OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

OECD

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

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

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

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

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Abbreviations and acronyms

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

Executive summary

Switzerland has an extensive tax treaty network with over 90 tax treaties. Switzerland has an established MAP programme and has long-standing and extensive experience with resolving MAP cases. It has a large MAP inventory, with a very large number of new cases submitted each year and almost 350 cases pending on 31 December 2017. Of these cases, 35% concern attribution/allocation cases. The outcome of the stage 1 peer review process was that overall Switzerland met most of the elements of the Action 14 Minimum Standard. Where deficiencies were identified, Switzerland worked to address them, which has been monitored in stage 2 of the process. In this respect, Switzerland has solved most of the identified deficiencies.

All of Switzerland's tax treaties include a provision relating to MAP, which generally follows 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 80% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions provided for in Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Approximately 10% of its tax treaties do not contain the equivalent of Article 25(1) to the OECD Model Tax Convention, whereby the majority of these treaties do not contain the equivalent of Article 25(1), second sentence, which provides for a three-year filing period for MAP requests.

In order to be fully compliant with the four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Switzerland needs to amend and update a significant number of its tax treaties. In this respect, Switzerland signed the Multilateral Instrument, through which a limited number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Furthermore, Switzerland opted for part VI of this instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Particularly concerning those treaties referred to in the first specification above, Switzerland reserved the right in the Multilateral Instrument not to modify its treaties to include the second sentence of Article 25(2) of the OECD Model Tax Convention. In that regard, Switzerland is willing to accept both alternative provisions in Article 9(1) and Article 7(2), for which it has prepared a specific plan for the renegotiation of the relevant treaties to include these provisions. In line with that plan it has initiated treaty negotiations with a large number of treaty partners and was in some cases already successful in incorporating the alternative provisions in Article 9(1) and Article 7(2). Taking this into account, Switzerland should also initiate such negotiations for the remaining treaties in accordance with its plan for renegotiations.

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

Switzerland also meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases. Furthermore, Switzerland has in place a notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Since the adoption of its stage 1 report, this process has been documented and Switzerland included it in its internal instruction notes for staff in charge of MAP cases. In addition, Switzerland has guidance on the availability of MAP and how it applies this procedure in practice. In its stage 1 peer review it was identified that although this guidance already provides practical information on MAP, it did not establish comprehensive MAP guidance. In 2018 Switzerland has updated this MAP guidance, in which several clarifications were reflected regarding its policy and practice concerning the handling and resolution of MAP cases.

Concerning the average time needed to resolve MAP cases, the MAP statistics for Switzerland 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	142	114	139	117	24.98
Other cases	180	200	159	221	17.44
Total	322	314	298	338	20.96

*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, Switzerland used as a start date the date of filing of the MAP request and as the end date the earliest of the following dates: (i) the date when the taxpayer is informed of the outcome of the MAP, (ii) the date of the closing letter which is drafted upon taxpayer's approval of the agreement reached, or (iii) the date when the Swiss Competent Authority formally closed the case.

The number of cases Switzerland closed in 2016 or 2017 almost equals 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 20.96 months. This mainly concerns the resolution of other cases, which average is considerably below the pursued 24-month average. The average time to close attribution/allocation cases is thereby longer (24.98 months) and only slightly above the pursued average of 24-months.

The average time to close MAP cases is below 24 months and the MAP inventory of Switzerland as per 31 December 2017 slightly increased with 5% as compared to the inventory on 1 January 2016, which mostly results from an increase with 23% in the number of other MAP cases, although the number of pending attribution/allocation decreased with 18%. In this respect, Switzerland has recently attributed more resources to the competent authority function and has introduced a system to ensure that its competent authority timely follows up actions to be taken in the MAP process. Nevertheless, the slight increase in the number of other MAP cases indicates that even more resources may be needed to cope with this increase and to ensure that Switzerland continues to resolve MAP cases in a timely, effective and efficient manner

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

Lastly, Switzerland almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Although Switzerland does not monitor the implementation of such agreements and while it has a domestic statute of limitation, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, no problems have surfaced regarding implementation throughout the peer review process.

Reference

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

Introduction

Available mechanisms in Switzerland to resolve tax treaty-related disputes

Switzerland has entered into 95 tax treaties on income (and/or capital), 92 of which are in force.[1] These 95 treaties apply to 109 jurisdictions.[2] All 95 of these tax treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 32 of the 95 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.[3]In Switzerland, the competent authority function to conduct MAP is delegated to the State Secretariat for International Finance ("**SIF**"), a division within the Federal Department of Finance, and which in practice is performed by two teams within SIF. One of these two teams handles attribution/allocation cases and APA requests, which consists of nine persons. The second team handles other MAP cases and consists of seven persons, which are also responsible for other tasks, such as the negotiation of tax treaties.

Switzerland has issued rules, guidelines and procedures on the operation of the MAP programme in a so-called fact sheet on the mutual agreement procedure ("**MAP guidance**"). This guidance is published in German, French, Italian and English and is publicly available at:

https://www.sif.admin.ch/sif/en/home/bilateral/verstaendigungsverf.html

Developments in Switzerland since 1 January 2017

Developments relating to the tax treaty network

Since 1 January 2017 Switzerland has signed new tax treaties with Brazil (2018), Kosovo (2017), Pakistan (2017), Saudi Arabia (2018) and Zambia (2017). The treaties with Brazil, Kosovo and Saudi Arabia concern newly negotiated treaties for which no treaty is currently in existence. The treaty with Pakistan will replace the existing treaty upon entry into force. Furthermore, the treaty with Zambia also concerns a newly negotiated treaty, but for this treaty partner Switzerland currently continues to apply the 1954 treaty with the United Kingdom. Lastly, it signed an amending protocol to the existing treaty with the United Kingdom. Up to the date of the adoption of this report, the treaties with Kosovo and Pakistan have entered into force.

Further to the above, the stage 1 peer review report of Switzerland did not yet take into account the treaty that is in force with Turkmenistan. If this treaty and the newly negotiated treaties with Brazil, Kosovo, Saudi Arabia and Zambia are considered, then Switzerland has entered into 95 treaties instead of 90 treaties that were taken as the basis in the stage 1 peer review report.

On 7 June 2017 Switzerland signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**"), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. It further opted for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. With the signing of the Multilateral Instrument, Switzerland also submitted its list of notifications and reservations to that instrument.[4] In relation to the Action 14 Minimum Standard, Switzerland reserved, pursuant to Article 16(5)(c), the right not to apply the second sentence of Article 16(2) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to provide that mutual agreements shall be implemented notwithstanding any time limits in the domestic law of the contracting states.[5] This reservation is in line with the requirements of the Action 14 Minimum Standard. On 22 August 2018, the Federal Council of Switzerland approved the dispatch on the Multilateral Instrument, which has been forwarded to the Swiss parliament. Parliamentary approval of the instrument is expected to be completed early 2019, after which could be subject to a facultative referendum. If such a referendum is not called for, it is expected that Switzerland can deposit its instrument of ratification in the third quarter of 2019.

For those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard, Switzerland has put a plan in place to bring *inter alia* its treaties in line with this standard and which primarily concerns element D.3. With respect to this element, Switzerland mentioned that it intends to include the alternative provisions for Article 9(1) and Article 7(2) in its tax treaties, to set a time limit for making transfer pricing adjustments. As almost all of its tax treaties were in its stage 1 peer review report considered not to be in line with element D.3, Switzerland reported that it was not feasible to revise all these treaties within a short time period. It completed negotiations with Ireland, Korea, Malta, Norway, Sweden and Ukraine and concluded an amending protocol with the United Kingdom. In addition, it has initiated negotiation processes with the following treaty partners to bring these treaties in line with the requirements under element D.3: Armenia, Australia, Belgium, Bulgaria, Canada, People's Republic of China, Côte d'Ivoire, Croatia, Cyprus,[6] Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hong Kong (China), Hungary, India, Israel, Indonesia, Jamaica, Japan, Kazakhstan, Latvia, New Zealand, Peru, Poland, Romania, Russia, Serbia, Singapore, the Slovak Republic, Slovenia, Spain, Tunisia and Viet Nam. For Belgium it also concerns element B.7, for France also element A.1 and for Indonesia also element B.1. Lastly, for the treaties that are listed as covered tax agreements under the Multilateral Instrument and that will not be modified with respect to element D.3, Switzerland reported it will reach out to the relevant treaty partners to bring these treaties in line with the requirements under this element, once the instrument has for Switzerland entered into force.

Other developments

Switzerland reported that its competent authority has since 1 January 2017 introduced a number of changes regarding its MAP process. In line with the four elements that form the basis of a dispute resolution process and the outline of this peer review report, these changes are:

A. Preventing disputes

- Introduction of a monitoring system to keep track of the date of an APA request and the tax periods included in the scope of an APA, which enables Switzerland to identify those APAs for which a roll-back was granted

B. Availability and access to MAP

- Documenting of the notification process for notifying Switzerland's treaty partners when its competent authority considers that the objection raised in a MAP request is not justified, as well as the preparation of internal instruction notes to clarify what steps staff in charge of MAP need to take in such a situation
- Update of the MAP guidance, such to reflect that: (i) access to MAP is available in transfer pricing cases, cases involving multiple states and cases concerning the application of anti-abuse provisions, (ii) relationship between MAP and domestic remedies, (iii) the availability of arbitration under tax treaties, (iv) the process to be followed when access to MAP is denied and (v) taxpayer's rights at the end of the MAP process.

C. Resolution of MAP cases

- Preparation of a strategy to schedule annual competent authority meetings, with a prioritisation for those treaty partners with whom Switzerland has most MAP cases or long-pending MAP cases
- Introduction of a system that generates alerts when certain steps in the MAP process takes too long (e.g. no issuing or receipt of a position paper within a certain term)
- Hiring of additional staff for the competent authority.

D. Implementation of MAP agreements

- A modification of the process for obtaining approval from the taxpayer of a MAP agreement. Instead of assuming that if no approval is received within 30 days that the agreement is accepted, no explicit approval may now indicate a rejection of the agreement.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Switzerland's implementation of the 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 Switzerland, 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, Switzerland's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 5 September 2017. This report

identifies the strengths and shortcomings of Switzerland in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.[7] Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Switzerland. In this update report, Switzerland 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 Switzerland is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty currently in force. Furthermore, the treaty analysis also takes into account the treaty with former Serbia and Montenegro that Switzerland continues to apply to both Serbia and Montenegro. As it concerns one tax treaty that is being applied to multiple jurisdictions, this treaty is only counted as one for this purpose. In addition, the treaty with Denmark is also counted as one treaty, even though it is also being applied to the Faroe Islands. Lastly, the 1954 treaty with the United Kingdom is being applied to 13 jurisdictions, not including the United Kingdom (which has a separate treaty with Switzerland). As this also concerns one treaty being applied to multiple jurisdictions, it is again counted as one for the treaty analysis. Reference is made to Annex A for the overview of Switzerland's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

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

While the commitment to Action 14 Minimum Standard only starts from 1 January 2016, Switzerland opted to provide information on the period starting as from 1 January 2014 and also requested peer input relating to this period. The period for evaluating Switzerland's implementation of this standard ranges from 1 January 2016 up to 31 December 2016 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2017 and depicts all developments as from that date until 31 August 2018. Next to its assessment on the compliance with the Action 14 Minimum Standard, Switzerland also addressed best practices[8] and asked for peer input on these best practices.

In total 20 peers provided input during stage 1: Austria, Belgium, Canada, People's Republic of China, Denmark, France, Germany, Greece, India, Italy, Japan, Korea, Liechtenstein, the Netherlands, Norway, Singapore, Spain, Sweden, the United Kingdom and the United States. In stage 1, these peers represent approximately 88% of post-2015 MAP cases in Switzerland's inventory that started in 2016. During stage 2, apart from Greece, the same peers provided input on the update report of Switzerland. Furthermore, also Portugal and Slovenia provided input during stage 2. For this stage, these peers

represent approximately 85% of post-2015 MAP cases in Switzerland's inventory that started in 2016 or 2017.[9] Input was also received from taxpayers. Broadly, all peers indicated having good working relationships with Switzerland in regard of MAP and some of them emphasised the ease of contact with Switzerland's competent authority. Specifically with respect to stage 2, nearly all peers that provided input reported that the update report of Switzerland fully reflects the experiences these peers have had with Switzerland since 1 January 2017 and/or that there was no addition to previous input given. Thirteen peers also reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance.

Input by Switzerland and cooperation throughout the process

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

- MAP profile[10]
- MAP statistics[11] according to the MAP Statistics Reporting Framework (see below)

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

Finally, Switzerland is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Switzerland provided detailed peer input on other jurisdictions in the framework of their peer review and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions.

Overview of MAP caseload in Switzerland

The analysis of Switzerland's MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2016. For stage 2 the period ranges from 1 January 2017 to 31 December 2017. Both periods are taken into account in this report for analysing the MAP statistics of Switzerland. The analysis of Switzerland's 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 Switzerland 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	142	114	139	117
Other cases	180	200	159	221
Total	**322**	**314**	**298**	**338**

General outline of the peer review report

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

A. Preventing disputes

B. Availability and access to MAP

C. Resolution of MAP cases

D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ("**Terms of Reference**").[12] Apart from analysing Switzerland's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Switzerland, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Switzerland 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 Switzerland 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 Switzerland 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 Switzerland has entered into are available at: https://www.admin.ch/opc/fr/classified-compilation/0.67.html (in French); https://www.admin.ch/opc/de/classified-compilation/0.67.html (in German); and https://www.admin.ch/opc/it/classified-compilation/0.67.html (in Italian). The tax treaties that are signed but have not yet entered into force are with Brazil (2018), Saudi Arabia (2018) and Zambia (2017). Apart from the treaty with Zambia, these concern newly negotiated treaties with treaty partners for which there is currently no treaty in force. The

newly signed treaty with Zambia will replace the existing treaty of 1954 with the United Kingdom that is being applied to Zambia, once it enters into force. Furthermore, an amending protocol to the 1977 treaty with the United Kingdom (2017) has been signed. For the three treaties and the amending protocol ratification procedures have been initiated in Switzerland. Annex A includes an overview of Switzerland's tax treaties with respect to the mutual agreement procedure.

2. The treaty with Denmark also applies to the Faroe Islands and the 1954 treaty with the United Kingdom that Switzerland continues to apply to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines, even though Switzerland and the United Kingdom have entered into a new convention in 1977. Switzerland also continues to apply the 2005 treaty with the former Serbia and Montenegro to both Serbia and Montenegro.

3. This concerns treaties with Albania, Australia, Austria, Belgium, Canada, Cyprus, Denmark (including the Faroe Islands), Estonia, France, Germany, Greece, Hong Kong (China), Iceland, Kazakhstan, Kosovo, Latvia, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Pakistan, Poland, the Slovak Republic, Slovenia, South Africa, Spain, Sweden, the United Kingdom, the United States, Uruguay and Zambia. See for a discussion element C.6 of this report. Reference is made to Annex A for the overview of Switzerland's tax treaties that include an arbitration clause.

   Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

   Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

4. Available at: www.oecd.org/tax/treaties/beps-mli-position-switzerland.pdf.

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

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

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

6. Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

7. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-switzerland-stage-1-9789264282650-en.htm.

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

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

10. www.oecd.org/tax/dispute/Switzerland-Dispute-Resolution-Profile.pdf.

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

12. 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).

Reference

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms*, Peer Review Documents, OECD, Paris, 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 Switzerland's tax treaties

2. Out of Switzerland's 95 tax treaties, 93 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.[1] Of the two remaining treaties not containing the required provision, one treaty does not contain the term "doubts" and therefore is considered not to be equivalent to the first sentence of Article 25(3) of the OECD Model Tax Convention. The remaining treaty does not contain a provision that is based on or equivalent to the first sentence of Article 25(3).[2]

3. Switzerland reported that where a tax treaty does not contain a provision that is based on or the full equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, there are under its domestic legislation and/or administrative practice no constraints to endeavour to reach an agreement on the general interpretation of a tax treaty. In practice, the lack of the full equivalent in the two treaties mentioned above has not caused any problems. Switzerland mentioned that with one of the treaty partners concerned, the competent authorities have regularly solved MAP cases of a general nature, while with the other treaty partner no situations have occurred concerning difficulties or doubts as to the interpretation or application of the provisions of their tax treaty.

4. Several peers that provided input mentioned that their treaty with Switzerland meets the requirements under the Action 14 Minimum Standard, including element A.1. Furthermore, one peer mentioned that the current treaty in force with Switzerland is under renegotiation, for which they seek to meet that standard. Another peer mentioned that

the requirement under this standard will be implemented via the Multilateral Instrument. 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 peer provided input and mentioned that its treaty with Switzerland does not meet the requirements under element A.1, but that it will propose an update to the treaty via the Multilateral Instrument.

Recent developments

Bilateral modifications

5. Switzerland signed new treaties with five treaty partners, one of which concerns the replacement of an existing tax treaty and one concerns a treaty partner for which Switzerland currently continues to apply the 1954 treaty with the United Kingdom. Furthermore, Switzerland also signed an amending protocol to an existing treaty, which, however, does not have relevance with respect to element A.1. All five treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, which also was the case for one treaty partner for which currently a treaty is in force. For none of these five treaties ratification procedures, however, have been completed by either treaty partner. The effects of these newly signed treaties and the amending protocol have been reflected in the analysis above.

Multilateral Instrument

6. Switzerland signed the Multilateral Instrument and the ratification process is ongoing, for which completion is expected for the third quarter of 2019.

7. 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.

8. 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, Switzerland listed none as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, the Multilateral Instrument will not modify these two treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Other developments

9. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Switzerland has put in place a plan for bringing these treaties in line with that standard. Concerning the two treaties that are not in line with element A.1 and will not be modified by the Multilateral Instrument, Switzerland has initiated bilateral negotiations with one treaty partner.

Peer input

10. Of the peers that provided input during stage 2, ten provided input in relation to their tax treaty with Switzerland. For nine of these peers this input, however, does not relate to element A.1 as the treaties to which these peers are a signatory are in line with this element. The peers for which the treaty with Switzerland is considered not to be in line with the requirements under element A.1 confirmed this conclusion, but did not address whether any actions have been taken to update the treaty in this respect.

Anticipated modifications

11. For the remaining treaty that is not in line with element A.1 and will not be modified by the Multilateral Instrument, and for which no bilateral negotiations are envisaged, scheduled or pending, Switzerland has not included this treaty in its plan for the renegotiation of a tax treaty. As this concerns the 1954 treaty with the United Kingdom that continues to be applied to 13 jurisdictions, such renegotiations are also not necessary. Regardless, Switzerland reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	Two out of 95 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. None of these two treaties are expected to be modified by the Multilateral Instrument to contain the required provision. Furthermore, one treaty is included in the list of treaties for which negotiations are envisaged, scheduled or pending.	Switzerland should for one of the two treaties 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, continue discussions or negotiations to include the required provision. Specifically with respect to the 1954 treaty with the United Kingdom that is being applied to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines, Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.

[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.

12. 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.

Switzerland's APA programme

13. Switzerland reported that it has not a formal APA programme in place, but that it is authorised to enter into bilateral and multilateral APAs on the basis of the MAP provision in the applicable tax treaty. The authority competent to handle APA requests is the State Secretariat for International Finance ("**SIF**") within the Federal Department of Finance, which is the same entity that acts as the competent authority for handling MAP cases.

Roll-back of bilateral APAs

14. Switzerland reported that 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 of five years, although shorter or longer periods are also possible, as in Switzerland there are no limits as to the years that can be covered by an APA other than that fiscal years should not be time-barred by domestic statute of limitations. It further reported that it allows for roll-back of bilateral APAs, provided that the roll-back period is within Switzerland's domestic time limit of 10 years. Thus far, Switzerland has never had a case where they refused or limited the roll-back period.

15. Switzerland's MAP guidance enumerates in section 1 that roll-back of bilateral APAs are also possible to cover past tax periods, provided that the facts and circumstances in those years are identical to the years covered by the APA and that fiscal years are not be time-barred by domestic statute of limitations.

Recent developments

16. Switzerland reported that since 1 January 2017 its competent authority tracks in its inventory the fiscal years that are in the scope of an APA, and the date on which the APA was submitted. Based on this information, Switzerland reported it can also identify the number of APAs that include a roll-back.

17. Further to the above, Switzerland also started publishing statistics on APAs, with the fiscal year 2016 being the first year for which statistics are published.[3] These statistics include (i) the number of APA requests received, closed and pending, (ii) completion times and (iii) the number of APAs per region.

Practical application of roll-back of bilateral APAs

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

18. Switzerland reported that until 31 December 2016 it did not have in place a recordkeeping system that tracks of: (i) the number of APA requests that include the rollback of an APA and (ii) for which such requests a roll back was granted. In that regard, there is no data available on the number of cases for which taxpayers requested the rollback of an APA and in how many cases such rollback was granted in the period 1 January 2014-31 December 2016.

19. Most of the peers that provided input, reported having experiences with Switzerland regarding bilateral APAs, although not all have in the period 1 January 2014-31 December 2016 received requests for such APAs or a roll-back thereof.

20. Peers with experience regarding roll-backs of APAs concerning Switzerland, indicated that roll-backs are possible in Switzerland and have been provided in the period

1 January 2014-31 December 2016. One of these peers specified that requests for roll-back with Switzerland occurred and were addressed appropriately. Other peers expressed confidence that the competent authority of Switzerland would provide for a roll back when both sides agree to a bilateral APA.

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

21. Given that Switzerland introduced a tracking system for APAs in 2017, it reported that out of the 136 APA requests received since 1 January 2017, 37 also concern a roll-back request and regard 13 treaty partners. Of these 37 cases, four were already closed and allowing for a roll-back. The other 33 cases are still pending. Furthermore, since 1 January 2017, 48 APA cases were concluded with a roll-back, for which the APA request was submitted prior to 2016 and which regards 14 treaty partners.

22. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Switzerland fully reflects their experience with Switzerland since 1 January 2017 and/or there are no additions to the previous input given. In addition, one peer specified that in 2017 it received one roll-back request regarding a multilateral APA to which Switzerland also is a party. It further mentioned that the roll-back request was accepted and is currently in the negotiation stage.

Anticipated modifications

23. Switzerland did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. These 93 treaties include the treaty with former Serbia and Montenegro that Switzerland continues to apply to both Serbia and Montenegro, and the treat with Denmark that also applies to the Faroe Islands.
2. This concerns the 1954 treaty with the United Kingdom that Switzerland continues to apply to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines.
3. Available at: https://www.sif.admin.ch/sif/en/home/bilateral/verstaendigungsverf.html.

Reference

OECD (2017), *Model Tax Convention on Income and on 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.

24. 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 Switzerland's tax treaties

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

25. Out of Switzerland's 95 tax treaties, six 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, 73 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 the Action 14 final report.[1]

26. The 16 remaining tax 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, whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	14
A provision included in the MAP article, but which does not assign specific rights to taxpayers to file a MAP request when they consider that there may or will be taxation not in accordance with the provisions of the convention and which procedure cannot be requested irrespective of domestic remedies.*	1
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, whereby taxpayers can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision taxpayers are also required to initiate these remedies when submitting a MAP request.	1

*This concerns the 1954 treaty with the United Kingdom that Switzerland continues to apply to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines.

27. The 14 treaties mentioned in the first row of the table 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 13 of these 14 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 (one treaty)
- 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 (12 treaties).

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

29. Furthermore, the treaty mentioned in the second row of the table is also considered not to contain 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, because it does not grant taxpayers the right to request the initiation of a mutual agreement procedure. This treaty therefore also not in line with this part of element B.1.

30. Lastly, the treaty mentioned in the last row of the table incorporates a provision in the protocol to this tax treaty, which reads:

> The expression "notwithstanding the remedies provided by the domestic law" in Article 26, paragraph 1 shall be construed as meaning that the remedies provided by domestic law cannot be replaced by the commencement of the mutual agreement procedure and that the commencement of such a procedure is in any case recommended where a dispute involves an application of … tax which is not in accordance with the convention.

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

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

32. Out of Switzerland's 95 tax treaties, 80 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.[2]

33. The remaining 15 treaties can be categorised as follows:

Provision	Number of tax treaties
Filing period less than 3 years for a MAP request (2 years)	5
No filing period for a MAP request	10*

*These ten treaties include the 1954 treaty with the United Kingdom that Switzerland continues to apply to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines.

Peer input

34. Several peers that provided input reported that their tax treaty with Switzerland meet the requirements under the Action 14 Minimum Standard, including element A.1. Furthermore, one peer mentioned that the current treaty in force with Switzerland is under renegotiation, for which they seek to meet that standard. Another peer mentioned that the requirement under this standard will be implemented via the Multilateral Instrument.

35. With respect to the four treaties identified above that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, two peers provided input, one of which stating that its treaty with Switzerland is in line with the requirements under the Action 14 Minimum Standard. The other treaty partner only specified its position under the Multilateral Instrument, but not its views on whether the treaty with Switzerland is in line with the requirements under element B.1.

36. With respect to the five treaties that do not contain a filing period for MAP requests of at least three years, the relevant peers did not provide input.

Practical application

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

37. As noted in paragraphs 30-31 above, in all but one of Switzerland's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Switzerland reported that access to MAP is available regardless of whether for the relevant case under review domestic available remedies are still pending or have been concluded. Connected herewith, Switzerland's Supreme Court has ruled that the MAP process is independent from domestic proceedings, such to the extent that the initiation of a MAP does not impede the taxpayer's rights under domestic law (judgment BGE/ATF 82 I-1 of 17 February 1956 and BGE/ATF 93 I-189 of 17 March 1967). Furthermore, Switzerland's Supreme Court also has ruled that where domestic remedies have been concluded, the

competent authority is not bound by that decision in a MAP case (e.g. judgment BGE/ATF 66 I 270 of 18 December 1940).

38. The above rules are also reflected in Switzerland's MAP guidance, which in section 1 stipulates that a MAP request can be submitted regardless of whether a decision by its tax administration or that of the treaty partner has been accepted or challenged in front of a court. It is further stated that Switzerland's competent authority is not bound by any decision of its domestic court or that of its treaty partner(s).

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

39. With respect to the ten treaties that do not include a filing period of a MAP request, Switzerland indicated that it applies its domestic ten year time limit for the filing of such requests. Nonetheless, it also reported that it would accept a MAP request filed under such treaties even if this domestic time limit has expired. However, in such a situation, once the taxation under review has become final in Switzerland, it can only be revised within ten years after the fiscal year in which the assessment was issued. As will be discussed under element D.3, almost all of Switzerland's tax treaties do not contain a provision overriding domestic time limits for the implementation of MAP agreements, this ten-year period usually would apply. Consequently, in such a situation, while accepting the case into MAP, Switzerland would not be in a position to change the tax assessment.

40. Furthermore, Switzerland also reported that it received numerous MAP requests under those tax treaties that do not contain a filing period and that access to MAP was granted in all situations.

Recent developments

Bilateral modifications

41. Switzerland signed new treaties with five treaty partners, one of which concerns the replacement of an existing tax treaty and one concerns a treaty partner for which Switzerland currently continues to apply the 1954 treaty with the United Kingdom. Furthermore, Switzerland also signed an amending protocol to an existing treaty. For none of these five treaties or the amending protocol ratification procedures have been completed by either treaty partner.

42. Concerning the first sentence of Article 25(1), all five treaties and the amending protocol contain 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 file a MAP request to either competent authority. For the newly negotiated treaty for which currently a treaty in force and for the amending protocol to an existing treaty, both of these treaties were already in line with element B.1 regarding the first sentence of Article 25(1). Furthermore, one of the treaties concerns a treaty partner for which Switzerland currently continues to apply the 1954 treaty with the United Kingdom, which treaty is considered not to be in line with element B.1 regarding the first sentence of Article 25(1).

43. Concerning the filing period for MAP requests, all five treaties and the amending protocol contain the second sentence of Article 25(1) of the OECD Model Tax Convention. For the newly negotiated treaty for which currently a treaty is in force and for the amending protocol to an existing treaty, both treaties did not contain a filing period for MAP requests. Furthermore, one of the treaties concerns a treaty partner for which Switzerland currently continues to apply the 1954 treaty with the United Kingdom, which treaty also does not contain such a filing period.

44. The effects of these newly signed treaties and the amending protocol have been reflected in the analysis above where they have relevance.

Multilateral Instrument

45. Switzerland signed the Multilateral Instrument and has initiated the ratification process, for which completion is expected for the third quarter of 2019.

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

46. 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.

47. With the signing of the Multilateral Instrument, Switzerland 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 Switzerland'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, Switzerland opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Switzerland listed 12 of its 95 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.

48. All relevant 12 treaty partners are a signatory to the Multilateral Instrument and listed their treaty with Switzerland under that instrument. However, five treaty partners reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties. The remaining seven treaty partners also made a notification on the basis of Article 16(6)(a) that the treaty with Switzerland has 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, the Multilateral Instrument, will, upon entry into force for these treaties, modify seven of Switzerland's 95 tax 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

49. In view of the above, for those three treaties identified in paragraphs 27-31 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, none 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.

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

50. 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.

