

**OECD/G20 Base Erosion and Profit Shifting  
Project**



# **Making Dispute Resolution More Effective - MAP Peer Review Report, The Netherlands (Stage 1)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**



OECD/G20 Base Erosion and Profit Shifting Project

# **Making Dispute Resolution More Effective - MAP Peer Review Report, The Netherlands (Stage 1)**

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

**Please cite this publication as:**

OECD (2017), *Making Dispute Resolution More Effective - MAP Peer Review Report, The Netherlands (Stage 1): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

<http://dx.doi.org/10.1787/9789264282629-en>

ISBN 978-92-64-28263-6 (print)

ISBN 978-92-64-28262-9 (PDF)

Series: OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

**Photo credits:** Cover © ninog-Fotolia.com

Corrigenda to OECD publications may be found on line at: [www.oecd.org/about/publishing/corrigenda.htm](http://www.oecd.org/about/publishing/corrigenda.htm).

© OECD 2017

---

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgement of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to [rights@oecd.org](mailto:rights@oecd.org). Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at [info@copyright.com](mailto:info@copyright.com) or the Centre français d'exploitation du droit de copie (CFC) at [contact@cfcopies.com](mailto:contact@cfcopies.com).

---

## 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 via treaty provisions. With the negotiation for a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the MLI on 7 June 2017, paving 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 an 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 100 members, will monitor and peer review the implementation of the minimum standards as well as complete 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.



## *Table of contents*

<b>Abbreviations and acronyms .....</b>	<b>7</b>
<b>Executive summary.....</b>	<b>9</b>
<b>Introduction.....</b>	<b>11</b>
Available mechanisms in the Netherlands to resolve tax treaty-related disputes.....	11
Recent developments in the Netherlands .....	11
Basis for the peer review process .....	12
Overview of MAP caseload in the Netherlands .....	13
General outline of the peer review report.....	13
<b>Bibliography .....</b>	<b>15</b>
<b>Part A Preventing Disputes .....</b>	<b>17</b>
[A.1] Include Article 25(3), first sentence, of the <i>OECD Model Tax Convention</i> in tax treaties.....	17
[A.2] Provide roll-back of bilateral APAs in appropriate cases .....	17
<b>Bibliography.....</b>	<b>19</b>
<b>Part B Availability and Access to MAP.....</b>	<b>21</b>
[B.1] Include Article 25(1) of the <i>OECD Model Tax Convention</i> in tax treaties.....	21
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process.....	24
[B.3] Provide access to MAP in transfer pricing cases .....	26
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions.....	27
[B.5] Provide access to MAP in cases of audit settlements .....	29
[B.6] Provide access to MAP if required information is submitted .....	30
[B.7] Include Article 25(3), second sentence, of the <i>OECD Model Tax Convention</i> in tax treaties ..	31
[B.8] Publish clear and comprehensive MAP guidance.....	32
[B.9] Make MAP guidance available and easily accessible and publish MAP profile.....	35
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP .....	36
<b>Bibliography.....</b>	<b>39</b>
<b>Part C Resolution of MAP cases .....</b>	<b>41</b>
[C.1] Include Article 25(2), first sentence, of the <i>OECD Model Tax Convention</i> in tax treaties.....	41
[C.2] Seek to resolve MAP cases within a 24-month average timeframe.....	42
[C.3] Provide adequate resources to the MAP function.....	46
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty .....	48
[C.5] Use appropriate performance indicators for the MAP function.....	50
[C.6] Provide transparency with respect to the position on MAP arbitration .....	51
<b>Bibliography.....</b>	<b>54</b>
<b>Part D Implementation of MAP Agreements .....</b>	<b>55</b>

[D.1]	Implement all MAP agreements .....	55
[D.2]	Implement all MAP agreements on a timely basis .....	56
[D.3]	Include Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> in tax treaties or alternative provisions in Article 9(1) and Article 7(2).....	57
<b>Bibliography</b> .....		<b>59</b>
<b>Summary</b> .....		<b>61</b>
<b>Annex A Tax Treaty Network of the Netherlands</b> .....		<b>65</b>
<b>Annex B MAP Statistics Pre-2016 cases</b> .....		<b>73</b>
<b>Annex C MAP Statistics Post-2015 cases</b> .....		<b>74</b>
<b>Glossary</b> .....		<b>75</b>

## Figures

Figure C.1	The Netherlands' MAP inventory .....	43
Figure C.2	End inventory on 31 December 2016 (294 cases) .....	43
Figure C.3	Cases resolved during the Reporting Period (70 cases) .....	44
Figure C.4	Average time (in months) .....	47



## *Abbreviations and Acronyms*

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



## Executive summary

The Netherlands has a large tax treaty network with over 90 tax treaties and has signed and ratified the EU Arbitration Convention. The Netherlands has an established Mutual Agreement Procedure (MAP) program and has extensive experience with resolving MAP cases. It has a large MAP inventory with a considerable number of new cases submitted each year and almost 300 cases pending on 31 December 2016, of which 42% consist of attribution/allocation cases. Overall, the Netherlands meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, the Netherlands is working to address them.

All of the Netherlands' tax treaties include a provision relating to MAP, which generally follows paragraphs 1 through 3 of Article 25 of the *OECD Model Tax Convention on Income and on Capital 2014* (*OECD Model Tax Convention*, OECD 2015). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- around a quarter of the Netherlands' tax treaties do not contain a provision requiring implementation of mutual agreements reached notwithstanding any time limits imposed by domestic law or include the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments; and
- around 10% of the Netherlands' treaties do not contain the full equivalent of Article 25(1), first sentence either as it read prior to the adoption of the final report on Action 14 or as amended by that final report allowing taxpayers to present their MAP cases either to the competent authorities of both contracting states or to the competent authority of which they are a resident or national in case of application of the non-discrimination provision.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, the Netherlands therefore needs to amend and update a certain number of its tax treaties. In this respect, the Netherlands indicated that it will do so via negotiations to replace or amend existing tax treaties and that it recently signed, without any reservations on the MAP article, the Multilateral Instrument potentially covering 80 tax treaties. Furthermore, the Netherlands opted for the arbitration part of the Multilateral Instrument.

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

The Netherlands meets most of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. The Netherlands provides access to MAP in all eligible cases. The Netherlands is in the process of introducing a bilateral consultation or notification process for those situations in which the Netherlands' competent authority considers the objection raised by taxpayers in a MAP request as not justified. The Netherlands has comprehensive guidance that provides practical

information on MAP but the guidance does not include information on the relationship between MAP and audit settlements. The Netherlands, however, indicated that it intends to introduce a bilateral consultation or notification process and it will publish an updated version of its MAP guidance that will include a section clarifying the relationship between access to MAP and audit settlements and that audit settlements do not preclude access to MAP.

Furthermore, the Netherlands' competent authority uses a pragmatic approach to resolve MAP cases in an effective and efficient manner. The performance indicators used are appropriate to perform the MAP function. Its organisation is however such that there is a minor risk that the competent authority function is not entirely performed independently from tax administration personnel directly involved in the adjustment at issue. The Netherlands therefore does not fully meet the requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Concerning the average time needed to resolve MAP cases, the MAP statistics for the year 2016 are as follows:

2016	Opening Inventory	Cases started	Cases closed	End inventory	Average time to resolve cases (in months)*
Attribution/Allocation cases	110	27	14	123	34.38
Other cases	144	83	56	171	19.12
<b>Total</b>	<b>254</b>	<b>110</b>	<b>70</b>	<b>294</b>	<b>22.20</b>

\* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, the Netherlands used as a start date the date of filing of the MAP request and as the end date the date of the closing letter which is drafted upon taxpayer's approval of the agreement reached.

These figures point out that the number of MAP cases resolved by the Netherlands is approximately 60% of the number of MAP cases started during 2016 and that its MAP inventory as per 31 December 2016 increased by approximately 15% as compared to its inventory as per 1 January 2016. The current resources for the MAP function in the Netherlands are in principle adequate, but more resources may be necessary to achieve a net reduction of its MAP inventory. Although the Netherlands' competent authority resolved MAP cases on average within a timeframe of less than 24 months, the average time necessary to resolve attribution/allocation was significantly longer (34.38 months). This indicates that additional resources specifically dedicated to handling attribution/allocation MAP cases may be necessary to accelerate the resolution of these cases.

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

## Introduction

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

The Netherlands has entered into 92 tax treaties on income (and/or capital), 90 of which are in force.<sup>1</sup> These 92 treaties apply to 94 jurisdictions.<sup>2</sup> All 92 treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 42 of these treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.<sup>3</sup>

Furthermore, the Netherlands is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.<sup>4</sup>

The competent authority function to conduct mutual agreement procedures (MAP) is performed by the Netherlands' Ministry of Finance's Directorate of International Tax and Consumer Tax (IZV). The organisation of this competent authority function is governed by a decree, which was issued on 29 September 2008 (IFZ2008/248M).<sup>5</sup> The Netherlands also provides information about its competent authority on various websites, such as on the Netherlands' government website and on the website of the EU Joint Transfer Pricing Forum.<sup>6</sup> The Netherlands' competent authority currently employs 18 people, 2-3 of whom work full-time on attribution/allocation MAP cases.

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

<https://www.rijksoverheid.nl/documenten/bsluiten/2009/07/21/internationaal-belastingrecht-onderlinge-overlegprocedures>

### Recent developments in the Netherlands

The Netherlands informed parliament by letter of 28 October 2016 that the Netherlands State Secretary of Finance will incorporate the proposed modifications in the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”) with respect to the Action 14 Minimum Standard without any reservations.<sup>7</sup> On 21 March 2017 the Netherlands State Secretary of Finance sent a second letter to the Netherlands parliament on the Multilateral Instrument, thereby explaining in more detail the choices the Netherlands envisages to make with respect to this instrument. The Netherlands will include in the scope of the Multilateral Instrument all the tax treaties to which it is a party, except for the treaties which are currently under (re)negotiation. Consequently, the Netherlands expects to have all its tax treaties with jurisdictions opting for the Multilateral Instrument modified upon entry into force of this instrument.

