark	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Egypt	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii

		Article 25(1) of the OECD Model Tax Convention ("MTC")				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC			Article 25(3) of the OECD MTC		Arbitration	
				B.1		B.3	B.4	C.1	D.3		A.1	B.7	C.6	
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		If yes, submission to either competent authority	If no, please state reasons			If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC?						
Estonia	Y	O*	Y	N/A	Y	i	Y	Y		Y	Y		Y	iii
Ethiopia	Y	O	Y	N/A	Y	i	Y	Y		Y	Y		Y	i
Finland	Y	O*	Y	N/A	Y	i	Y	Y		Y	Y		N	N/A
Former Yugoslav Republic of Macedonia	Y	O	Y	N/A	Y	i	Y	Y		Y	Y		Y	iii
France	Y	N*	Y	N/A	i**	i	Y	Y		N*	Y		N	N/A
Georgia	Y	O*	Y	N/A	Y	i	Y	Y		Y	Y		Y	iii
Germany	Y	O	Y	N/A	Y	i	Y	Y		Y	Y		Y	i
Ghana	Y	O	Y	N/A	Y	i	Y	Y		Y	Y		Y	iii
Greece	Y	O*	Y	N/A	Y	i	Y	Y		Y	Y		N	N/A
Hong Kong (China)	Y	O*	Y	N/A	Y	i	Y	Y		Y	Y		Y	i
Hungary	Y	O	Y	N/A	Y	i	Y	Y		Y	Y		N	N/A
Iceland	Y	O*	Y	N/A	Y	i	Y	Y		Y	Y		Y	iii
India	Y	O	Y	N/A	Y	i	Y	Y		Y	Y		N	N/A
Indonesia	Y	O	Y	N/A	Y	i	Y	N*		Y	Y		N	N/A
Ireland	Y	O	i	N/A	i	i	Y	N		Y	Y		N	N/A
Israel	Y	N	i	N/A	i**	i	Y	N*		Y	Y		N	N/A
Italy	Y	N	ii*	2-years	i**	i	Y	N*		Y	N*		N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
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Japan	Y	O*	Y	N/A	i*	i	Y	Y	Y	Y	Y	i
Jordan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Kazakhstan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Kenya	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Korea	Y	N*	i	N/A	i**	i	Y	N*	Y	Y	N	N/A
Kosovo	Y	O	ii	5-years	i	i	Y	N	Y	Y	N	N/A
Kuwait	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Latvia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Lithuania	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Luxembourg	Y	N*	i	N/A	i**	i	Y	N*	Y	Y	N	N/A
Malawi	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Malaysia	Y	O*	ii*	2-years	i**	i	Y	N*	Y	Y	N	N/A
Malta	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Mexico	Y	O*	Y	N/A	Y	i	Y	N	Y	N*	N	N/A
Moldova	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Montenegro	Y	O	ii	5-years	i	i	Y	N	Y	Y	N	N/A
Morocco	Y	N	i	N/A	i	i	Y	N	Y	Y	N	N/A
New Zealand	Y	N*	ii	5-years	Y	i	Y	Y	Y	Y	N	N/A
Nigeria	Y	O*	Y	N/A	Y	i	Y	N*	Y	N*	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
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Norway	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Oman	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Pakistan	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Panama	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Philippines	Y	O	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Poland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Portugal	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Qatar	Y	O*	ii*	2-years	Y	i	Y	Y	Y	Y	Y	i
Romania	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Russia	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Saudi Arabia	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Serbia	Y	O	ii	5-years	i**	i	Y	N*	Y	Y	N	N/A
Singapore	Y	O	i	N/A	i**	i	Y	N*	Y	Y	N	N/A
Sint Maarten	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
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	iii
South Africa	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Spain	Y	N	i	N/A	i	i	Y	N	Y	Y	N	N/A
Sri Lanka	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
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Suriname	Y	N	i	N/A	Y	i	Y	N	Y	Y	N	N/A
Sweden	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Switzerland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Chinese Taipei	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Tajikistan	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Thailand	Y	N	i	N/A	i	i	Y	N	Y	Y	N	N/A
Tunisia	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Turkey	Y	O*	i	N/A	Y	i	Y	Y	Y	Y	N	N/A
Uganda	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Ukraine	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
United Arab Emirates	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
United Kingdom	Y	O*	Y	N/A	Y	i	Y	N*	Y	Y	Y	i
United States	Y	O	i	N/A	Y	i	Y	N	Y	Y	Y	iii
Uzbekistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Venezuela	Y	O	ii	2-years	Y	i	Y	Y	Y	Y	N	N/A
Viet Nam	Y	O	Y	N/A	Y	i	Y	Y	N	Y	N	N/A
Zambia	Y	O	i	N/A	Y	i	Y	Y	Y	Y	Y	i
Zimbabwe	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

Legend

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

Annex B

MAP Statistics pre-2016 cases

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	106	0	0	0	2	4	6	1	0	0	0	93	36.68
Others	155	1	0	1	0	5	31	0	0	3	0	114	25.18
Total	261	1	0	1	2	9	37	1	0	3	0	207	27.95

Note: The pre-2016 statistics were corrected after the publication of the 2016 MAP statistics as the Netherlands has cleaned up its MAP registration system.

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	93	1	0	0	3	0	16	1	0	2	0	70	32.12
Others	114	3	0	2	2	0	19	0	0	2	0	86	29.04
Total	207	4	0	2	5	0	35	1	0	4	0	156	30.43

Annex C

MAP Statistics post-2015 cases

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	24	0	0	0	0	0	1	0	0	0	0	23	4.50
Others	0	88	1	2	2	2	1	7	0	0	0	0	73	2.57
Total	0	112	1	2	2	2	1	8	0	0	0	0	96	2.69

Note: The post-2015 statistics were corrected after the publication of the 2016 MAP statistics as the Netherlands has cleaned up its MAP registration system and included cases with non-Inclusive Framework members.

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied map access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	23	42	1	0	1	1	0	13	0	0	1	0	48	9.05
Others	73	181	6	14	3	15	3	56	4	1	4	2	146	5.43
Total	96	223	7	14	4	16	3	69	4	1	5	2	194	5.92

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
APA guidance	Advance Pricing Agreement (APA) Decree of 11 August 2004 (IFZ2004/124)
MAP guidance	Decree of the Netherlands State Secretary of Finance (IFZ2008/248M) of 29 September 2008
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
Pre-2016 cases	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017

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OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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

Consult this publication on line at ***https://doi.org/10.1787/cce92832-en***.

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