51. In regard of the five tax treaties identified in paragraph 33 above that contain a filing period for MAP requests of less than three years, Switzerland listed two treaties as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification for all of them that they do not contain a provision described in Article 16(4)(a)(ii). The two treaty partners are signatories to the Multilateral Instrument, listed their treaty with Switzerland 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 entry into force for the treaties concerned, modify two of the five treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Other developments

52. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Switzerland has put in place a plan for bringing these treaties in line with that standard. Concerning the five treaties that are considered not to contain the equivalent of Article 25(1), first or second sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, and will not be modified by the Multilateral Instrument, Switzerland reported it has initiated bilateral negotiations with two treaty partners.

Peer input

53. Of the peers that provided input during stage 2, ten provided input in relation to their tax treaty with Switzerland. For two of these peers this input relates to element B.1. One of these peers mentioned that it has agreed with Switzerland on an amending protocol, following which the first sentence of Article 25(1) of the OECD Model Tax Convention is replaced with the 2017 version, allowing the filing of a MAP request to either competent authority. The other peer noted that it has also finalised negotiations on an amending protocol, which will incorporate all the relevant elements of the Action 14 Minimum Standard.

Anticipated modifications

54. For the three treaties that are not in line with all requirements under element B.1 and will not be modified by the Multilateral Instrument and for which no bilateral negotiations are envisaged, scheduled or pending, Switzerland has not included these treaties in its plan for renegotiations. One of these treaties, however, concern the 1954 treaty with the United Kingdom that Switzerland continues to apply to 13 jurisdiction and for which such renegotiations are also not necessary. Furthermore, for one treaty, Switzerland mentioned that the reason that this treaty is not in line with one element of this standard is due to a protocol provision that requires that domestic remedies be initiated first before a MAP request can be submitted. This requirement, however, does not affect access to MAP in Switzerland. In addition, Switzerland was informed by the relevant treaty partner that they will solve this issue due to a modification of its domestic law. As the treaty will not be modified by the Multilateral Instrument following a reservation by the treaty partner, Switzerland is of the opinion that it is the treaty partner that should initiate the renegotiation of the tax treaty with respect to element B.1 and therefore that no specific actions were undertaken in this regard. Switzerland, however, also specified that once all of its other tax treaties are brought in line with the requirements under the Action 14 Minimum Standard, and negotiations with this treaty partner have not been initiated or completed, actions will be taken to also bring this treaty in line with the requirements under this standard.

55. Regardless, Switzerland indicated it will seek to include Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report in all of its future treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	Three out of 95 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 or as amended by the Action 14 final report. None of these treaties is expected to be modified by the Multilateral Instrument to include such equivalent. With respect to these treaties, negotiations have been initiated with one treaty partner, while for the remaining two treaties no actions have been taken or are planned to be taken, but one is included in the plan for renegotiation.	Switzerland should continue negotiations with one treaty partner and, in accordance with its plan, initiate also negotiations with the other treaty partner concerning those two 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. This concerns a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention either as it read prior to or as amended in the final report on Action 14. Specifically with respect to the 1954 treaty with the United Kingdom that is being applied to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines, Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.

	Areas for improvement	Recommendations
[B.1]	Five out of 95 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these five treaties: • Two are expected to be 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 one of these three treaties, negotiations have been initiated with one treaty partner, while for the other two no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.	Switzerland should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For the remaining three treaties, Switzerland should continue negotiations with one treaty partner and, in accordance with its plan for renegotiations, should request the inclusion of the required provision via bilateral negotiations in the other two treaties.

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

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

56. 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 in the situation 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

57. Out of Switzerland's 95 tax treaties, six currently contain a provision 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 either treaty partner. In addition, as was also discussed under element B.1, seven of these 95 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.

58. For the remaining 82 tax treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, Switzerland reported that as a matter of practice it notifies the other competent authority concerned when it considers that the objection raised by the taxpayer in a MAP request is not justified, thereby stating the reasons that led to this decision. One of these reasons, as is specified in section 1 of its MAP guidance is that the taxpayer has not completed the administrative steps for obtaining foreign tax rebates as agreed between Switzerland's competent authority and that of its treaty partner, as in such a situation there is not yet taxation not in accordance with the convention given that the taxpayer then still has means to obtain treaty relief.

59. Further to the above, section 8.2 of Switzerland's MAP guidance briefly outlines the notification process described above.

Recent developments

60. Switzerland reported it has documented its notification process to be applied when its competent authority considers that the objection raised by a taxpayer in its MAP request is not justified. Furthermore, this notification process is outlined in an internal instruction note to staff in charge of MAP cases. When staff arrive at the conclusion that the objection raised by the taxpayer is not justified, it is instructed to notify the taxpayer and the other competent authority concerned hereof. The latter thereby has to be notified of this decision within 90 days from receipt of the MAP request, or, when additional information was requested, within 90 days from receiving such information. In case feedback from the other competent authority leads to an alteration of the conclusion in that the objection was actually justified, then the taxpayer will be informed hereof without delay and the MAP process will proceed accordingly.

Practical application

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

61. Switzerland 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 Switzerland it follows that during that year in three cases the outcome was "objection not justified". The decision hereto, however, was taken by the competent authority of the treaty partner and not by that of Switzerland.

62. All peers that provided input indicated not being aware of any cases for which Switzerland's competent authority denied access to MAP in the period 1 January 2014-31 December 2016. They also reported not having being consulted/notified of a case where the competent authority of Switzerland considered the objection raised in a MAP request as not justified, which can be clarified by the fact that no such instances have occurred in Switzerland during this period.

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

63. Switzerland reported that since 1 January 2017 its competent authority decided in four cases that the objection raised by taxpayers in their MAP request was not justified. In three cases this decision was due to the fact that the taxpayer had not yet used the applicable procedures to obtain treaty relief, by which there was not yet taxation not in

accordance with the provisions of the applicable tax treaty. In the other case, the decision was taken because there was not any risk of double taxation. Switzerland further reported that in all four cases the other competent authority was notified.

64. Most of the peers that provided input during stage 1 indicated that also since 1 January 2017 they are not being aware of any cases for which Switzerland's competent authority considered the objection raised in a MAP request as not justified. They also reported not having been consulted/notified in such cases. Concerning the four cases for which Switzerland's competent authority considered the objection raised in a MAP request as not justified, all four relevant peers provided input and confirmed they were notified/consulted for the specific case.

Anticipated modifications

65. Switzerland 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.

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

Legal and administrative framework

67. Out of Switzerland's 95 tax treaties, 30 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.[3] Furthermore, 22 tax treaties do not include such a provision.[4] One of these treaties specifies in the protocol that:

> It is understood that the absence of a clause providing for an obligation of a Contracting State to make an appropriate corresponding adjustment cannot be construed so as to hinder a Contracting State to make such an appropriate adjustment if it has been agreed to in the course of a mutual agreement procedure.

In other words, the absence of the equivalent of Article 9(2) in this tax treaty will not obstruct the case to be dealt with in MAP and also not hinder the implementation of a MAP agreement leading to a corresponding adjustment in one of the contracting states.

68. With respect to the remaining 43 treaties, all contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but are considered not being equivalent thereof for the following reasons:

- In 37[5] treaties the sentence reading "then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits", is replaced by wording that the competent authorities of the contracting states may consult together with a view to reaching an agreement on the adjustment of profits or losses in both Contracting States. In addition, these 37 treaties do not include the sentence: "in determining such adjustment due regard shall be had to the other provisions of this convention and the competent authorities of the contracting states shall, if necessary, consult each other"
- In one treaty it is not specified that the corresponding adjustment relates to the amount of the tax charged therein on those profits
- In five treaties a corresponding adjustment is only to be made through the mutual agreement procedure.

69. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is included in Switzerland's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Switzerland 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. Section 1 of Switzerland's MAP guidance stipulates that MAP is available to avoid double taxation in the area of transfer pricing.

Recent developments

Bilateral modifications

70. Switzerland signed new treaties with five treaty partners, one concerns the replacement of an existing tax treaty and one concerns a treaty partner for which Switzerland currently continues to apply the 1954 treaty with the United Kingdom. Furthermore, Switzerland also signed an amending protocol to an existing treaty. With respect to the inclusion of Article 9(2) of the OECD Model Tax Convention, three of these five treaties (two new treaties and one replacements of an existing treaty) and the amending protocol to an existing treaty contain the equivalent of Article 9(2), which was not the case for treaties currently in force. The effects of these newly signed treaties and amending protocols have been reflected in the analysis above.

Multilateral Instrument

71. Switzerland signed the Multilateral Instrument and has initiated the ratification process, for which completion is expected for the third quarter of 2019.

72. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or

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

73. Switzerland 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 65 tax treaties identified in paragraph 68 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Switzerland listed eight as a covered tax agreement under the Multilateral Instrument and for seven of these eight treaties did it make a notification on the basis of Article 17(4).

74. With regard to those seven treaties, all treaty partners are a signatory to the Multilateral Instrument, but 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 Switzerland already contains the equivalent of Article 9(2). Furthermore, three also made a notification on the basis of Article 17(4). Therefore, at this stage, three of the 65 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, whereas the remaining two will be superseded to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

75. With regard to the remaining treaty for which Switzerland did not make a notification on the basis of Article 17(4), the relevant treaty partner is a signatory to the Multilateral Instrument, listed its tax treaty with Switzerland as a covered tax agreement, but did neither, on the basis of Article 17(3), reserved the right not to apply Article 17(2), nor did they make a notification on the basis of Article 17(4). Therefore, at this stage, this treaty 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).

Other developments

76. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Switzerland has put in place a plan for bringing these treaties in line with that standard. While having Article 9(2) is only a best practice, for two tax treaties that do not contain the equivalent of Article 9(2) of the OECD Model Tax Convention and that will not be modified or superseded by the Multilateral Instrument, negotiations are pending on the amendment of such treaties, for Switzerland will strive to include such equivalent.

77. As is reflected in paragraph 69 above, Switzerland's MAP guidance stipulates that MAP is available for transfer pricing cases, which was clarified with the 2018 update of this guidance.

Practical application

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

78. Switzerland 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.

79. All peers that provided input indicated not being aware of denial of access to MAP by Switzerland 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 August 2018 (stage 2)

80. Switzerland 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.

81. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Switzerland fully reflects their experience with Switzerland since 1 January 2017 and/or there are no additions to the previous input given. In addition, one peer observed that Switzerland will grant access to MAP and considers to give corresponding relief for transfer pricing cases even when the case under review involves domestic court rulings, provided that the MAP request was timely filed.

Anticipated modifications

82. Switzerland indicated that it did not anticipate 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.

83. 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

84. None of Switzerland's 95 tax treaties allows competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

85. In Switzerland, there is a general legal principle allowing, but not requiring, its competent authority to limit access to MAP for cases when a domestic anti-abuse rule applies. Issues relating to the application of domestic anti-abuse provisions are covered within the scope of MAP provided such a provision impacts the application of a treaty in the specific case. Furthermore, Switzerland reported that it considers issues relating to the application of a treaty anti-abuse provision to be within the scope of the MAP. Section 1 of Switzerland's MAP guidance stipulates that taxpayers have the possibility to request the initiation of a mutual agreement procedure if the cause of the taxation that is not in accordance with the treaty is the result of the application of anti-abuse provisions.

Recent developments

86. As is reflected above, Switzerland's MAP guidance stipulates that MAP is available in case of the application of anti-abuse provisions, which was introduced with the 2018 update of this guidance.

Practical application

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

87. Switzerland 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.

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

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

89. Switzerland 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. It further reported having received one MAP request in relation to the application of a domestic anti-abuse provision at the level of the treaty partner, for which access was granted and which case is currently pending.

90. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Switzerland fully reflects their experience with Switzerland since 1 January 2017 and/or there are no additions to the previous input given. In addition, one peer mentioned that since 1 January 2017 it has received two MAP cases concerning the application of anti-abuse provisions and that access to MAP was granted in all cases.

Anticipated modifications

91. Switzerland 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.

92. 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 dispute settlement/resolution process that functions independently from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

Audit settlements

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

Administrative or statutory dispute settlement/resolution process

94. Switzerland 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

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

Practical application

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

96. Switzerland 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 has already been resolved through an audit settlement between the taxpayer and the tax administration.

97. All peers that provided input indicated not being aware of a denial of access to MAP by Switzerland 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, which can be explained by the fact that such settlements are not possible in Switzerland.

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

98. Switzerland 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.

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

Anticipated modifications

100. Switzerland 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.

101. 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

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

103. According to Switzerland it provides access to MAP in all cases where taxpayers have complied with the information or documentation required by its competent authority and as set out in its MAP guidance. It specified that upon receipt of a MAP request, the competent authority will analyse whether all required information was submitted. If a taxpayer has not provided the required information, Switzerland will request the missing information within 60 days from the receipt of the request. The process for requesting additional information is also reflected in section 8.1 of Switzerland's MAP guidance. Taxpayers are given 30 days to provide the required information. If the taxpayer does not provide the requested information within this timeframe, Switzerland will send the taxpayer a reminder with a

new deadline. If the taxpayer then still does not provide the information, the competent authority could, depending on the facts and circumstances of the case, close the case. This process is described in section 8.2 of its MAP guidance, where it is stated that following a non-submission of requested information, Switzerland will decline the request to initiate the MAP process and accordingly inform the taxpayer and the other competent concerned.

Recent developments

104. There are no recent developments for element B.6.

Practical application

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

105. Switzerland reported that in the period 1 January 2014-31 December 2016 it has not limited access to MAP on the grounds that taxpayers did not comply with the information and documentation requirements as set out in its MAP guidance.

106. All peers that provided input indicated not being aware of a limitation of access to MAP by Switzerland 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.

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

107. Switzerland reported that since 1 January 2017 it has also 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.

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

Anticipated modifications

109. Switzerland 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.

110. 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 Switzerland's tax treaties

111. Out of Switzerland's 95 tax treaties, 90 contain a provision allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties.[6] The remaining five treaties do not contain a provision that is based on, or equivalent to, Article 25(3), second sentence, of the OECD Model Tax Convention.[7]

112. Several peers that provided input mentioned that their treaty with Switzerland meets the requirements under the Action 14 Minimum Standard, including element B.7. Furthermore, one peer mentioned that the current treaty in force with Switzerland is under renegotiation, for which they seek to meet that standard. Another peer mentioned that the requirement under this standard will be implemented via the Multilateral Instrument. With respect to the five treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, one peer provided input, indicating that it had not contacted Switzerland nor is it in negotiations with Switzerland to bring the treaty in line with the requirements under element B.7.

Recent developments

Bilateral modifications

113. Switzerland signed new treaties with five treaty partners, one of which concerns the replacement of an existing tax treaty and one concerns a treaty partner for which Switzerland currently continues to apply the 1954 treaty with the United Kingdom. Furthermore, Switzerland also signed an amending protocol to an existing treaty, which, however, does not have relevance with respect to element B.7. All five treaties contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, which also was the case for one treaty for which currently a treaty is in force. For none of these five treaties ratification procedures, however, have been completed by either treaty partner. The effects of these newly signed treaties and amending protocol have been reflected in the analysis above.