In addition, the Netherlands indicated that it will update its MAP guidance in the course of 2017 to clarify the relationship between domestic available remedies and MAP as well as the relationship between audit settlements and MAP. The Netherlands will also

clarify where access to MAP would be granted in the case of double taxation resulting from bona fide taxpayer-initiated foreign adjustments as well as including information on multilateral MAP guidance.

### **Basis for the peer review process**

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

For the purpose of this report in assessing whether the Netherlands is in line with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a replacement of an existing treaty currently in force. Furthermore, the treaty analysis also takes into account the treaty with the former USSR and Yugoslavia, because this treaty is still being applied by the Netherlands with respect to the jurisdictions mentioned previously. Although this concerns one tax treaty that is applicable to multiple jurisdictions, this type of treaty is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of the Netherlands' tax treaties regarding the mutual agreement procedure.

The questionnaires for the peer review process were sent to the Netherlands and the peers on 5 December 2016. While the minimum standard commitment only starts from 1 January 2016, the Netherlands opted to provide information on a period starting from 1 January 2014 (**“the look back period”**) and also requested peer input relating to the look back period. In addition to the assessment on its compliance with the minimum standard, the Netherlands also addressed best practices and asked for peer input on these best practices.

In total, 21 peers provided input: Australia, Austria, Belgium, Canada, Denmark, France, Germany, Greece, India, Ireland, Italy, Japan, Korea, Norway, People's Republic of China, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States. These peers represent approximately 80% of post-2015 MAP cases in the Netherlands' inventory on 31 December 2016.

Taxpayers did not provide any input with respect to the Netherlands. Broadly, all peers indicated having good working relationships with the Netherlands with regard to MAP, some of them emphasising the joint effort put forth to successfully resolve disputes.

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

- MAP profile;<sup>8</sup>
- MAP statistics<sup>9</sup> according to the MAP Statistics Reporting Framework (see below);<sup>10</sup>

- An example of a competent authority agreement; and
- Examples of administrative arrangement relating to the MAP.

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

## Overview of MAP caseload in the Netherlands

According to the statistics provided by the Netherlands, on 31 December 2016 its MAP inventory was 294 cases, 123 of which concern attribution/allocation cases and 171 other cases. During the period for reporting MAP statistics that started on 1 January 2016 (“**Reporting Period**”) 110 cases were initiated, and 70 cases were closed.

## General outline of the peer review report

This report includes an evaluation of the Netherlands’ implementation of the Action 14 Minimum Standard. The report comprises the following four sections:

- A. Preventing Disputes;
- B. Availability and Access to MAP;
- C. Resolution of MAP cases; and
- 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<sup>11</sup>. Apart from analysing the Netherlands’ legal framework and its administrative practice, the report also incorporates peer input and responses to such input by the Netherlands. Furthermore, the report depicts the changes adopted and plans shared by the Netherlands to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

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

## Notes

1. Available at: <https://verdragenbank.overheid.nl/nl>. The treaties with Kenya and Malawi are not yet in force. Further, the treaty analysis also includes Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands, because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the *OECD Model Tax Convention* (OECD, 2015). Therefore these were also taken into account.
2. The Netherlands continues to apply the 1986 treaty with the former USSR to Tajikistan and the 1982 treaty with former Yugoslavia to Bosnia and Herzegovina, Montenegro and Serbia.
3. This concerns treaties with Albania, Armenia, Azerbaijan, Bahrain, Barbados, Bermuda, Canada, Croatia, Curacao, Egypt, Estonia, Ethiopia, Finland, Germany, Ghana, Hong Kong (China), Iceland, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Latvia, Lithuania, Macedonia, Malawi, Moldova, Oman, Poland, Qatar, Russia, Slovenia, South Africa, Switzerland, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan and Zambia. See element C.6 of this report for further discussion. Reference is made to Annex A for the overview of the Netherlands' tax treaties that include an arbitration clause.
4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.
5. [www.oecd.org/ctp/transfer-pricing/netherlands-decree-mutual-agreement-procedure-2008.pdf](http://www.oecd.org/ctp/transfer-pricing/netherlands-decree-mutual-agreement-procedure-2008.pdf).
6. [http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/profiles/tppr\\_ofile-nl.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/tppr_ofile-nl.pdf) (accessed on 10 September 2017).
7. Letter of the State Secretary of Finance of 28 October 2016 with reference Kamerstukken II 2016-2017 25 087 no. 135. Available at: <https://zoek.officielebekendmakingen.nl/kst-25087-135.html> (accessed on 10 September 2017).
8. Available at: [www.oecd.org/tax/dispute/Netherlands-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/Netherlands-Dispute-Resolution-Profile.pdf).
9. The MAP statistics of the Netherlands are included in Annex B and C of this report.
10. MAP Statistics Reporting Framework, in *Peer Review Documents* (OECD 2016): [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf) (accessed on 22 August 2017).
11. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective in *Peer Review Documents* (OECD, 2016): [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf) (accessed on 22 August 2017).



## *Bibliography*

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.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, 2015) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

#### ***Current situation of the Netherlands' tax treaties***

2. All of the Netherlands' 92 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.<sup>1</sup>

#### ***Anticipated modifications***

3. The Netherlands did not indicate it anticipates any modifications in relation to element A.1.

#### ***Conclusion***

	Areas for Improvement	Recommendations
[A.1]	-	The Netherlands should maintain its stated intention to include the required provision in all future treaties.

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

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

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

### ***The Netherlands’ APA programme***

5. The Netherlands has implemented an APA programme. The legal basis of this programme is the Decree of the Netherlands State Secretary of Finance of 3 June 2014 (DGB2014/3098).<sup>2</sup> This decree includes rules, guidelines and procedures for how taxpayers can request (unilateral, bilateral and multilateral) APAs and how the process of the request up until the conclusion of an APA is conducted. The assignment of competence for entering into APAs is provided by the Decree of the Netherlands State Secretary of Finance of 3 June 2014 (DGB 2014/296M).<sup>3</sup>

6. There are no specific timelines for filing of an APA request in the Netherlands and it does not charge any fees to taxpayers for a bilateral APA request.

### ***Roll-back of bilateral APAs***

7. The Netherlands applies APAs as from the first year covered by the request, irrespective of the date when the competent authorities enter into an APA. Such an APA generally runs for a period ranging from three to five years. Paragraph 5 of the Decree of the Netherlands State Secretary of Finance of 3 June 2014 (DGB2014/3098) allows for roll-back of unilateral, bilateral and multilateral APAs.<sup>4</sup> Criteria for the roll-back are that the facts and circumstances of the roll-back period must be comparable to those of the periods covered by the APA period and both competent authorities must agree on granting such roll-back.

### ***Practical application of roll-back of bilateral APAs***

8. The Netherlands does not have in place a mechanism that monitors (i) the number of APA requests that concern the roll-back of an existing APA and (ii) 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 for the roll-back of an APA and in how many cases such roll-back was granted.

9. Some of these peers were in the process of addressing requests for roll-backs in bilateral APAs, but these processes have not yet been finalized. Others have described the Netherlands as being readily agreeable to provide roll-backs for APAs.

### ***Anticipated modifications***

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

## Conclusion

	Areas for Improvement	Recommendations
[A2]	-	<p>The Netherlands should continue to provide for roll-back of bilateral APAs in all appropriate cases as it has done thus far.</p> <p>To keep a record of the number of APAs where a roll-back was and was not granted, the Netherlands could introduce a monitoring system.</p>

## Notes

1. This includes the treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the *OECD Model Tax Convention*. Therefore these were also taken into account.
2. Available at: [www.rijksoverheid.nl/documenten/bsluiten/2014/06/13/bsluit-dgb-2014-3098](http://www.rijksoverheid.nl/documenten/bsluiten/2014/06/13/bsluit-dgb-2014-3098) (accessed on 10 September 2017).
3. Available at: [www.rijksoverheid.nl/documenten/bsluiten/2014/06/13/bsluit-dgb-2014-296m](http://www.rijksoverheid.nl/documenten/bsluiten/2014/06/13/bsluit-dgb-2014-296m) (accessed on 10 September 2017).
4. Available at: [www.rijksoverheid.nl/documenten/bsluiten/2014/06/13/bsluit-dgb-2014-3098](http://www.rijksoverheid.nl/documenten/bsluiten/2014/06/13/bsluit-dgb-2014-3098) (accessed on 10 September 2017).

## Bibliography

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

11. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties include a provision allowing taxpayers to request a mutual agreement procedure and that this procedure can be requested irrespective of the remedies provided by the domestic law of the treaty partners. In addition, to provide certainty to taxpayers and competent authorities on the availability of the mutual agreement procedure, a minimum period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, is the baseline.

#### ***Current situation of the Netherlands' tax treaties***

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

12. Out of the Netherlands' 92 tax treaties, 71 treaties contain a provision that is equivalent to Article 25(1), first sentence of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report* (Action 14 final report, OECD 2015b) allowing taxpayers to submit a MAP request to the competent authority of the state in which they are a resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.<sup>1</sup>

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

Provision	Number of treaties
A variation of Article 25(1), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b), whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	19 <sup>2</sup>
A variation of Article 25(1), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b), whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident and whereby taxpayers can only submit such request when there is double taxation not in accordance with the convention.	1
A variation to Article 25(1), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

14. The 19 treaties mentioned above are considered not to have the full equivalent of Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, 9 of the 19 treaties are considered to be in line with this part of element B.1 for the following reasons:

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

15. For the remaining ten treaties it is considered that they are not in line with this part of element B.1, as the non-discrimination provision of these tax treaties apply to both nationals that are resident of one of the contracting states, and to nationals that are not resident of one of the contracting states.