Multilateral Instrument

114. Switzerland signed the Multilateral Instrument and has initiated the ratification process, for which completion is expected for the third quarter of 2019.

115. 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.

116. In regard of the five tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Switzerland listed two as a covered tax agreement under the Multilateral Instrument, but only for one of them did it make, pursuant to Article 16(6)(d)(ii), a notification that it does not contain a provision described in Article 16(4)(c)(ii). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its treaty with Switzerland 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 one of the five treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Other developments

117. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Switzerland has put in place a plan for bringing these treaties in line with that standard. Concerning the four treaties that are not in line with element B.7 and will not be modified by the Multilateral Instrument, Switzerland is currently negotiating with one treaty partner and has initiated negotiations with another treaty partner to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention

Peer input

118. Of the peers that provided input during stage 2, ten provided input in relation to their tax treaty with Switzerland. None of this input, however, relates to element B.7 as the treaties to which these peers are a signatory are in line with this element. The peers for which the treaty with Switzerland is considered not to be in line with the requirements under element B.7 did not provide input.

Anticipated modifications

119. For the remaining two treaties that are not in line with element B.7 and will not be modified by the Multilateral Instrument and for which no bilateral negotiates are envisaged, scheduled or pending, Switzerland indicated that it for one treaty partner will update its notifications under the Multilateral Instrument following it will be modified by that instrument upon entry into force for this treaty. The other treaty concerns the 1954 treaty with the United Kingdom that continues to be applied to 13 jurisdictions and for which such renegotiations are not necessary. Regardless, Switzerland 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]	Five out of 95 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these five treaties: • One is expected to be modified by the Multilateral Instrument to contain the required provision • One is expected to be modified by the Multilateral Instrument when an update is made to the list of notifications under that instrument • Three will not be modified by that instrument to contain 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.	Switzerland should as quickly as possible complete the ratification process for the Multilateral Instrument and update its list of notifications under that instrument, to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in the two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For two of the remaining three 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, Switzerland should continue the current pending negotiations with a view to include the required provision in accordance with its plan for renegotiations. Specifically with respect to the 1954 treaty with the United Kingdom that is being applied to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines, Switzerland should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.

[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.

Switzerland's MAP guidance

121. Switzerland has issued rules, guidelines and procedures on the operation of the MAP programme in a so-called fact sheet on the mutual agreement procedure ("**MAP guidance**"). This guidance is published in German, French, Italian and English and is publicly available at:

https://www.sif.admin.ch/sif/en/home/bilateral/verstaendigungsverf.html

122. Switzerland's MAP guidance contains basic information on:

a. general information on the availability of the MAP process and cases for which there is access to MAP (transfer pricing cases, anti-abuse provisions, audit settlements, bona fide foreign-initiated self-adjustments and multilateral disputes)

b. legal basis and nature of the MAP process and the objective of the process

c. contact information of the competent authority or the office in charge of MAP cases

d. the manner and form in which the taxpayer should submit its MAP request

e. the specific information and documentation that should be included in a MAP request

f. time limits for filing a MAP request

g. how the MAP functions in terms of steps, timing of these steps and the role of the competent authorities throughout the process

h. relationship with domestic available remedies

i. rights and role of taxpayers in the process

j. implementation of MAP agreements.

123. The above-described MAP guidance of Switzerland includes information on the availability and the use of the MAP and how its competent authority conducts the process in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP requests.[8] However, some subjects are not specifically discussed, which are: (a) whether taxpayers can request for the multi-year resolution of recurring issues through MAP, (b) the possibility of suspension of tax collection during the course of the MAP and (c) the consideration of interest and penalties in MAP.

Information and documentation to be included in a MAP request

124. Switzerland's MAP guidance includes in section 6 a detailed list of what information taxpayers should include in their MAP request. Furthermore, section 4 specifies that MAP requests have to be submitted either in writing or electronically, in one of Switzerland's official languages or in English.

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 on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.[9] In light of this list, Switzerland's MAP guidance enumerating which items must be included in a request for MAP assistance are checked below:

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

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

126. Further to the above, section 6 of Switzerland's MAP guidance also requires that the taxpayer includes the following information in its MAP request: (i) the Swiss tax authority concerned, (ii) the treaty partner(s) concerned, (iii) copy of the assessment decision in either Switzerland or the treaty partner for the years for which a MAP is requested (if available), and (iv) copy of the audit report or adjustment proposal (if available).

127. One taxpayer provided input and stated that the existing guidance provides full clarity on how to access and use the MAP process.

Recent developments

128. Switzerland has updated its MAP guidance in May 2018. This updated guidance replaced the previous MAP guidance, issued in June 2016.[10] The update to its MAP guidance *inter alia* was performed to reflect:

- that taxpayers have access to MAP in transfer pricing cases, in cases where an anti-abuse provision applies and where multiple states are involved
- the relationship between domestic remedies and access to MAP
- details on the availability of arbitration under tax treaties
- the applicable process when access to MAP is denied
- the rights of taxpayers when a MAP agreement is reached

129. Further to the above, Switzerland has for both attribution/allocation cases and other cases, created a specific form that taxpayers should use when filing a MAP request, for which the link is included in the MAP guidance.

Anticipated modifications

130. Switzerland did not indicate that it anticipates any modifications in relation to element B.8.

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[11] 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 Switzerland is published and can be found at:

https://www.sif.admin.ch/sif/en/home/bilateral/verstaendigungsverf.html

133. The guidance was last updated in May 2018. As regards its accessibility, it can be easily found on the website of the State Secretariat for International Finance (SIF) by searching for "double taxation" or "mutual agreement procedure".

MAP Profile

134. The MAP profile of Switzerland is published on the website of the OECD. This MAP profile is complete and meets the baseline of what is required with minimal information. The MAP profile of Switzerland is published on the website of the OECD.[12] This profile includes external links which provide extra information and guidance.

Recent developments

135. As discussed under element B.9, Switzerland updated its MAP guidance in 2018. Furthermore, it has updated its MAP profile in August 2018 to reflect:

- changes to the contact details of Switzerland's competent authority
- links to guidance on APAs and the MAP guidance, as well as statistics on APAs and MAP cases
- a clarification that audit settlements are not available in Switzerland
- a specification that there is an internal document that details the MAP process, including timeframes to be applied during the process.

Anticipated modifications

136. Switzerland did not indicate that it anticipates any modifications in relation to element B.9.

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.

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

MAP and audit settlements in the MAP guidance

138. As previously mentioned under element B.5, audit settlements are not available in Switzerland. In that regard, there is no need to address in MAP guidance that such settlements do not preclude access to MAP. Nevertheless, Switzerland's MAP guidance in section 1, clarifies that taxpayers may request the initiation of a mutual agreement procedure even if after a tax audit in Switzerland, taxpayers have accepted the adjustment for which a MAP request is submitted.

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

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

140. As previously mentioned under element B.5, Switzerland does not have an administrative or statutory dispute settlement/resolution process available in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer.

141. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Switzerland, 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 processes

142. As Switzerland does not have an internal administrative or statutory dispute settlement/resolution process available, there is no need to notify treaty partners of such process.

Recent developments

143. There are no recent developments for element B.10.

Anticipated modifications

144. Switzerland did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These 73 treaties include the treaty with former Serbia and Montenegro that Switzerland continues to apply to both Serbia and Montenegro, and the treaty with Denmark that Switzerland also applies to the Faroe Islands.
2. These 80 treaties include the treaty with former Serbia and Montenegro that Switzerland continues to apply to both Serbia and Montenegro, and the treaty with Denmark that also applies to the Faroe Islands.
3. In the stage 1 peer review report, reference was made to 28 of the 90 tax treaties that contain the equivalent of Article 9(2) of the OECD Model Tax Convention. As will be described under the recent developments section, two treaties that concern the replacement of an existing treaty or the treaty that Switzerland continues to apply to multiple jurisdictions, three new treaties and one amending protocol have been signed. In total three of these five treaties and the amending protocol contain the equivalent of Article 9(2) of the OECD Model Tax Convention and two do not a provision on the granting of corresponding adjustments. Furthermore, following the peer review process of other assessed jurisdictions, two other treaties were also identified that do not contain the equivalent to Article 9(2) of the OECD Model Tax Convention, while they were marked as having such equivalent in the stage 1 peer review report of Switzerland. In addition, the treaty analysis in stage 1 did not take into account a treaty, which, includes a provision that is based on Article 9(2), but considered not to be the full equivalent thereof. Taking these changes into account, the number of treaties being referred as having the equivalent of Article 9(2) of the OECD Model Tax Convention is 30.
4. These 22 treaties include the 1954 treaty with the United Kingdom that Switzerland continues to apply to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines.
5. These 37 treaties include the treaty with former Serbia and Montenegro that Switzerland continues to apply to both Serbia and Montenegro.
6. These 90 treaties include the treaty with former Serbia and Montenegro that Switzerland continues to apply to both Serbia and Montenegro, and the treaty with Denmark that Switzerland also applies to the Faroe Islands.

7. These five treaties include the 1954 treaty with the United Kingdom that Switzerland continues to apply to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines.

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

9. Ibid.

10. Reference is made to the stage 1 peer review report of Switzerland for a description of the previous MAP guidance. Available at: https://www.sif.admin.ch/sif/en/home/bilateral/verstaendigungsverf.html.

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

12. https://www.oecd.org/tax/dispute/Switzerland-Dispute-Resolution-Profile.pdf.

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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.

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Part C

Resolution of MAP cases

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

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

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

Current situation of Switzerland's tax treaties

146. Out of Switzerland's 95 tax treaties 94 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.[1] The remaining treaty does not contain such a provision.[2]

147. Several peers that provided input mentioned that their treaty with Switzerland meets the requirements under the Action 14 Minimum Standard, including element C.1. Furthermore, one peer mentioned that the current treaty in force with Switzerland is under renegotiation, for which they seek to meet that standard. Another peer mentioned that the requirement under this standard will be implemented via the Multilateral Instrument. With respect to the treaty identified above that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant peer did not provide input.

Recent developments

Bilateral modifications

148. Switzerland signed new treaties with five treaty partners, one of which concerns the replacement of an existing tax treaty and one concerns a treaty partner for which

Switzerland currently continues to apply the 1954 treaty with the United Kingdom. Furthermore, Switzerland also signed an amending protocol to an existing treaty, which, however, does not have relevance with respect to element C.1. All five treaties contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, which also was the case for one treaty for which currently a treaty is in force. For none of these five treaties or the amending protocol ratification procedures have been completed by either treaty partner. The effects of these newly signed treaties and the amending protocol have been reflected in the analysis above.

Multilateral Instrument

149. Switzerland signed the Multilateral Instrument and has initiated the ratification process, for which completion is expected for the third quarter of 2019.

150. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

151. In regard of the treaty identified above that is considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Switzerland did not list this treaty as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, the Multilateral Instrument will not modify this treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Other developments

152. The treaty that is not in line with element C.1 and will not be modified by the Multilateral Instrument concerns the 1954 treaty with the United Kingdom that Switzerland continues to apply to 13 jurisdictions and for which such renegotiations are not necessary.

Peer input

153. Of the peers that provided input during stage 2, ten provided input in relation to their tax treaty with Switzerland. None of this input, however, relates to element C.1 as the treaties to which these peers are a signatory are in line with this element. The peers for which the treaty with Switzerland is considered not to be in line with the requirements under element C.1 did not provide input.

Anticipated modifications

154. Switzerland reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all future treaties.

Conclusion

	Areas for improvement	Recommendations
[C.1]	One out of 95 tax treaties does not contain a provision equivalent to Article 25(2), first sentence of the OECD Model Tax Convention.	As the one treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention include such provision is the 1954 treaty with the United Kingdom that Switzerland continues to apply to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines, Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.

[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).

155. 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

156. Statistics regarding all tax treaty related disputes concerning Switzerland are published on the website of the OECD as of 2007.[3] Since 2016, Switzerland also publishes MAP statistics on its government website.[4] These latter statistics are presented in the form of a report, which includes next to the statistics also an analysis and explanation of these statistics. This, for example, concerns the number of MAP cases per region and the amounts at stake in MAP cases.

157. 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. Switzerland provided their MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Switzerland 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.[5] It is to be noted that the statistics for both reporting periods should be considered jointly for an understanding of the MAP caseload of Switzerland. With respect to post-2015 cases, Switzerland reported having reached out to all its MAP partners with a view to have their MAP statistics matching.

158. For the year 2016, Switzerland indicated that it matched its statistics with all of its MAP partners. For the year 2017, Switzerland mentioned it reached out to its MAP partners. It was able to match its statistics with all but one of its MAP partners. The remaining treaty partner did not respond to Switzerland's request.

159. Eight peers provided input on the matching of MAP statistics with Switzerland, all of which confirmed that they were able to match their statistics with Switzerland. In addition, one of these peers mentioned that the respective competent authorities have exchanged information via various means of communication such as fax, mail, face-to-face meetings in order to be able to match the statistics. Furthermore, one peer mentioned no difficulties were encountered in matching the statistics, whereas another peer mentioned that contacts for the purposes of matching statistics were fruitful and led to a good result.

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

Monitoring of MAP statistics

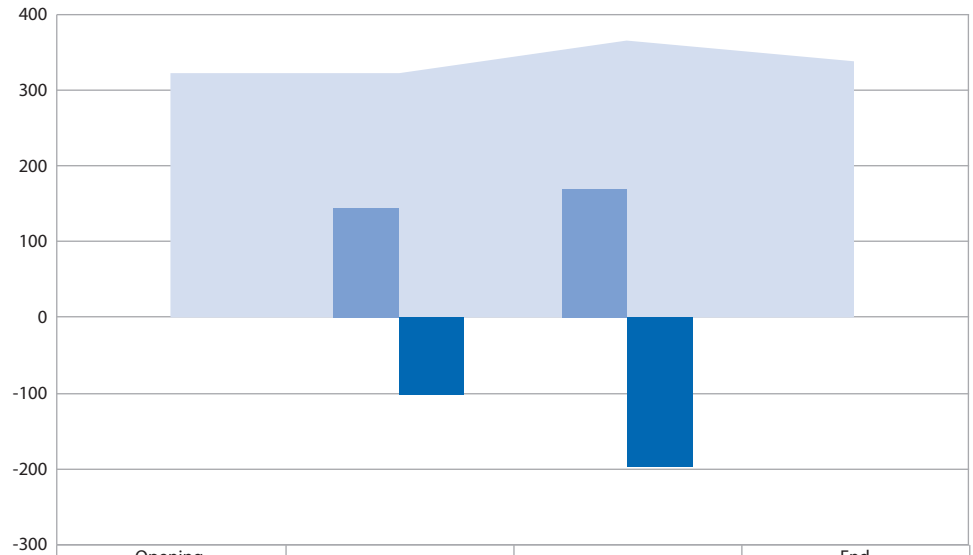
161. Switzerland reported that in 2016 it introduced a new management tracking system to measure performance with respect to MAP. This system concerns measuring the ability to reach an agreement within 24 months as well as the overall timeframes of each step of the mutual agreement procedure.

Analysis of Switzerland's caseload

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

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

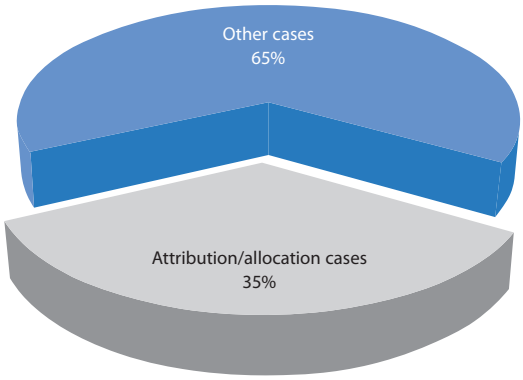
Figure C.1. **Evolution of Switzerlands MAP caseload**



	Opening inventory on 1/1/2016	2016	2017	End inventory on 31/12/2017
Inventory	322	322	366	338
Cases started		145	169	
Cases closed		-101	-197	

164. At the beginning of the Statistics Reporting Period Switzerland had 322 pending MAP cases, of which 142 were attribution/allocation cases and 180 other MAP cases.[6 7] At the end of the Statistics Reporting Period, Switzerland had 338 MAP cases in inventory, of which 117 are attribution/allocation cases and 221 are other MAP cases. Consequently, Switzerland's pending MAP cases have increased by 5% during the Statistics Reporting Period. This increase can be broken down into a decrease by 18% for attribution/allocation cases and an increase by 23% for other cases. The breakdown of the end inventory can be illustrated as follows:

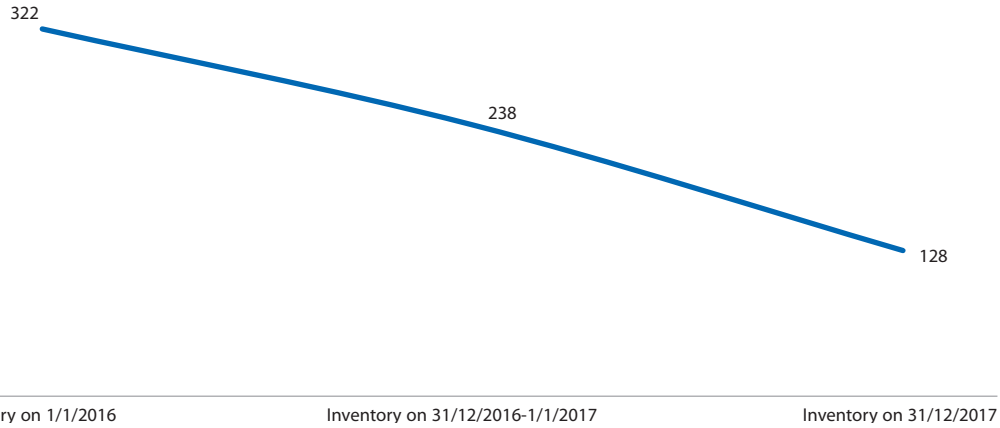
Figure C.2. **End inventory on 31 December 2017 (338 cases)**



Pre-2016 cases

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

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



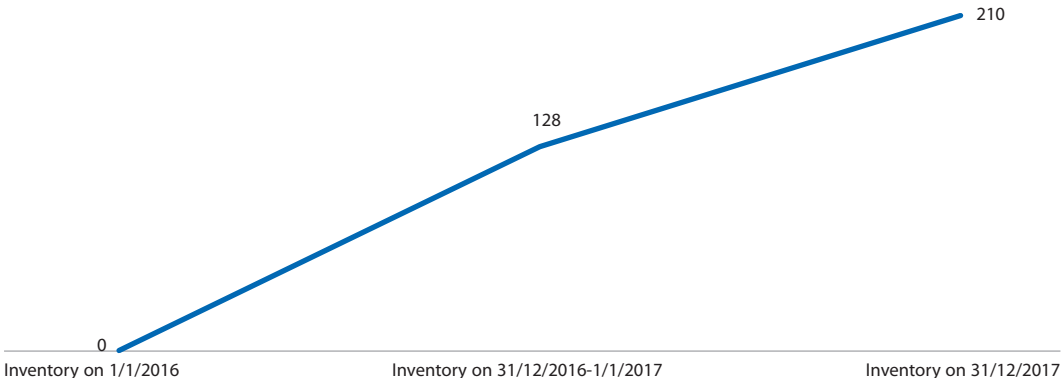
166. At the beginning of the Statistics Reporting Period, Switzerland's MAP inventory of pre-2016 MAP cases consisted of 322 cases, 142 of which were attribution/allocation cases and 180 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 128 cases, consisting of 46 attribution/allocation cases and 82 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	-34%	-51%	-68%
Other cases	20%	-43%	-54%

Post-2015 cases

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

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



168. In total, 314 MAP cases started during the Statistics Reporting Period, 114 of which concerned attribution/allocation cases and 200 other cases. At the end of this period the total number of post-2015 cases in the inventory was 210 cases, consisting of 71 attribution/allocation cases and 139 other cases. Conclusively, Switzerland closed 104 post-2015 cases during the Statistics Reporting Period, 43 of them being attribution/allocation cases and 61 other cases. The total number of closed cases represent 33% of the total number of post-2015 cases that started during the Statistics Reporting Period.

169. 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.

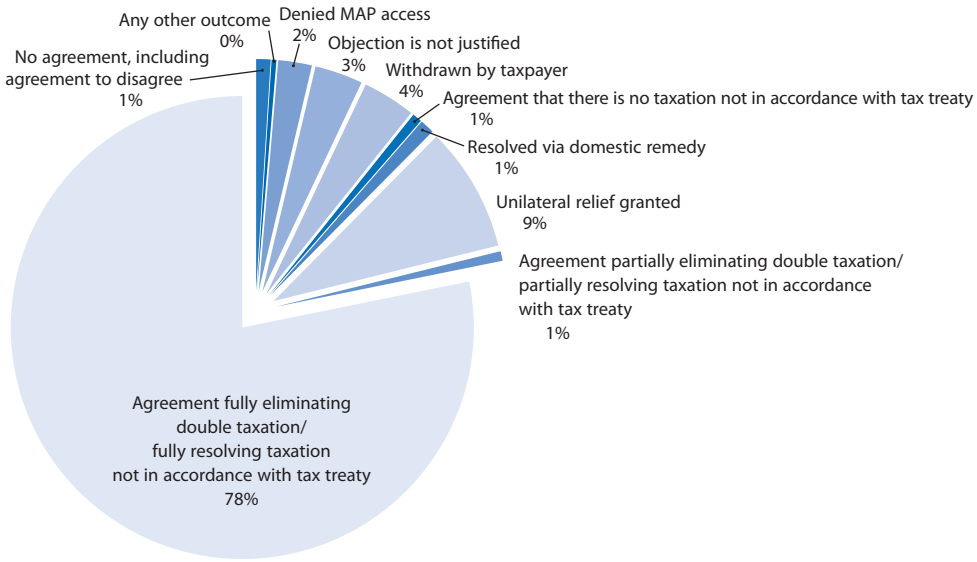
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution/allocation cases	15%	62%	38%
Other cases	9%	46%	31%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

170. During the Statistics Reporting Period Switzerland resolved 298 MAP cases and the following outcomes were reported:

Figure C.5. **Cases closed during the Statistics Reporting Period (298 cases)**



171. This chart shows that during the Statistics Reporting Period, 233 out of the 298 cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

172. In total, 139 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 (88%)
- unilateral relief granted (6%).

Reported outcomes for other cases

173. In total, 159 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 (69%)
- unilateral relief granted (11%)
- objection not justified (6%).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

174. The average time needed to close MAP cases during the Statistics Reporting Period was 20.96 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	139	24.98
Other cases	159	17.44
All cases	298	20.96

Pre-2016 cases

175. Switzerland reported that on average it needed 32.98 months to close 96 attribution/allocation cases and 24.67 months to close 98 other cases. This resulted in an average time needed of 28.74 months to close 194 pre-2016 cases. For the purpose of computing the time to resolve pre-2016 cases, Switzerland used:

- as the start date the date of filing of the MAP request
- as the end date, the earliest of the following dates: (i) the date when the taxpayer is informed of the outcome of the MAP, (ii) the date of the closing letter which is drafted upon taxpayer's approval of the agreement reached, or (iii) the date when Switzerland's competent authority formally closed the case.

Post-2015 cases

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

177. For post-2015 cases, Switzerland reported that on average it needed 7.32 months to close 43 attribution/allocation cases and 5.82 months to close 61 other cases. This resulted in an average time needed of 6.44 months to close 104 post-2015 cases.

Peer input

178. All peers that provided input on their experience with Switzerland's competent authority on the resolution of MAP cases reported a good working relationship, which is further discussed under element C.3 below. This concerns jurisdictions that have large MAP inventories with Switzerland as well as those with a relatively modest caseload. Peers indicated that contact with the competent authority of Switzerland is easy and that the competent authority is solution-oriented. Peers further indicated that cases are generally resolved within a reasonable period, although not all cases are resolved within a 24-month period as some cases are particularly complex and take longer to resolve.

Recent developments

179. Further to the above, in the stage 1 peer review report Switzerland was under element C.2 recommended to seek to resolve the remaining 90% of its post-2015 MAP cases that were pending on 31 December 2016 (128 cases), such within a timeframe that results in an average timeframe of 24 months for all post-2015 cases. With respect to the recommendation, Switzerland reported that it taken a few steps. These are:

- introduction of a strategy to schedule its annual competent authority meetings, whereby it prioritises negotiations with those treaty partners with which it has the most MAP cases pending and those with which the MAP cases are the longest pending

- introduction of a system to alert staff in charge of MAP when the steps in the MAP process take too long. Such alert, for example, is given when for a MAP case there is no milestone 1 within 18 months after the start date for this case.
- development of an escalation procedure for the oldest cases with a view to accelerate the process of resolving them
- hiring of new staff for the transfer pricing team and hiring of an intern.

180. In view of these steps, Switzerland reported that these have contributed to a decrease in its MAP inventory. As follows from the MAP statistics discussed above, the average completion time has in Switzerland slightly decreased in 2017 as compared to 2016.

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

182. As mentioned under element C.6, Switzerland has committed to provide for mandatory and binding MAP arbitration in its bilateral tax treaties as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe. Other than this commitment, Switzerland did not indicate that it anticipates any modifications in relation to element C.2.

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.

183. 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 Switzerland's competent authority

184. Under the tax treaties Switzerland has entered into, the competent authority function to handle MAP cases is delegated to the State Secretariat for International Finance ("**SIF**"), a division within the Federal Department of Finance, which is responsible for the co-ordination and strategic management of international financial, monetary and tax matters.[8] Furthermore, within SIF it is the tax department that is responsible for handling MAP and APA cases, next to other tasks.

185. Switzerland's competent authority consist of two teams, one of which handles attribution/allocation cases and APA requests. This team consist of nine persons. The second team handles other MAP cases and consists of seven persons, which next to handling such cases are also responsible for other tasks, such as the negotiation of tax treaties. Furthermore, both teams could also work on other issues, such as preparing documents like MAP guidance.

186. When a MAP request is received by Switzerland's competent authority it is assigned to a staff member, who is in charge of MAP cases with the specific treaty partner. This staff member will take three preliminary steps. It will first process the main elements of the case into a scorecard, which is used for statistical and monitoring purposes. This scorecard follows the rules set out in Switzerland's MAP guidance and the MAP Statistics Reporting Framework. It will subsequently review the request on whether all required information on the case was submitted and, if necessary, request additional information. If the MAP request is considered to be complete, the staff member will put all relevant information on the case into a specific document that notes the important steps for the MAP process. Thirdly, the staff member will inform the cantons and/or the Federal Tax Administration of the MAP request, thereby inviting these parties to provide their views on the case under review.

187. After a case is accepted into the MAP process, an internal preparation meeting is held to discuss the case, if necessary. Afterwards the other competent authority will be contacted and a position paper on the case is being prepared (or a response to such a paper if it is received from the other competent authority concerned). Also meetings can be scheduled with the other competent authority concerned. Meetings with taxpayers are also possible, when there is a feeling that it may speed up the understanding of handling cases.

188. Switzerland further reported that it has established an internal document that includes guiding timeframes for staff in charge of MAP in order to seek to resolve MAP cases within a 24-month average timeframe. These include:

- five-day period for sending acknowledgment of receipt of a MAP request
- 28-day period for informing the other competent authority of receipt of a MAP request
- 60-day period for analysing whether all required information is included in the MAP request and for requesting additional information, if necessary
- 60-day period for informing the canton concerned and/or the Federal Tax Administration of receipt of the MAP request
- 240-day period for preparing a position paper
- 720-day period for resolving the case.

Monitoring mechanism

189. Switzerland reported that the monitoring of whether resources for the MAP function are adequate is based on the average time taken to complete a case and the number of pending cases on file.

190. Furthermore, every three months the heads of the two teams have a meeting of each member of the team to discuss and verify the actions taken during the period under review for cases that are randomly chosen by the head of the teams. It is during these meetings that also the adequacy of workload of staff is being discussed.

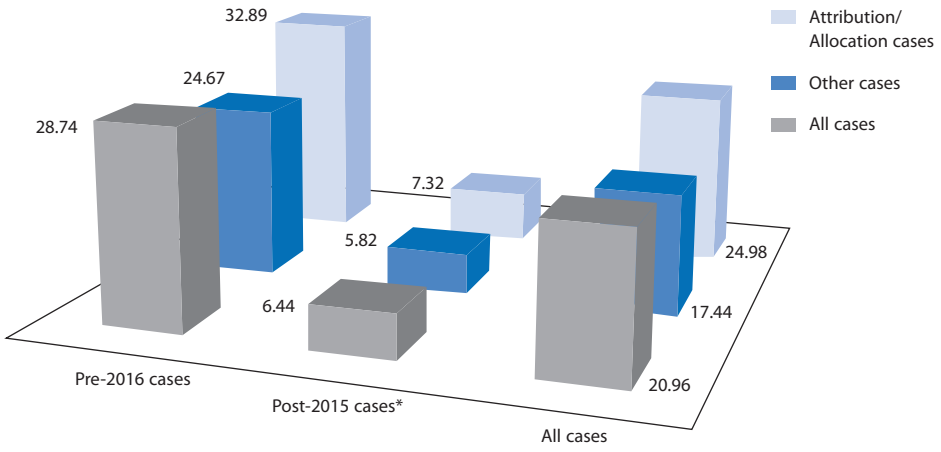
Recent developments

191. Switzerland reported that since 1 January 2017 it hired one academic trainee and a full time employee, both of which work in the team that handles attribution/allocation cases and which are included in the nine persons reflected above.