16. Furthermore, the other two treaties require either double taxation not in accordance with the convention, while the *OECD Model Tax Convention* (OECD, 2015a) only requires taxation not in accordance with the convention, or do not allow the filing of a MAP request irrespective of domestic remedies. For these reasons both treaties are considered not having the full equivalent of Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b).



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

17. Out of the Netherlands' 92 treaties, 69 contain a provision allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty, which wording is equivalent to Article 25(1), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a).<sup>3</sup> The remaining 23 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of treaties
Filing period less than three years for a MAP request (two years)	6
Filing period longer than three years for a MAP request	3 <sup>4</sup>
No filing period for a MAP request	14

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

### *Anticipated modifications*

19. For those treaties that do not contain a provision equivalent to Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to or after the adoption of the Action 14 final report, OECD (2015b), the Netherlands indicated that it intends to implement element B.1 for all its existing tax treaties by signing the Multilateral Instrument, except for the treaties that are currently under (re)negotiation.<sup>5</sup> In that regard, the Netherlands envisages not making any reservations against the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing treaties to be covered by that instrument as soon as practicable.<sup>6</sup> Where a tax treaty will not be modified by the Multilateral Instrument, the Netherlands reported that it intends to update via bilateral negotiations all of its tax treaties to be in line with element B.1. In addition, the Netherlands will seek to include Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

## Conclusion

	Areas for Improvement	Recommendations
[B.1]	<p>17 out of 92 tax treaties do not contain a provision that is equivalent to Article 25(1) of the <i>OECD Model Tax Convention</i> (OECD, 2015a). Of those 17 tax treaties:</p> <ul style="list-style-type: none"> <li>○ 11 do not contain a provision that is the equivalent of Article 25(1), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report, OECD (2015b) or as amended by that final report;</li> <li>○ Five do not contain a provision based on Article 25(1), second sentence of the <i>OECD Model Tax Convention</i> (OECD, 2015a), allowing taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty; and</li> <li>○ One does not contain a provision that is the equivalent of Article 25(1), first and second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a).</li> </ul>	<p>Where treaties do not include the equivalent of Article 25(1) of the <i>OECD Model Tax Convention</i> (OECD, 2015a) provisions and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, the Netherlands should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> <li>○ a provision that is equivalent to Article 25(1) first sentence of the <i>OECD Model Tax Convention</i> (OECD, 2015a) either: <ul style="list-style-type: none"> <li>(a) as amended in the Action 14 final report, OECD (2015b); or</li> <li>(b) as it read prior to the adoption of the Action 14 final report, OECD (2015b), and</li> </ul> </li> <li>○ a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>In addition, the Netherlands should maintain its stated intention to include the required provision in all future treaties.</p>

### [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).

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

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

### *Domestic bilateral consultation or notification process in place*

21. None of the Netherlands' 92 tax treaties contain a provision equivalent to Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) as changed by the Action 14

final report allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. The Netherlands does not have a bilateral consultation or notification process in place which allows the other competent authority to provide its views on the case when the Netherlands' competent authority that received the MAP request considers the objection raised by the taxpayer not to be justified. The Netherlands, however, indicated that it intends to implement a notification and/or consultation process to address this.

### ***Practical application***

22. From the MAP statistics provided by the Netherlands, it follows that during the Reporting Period the Netherlands' competent authority did not consider any objection raised by the taxpayer as not justified. However, in the Netherlands' MAP statistics there was one case which was closed because there was no violation of the treaty. At the time of reporting, the Netherlands was not aware that the case should have been classified as an objection not justified instead of denied access to MAP and for which the other treaty partner was not notified due to the fact that the Netherlands has not yet implemented a bilateral consultation and/or notification procedure.

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

### ***Anticipated modifications***

24. For those treaties that do not contain a provision equivalent to Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to or after the adoption of the final report on Action 14, the Netherlands indicated that it intends to modify its existing tax treaties by signing the Multilateral Instrument.<sup>7</sup> In that regard, the Netherlands envisages not making any reservations against the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing treaties to be covered by that instrument as soon as practicable.<sup>8</sup> Where a tax treaty will not be modified by the Multilateral Instrument, the Netherlands reported that it intends to update via bilateral negotiations all of its tax treaties to be in line with element B.2. In addition, the Netherlands will seek to include Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

25. Further to the above, insofar as treaties will not be modified by the Multilateral Instrument and are not amended via bilateral negotiations, the Netherlands indicated that it is in the process of introducing a bilateral consultation or notification process for situations where its competent authority considers an objection raised in a MAP request as being not justified.

### Conclusion

	Areas for Improvement	Recommendations
[B.2]	No process in place to notify and/or consult the other competent authority in cases access to MAP is denied or where its competent authority considered the objection raised in a MAP request as not justified for those treaties that do not contain a provision equivalent to Article 25(1) of the <i>OECD Model Tax Convention</i> (OECD, 2015a) as changed by the Action 14 final report, OECD (2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners.	The Netherlands should finalise its ongoing process to introduce a bilateral notification and/or consultation procedure for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned by the request does not include Article 25(1) of the <i>OECD Model Tax Convention</i> (OECD, 2015a) as amended in the Action 14 final report, OECD (2015b).

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

Jurisdictions should provide access to MAP in transfer pricing cases.

26. 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*

27. Out of the Netherlands' 92 tax treaties, 70 contain a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is made by the other treaty partner.<sup>9</sup> Furthermore, two treaties include a provision based on Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a), but which either lacks the possibility of consultation between the competent authorities or only allows a case to be dealt with in a MAP. The remaining 20 treaties do not include a provision that allows competent authorities to make a correlative adjustment.<sup>10</sup>

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

29. Notwithstanding whether the equivalent of Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) is included in the Netherlands' tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments, the Netherlands indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments.

30. The Netherlands noted in paragraphs 1.1, 2.4.1 and 3 of its MAP guidance that in its view the MAP provisions in tax treaties also applies to discuss transfer pricing cases so having the equivalent of Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) is not a prerequisite to deal with transfer pricing cases in a MAP. Furthermore, the Coordination Group on Transfer Pricing of the Tax Authorities ('CGTP') advises the

Netherlands' competent authority when assessing a MAP case. The CGTP is responsible for coordinating the administration of transfer pricing and for the enforcement of transfer pricing policy. The MAP guidance explains that in the Netherlands, the tax inspector has to submit all requests to the CGTP for binding advice.

### *Practical application of legal and administrative framework in practice*

31. The Netherlands reported that it has since 1 January 2014 not denied access to MAP on the basis that the case concerned a transfer pricing case.

32. Peers indicated not being aware of denial of access to MAP by the Netherlands for transfer pricing cases since 1 January 2014.

### *Anticipated modifications*

33. For those treaties that do not contain a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a), the Netherlands indicated that it intends signing the Multilateral Instrument and by doing so incorporate, where necessary, in all covered tax treaties the equivalent of Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a). In that regard, the Netherlands envisages not making any reservations against the modifications made by Article 17 of the Multilateral Instrument. In addition, the Netherlands will seek to include Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

34. By letter of 28 October 2016 the Netherlands State Secretary of Finance informed parliament that it will incorporate the proposed modifications in the Multilateral Instrument with respect to the Action 14 Minimum Standard without any reservations.<sup>11</sup> On 21 March 2017 the Netherlands State Secretary of Finance sent a second letter to the Netherlands parliament on the Multilateral Instrument, thereby explaining in more detail the choices the Netherlands envisages to make with respect to this instrument. Specifically regarding the Action 14 Minimum Standard, the State Secretary of Finance reported that the Netherlands will accept the relevant articles in the Multilateral Instrument without any reservations.<sup>12</sup>

### *Conclusion*

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

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

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

35. 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***

36. None of the Netherlands' 92 tax treaties allows competent authorities to restrict access to MAP for cases when an anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of the Netherlands do not include a provision allowing its competent authority to limit access to the MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

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

### ***Practical application***

38. The Netherlands reported that since 1 January 2014 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.

39. Peers have indicated not being aware of a denial of access to MAP by the Netherlands in relation to the application of a treaty and/or domestic anti-abuse provisions since 1 January 2014.

### ***Anticipated modifications***

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

### *Conclusion*

	Areas for Improvement	Recommendations
[B.4]	-	As the Netherlands has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision has been met or whether the application of a domestic law anti-abuse provisions is in conflict with the provisions of a treaty, it should continue granting access for these cases.

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

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

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

#### *Legal and administrative framework*

42. Audit settlements are available in the Netherlands. The Netherlands reported that it will not preclude access to MAP in cases where the issues presented by the taxpayer in that request have already been resolved through an audit settlement between the taxpayer and the Netherlands' tax administration. The MAP guidance of the Netherlands, however, does not include information on whether taxpayers can request MAP for cases for which it entered into an audit settlement with the tax authorities.

43. The Netherlands has no other administrative or statutory dispute settlement/resolution process(es) in place that allows its competent authority to deny access to MAP for issues resolved through such process(es).

#### *Practical application*

44. The Netherlands reported that it has since 1 January 2014 not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement.

45. Peers have indicated not being aware of a denial of access to MAP by the Netherlands since 1 January 2014 in case there was already an audit settlement between the taxpayer and the Netherlands' tax administration.

#### *Anticipated modifications*

46. The Netherlands did not indicate that it anticipates any modifications in relation to element B.5.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.5]	-	As the Netherlands has thus far granted access to the MAP in eligible cases, even if there was an audit settlement between the tax authority and a taxpayer, it should continue granting access for these cases.

### **[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.

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

#### *Legal framework on access to MAP and information to be submitted*

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

#### *Practical application*

49. Upon receipt of such request, the Netherlands' competent authority will assess whether the taxpayer has provided all required information, and, if necessary, request additional information from the taxpayer within two months upon receipt of the MAP request. Taxpayers are given the opportunity to supplement the necessary information within a reasonable timeframe, whereby the length of this timeframe is determined by the Netherlands' competent authority taking into account the extent and nature of missing information. If a taxpayer does not supplement the additional information required within the given timeframe, a reminder will be sent including a new deadline for submitting the additional information. This practice, however, is not established in its MAP guidance or any other legislative provision in the Netherlands.

50. The Netherlands' competent authority endeavours to notify the taxpayer within two months after receipt of all required information, as set out in its MAP guidance, as to whether the request will be dealt with in a MAP. As indicated above, the Netherlands' competent authority will deny access to MAP, or suspend proceedings once a case is dealt with in MAP, if the information and documentation provided are insufficient to assess the MAP request and the taxpayer filing the request has not supplemented the information requested. This policy and practice is outlined in paragraphs 2.5, 4.1 and 4.2.2 of its MAP guidance.

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



52. Peers generally indicated that they were not aware of any MAP requests that have been denied access to MAP in the Netherlands since 1 January 2014. One peer, however, noted that it is aware that the Netherlands has denied access to MAP in three cases, but such denial was based on the fact that not all required information and documentation was submitted.

### *Anticipated modifications*

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

### *Conclusion*

	Areas for Improvement	Recommendations
[B.6]	-	As the Netherlands has thus far granted access to the MAP in eligible cases when taxpayers have complied with the Netherlands' information and documentation requirements for MAP requests, it should continue this practice.

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

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

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

### *Current situation of the Netherlands' tax treaties*

55. Out of the Netherlands' 92 tax treaties 86<sup>13</sup> contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining six treaties do not include the second sentence of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015a).

### *Anticipated modifications*

56. For those treaties that do not contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to or after the adoption of the final report on Action 14, the Netherlands indicated that it intends to modify its existing tax treaties by signing the Multilateral Instrument, except for the treaties currently under (re)negotiation.<sup>14</sup> In that regard, the Netherlands envisages not making any reservations against the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing

treaties to be covered by that instrument as soon as practicable.<sup>15</sup> Where a tax treaty will not be modified by the Multilateral Instrument, the Netherlands reported that it intends to update via bilateral negotiations all of its tax treaties to be in line with element B.7. In addition, the Netherlands will seek to include Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

57. Ireland indicated that the existing MAP provision in the Ireland-Netherlands Double Taxation Agreement does not adhere to the Action 14 Minimum Standard, but a new treaty has been renegotiated which fully meets this standard. Ireland expects to sign and ratify this treaty during 2017.

### **Conclusion**

	<b>Areas for Improvement</b>	<b>Recommendations</b>
[B.7]	Six out of 92 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a).	Where treaties do not include the equivalent of Article 25(3), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, the Netherlands should request the inclusion of the required provision via bilateral negotiations.  In addition, the Netherlands should maintain its stated intention to include the required provision in all future treaties.

### **[B.8] Publish clear and comprehensive MAP guidance**

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

58. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases.<sup>16</sup> Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

#### ***The Netherlands' MAP guidance***

59. The Netherlands's rules, guidelines and procedures relating to the MAP function are included in its MAP guidance, which is comprehensive. This document sets out the availability and practical application of the MAP under the tax treaties the Netherlands entered into and the EU Arbitration Convention. It also describes the approach of the Netherlands on using arbitration where MAP does not lead to the elimination of double taxation within a certain timeframe. More specifically, the Netherlands' MAP guidance contains information on:

- (a) Contact information of the competent authority or the office in charge of MAP cases;
- (b) The manner and form in which the taxpayer should submit its MAP request;
- (c) The specific information and documentation that should be included in a MAP request (see also below);
- (d) How the MAP functions in terms of timing and the role of the competent authorities;
- (e) When MAP becomes available under tax treaties and in what cases access to MAP will not be granted;
- (f) Information on availability of arbitration (including the EU Arbitration Convention);
- (g) Access to MAP in transfer pricing cases and for multi-year resolution of cases;
- (h) The process of implementation of MAP agreements;
- (i) Rights and role of taxpayers in the process;
- (j) Availability of suspension of tax collection;
- (k) Consideration of interest and penalties in a MAP; and
- (l) Relationship between MAP and the APA program.

60. The above-described MAP guidance of the Netherlands includes detailed information on the availability and the use of MAP and how its competent authority conducts the process in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.<sup>17</sup> Although this information is comprehensive, two subjects are not specifically discussed in the Netherlands' MAP guidance. This regards whether MAP is available in cases where access to MAP would be granted in the case of double taxation resulting from bona fide taxpayer-initiated foreign adjustments and also concerns multilateral MAP guidance. It could also clarify the relationship between domestic available remedies and MAP.

### ***Information and documentation to be included in a MAP request***

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

62. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.<sup>18</sup> In light of

this list, the requirements in the Netherlands on what information and documentation should be included in a MAP request are checked below:

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

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

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

### *Anticipated modifications*

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

### *Conclusion*

	Areas for Improvement	Recommendations
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of clarity, the Netherlands, when updating this guidance, could consider including in its MAP guidance information on where access to MAP would be granted in the case of double taxation resulting from bona fide taxpayer-initiated foreign adjustments and information on multilateral MAP guidance;  Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.

## **[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.

66. 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<sup>19</sup> further promotes the transparency and dissemination of the MAP programme.

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

67. As discussed in the Introduction the MAP guidance of the Netherlands is published (in Dutch) and can be found at:

<https://www.rijksoverheid.nl/documenten/besluiten/2009/07/21/internationaal-belastingrecht-onderlinge-overlegprocedures>

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

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

### ***MAP Profile***

69. The MAP profile of the Netherlands is published on the website of the OECD.<sup>20</sup> This MAP profile is complete and comprehensive. It also includes external links which provides extra information and guidance.

### ***Anticipated modifications***

70. The Netherlands did not indicate that it anticipates any modifications in relation to element B.9.

### ***Conclusion***

	<b>Areas for Improvement</b>	<b>Recommendations</b>
[B.9]	-	The Netherlands should ensure that future updates of its MAP guidance are made publicly available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.

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

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

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

### ***MAP and audit settlements in the MAP guidance***

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

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

73. As previously discussed under B.5, the Netherlands has not in place an administrative or statutory dispute settlement/resolution process, by which access to MAP may be restricted.

74. Peers indicated no issues regarding element B.10 in relation to the public availability of information relating to access to MAP and audit settlements or in case of administrative or statutory dispute settlement/resolution processes.

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

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

### *Anticipated modifications*

76. The Netherlands did not indicate that it anticipates any modifications relating to element B.10.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.10]	The MAP guidance does not include information on the relationship between MAP and audit settlements.	The Netherlands should include in its MAP guidance a section clarifying the relationship between access to MAP and audit settlements, and that audit settlements do not preclude access to MAP.

## Notes

1. This includes the treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the *OECD Model Tax Convention* (OECD, 2015a). Therefore these were also taken into account.
2. This includes the treaty with the former USSR that is continued to be applied to Tajikistan.
3. This includes the treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the *OECD Model Tax Convention* (OECD, 2015a). Therefore these were also taken into account.
4. This includes the treaty with the former Yugoslavia that continues to be applied to Bosnia and Herzegovina, Montenegro and Serbia.
5. By letter of 28 October 2016 the Netherlands State Secretary of Finance informed parliament that it will incorporate the proposed modifications in the Multilateral Instrument with respect to the Action 14 Minimum Standard without any reservations (Available at: <https://zoek.officielebekendmakingen.nl/kst-25087-135.html>, accessed on 10 September 2017). On 21 March 2017 the Netherlands State Secretary of Finance sent a second letter to the Netherlands parliament on the Multilateral Instrument, thereby explaining in more detail the choices the Netherlands envisages to make with respect to this instrument. Specifically regarding the Action 14 Minimum Standard, the State Secretary of Finance reported that the Netherlands will accept the relevant articles in the Multilateral Instrument without any reservations (Available at:

<https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2017/03/21/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps.pdf> (accessed on 10 September 2017).

6. The Netherlands indicated that the Multilateral Instrument will not apply to treaties currently under (re)negotiation.
7. By letter of 28 October 2016 the Netherlands State Secretary of Finance informed parliament that it will incorporate the proposed modifications in the Multilateral Instrument with respect to the Action 14 Minimum Standard without any reservations (Available at: <https://zoek.officielebekendmakingen.nl/kst-25087-135.html>, accessed on 10 September 2017). On 21 March 2017 the Netherlands State Secretary of Finance sent a second letter to the Netherlands parliament on the Multilateral Instrument, thereby explaining in more detail the choices the Netherlands envisages to make with respect to this instrument. Specifically regarding the Action 14 Minimum Standard, the State Secretary of Finance reported that the Netherlands will accept the relevant articles in the Multilateral Instrument without any reservations (Available at: [www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2017/03/21/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps.pdf](https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2017/03/21/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps.pdf) (accessed on 10 September 2017).
8. The Netherlands indicated that the Multilateral Instrument will not apply to treaties currently under (re)negotiation.
9. This includes the treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the *OECD Model Tax Convention* (OECD, 2015a). Therefore these were also taken into account.
10. These 20 treaties include the treaty with the former USSR that is continued to be applied to Tajikistan and the treaty with former Yugoslavia that is continued to be applied to Bosnia and Herzegovina, Montenegro and Serbia.
11. Letter of the State Secretary of Finance of 28 October 2016 with reference Kamerstukken II 2016-2017 25 087 no. 135. Available at: <https://zoek.officielebekendmakingen.nl/kst-25087-135.html> (accessed on 10 September 2017).
12. Letter of the Netherlands State Secretary of Finance of 21 March 2017 with reference 2017-0000034664. Available at: [www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2017/03/21/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps.pdf](https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2017/03/21/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps.pdf) (accessed on 10 September 2017).
13. These 86 treaties include the treaty with the former USSR that is continued to be applied to Tajikistan and the treaty with former Yugoslavia that is continued to be applied to Bosnia and Herzegovina, Montenegro and Serbia. They also include the treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure



similar to Article 25 of the *OECD Model Tax Convention* (OECD, 2015a). Therefore these were also taken into account.