Practical application

192. As discussed under element C.2, in 2016 and 2017 Switzerland closed its MAP cases within the required 24-month average, as the average is 20.96 months. However, a discrepancy exist between the average time taken to solve attribution/allocation cases and other cases. This can be illustrated by the following graph:

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



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

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

	2016	2017
Attribution/Allocation cases	26.08	24.21
Other cases	15.49	18.19
All cases	21.47	20.69

194. Based on these figures, it follows that on average it took Switzerland 20.96 months to resolve MAP cases. Switzerland provided the following clarification why it experienced some delays in the resolution of some MAP cases: complexity and financial impact of cases resolved; a certain lack of resources at the competent authority of Switzerland; and lengthy response times by other competent authorities. Switzerland also explained that it made additional effort to close old cases which resulted in lengthening its average timeframe.

195. The stage 1 peer review report of Switzerland analysed the 2016 statistics and showed an average of 22.05 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 Switzerland slightly 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.

196. With the final submission of the 2016 statistics, however, the average time to resolve MAP cases was modified, which numbers are shown in the above table, but this only concerns a minor deviation.[9] The 2017 statistics show that Switzerland decreased the average completion time of MAP cases to 20.69 months, resulting in an average for both years of 20.96 months.

However, also in 2017 the average completion time for attribution/allocation cases was slightly above 24 months and furthermore – as analysed in element C.2 – the MAP inventory of Switzerland slightly increased since 1 January 2016. This can be shown as follows:

2016+2017	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	142	59	57	144	55	82	117	-18%
Other cases	180	86	44	222	114	115	221	23%
Total	322	145	101	366	169	197	338	5%

197. The increase in the number of other MAP cases of 23% (41 cases) indicates that more resources may be necessary to cope with this increase and to ensure that for the current and future MAP cases Switzerland continues to resolve them within the pursued average of 24 months.

Peer input

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

198. All peers that provided input appreciated their MAP relationship with Switzerland and the efforts by Switzerland's competent authority to resolve MAP cases in an effective and efficient manner. This concerns both peers that consider Switzerland to be an important MAP partner as well as those peers for which the number of MAP cases with Switzerland is less important. Furthermore, the positive input voiced by peers regards both treaty partners that are neighbouring and non-neighbouring states.

199. In a general sense, all peers that provided input mentioned that they have a good relationship with Switzerland's competent authority regarding the resolution of MAP cases. One of these peers noted it has an excellent working relationship with Switzerland in relation to the administration and resolution of the MAP programme. Furthermore, another peer stressed that it has with Switzerland a long and well-established relationship regarding the resolution of MAP cases. Two other peers mentioned they has a very good and productive MAP relationship with Switzerland, which they both value. Lastly, one peer indicated its competent authority is pleased to have an active and productive relationship with Switzerland's competent authority, both as regards attribution/allocation and other MAP cases. This peer further note that their competent authorities consistently work together to resolve MAP cases in a timely and principled manner.

200. Concerning contacts with Switzerland's competent authority, all peers provided positive input on the easiness and frequency of contacts. One peer mentioned it has not faced any problems with reaching Switzerland's competent authority. Furthermore, another peer mentioned that contacts are generally easy, since Switzerland provide the contact details of the official handling the case under review in the relevant documents. Similar input was given by a third peer, who mentioned that the organisational structure in Switzerland regarding the MAP process is easy to identify and that the indication of an email address in correspondence facilitates contacts with its competent authority. Finally, one peer mentioned that regarding pending MAP cases with Switzerland contacts with its competent authority have worked well and also that quick responses to communications were received.

201. Further to the above, a number of peers indicated means of communication with Switzerland, which are done via various manners, such as telephone, written correspondence, emails and face-to-face meetings. In this respect, peers also mentioned scheduling at regular occasions face-to-face meetings with Switzerland. For one peer this is generally twice per year, to which it added that also frequent conference calls take place to prepare for discussions during such meetings. For other peers the number of face-to-face meetings is generally once a year. One peer also mentioned that they maintain in direct contact with Switzerland via officials that attend OECD meetings.

202. Concerning the resolution of MAP cases, peers also reported positive experiences with Switzerland's competent authority. One peer particularly mentioned that there are no obstacles in the resolution of MAP cases with Switzerland, which input was echoed by another peer. This latter peer emphasised that there are no major impediments in resolving cases in a timely manner and further that adequate resources have been deployed in Switzerland to the MAP function. Furthermore, one peer mentioned that their respective competent authorities work collaboratively to reach solutions in a practical and principal manner. It further mentioned it has a positive experience with Switzerland in resolving MAP cases and that its competent authority works diligently with to resolve MAP issues in a principled manner, as also that it has demonstrated flexibility and creativity in addressing challenging technical and procedural issues. The peer also believed Switzerland has devoted the resources it can to resolve MAP cases with the peer's competent authority. Another peer indicated that the adoption of a common working language with Switzerland has further simplified the examination of their pending MAP cases, as also that they have co-operated in a continuous and effective way for resolving MAP cases. A fifth peer mentioned that its MAP inventory with Switzerland mainly consists of non-attribution/allocation cases, for which it considered the dialogue between the competent authorities to be positive and which acts as a sound basis for discussing and solving MAP cases. This peer also noted that it has good experiences in resolving such cases, whereby it considered that Switzerland has shown great efforts in finding ways for their resolution. While this peer concluded that Switzerland has adequate resources in place for the MAP function, it also noted that the number of cases per case handler is high.

203. In addition to the above input, three peers mentioned that Switzerland strives at resolving MAP cases in a timely manner. One of these peers mentioned that while the average completion time for its cases with Switzerland is slightly above 24-months, this is in its view not due to lack of resources at the level of Switzerland's competent authority. The peer further noted that the use of email has improved the timeliness of resolving cases. Furthermore, another of these peers mentioned that in cases where facts have to be examined in more detail, it, however, might take longer for Switzerland's competent authority to be ready to discuss cases. Lastly, another peer also provided positive input on the attitude of Switzerland's competent authority in resolving MAP cases, as it noted that the competent authority is flexible and focuses on achieving a result. This peer, however, also put forward some criticism on its experiences with Switzerland in resolving MAP cases, as in its view Switzerland's competent authority does neither issue position papers nor any other kind of written positions. This peer therefore considered that written communication is not always easy. It further mentioned that they also seem to have information about the companies and the cases, which they do not always share with the other competent authority before a competent authority meeting. Nevertheless, this peer also mentioned that Switzerland's competent authority is always very well prepared for face-to-face meetings and seem to have very close contacts with their taxpayers.

204. A few peers made suggestions for improvement. One of these peers mentioned that it regards it as useful that when MAP cases are discussed during face-to-face meetings, minutes are drawn up in which it is clearly stated which competent authority should undertake further steps. The peer gave the example that where the facts of a case are unclear for at least one competent authority, such minutes should clearly say which competent authority should proceed with further investigations. Furthermore, another peer suggested that due to different time zones, both jurisdictions should make every effort to increase the frequency of teleconferences to supplement face-to-face meetings and to further improve upon the timeframes for resolving MAP cases. A third peer mentioned that its competent authority is very open to continuing to work with Switzerland's competent authority to find ways to foster consistent, direct communications to strive towards even greater efficiency in resolving MAP cases. Lastly, one peer (being the peer whose input is discussed at the end of paragraph 202) suggested that more resources are attributed to the resolution of attribution/allocation MAP cases.

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

205. All but one peer that provided input during stage 1 stated in stage 2 that the update report provided by Switzerland fully reflects their experience with Switzerland since 1 January 2017 and/or there are no additions to the previous input given. Seven peers provided specific input on their experiences with Switzerland concerning the resolution of MAP cases since that date.

206. One of these seven peers mentioned that due to the excellent and co-operative relationship with Switzerland's competent authority, MAP cases have been resolved in a timely manner. To this the peer added that their competent authorities share a positive and professional relationship in resolving MAP cases, as also that they have made efforts to increase the frequency of teleconferencing in preparation for face-to-face meetings, such with a view to improve the timely resolution of MAP cases. It further considered that Switzerland has sufficient resources for the MAP function and that personnel within its competent authority is highly competent to ensure the resolution of MAP cases with the peer. This input was echoed by another peer who concluded that Switzerland's competent authority is professional, principled and well-resourced. This peer also considered that their MAP relationship is co-operative and helpful when discussing MAP cases. It in particular noted that the use of encrypted emails and teleconferencing facilitates the timely resolution of such cases.

207. Further to the above, one peer also mentioned that via regular exchanges in face-to-face meetings, email and telephone enabled that MAP cases with Switzerland were effectively resolved. Two other peers also mentioned that they were able to resolve MAP cases with Switzerland without any delays, one of them noting that pending cases are progressing and that there is continuous email contact between the competent authorities, as also that annually face-to-face meetings are being scheduled.

208. In addition, one peer mentioned that as Switzerland is one of its main MAP partners, there has been frequent communications between their competent authorities via various means (face-to-face meetings, conference calls and emails), which were held in a very polite, respectful and co-operative atmosphere. The peer further noted that their competent authorities strived at resolving MAP cases in a timely manner. Where cases could not be resolved through email or telephone discussions, they were discussed in the face-to-face meetings, leading to a solution for many of these cases. Specifically concerning attribution/allocation cases, the peer specified that cases could be resolved via a compromise-oriented

approach, whereby Switzerland's competent authority showed in the peer's view extensive theoretical and practical knowledge. This peer concluded that it has a very good relationship with Switzerland in resolving MAP cases, whereby most cases are resolved efficiently and satisfactorily. Nevertheless, the peer noted that in some cases the response of Switzerland's competent authority could have been swifter.

209. Lastly, one peer mentioned that its experiences with Switzerland have not changed since 1 January 2017, thereby specifying that in its view Switzerland's competent authority does not issue position papers nor any other kind of written position, following which written correspondence is not always easy. It also noted that Switzerland's competent authority is always very well prepared for face-to-face meetings and seem to have very close contacts with their taxpayers. They also seem to have information about the companies and the cases, which they not always share with the other competent authority. Switzerland responded to this input and indicated not fully agreeing herewith. It mentioned that its competent authority issues position papers when it is considered necessary, which will not be the case where the adjustment under review in a MAP case is made at the level of the treaty partner. Furthermore, Switzerland noted that it does not agree with the comment made that certain information is not shared, as all facts and documents that are used for bilateral discussions that are received from taxpayers are shared with the other competent authority concerned. Where, mistakenly information that was only provided by taxpayers to Switzerland's competent authority, Switzerland is willing to share such information and there is no intention of not sharing.

Anticipated modifications

210. Switzerland did not indicate that it anticipates any modifications in relation to element C3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	The MAP caseload of other cases has increased substantially since 1 January 2016. While a significant higher amount of MAP cases was resolved, the increase in the MAP inventory as regards other cases indicates that the competent authority may not be adequately resourced to cope with the increase of this type of cases.	Switzerland 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.

211. 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 and absent any policy consideration, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

212. Switzerland reported that in a general manner when resolving MAP cases, staff in charge of MAP has to consider the provisions of the relevant treaty including relevant case law and available literature dealing with the relevant provisions, namely the Commentary to the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines (OECD, 2017b).

213. When position papers are prepared, these are subject to review by a third person, usually the head of section or the head of section's deputy. Particularly complex or out of the ordinary cases are discussed with the head of division and, if appropriate, with the head of the State Secretariat for International Finance ("**SIF**"). Each of the team members are thereby allowed to enter into MAP agreements, but these are subject to approval by the head of the respective team. Switzerland further reported that its competent authority operates independently and has full authority to resolve MAP cases. There is neither a (formal) system in place requiring the competent authority to ask tax administration personnel directly involved in the adjustment at issue for approval of any MAP agreements nor is the process for negotiating MAP agreements influenced by policy considerations. In this respect, the tax administration's involvement in the process primarily to gather the relevant facts, to obtain the tax authority's perspective of the case and to make it aware of the MAP case in view of possible adjustments.

Recent developments

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

Practical application

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

215. Peers have indicated that Switzerland's competent authority is flexible and focused on achieving results in the competent authority negotiations and that the officers in charge of the MAP function have sufficient authority and mandate to resolve MAP cases.

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

216. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Switzerland fully reflects their experience with Switzerland since 1 January 2017 and/or there are no additions to the previous input given. One of these peers mentioned that there were no known instances where the independence of Switzerland's competent authority has been at issue or where policy considerations have influenced MAP agreements in such a manner that future amendments to the treaty are necessary.

Anticipated modifications

217. Switzerland did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

218. 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 Switzerland

219. Switzerland reported that performance indicators for staff in charge of MAP processes involve the average time for the resolution of MAP cases, the number of negotiations held per year or compliance with the determined MAP process. Switzerland further reported that each team member has one to three specific goals that are set every year during bilateral discussions with his or her superior, of which the indicators mentioned above all play a role in the evaluation. Evaluation of these goals is done once or twice a year during a bilateral discussion and gives rise to a grade that has a very limited influence on the salary of the employee. Tax amounts are never relevant as a performance indicator.

220. When resolving MAP cases, Switzerland reported that staff in charge of MAP has to consider the provisions of the relevant treaty including relevant case law and available literature dealing with the relevant provisions, namely the Commentary to the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines. Moreover the relevant actions taken by staff are subject to review by a third person, usually the head of section or the head of section's deputy. Particularly complex or out of the ordinary cases are discussed with the head of division and, if appropriate, with the head of the State Secretariat for International Finance ("**SIF**").

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

- ☑ number of MAP cases resolved
- ☐ consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly situated taxpayer)
- ☑ 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).

222. Further to the above, Switzerland reported it does not use performance indicators that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintaining tax revenue. In other words, in Switzerland the specific material outcome of MAP discussions is not a criterion to evaluate performance of staff in charge of MAP.

Recent developments

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

Practical application

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

224. Peers reported not being aware of any inappropriate performance indicators used by Switzerland's competent authority. One peer noted Switzerland was flexible and focused on achieving results and another stated that it has shown great efforts in finding ways to solve cases.

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

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

Anticipated modifications

226. Switzerland did not anticipate 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.

227. 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

228. Switzerland reported that there are no domestic law limitations for including MAP arbitration in its tax treaties. In this respect, it declared that it is favourable to the use of arbitration as a means to ensure dispute resolution. Switzerland was furthermore a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument. Switzerland's MAP guidance, in section 3, briefly describe the availability of arbitration under tax treaties, but not further specify its policy on arbitration.