14. By letter of 28 October 2016 the Netherlands State Secretary of Finance informed parliament that it will incorporate the proposed modifications in the Multilateral Instrument with respect to the Action 14 Minimum Standard without any reservations (Available at: <https://zoek.officielebekendmakingen.nl/kst-25087-135.html>, accessed on 10 September 2017). On 21 March 2017 the Netherlands State Secretary of Finance sent a second letter to the Netherlands parliament on the Multilateral Instrument, thereby explaining in more detail the choices the Netherlands envisages to make with respect to this instrument. Specifically regarding the Action 14 Minimum Standard, the State Secretary of Finance reported that the Netherlands will accept the relevant articles in the Multilateral Instrument without any reservations (Available at: [www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2017/03/21/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps.pdf](http://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2017/03/21/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps.pdf), accessed on 10 September 2017).
15. The Netherlands indicated that the Multilateral Instrument will not apply to treaties currently under (re)negotiation.
16. [www.rijksoverheid.nl/documenten/besluiten/2009/07/21/internationaal-belastingrecht-onderlinge-overlegprocedures](http://www.rijksoverheid.nl/documenten/besluiten/2009/07/21/internationaal-belastingrecht-onderlinge-overlegprocedures). An unofficial translation of this guidance can be found at: [www.oecd.org/ctp/transfer-pricing/netherlands-decree-mutual-agreement-procedure-2008.pdf](http://www.oecd.org/ctp/transfer-pricing/netherlands-decree-mutual-agreement-procedure-2008.pdf) (accessed on 10 September 2017).
17. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
18. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
19. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).
20. [www.oecd.org/tax/dispute/Netherlands-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/Netherlands-Dispute-Resolution-Profile.pdf).

## *Bibliography*

- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en>.



## *Part C*

### **Resolution of MAP Cases**

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

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

77. 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, 2015a), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

#### ***Current situation of the Netherlands' tax treaties***

78. All of the Netherlands' 92 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is 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.

#### ***Anticipated modifications***

79. The Netherlands did not indicate that it anticipates any modifications in relation to element C.1.

#### ***Conclusion***

	<b>Areas for Improvement</b>	<b>Recommendations</b>
[C.1]	-	The Netherlands should include the required provision in all future treaties.

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

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

80. 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*

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

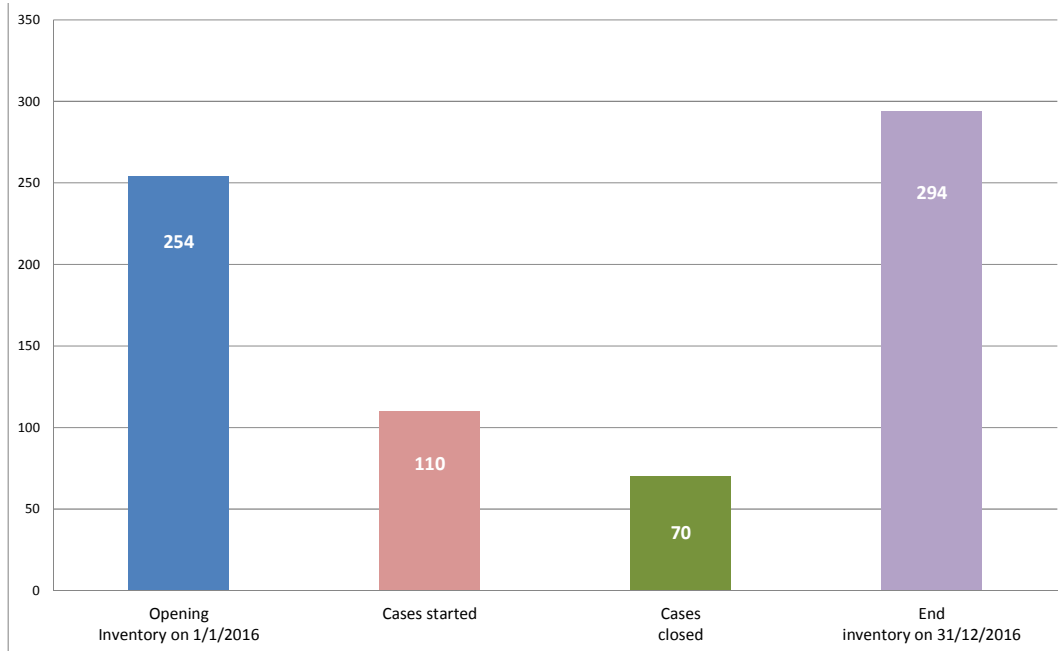
82. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (**‘MAP Statistics Reporting Framework’**) for MAP requests submitted on or after January 1, 2016 (**‘post-2015 cases’**). Also, for MAP requests submitted prior to that date (**‘pre-2016 cases’**), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. The Netherlands provided their MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving the Netherlands and of which its competent authority was aware. The statistics discussed below include both post-2015 and pre-2016 cases and the full statistics are attached to this report as Annex B and C respectively.<sup>3</sup> It should be noted that the statistics for both reporting periods should be considered jointly for an understanding of the MAP caseload of the Netherlands. With respect to post-2015 cases, the Netherlands reported having reached out to all its MAP partners with a view to have their MAP statistics matching. The Netherlands indicated that it could match its statistics with almost all of its MAP partners except for three (representing together less than 5% of the Netherlands’ end inventory of post-2015 MAP cases). Two MAP partners did not yet respond to such requests and with one MAP partner there are ongoing discussions regarding the year in which some MAP cases are to be reported.

### *Monitoring of MAP statistics*

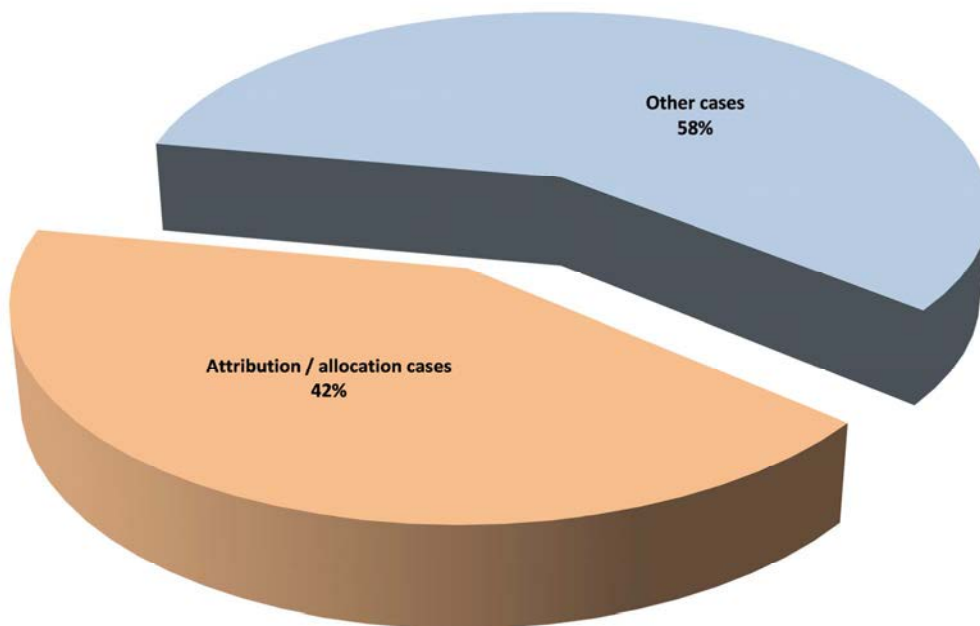
83. The Netherlands does not have a system in place with its treaty partners that communicates, monitors, and manages with its treaty partners the MAP caseload. The Netherlands reported that in 2016 it introduced a new registration system for MAP cases to monitor the process in more detail and to be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