Recent developments

229. Since 1 January 2017 Switzerland signed new treaties with five treaty partners, one concerns the replacement of an existing tax treaty and one concerns a treaty partner for which Switzerland currently continues to apply the 1954 treaty with the United Kingdom. Three of the signed five new treaties contain an arbitration clause that is modelled after Article 25(5) of the OECD Model Tax Convention. These treaties are included in the specification below.

230. In addition, Switzerland signed the Multilateral Instrument and has initiated the ratification process, for which completion is expected for the third quarter of 2019. With the signing of that instrument, Switzerland 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

231. Switzerland has incorporated an arbitration clause in 32 tax treaties as a final stage to the MAP. These clauses are as follows:

- 29 treaties contain an arbitration clause that is based on Article 25(5) of the OECD Model Tax Convention.[10] In 28 of these treaties deviations were agreed from Article 25(5), which are:
  - In 15 treaties the two-year period for MAP is replaced with a three-year period and competent authorities have a six-month period to negotiate a deviating agreement after the arbitration commission gave its decision.
  - In 10 treaties the two-year period for MAP is replaced with a three-year period.
  - In one treaty the two-year period for MAP is replaced with a three-year period and arbitration is only available for cases related to transfer pricing or for the determination whether a permanent establishment is in existence.
  - In one treaty the two-year period for MAP is replaced with a three-year period and arbitration can be excluded for abusive cases or cases where competent authorities agree that they are not suitable for resolution through arbitration.
  - In one treaty the two-year period for MAP is replaced with a four-year period and competent authorities have a six-month period to negotiate a deviating agreement after the arbitration commission gave its decision.
- Two treaties contain a mandatory and binding arbitration clause
- One treaty provides for a voluntary and binding arbitration procedure.

232. Furthermore, Switzerland included in 11 treaties a most-favoured nation clause concerning the inclusion of an arbitration provision. In three treaties[11] this concerns the automatic inclusion of such provision, whereas in eight treaties[12] this concerns entering into negotiations for the inclusion of an arbitration provision, should Switzerland's treaty partner include an arbitration provision in a tax treaty with a third state. With respect to the first three most-favoured nation clauses, Switzerland reported that the relevant conditions have been fulfilled for two of them, following which these treaties now also include an arbitration clause. These treaties are included in the specification above.

233. In addition, with respect to the effect of part VI of the Multilateral Instrument on Switzerland's tax treaties, there are next to Switzerland in total 28 signatories to this instrument that also opted for part VI. Concerning these 28 signatories, Switzerland listed

four as a covered tax agreement under the Multilateral Instrument and all of these four treaty partners also listed their treaty with Switzerland under that instrument. For these four treaties, Switzerland has already included an arbitration provision in two tax treaties. For the remaining two tax treaties, Switzerland reported it expects that part VI of the Multilateral Instrument will apply and introduce a mandatory and binding arbitration procedure in these treaties.

234. One peer provided input and mentioned that is has made a reservation on the application of part VI of the Multilateral Instrument regarding the treaty with Switzerland, as this treaty already provides for a mandatory and binding arbitration procedure. This peer also mentioned that it is currently in the process of negotiating an agreement with Switzerland on how to apply the arbitration procedure, such to give clarity and certainty to taxpayers with respect to the process and also to ensure a smooth procedure.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 94 treaties include the treaty with former Serbia and Montenegro that Switzerland continues to apply to both Serbia and Montenegro, and the treaty with Denmark that Switzerland also applies to the Faroe Islands.
2. This concerns the 1954 treaty with the United Kingdom that Switzerland continues to apply to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines.
3. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2015.
4. .Available at: https://www.sif.admin.ch/sif/en/home/bilateral/verstaendigungsverf.html. These statistics are up to and include fiscal year 2016.
5. For post-2015 cases, if the number of MAP cases in Switzerland's inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five, Switzerland's reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
6. For pre-2016 and post-2015 Switzerland follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of the *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.".

7. In the stage 1 peer review report of Switzerland, the number of pending MAP cases as per 1 January 2016 was 303, consisting of 141 attribution/allocation cases and 162 other cases. With the submission of the 2017 MAP statistics this number has been changed into 322 pending cases, consisting of 142 attribution/allocation cases and 180 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.

8. Switzerland publishes who the competent authority is on its competent authority website. Available at: https://www.sif.admin.ch/sif/en/home/bilateral/verstaendigungsverf.html.

9. The initial reported MAP statistics by Switzerland for 2016 showed an average time to close MAP cases of 22.05 months. However, with the final submitted statistics, it follows that instead of 14 post-2015 cases closed there were 17 post-2015 cases closed. Following this, the average time needed to close cases in 2016 decreased from 22.05 months to 21.47 months.

10. These 29 treaties include the treaty with Denmark, which for Switzerland also applies to the Faroe Islands.

11. This concerns treaties with Bulgaria, Cyprus and Romania.

    Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

    Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

12. This concerns treaties with the Czech Republic, Hungary, Ireland, Korea, Mexico, Peru, Portugal and Russia.

References

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

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

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Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

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. Switzerland reported that it has a domestic statute of limitation for amending the taxpayer's tax position, which would apply in respect of most of Switzerland's tax treaties, as only a few tax treaties contain second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) stipulating that any MAP agreement shall be implemented notwithstanding domestic time limits (see element D.3).

238. According to Article 148 of the Federal Law on Direct Federal Tax, a change of assessment in favour of the taxpayer has to be requested within 90 days after having knowledge of the ground for revision but no longer than 10 years after the assessment was rendered. Where a tax assessment has become final, it can only be amended later on the basis of certain grounds. A MAP agreement is considered to be one of these. With respect to MAP agreements, Switzerland specified that this 10 year deadline is deemed to be met if the MAP request is filed before the end of that deadline. In other words, that the length of the MAP process will not negatively affect the taxpayer and Switzerland will implement all agreements reached in MAP discussions given that the MAP request was submitted within this 10 year time limit.

239. Concerning the process for implementing MAP agreements, Switzerland reported it informs taxpayers of the outcome of the mutual agreement procedure. It also requests the taxpayer concerned to give its consent to the agreement reached and, if applicable, to withdraw from pending domestic judicial remedies, which is a prerequisite for implementation. This applies for agreements reached as the result of the MAP, as well as for any agreements reached following the decision of an arbitration panel as a final stage to the MAP. Taxpayers have 30 days to give their consent to the agreement, which can be extended by the taxpayer via a written request. Unless this agreement was rejected within 30 days, it was assumed that the taxpayer has accepted it (see further below). Once the agreement is accepted by the taxpayer, the competent authority will inform the local tax administration of the MAP agreement, who will, when necessary, implement it automatically.

Recent developments

240. Switzerland reported that it has updated its MAP guidance, which in section 8.5 now includes information on the role of the taxpayer in the implementation process and the time he has to give its consent to a MAP agreement, which aligns with the analysis above. Furthermore, Switzerland also reported that it changed the approval process for the taxpayer, which is that the taxpayer now explicitly has to accept the MAP agreement for it to become valid. If its competent authority does not receive a response from the taxpayer within the 30-day period, the MAP agreement will once again be communicated to the taxpayer via registered mail, setting another 30 days to provide the consent. If after that 30-day period there is still no response from the taxpayer, this may be considered as a rejection of the MAP agreement. In other words, different than the previous process, it is not automatically assumed anymore that no response within the 30-day period is a consent from the taxpayer with the MAP agreement.

Practical application

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

241. Switzerland reported that all MAP agreements reached 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. However, there is no mechanism in place that keeps track of the implementation of all MAP agreements.

242. All peers that provided input reported not being aware of any impediments to the implementation of MAP agreements in Switzerland in the period 1 January 2014-31 December 2016. In addition, one peer mentioned that in its impression MAP agreements with Switzerland have been implemented both timely and correctly. This peer also mentioned that the absence of the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention has not caused any problems regarding the implementation of MAP agreements. The latter input was echoed by another peer.

243. Taxpayers also noted that they have not experienced any problems with respect to implementation of MAP agreements.

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

244. Switzerland 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. It further mentioned that the implementation of MAP agreements has not been obstructed by its domestic 10-year time limit.

245. Most peers that provided input during stage 1 stated in stage 2 that the update report provided by Switzerland fully reflects their experience with Switzerland since 1 January 2017 and/or there are no additions to the previous input given. One peer thereby specified that it has not received any feedback from taxpayers that Switzerland did not implement the MAP agreement reached. Furthermore, one peer mentioned that although its treaty with Switzerland does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention or the alternative provisions for Article 9(1) and Article 7(2), this has not caused any difficulties concerning the implementation of MAP agreements. Another peer arrived at the same conclusion and mentioned that while it was not explicitly informed

that domestic time limits may cause that a MAP agreement could not be implemented, in practice it did not encounter any case where domestic time limits in Switzerland caused that such agreement could not be implemented.

Anticipated modifications

246. Switzerland did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Switzerland's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternatives provided in Article 9(1) and 7(2). Therefore, there is a risk that for those tax treaties that do not contain those provisions, not all MAP agreements will be implemented due to the ten year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in Switzerland's relevant tax treaty, prevent the implementation of a MAP agreement, Switzerland should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Switzerland should for clarity and transparency purposes notify the treaty partner thereof without delay.

[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. As discussed under element D.1, Switzerland's competent authority will, after acceptance by the taxpayer, communicate the MAP agreement to the local tax administration and request its implementation. The Swiss cantonal tax authority will implement the agreement automatically unless it lacks information for such implementation. In such situations it will contact the taxpayer directly.

249. Switzerland has in its domestic legislation and/or administrative framework, however, no timeframe for implementation of MAP agreements reached. Furthermore, its MAP guidance does not include information on the timeframe for implementing MAP agreements.

Recent developments

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

Practical application

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

251. Switzerland 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.

252. All peers that provided input reported not being aware of any impediments in the period 1 January 2014-31 December 2016 concerning the implementation of MAP agreements in Switzerland on a timely basis. In addition, one peer noted that it is their impression that MAP agreements are implemented in a timely and effective matter. Taxpayers also noted that they have not experienced any problems with respect to implementation of MAP agreements on a timely basis.

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

253. Switzerland 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.

254. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Switzerland fully reflects their experience with Switzerland since 1 January 2017 and/or there are no additions to the previous input given. Two of these peers mentioned that they have not experienced any delays in the implementation process of MAP agreements.

Anticipated modifications

255. Switzerland 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.

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

Legal framework and current situation of Switzerland's tax treaties

257. As discussed under element D.1, Switzerland is, pursuant to its domestic legislation, not allowed to implement MAP agreements if domestic time limits have passed and where they are not overwritten by a tax treaty.

258. Furthermore, Switzerland reserved in paragraph 96 the Commentary to Article 25 of the OECD Model Tax Convention the right not to incorporate the second sentence of Article 25(2) in its tax treaties. This reservation reads:

> Switzerland reserves its position on the second sentence of paragraph 2. It considers that the implementation of reliefs and refunds following a mutual agreement ought to remain linked to time limits prescribed by its domestic laws. Switzerland is willing to accept alternative treaty provisions that limit the time during which a Contracting State may make an adjustment pursuant to paragraph 1 of Article 9 or paragraph 2 of Article 7, in order to avoid late adjustments with respect to which MAP relief will not be available.

259. Out of Switzerland's 95 tax treaties, five contain a provision that is 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 the domestic law of the states concerned. Furthermore, five tax treaties do not contain the second sentence of Article 25(2), but contain the alternative provisions for Article 9(1) and Article 7(2), setting a time limit for making primary adjustments. For the remaining 85 treaties the following analysis is made:

- 84 neither contain the second sentence of Article 25(2) of the OECD Model Tax Convention nor the alternative provisions for Article 9(1) and Article 7(2).
- One treaty contains the second sentence of Article 25(2) of the OECD Model Tax Convention, but this sentence is supplemented with wording that limits the actual implementation of MAP agreements to ten years after ending of the concerned fiscal year and is for that reason not considered being equivalent thereof.

260. Several peers that provided input mentioned that their treaty with Switzerland meets the requirements under the Action 14 Minimum Standard, including element D.3. Furthermore, one peer mentioned that the current treaty in force with Switzerland is under renegotiation, for which they seek to meet that standard. Another peer mentioned that the requirement under this standard will be implemented via the Multilateral Instrument. With respect to the 85 treaties identified above that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, nine peers mentioned that their treaty is not in line with the requirements under this element. Of these nine peers, four mentioned that there have no negotiations yet with Switzerland to either include the second sentence of Article 25 or the alternative provisions. Furthermore, three of these peers mentioned that they expect their treaty with Switzerland will be modified by the Multilateral Instrument to meet the requirements under element D.3.

Recent developments

Bilateral modifications

261. Switzerland signed new treaties with five treaty partners, one of which concerns the replacement of an existing tax treaty and one concerns a treaty partner for which Switzerland currently continues to apply the 1954 treaty with the United Kingdom. Of these five treaties, one contains a provision that is equivalent to Article 25(2), second sentence,

of the OECD Model Tax Convention. This concerns the treaty with a treaty partner, for which currently no treaty is in existence. Furthermore, two treaties contain the alternative provisions for Article 9(1) and Article 7(2). One of these treaties is with a treaty partner, for which currently no treaty is in existence and the other is with a treaty partner for which Switzerland currently continues to apply the 1954 treaty with the United Kingdom. The remaining two treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor any of the alternative provisions. During negotiations with one of these treaty partners, Switzerland proposed to include the alternative provisions for Article 9(1) and Article 7(2) in the tax treaty, but it could eventually not reach an agreement with the treaty partner hereon. For none of these five treaties ratification procedures have been completed by either treaty partner.

262. Furthermore, Switzerland also signed an amending protocol to an existing treaty, which currently does not contain the second sentence of Article 25(2) nor any of the alternative provisions. During negotiations with the treaty partner, Switzerland proposed to include the alternative provisions for Article 9(1) and Article 7(2) in the tax treaty, but it could eventually not reach an agreement with the treaty partner hereon.

263. The effects of these newly signed treaties and the amending protocol have been reflected in the analysis above.

Multilateral Instrument

264. Switzerland signed the Multilateral Instrument and has initiated the ratification process, for which completion is expected for the third quarter of 2019.

265. 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 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.

266. Switzerland has, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, of the Multilateral Instrument. Therefore, at this stage the Multilateral Instrument will not modify any of the 85 treaties identified above to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Other developments

267. As mentioned in the Introduction, for those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard, Switzerland has put a plan in place to bring its treaties in line with the requirements under element D.3, such by proposing the inclusion of the alternative provisions for Article 9(1) and Article 7(2) in its tax treaties.

268. As almost all of its tax treaties were in its stage 1 peer review report considered not to be in line with element D.3, Switzerland reported that it was not feasible to revise all these treaties within a short time period. In this respect, it completed negotiations with seven treaty partners on the inclusion of the alternative provisions, for which it reached an agreement with three treaty partners. As mentioned above, with one treaty partner it could not reach such an agreement. Furthermore, it has initiated negotiation processes with 38 treaty partners to bring these treaties in line with the requirements under element D.3, which processes are still pending. In addition, for the treaties that are listed as covered tax agreements under the Multilateral Instrument and that will not be modified with respect to element D.3, Switzerland reported it will reach out to the relevant treaty partners to bring these treaties in line with the requirements under this element, once the instrument has for Switzerland entered into force.

Peer input

269. Of the peers that provided input during stage 2, ten provided input in relation to their tax treaty with Switzerland, eight of which have a relation with element D.3. One of these peers mentioned it recently negotiated an amending protocol to the treaty with Switzerland and that will meet all relevant requirements under the Action 14 Minimum Standard. Another peer mentioned it is currently negotiating with Switzerland *inter alia* to add the second sentence of Article 25(2) of the OECD Model Tax Convention to the treaty. Furthermore, five treaty partners confirmed Switzerland's statement mentioned above in that they have been approached to renegotiate the treaty to include the alternative provisions for Article 9(1) and 7(2). Three of these peers mentioned that they could not reach an agreement hereon with Switzerland, one of them specifying that this was due to a disagreement on the time limit to be applied for making adjustments. Lastly, the remaining of the eight peers mentioned that it is currently awaiting Switzerland's initiative for a proposal to bring the treaty in line with the requirements under element D.3.

Anticipated modifications

270. Switzerland reported it is willing to seek to include the alternatives provisions for Article 9(1) and 7(2) in all its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	85 out of 95 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor the alternative provisions in both Article 9(1) and Article 7(2). None of these treaties will be modified by the Multilateral Instrument to include this equivalent. For one of these 85 treaties negotiations have been conducted, which did not result in the inclusion of the alternative provisions in both Article 9(1) and Article 7(2). With respect to the remaining 84 treaties: • For 44 negotiations have been initiated in order to include the alternative provisions in both Article 9(1) and Article 7(2), of these the negotiations were completed with six of them. • For the remaining 40 no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.	Switzerland should continue the negotiation process for the 38 treaties for which negotiations have been initiated to include the alternative provisions in both Article 9(1) and Article 7(2). Furthermore, Switzerland should initiate the signing and ratification procedures for the six treaties for which negotiations have been completed. For 39 of the remaining 40 treaties for which no negotiations have been conducted or are pending, Switzerland should also be willing to accept the inclusion of the alternative provisions in both Article 9(1) and Article 7(2), in accordance with its plan for renegotiation. Specifically with respect to the 1954 treaty with the United Kingdom that Switzerland continues to apply to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines, Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision or be willing to accept the inclusion of both alternative provisions.

Reference

OECD (2017), *Model Tax Convention on Income and on 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 95 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. None of these two treaties are expected to be modified by the Multilateral Instrument to contain the required provision. Furthermore, one treaty is included in the list of treaties for which negotiations are envisaged, scheduled or pending.	Switzerland should for one of the two treaties 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, continue discussions or negotiations to include the required provision. Specifically with respect to the 1954 treaty with the United Kingdom that is being applied to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines, Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	Three out of 95 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 or as amended by the Action 14 final report. None of these treaties is expected to be modified by the Multilateral Instrument to include such equivalent. With respect to these treaties, negotiations have been initiated with one treaty partner, while for the remaining two treaties no actions have been taken or are planned to be taken, but one is included in the plan for renegotiation.	Switzerland should continue negotiations with one treaty partner and, in accordance with its plan, initiate also negotiations with the other treaty partner concerning those two 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. This concerns a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention either as it read prior to or as amended in the final report on Action 14. Specifically with respect to the 1954 treaty with the United Kingdom that is being applied to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines, Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.

	Areas for improvement	Recommendations
[B.1]	Five out of 95 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these five treaties: • Two are expected to be 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 one of these three treaties, negotiations have been initiated with one treaty partner, while for the other two no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.	Switzerland should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For one of the remaining three treaties, Switzerland should continue negotiations with one treaty partner and, in accordance with its plan for renegotiations, should request the inclusion of the required provision via bilateral negotiations.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	Five out of 95 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these five treaties: • One is expected to be modified by the Multilateral Instrument to contain the required provision • One is expected to be modified by the Multilateral Instrument when an update is made to the list of notifications under that instrument • Three will not be modified by that instrument to contain 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.	Switzerland should as quickly as possible complete the ratification process for the Multilateral Instrument and update its list of notifications under that instrument, to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in the two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For two of the remaining three 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, Switzerland should continue the current pending negotiations with a view to include the required provision in accordance with its plan for renegotiations. Specifically with respect to the 1954 treaty with the United Kingdom that is being applied to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines, Switzerland should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-

	Areas for improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	One out of 95 tax treaties does not contain a provision equivalent to Article 25(2), first sentence of the OECD Model Tax Convention.	As the one treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention include such provision is the 1954 treaty with the United Kingdom that Switzerland continues to apply to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines, Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.
[C.2]	-	-
[C.3]	The MAP caseload of other cases has increased substantially since 1 January 2016. While a significant higher amount of MAP cases was resolved, the increase in the MAP inventory as regards other cases indicates that the competent authority may not be adequately resourced to cope with the increase of this type of cases.	Switzerland 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]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of Switzerland's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternatives provided in Article 9(1) and 7(2). Therefore, there is a risk that for those tax treaties that do not contain those provisions, not all MAP agreements will be implemented due to the ten year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in Switzerland's relevant tax treaty, prevent the implementation of a MAP agreement, Switzerland should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Switzerland should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	-	-
[D.3]	85 out of 95 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor the alternative provisions in both Article 9(1) and Article 7(2). None of these treaties will be modified by the Multilateral Instrument to include this equivalent. For one of these 85 treaties negotiations have been conducted, which did not result in the inclusion of the alternative provisions in both Article 9(1) and Article 7(2). With respect to the remaining 84 treaties: • For 44 negotiations have been initiated in order to include the alternative provisions in both Article 9(1) and Article 7(2), of these the negotiations were completed with six of them. • For the remaining 40 no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.	Switzerland should continue the negotiation process for the 38 treaties for which negotiations have been initiated to include the alternative provisions in both Article 9(1) and Article 7(2). Furthermore, Switzerland should initiate the signing and ratification procedures for the six treaties for which negotiations have been completed. For 39 of the remaining 40 treaties for which no negotiations have been conducted or are pending, Switzerland should also be willing to accept the inclusion of the alternative provisions in both Article 9(1) and Article 7(2), in accordance with its plan for renegotiation. Specifically with respect to the 1954 treaty with the United Kingdom that Switzerland continues to apply to Anguilla, Antigua and Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and Grenadines, Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision or be willing to accept the inclusion of both alternative provisions.

Annex A

Tax treaty network of Switzerland

		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?	Is Art. 25(3) second sen-tence included?	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		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	i	i	Y	ii	Y	Y	Y	i
Algeria	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Anguilla	Y	N	i	N/A	i	i	N	N	N	N	N	N/A
Antigua and Barbuda	Y	N	i	N/A	i	i	N	N	N	N	N	N/A
Argentina	Y	O*	Y	N/A	i*	i	Y	iii	Y	Y	N	N/A
Armenia	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	**Column 2**	**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	
Treaty partner	DTC in force?	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?	Is Art. 25(3) second sen-tence included?	Inclusion arbitration provsion?	
Australia	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	i
Austria	Y	O	i	N/A	i**	i	Y	N	Y	Y	Y	i
Azerbaijan	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Bangladesh	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Barbados	Y	N	i	N/A	i	i	N	N	N	N	N	N/A
Belarus	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Belgium	Y	O	Y	N/A	Y	i	Y	N	Y	N	Y	i
Belize	Y	N	i	N/A	i	i	N	N	N	N	N	N/A
Brazil	N	E	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
British Virgin Islands	Y	N	i	N/A	i	i	N	N	N	N	N	N/A
Bulgaria	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Canada	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	i
Chile	Y	O	Y	N/A	Y	i	Y	ii	Y	N*	N	N/A
China (People's Republic of)	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Colombia	Y	O	Y	N/A	Y	i	Y	ii	Y	Y	N	N/A
Côte d'Ivoire	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Croatia	Y	O	Y	N/A			Y	N	Y	Y	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	**Column 2**	**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	
Treaty partner	DTC in force?	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?	Is Art. 25(3) second sen-tence included?	Inclusion arbitration provsion?	
Cyprus [a]	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	i
Czech Republic	Y	O*	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Denmark	Y	O	i	N/A	i	i	Y	N	Y	Y	Y	i
Dominica	Y	N	i	N/A	i	i	N	N	N	N	N	N/A
Ecuador	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Egypt	Y	O	Y	N/A	i	i	Y	iii	Y	Y	N	N/A
Estonia	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	i
Faroe Islands	Y	O	i	N/A	i	i	Y	N	Y	Y	Y	i
Finland	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Former Yugoslav Republic of Macedonia	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
France	Y	O	Y	N/A	i	i	Y	N	N	Y	Y	i
Gambia	Y	N	i	N/A	i	i	N	N	N	N	N	N/A
Georgia	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Germany	Y	O	i	N/A	i	i	Y	N	Y	Y	Y	ii
Ghana	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Greece	Y	O	Y	N/A	i	i	Y	N	Y	Y	Y	i

		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?	Is Art. 25(1), second sen-tence included?		Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sen-tence included?	Is Art. 25(3) second sen-tence included?	Inclusion arbitration provsion?	
		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?				
Grenada	Y	N	i	N/A	i	i	N	N	N	N	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	N	Y	Y	N	N/A
Iceland	Y	O*	Y	N/A	Y	i	Y	N	Y	Y	Y	i
India	Y	N	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Indonesia	Y	O	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Iran	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Ireland	Y	O	i	N/A	Y	i	Y	N	Y	Y	N	N/A
Israel	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Italy	Y	N	Y	N/A	i**	i	Y	Y	Y	Y	N	N/A
Jamaica	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Japan	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Kazakhstan	Y	O	Y	N/A	i	i	Y	ii	Y	Y	Y	i
Korea	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Kosovo	N	E	Y	N/A	Y	i	Y	iii	Y	Y	Y	i
Kuwait	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Kyrgyzstan	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Latvia	Y	O	Y	N/A	i	i	Y	N	Y	Y	Y	i

		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?	Is Art. 25(3) second sen-tence included?	Inclusion arbitration provsion?	
Liechtenstein	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	i
Lithuania	Y	O*	Y	N/A	i*	i	Y	N	Y	Y	N	N/A
Luxembourg	Y	O*	Y	N/A	i*	i	Y	ii	Y	Y	Y	i
Malawi	Y	O	i	N/A	i	i	N	N	N	N	N	N/A
Malaysia	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A
Malta	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	i
Mexico	Y	O*	ii*	2-years	i**	i	Y	ii	Y	N	N	N/A
Moldova	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Mongolia	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Montenegro	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Montserrat	Y	N	i	N/A	i	i	N	N	N	N	N	N/A
Morocco	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Netherlands	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
New Zealand	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Norway	Y	O	Y	N/A	i	i	Y	N	Y	Y	Y	i
Oman	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Pakistan	N	E	Y	N/A	i	i	Y	N	Y	Y	Y	i
Peru	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	**Column 2**	**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sen-tence included?		Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sen-tence included?	Is Art. 25(3) second sen-tence included?	Inclusion arbitration provsion?	
		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?				
Philippines	Y	O	ii	2-years	i	i	Y	iii	Y	Y	N	N/A
Poland	Y	O	Y	N/A	i	i	Y	ii	Y	Y	Y	i
Portugal	Y	O	ii*	2-years	Y	i	Y	N	Y	Y	N	N/A
Qatar	Y	O*	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Romania	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Russia	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Saint Kitts and Nevis	Y	N	i	N/A	i	i	N	N	N	N	N	N/A
Saint Lucia	Y	N	i	N/A	i	i	N	N	N	N	N	N/A
Saint Vincent and Grenadines	Y	N	i	N/A	i	i	N	N	N	N	N	N/A
Saudi Arabia	N	E	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Serbia	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Singapore	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Slovak Republic	Y	O	Y	N/A	i	i	Y	ii	Y	Y	Y	i
Slovenia	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	i
South Africa	Y	O	Y	N/A	Y	i	Y	ii	Y	Y	Y	iii
Spain	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	i
Sri Lanka	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	**Column 2**	**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	
Treaty partner	DTC in force?	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?	Is Art. 25(3) second sen-tence included?	Inclusion arbitration provsion?	
Sweden	Y	O	i	N/A	Y	i	Y	N	Y	Y	Y	i
Chinese Taipei	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Tajikistan	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Thailand	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Trinidad and Tobago	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A
Tunisia	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Turkey	Y	O*	i	N/A	i	i	Y	ii	Y	Y	N	N/A
Turkmenistan	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Ukraine	Y	O	Y	N/A	i	i	Y	ii	Y	N	N	N/A
United Arab Emirates	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
United Kingdom	Y	E	Y	N/A	Y	i	Y	N	Y	Y	Y	i
United States	Y	O	i	N/A	i	i	Y	N	Y	Y	Y	ii
Uruguay	Y	O	Y	N/A	i	i	Y	ii	Y	Y	Y	i
Uzbekistan	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Venezuela	Y	O	ii	2-years	i	i	Y	ii	Y	Y	N	N/A
Viet Nam	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Zambia	N	E	Y	N/A	Y	i	Y	iii	Y	Y	Y	i

Notes: a. Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Legend

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

Annex B

MAP Statistics pre-2016 cases

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	142	2	0	0	1	0	45	0	0	0	0	94	30.55
Others	180	0	3	1	3	0	26	1	0	1	1	144	18.53
Total	322	2	3	1	4	0	71	1	0	1	1	238	25.39

Note: The pre-2016 statistics were corrected after the publication of the 2016 MAP statistics as Switzerland was informed about pre-2016 cases after submitting its statistics.

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	94	0	0	3	5	0	40	0	0	0	0	46	35.22
Others	144	0	0	3	1	0	57	0	0	1	0	82	28.24
Total	238	0	0	6	6	0	97	0	0	1	0	128	31.29

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	59	0	0	0	1	0	7	1	0	0	0	50	2.25
Others	0	86	1	0	2	3	2	0	0	0	0	0	78	1.79
Total	0	145	1	0	2	4	2	7	1	0	0	0	128	2.04

Note: The post-2015 statistics were corrected after the publication of the 2016 MAP statistics as Switzerland reclassified some cases.

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	50	55	0	0	1	2	0	31	0	0	0	0	71	8.66
Others	78	114	4	7	1	10	1	27	0	2	1	0	139	6.43
Total	128	169	4	7	2	12	1	58	0	2	1	0	210	7.30

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	*OECD Model Tax Convention* on Income and on Capital as it read on 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
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

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OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Switzerland (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 Switzerland, 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/10.1787/77ab98a6-en***.

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