### *Analysis of the Netherlands’ MAP caseload*

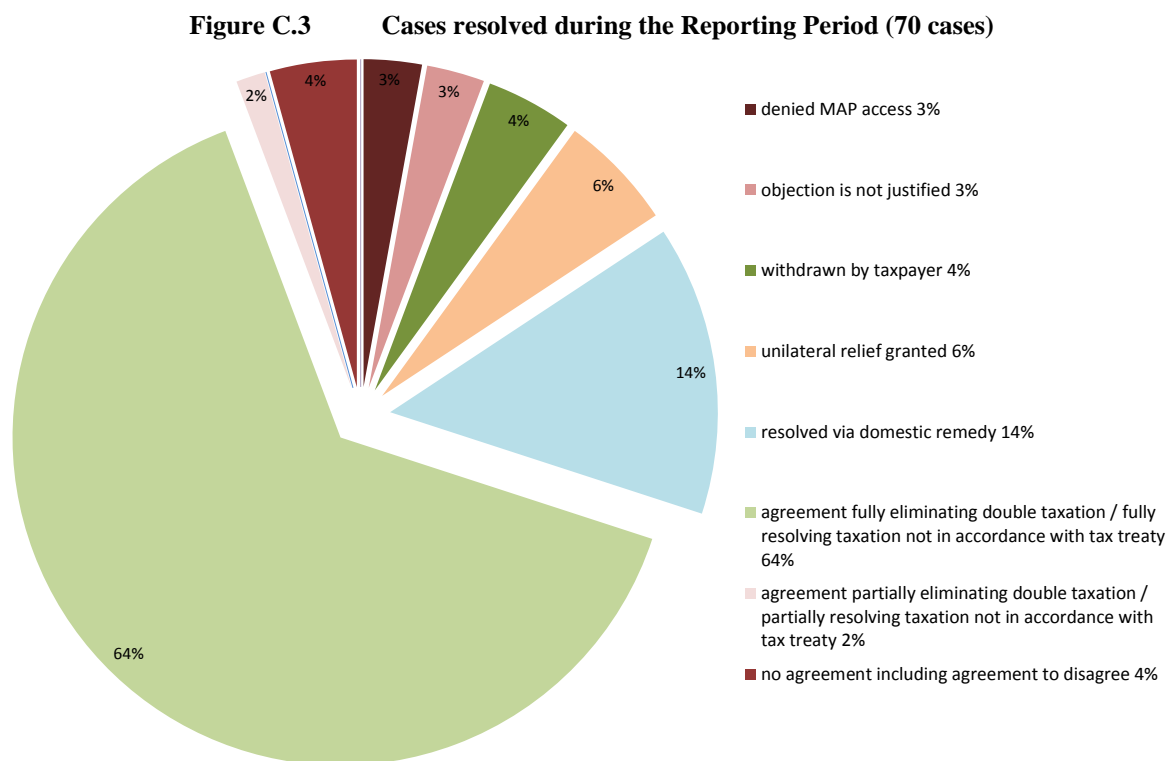
84. The analysis of the Netherlands’ MAP caseload relates to the Reporting Period. The following graph shows the evolution of the Netherlands’ MAP caseload over the Reporting Period:

**Figure C.1 The Netherlands' MAP inventory**

85. At the beginning of the Reporting Period the Netherlands had 254 pending MAP cases, of which 110 are attribution/allocation cases and 144 other MAP cases.<sup>4</sup> At the end of the Reporting Period, the Netherlands had 294 MAP cases in inventory, of which 123 are attribution/allocation cases and 171 other MAP cases. The breakdown of the end inventory can be illustrated as follows:

**Figure C.2 End inventory on 31 December 2016 (294 cases)**

86. During the Reporting Period the Netherlands resolved 70 MAP cases and the following outcomes were reported:



87. This chart points out that during the Reporting Period 45 out of 70 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

### *Average timeframe needed to resolve MAP cases*

#### *Pre-2016 cases*

88. The Netherlands reported that on average it needed 36.68 months to resolve attribution/allocation cases and 25.18 months to resolve other cases. This resulted in an average time needed of 27.99 months to close pre-2016 cases. For the purpose of computing the time to resolve pre-2016 cases, the Netherlands used:

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

#### *Post-2015 cases*

89. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 12 months by which a comprehensive analysis of these statistics was not yet possible.

90. From the statistics it follows that the Netherlands closed 14.5% of post-2015 cases during the Reporting Period. During these 12 months, all cases closed concern “other” MAP cases, except one. The Netherlands closed the attribution/allocation case within 4.50 months. For other MAP cases, the average time to resolve the other cases was reported as 2.55 months.

*All cases resolved during Reporting Period*

91. The average time needed to resolve MAP cases during the Reporting Period was 22.20 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution / Allocation cases	14	34.38
Other cases	56	19.12
<b>All cases</b>	<b>70</b>	<b>22.20</b>

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

*Peer input*

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

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

*Anticipated modifications*

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

## Conclusion

	Areas for Improvement	Recommendations
[C.2]	The Netherlands submitted timely comprehensive MAP statistics and indicated they have been matched with almost all of their MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether the Netherlands' MAP statistics match those of its treaty partners as reported by the latter.	
	Within the context of the state of play outlined above and in relation to the MAP statistics provided by the Netherlands, it resolved during the Reporting Period 14.5% (16 out of 70 cases) of its post-2015 cases in 2.68 months on average. In that regard, the Netherlands is recommended to seek to resolve the remaining 85.5% (54 cases) of the post-2015 cases pending on 31 December 2016 within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

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

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

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

#### *Description of the Netherlands' competent authority*

97. The government institution in the Netherlands that handles MAP cases is the International Tax Department of the International Tax and Consumer Tax Directorate within the Netherlands Ministry of Finance. This department consists of approximately 18 full time-employees and most of them are involved in handling MAP cases. In total two to three persons are fully dedicated to handling attribution/allocation cases as well as requests for bilateral and multilateral APAs. All other personnel in the department also handle MAP cases and are involved in other activities as well, such as treaty negotiations and policy work. In addition, employees of the Netherlands' tax administration assist the Netherlands' competent authority in handling MAP cases. This applies to both attribution/allocation cases as well as other cases. For other cases the assistance is more of an informative nature and for attribution/allocation cases the assistance consists of providing information as well as giving advice.

98. Specifically with respect to MAP cases that concern the application of the corporate tiebreaker rule under tax treaties<sup>5</sup> the Netherlands has, by decree of 12 November 2015 (IZV/2015/832), delegated the competent authority function to the Director Large Business of the Netherlands tax administration.<sup>6</sup> In practice, the APA/ATR team of the Netherlands' tax administration handles MAP cases concerning the corporate tiebreaker rule under tax treaties. The primary workforce of this team consists of handling requests for APAs and ATRs, but the Netherlands reported that the team can be flexible in their amount of time dedicated to handling corporate tiebreaker requests. The Netherlands does not, however, have an estimate on how much time employees of the APA/ATR team allocates to handling these MAP cases.

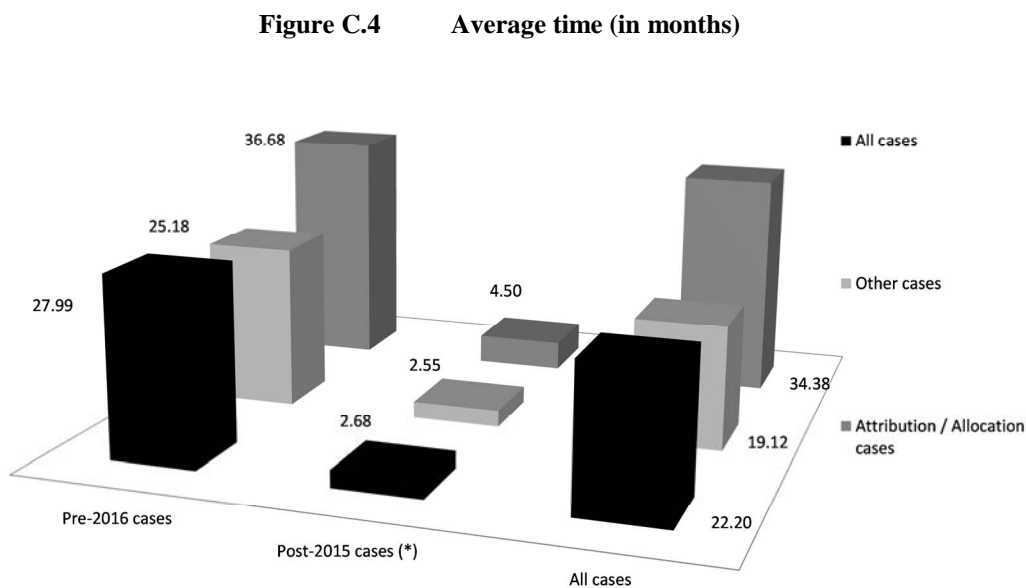


### *Monitoring mechanism*

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

### *Practical application*

100. As discussed under element C.2 the Netherlands solved its MAP cases within the pursued 24-month average. However, a discrepancy exists between the average time taken to solve attribution /allocation cases and other cases. This can be illustrated by the following graph:



(\*) Post-2015 cases only concern cases started and closed during 2016.

101. Based on these figures, it follows that on average it took the Netherlands 22.20 months to resolve all MAP cases and 34.38 months to resolve attribution/allocation cases. This may indicate that additional resources specifically dedicated to allocation/attribution cases may be necessary to accelerate the resolution of these cases.

102. Peers that provided input to the Netherlands' compliance with the Action 14 Minimum Standard report a good working relationship with its competent authority. This concerns both peers that have a large MAP inventory with the Netherlands as well as peers with a relatively modest MAP inventory. Furthermore, peers indicated that the contacts with the Netherlands' competent authority are frequent and via different channels, such as written correspondence, telephone and e-mail. Its competent authority is considered easily accessible and no problems were reported as regards contacting the Netherlands' competent authority. Generally, all available methods of communication are used to resolve MAP cases. As noted under element C.2, one peer, however, also

responded that cases take a long time to resolve with the Netherlands because both competent authorities take a long time to react to each other's positions.

103. On the material side of handling MAP cases, one peer particularly noted that the Netherlands is focused on finishing pending cases in a timely manner and another commented on how the use of email and phone calls has improved the timeliness of resolving MAP cases. Other peers commented that they considered that there were no impediments to the MAP process and that they had a positive experience dealing with the Netherlands' competent authority. They all considered that the Netherlands promptly answers questions through different means of communication and have been efficient in handling and resolving MAP cases. One peer specifically mentioned that the Netherlands competent authority was always prompt and responsive and consistently meets promised due dates.

104. In regard of the above, peers generally reported no items for improvement regarding providing adequate resources for the MAP function in the Netherlands.

### *Anticipated modifications*

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

### *Conclusion*

	Areas for Improvement	Recommendations
[C.3]	-	<p>The Netherlands should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.</p> <p>Furthermore, as the Netherlands resolved attribution/allocation cases in 34.38 months on average, it could consider devoting additional funding and resources to meet the competent authorities of its treaty partners more often to accelerate the resolution of these cases.</p>

### **[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.

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

### ***Functioning of staff in charge of MAP***

107. The Netherlands reported that staff in charge of MAP has the authority to resolve the MAP cases in accordance with the terms of the applicable treaties and that it can enter into MAP agreements without approval of any department other than the competent authority. It is common practice for the Netherlands' competent authority to consult personnel in the Netherlands tax administration on the initial position taken in a certain case (e.g. the rationale behind a transfer pricing adjustment). This initial position, however, is not binding for staff in charge of MAP when preparing position papers, discussing cases and entering into MAP agreements. Specifically with respect to transfer pricing cases, the CGTP of the Netherlands tax administration advises the competent authority when assessing a MAP request and preparing a position paper. The CGTP is within the Netherlands' tax administration responsible for coordinating transfer pricing matters and for enforcing the Netherlands' transfer pricing legislation.

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

109. As previously discussed under element C.3, the Netherlands' tax administration is the delegated competent authority for handling MAP cases relating to disputes on resident status of corporate taxpayers. As this competence is delegated to the Director Large Enterprises, which includes the audit department of the Netherlands tax administration, there is no full assurance that the APA/ATR-team of the Netherlands' tax administration can operate separately from the tax administration personnel directly involved in the adjustments at issue.

### ***Practical application***

110. One peer that provided input in relation to element C.4 noted that the Netherlands' competent authority occasionally gets in touch with the relevant auditors from the Netherlands' tax administration during competent authority meetings, and also attends these meetings. Other peers noted that they considered that the personnel in the Netherlands' competent authority department have sufficient authority to resolve MAP cases.

### ***Anticipated modifications***

111. The Netherlands indicated it will review whether the delegation of the competent authority function to handle MAP cases relating to corporate tiebreakers was formally further mandated to the APA/ATR-team of the Netherlands' tax administration. This mandate will be further arranged to ensure these MAP cases are handled by this team within the correct legal framework of the delegated competent authority.

112. As regards attribution/allocation cases and the attendance of audit personnel within the Netherlands tax administration during competent authority meetings, the Netherlands acknowledges it should explicitly communicate to its treaty partners that these auditors are not the auditors directly involved in the adjustments at issue and furthermore that the Netherlands' competent authority is not dependent on approval or direction of audit personnel that imposed the adjustment. In addition, the Netherlands indicated that it is in the process of introducing the function of country-coordinators for auditors/members of the CGTP. The Netherlands considers this to be helpful in communicating to treaty partners that only auditors that were not directly involved in the adjustment at issue could participate in the competent authority meetings.

### *Conclusion*

	Areas for Improvement	Recommendations
[C.4]	<p>With regard to the resolution of attribution/allocation MAP cases, there is a close relationship between the Netherlands' competent authority and the CGTP in handling and resolving MAP cases. Although the CGTP endeavours to avoid having the auditors who were directly involved in the adjustment at issue, there remains a minor risk that personnel of the Netherlands tax administration directly involved in the adjustment at issue, are or become involved in the decision-making process and that therefore the Netherlands' competent authority function is not performed entirely independently from the approval or direction of the tax administration personnel directly involved in the adjustment at issue.</p> <p>Handling of corporate tiebreaker MAP cases is delegated to the Director Large Enterprises of the tax administration, which bears the risk that the tax administration personnel directly involved in the adjustments at issue and the decision making process of handling these MAP cases become intertwined and may influence the process of resolving these cases.</p>	<p>The Netherlands should ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue.</p> <p>The Netherlands should ensure that corporate tiebreaker MAP cases are handled by personnel that have the authority to resolve these cases without being dependent on the approval or the direction of the tax administration personnel directly involved in the adjustments at issue. The Netherlands should in this regard follow-up its stated intention to analyse whether the team that handles these MAP cases in practice also is within the legal framework of the delegated competent authority and make (legal) changes, if necessary.</p>

### **[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.

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

### *Performance indicators used by the Netherlands*

114. The Netherlands reported that it strives at resolving MAP cases within an average of 24 months. As of 2016 a framework is in place to monitor for each case the time necessary to resolve such cases. This also measures the time between the receipt of a

MAP request and the sending of a position paper to the other competent authority. The Netherlands does not use performance indicators based on the amount of a sustained audit adjustment or maintaining tax revenue. In addition, no targets are set for members of the MAP staff with regard to the number of MAP cases resolved and the time taken to resolve a MAP case. In general, the performance of staff in charge of MAP is based on general performance indicators that apply to all personnel within the Ministry of Finance and within the entire Netherlands' government.

115. The Action 14 final report, (OECD, 2015b) includes the examples for performance indicators that are considered appropriate. These indicators are shown below are checked in the following boxes (if used):

- Number of MAP cases resolved;
- Consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers); and
- 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).

116. The Netherlands reported they do not use any of these performance indicators to evaluate its staff in charge of MAP.

### ***Practical application***

117. Peers reported not being aware of any performance indicators used in the Netherlands to evaluate its staff in charge of MAP based on the amount of sustained audit adjustments or maintaining tax revenue.

### ***Anticipated modifications***

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

### ***Conclusion***

	Areas for Improvement	Recommendations
[C.5]	-	The Netherlands could consider using the performance indicators as agreed by the FTA MAP Forum to evaluate staff in charge of the MAP function.

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

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

119. 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***

120. There are no domestic law limitations in the Netherlands for including MAP arbitration provisions in tax treaties. In fact, since the 1990s the Netherlands' tax treaty policy is to incorporate a (mandatory and binding) arbitration procedure as a supplement to the MAP for the resolution of tax treaty related disputes. This is specified in paragraph 2.17 of the Memorandum on the Netherlands' tax treaty policy of 11 February 2011 as well as paragraph 1.2.2 of its MAP guidance, which stipulates that the policy of the Netherlands is to incorporate an arbitration clause – based on article 25(5) of the *OECD Model Tax Convention* (OECD, 2015a) – in all of its double tax conventions. In addition, the Netherlands is a signatory to the EU Arbitration Convention and has been a participant in the sub-group on arbitration as part of the Multilateral Instrument of Action 15 of the BEPS project. The Netherlands also was actively involved in the past in developing the arbitration provision currently included in Article 25(5) of the *OECD Model Tax Convention* (OECD, 2015a).

### ***Practical application***

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

- In 13<sup>7</sup> treaties the arbitration clause is based on Article 25(5) of the *OECD Model Tax Convention* (OECD, 2015a);
- In two treaties the arbitration clause concerns a mandatory and binding arbitration procedure; and
- In 27 treaties the arbitration clause concerns a voluntary and binding arbitration procedure.

122. In addition, the Netherlands has included in four treaties a most-favoured nation clause concerning the inclusion of an arbitration provision. In one treaty this concerns the automatic inclusion of such provision, whereas in three treaties this concerns entering into negotiations for the inclusion of an arbitration provision, should the Netherlands' treaty partner include an arbitration provision in a tax treaty with a third state.

123. Peers provided no input in relation to element C.6.

### ***Anticipated modifications***

124. The Netherlands has reported that it will opt for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.<sup>8</sup> The Netherlands thereby intends to preserve mandatory and binding arbitration provisions in existing tax treaties by making a reservation under Article 26(4) of the Multilateral Instrument.

### ***Conclusion***

	Areas for Improvement	Recommendations
[C.6]	-	-

## Notes

1. Available at: [www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm](http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm) (accessed on 10 September 2017). These statistics are up to fiscal year 2015.
2. Available at: [http://ec.europa.eu/taxation\\_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum\\_en](http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en) (accessed on 10 September 2017). The statistics made available on the website of the EU Joint Transfer Pricing forum are up to fiscal year 2015.
3. For post-2015 cases, if the number of MAP cases in the Netherlands' inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five, the Netherlands' reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution / allocation cases and other cases).
4. For pre-2016 and post-2015 the Netherlands follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “*an attribution allocation MAP case is a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention (OECD, 2015a)); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention (OECD, 2015a)), which is also known as a transfer pricing MAP case.*”
5. This concern cases where a person, other than an individual, is considered a resident of both contracting states and whereby the competent authorities shall determine by mutual agreement of which state that person shall be deemed to be a resident for the purposes of the applicable tax treaty.
6. Decree of the Netherlands State Secretary of Finance of November 12, 2015 (IZV/2015/832). Available at: <https://zoek.officielebekendmakingen.nl/stcrt-2015-41010> (accessed on 10 September 2017).
7. This includes the treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the *OECD Model Tax Convention* (OECD, 2015a). Therefore these were also taken into account.
8. By letter of 28 October 2016 the Netherlands State Secretary of Finance informed parliament that it will incorporate the proposed modifications in the Multilateral Instrument with respect to the Action 14 Minimum Standard without any reservations (Available at: <https://zoek.officielebekendmakingen.nl/kst-25087-135.html>, accessed on 10 September 2017). On 21 March 2017 the Netherlands State Secretary of Finance sent a second letter to the Netherlands parliament on the Multilateral Instrument, thereby explaining in more detail the choices the Netherlands envisages to make with respect to

this instrument. Specifically regarding the Action 14 Minimum Standard, the State Secretary of Finance reported that the Netherlands will accept the relevant articles in the Multilateral Instrument without any reservations (Available at:

[www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2017/03/21/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps.pdf](http://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2017/03/21/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps.pdf), (accessed on 10 September 2017).

## *Bibliography*

- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, OECD, Paris, [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf) (accessed on 22 August 2017).
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en>.



## *Part D*

### **Implementation of MAP Agreements**

#### **[D.1] Implement all MAP agreements**

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

125. 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***

126. The Netherlands reported that it will implement all agreements reached in MAP discussions. Although not all of the Netherlands' tax treaties include the equivalent of the second sentence of Article 25(2) of the *OECD Model Tax Convention* (OECD, 2015), dealing with the implementation of a mutual agreement reached notwithstanding any time limits on the domestic law of the contracting states (see element D.3 below), there is no statute of limitation in the Netherlands for implementing MAP agreements.

127. In practice, the Netherlands' tax administration will implement the MAP via an official reduction of the taxable amount in the tax assessment. In principal the tax administration has a five year period to make such reduction in a given tax assessment. However, pursuant to paragraph 6.1 of the Decree of the Netherlands State Secretary of Finance of December 10 2009 (CPP 2009/2461M) such time limit is waived for implementing MAP agreements, as under this paragraph the period of five years may be extended for implementing such agreement. As reiterated in paragraph 6.2 of the decree, the Netherlands will implement all MAP agreements reached and makes appropriate adjustments to the tax assessed in transfer pricing cases, if required. So even in the absence of the last sentence of the equivalent of article 25(2) *OECD Model Tax Convention* (OECD, 2015) in its tax treaties, a MAP agreement is always implemented in the Netherlands notwithstanding domestic time limits.

128. With respect to taxpayer's position on implementing MAP agreements, the Netherlands allows the taxpayer concerned to either accept or reject the outcome of a MAP. In case of a rejection, the MAP agreement would not be implemented and the taxpayer is at liberty to pursue domestic remedies if still available. This applies for agreements reached as the result of the MAP, as also for any agreements reached following the decision of an arbitration panel as a final stage to the MAP.

129. Under the EU Arbitration Convention if the competent authorities are unable to reach agreement within a period of two years, they are obliged to establish an advisory commission that has to render an opinion on the case under review within six months. Subsequently, within six months of receiving the commission's advice the competent authorities concerned must take a final decision on the case that eliminates double taxation. The measures taken by the competent authorities may differ from the advisory

commission's opinion, but they must in all cases result in the double taxation being eliminated. If the competent authorities cannot reach such final decision, the advisory commission's opinion will become binding on the competent authorities. Specifically with respect to the EU Arbitration Convention, the Netherlands has included in paragraph 7.1 of its MAP guidance that taxpayers are in such situation considered to be bound by the opinion as well. Consequently, such binding opinion will be implemented by the Netherlands regardless of the taxpayer's acceptance.

### *Practical application*

130. The Netherlands reported that all MAP agreements reached since 1 January 2014 and once accepted by taxpayers have been implemented. The Netherlands, however, has no mechanism in place that keeps track of the actual implementation of all MAP agreements.

131. Peers have not indicated experiencing any problems with the Netherlands regarding the implementation of MAP agreements that were reached on or after 1 January 2014.

### *Anticipated modifications*

132. The Netherlands did not indicate it anticipates any modifications in relation to element D.1.

### *Conclusion*

	Areas for Improvement	Recommendations
[D.1]	-	As it has done thus far, the Netherlands should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled. To keep a record of whether all future MAP agreements are implemented, the Netherlands could introduce a tracking system.

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

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

133. 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*

134. The Netherlands' competent authority presents the MAP agreement reached to the taxpayer concerned in writing as soon as possible. Subsequently, the taxpayer must notify (in writing) the competent authority about whether he accepts this agreement. The Netherlands has in its domestic legislation and/or administrative framework no timeline

for implementation of mutual agreements reached. However, the Netherlands indicated that MAP agreements are implemented within a reasonable period.

### ***Practical application***

135. The Netherlands reported that all MAP agreements reached since 1 January 2014 and once accepted by taxpayers have been implemented on a timely basis.

136. Peers have not indicated experiencing any problems with the Netherlands regarding the implementation of MAP agreements on a timely basis that were reached on or after 1 January 2014.

### ***Anticipated modifications***

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

### ***Conclusion***

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

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

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

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

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

139. As discussed under element D.1, the Netherlands has, pursuant to its domestic legislation, no statute of limitations for implementing MAP agreements. Furthermore, it did not reserve in the Commentary to Article 25 of the *OECD Model Convention* the right not to incorporate the second sentence of Article 25(2) in its tax treaties.

140. Out of the Netherlands' 92 tax treaties, 66 contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.<sup>1</sup> The remaining 26<sup>2</sup> treaties do not include a provision

concerning the implementation of MAP agreements in general or notwithstanding any time limits in the domestic laws of the states concerned. However, one of these 26 tax treaties contains the alternative provisions provided for in Article 9(1) and 7(2) of the *OECD Model Tax Convention* (OECD, 2015), setting a time limit for making primary adjustments.

### *Anticipated modifications*

141. For those treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) as it read prior to or after the adoption of the final report on Action 14, the Netherlands indicated that it intends to modify its existing tax treaties by signing the Multilateral Instrument, except for the treaties that are currently under (re)negotiation.<sup>3</sup> In that regard, the Netherlands envisages not making any reservations against the modifications made by Article 17 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing treaties to be covered by that instrument as soon as practicable.<sup>4</sup> Where a tax treaty will not be modified by the Multilateral Instrument, the Netherlands reported that it intends to update via bilateral negotiations all of its tax treaties to be in line with element D.3. In addition, the Netherlands will seek to include Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

### *Conclusion*

	Areas for Improvement	Recommendations
[D.3]	<p>26 out of 92 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015) nor the alternative provisions provided for in Article 9(1) and Article 7(2).</p> <p>One out of 92 tax treaties do not contain a provision that is equivalent to Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015), but includes the alternative provision provided for in Article 9(1) and 7(2).</p>	<p>Where treaties do not include the equivalent of Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015), or both alternatives provided in Article 9(1) and Article 7(2), and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, the Netherlands should request the inclusion of the required provision or be willing to accept the inclusion of both alternatives via bilateral negotiations.</p> <p>Specifically with respect to the treaty with the former USSR that continues to be applied to Tajikistan and the treaty with the former Yugoslavia that is continued to be applied to Bosnia and Herzegovina, Montenegro, and Serbia, the Netherlands should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>In addition, the Netherlands should maintain its stated intention to include the required provision or be willing to accept the inclusion of both alternative provisions in all future treaties.</p>

## Notes

1. These include the treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation between the Netherlands and these islands function in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the *OECD Model Tax Convention* (OECD, 2015). Therefore these were also taken into account.
2. These 26 treaties include the treaty with the former USSR that is continued to be applied to Tajikistan and the treaty with former Yugoslavia that is continued to be applied to Bosnia and Herzegovina, Montenegro and Serbia.
3. By letter of 28 October 2016 the Netherlands State Secretary of Finance informed parliament that it will incorporate the proposed modifications in the Multilateral Instrument with respect to the Action 14 Minimum Standard without any reservations (Available at: <https://zoek.officielebekendmakingen.nl/kst-25087-135.html>, accessed on 10 September 2017). On 21 March 2017 the Netherlands State Secretary of Finance sent a second letter to the Netherlands parliament on the Multilateral Instrument, thereby explaining in more detail the choices the Netherlands envisages to make with respect to this instrument. Specifically regarding the Action 14 Minimum Standard, the State Secretary of Finance reported that the Netherlands will accept the relevant articles in the Multilateral Instrument without any reservations (Available at: [www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2017/03/21/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps.pdf](http://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2017/03/21/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps/aanbiedingsbrief-schriftelijk-overleg-multilateraal-instrument-beps.pdf) (accessed on 10 September 2017)).
4. The Netherlands indicated that the Multilateral Instrument will not apply to treaties currently under (re)negotiation.

## Bibliography

- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf) (accessed on 22 August 2017).
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.



## Summary

	Areas for Improvement	Recommendations
<b>Part A: Preventing disputes</b>		
[A.1]	-	The Netherlands should maintain its stated intention to include the required provision in all future treaties.
[A.2]	-	The Netherlands should continue to provide for roll-back of bilateral APAs in all appropriate cases as it has done thus far.  To keep a record of the number of APAs where a roll-back was and was not granted, the Netherlands could introduce a monitoring system.
<b>Part B: Availability and access to MAP</b>		
[B.1]	<p>17 out of 92 tax treaties do not contain a provision that is equivalent to Article 25(1) of the <i>OECD Model Tax Convention</i> (OECD, 2015). Of those 17 tax treaties:</p> <ul style="list-style-type: none"> <li>○ 11 do not contain a provision that is the equivalent of Article 25(1), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015), either as it read prior to the adoption of the final report on Action 14 or as amended by that final report; and</li> <li>○ Five do not contain a provision based on Article 25(1), second sentence of the <i>OECD Model Tax Convention</i> (OECD, 2015), allowing taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty; and</li> <li>○ One does not contain a provision that is the equivalent of Article 25(1), first and second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015).</li> </ul>	<p>Where treaties do not include the equivalent of Article 25(1) of the <i>OECD Model Tax Convention</i> (OECD, 2015) provisions and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, the Netherlands should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> <li>○ a provision that is equivalent to Article 25(1) first sentence of the <i>OECD Model Tax Convention</i> (OECD, 2015) either: <ul style="list-style-type: none"> <li>(a) as amended in the final report of Action 14; or</li> <li>(b) as it read prior to the adoption of the final report of Action 14, and</li> </ul> </li> <li>○ a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>In addition, the Netherlands should maintain its stated intention to include the required provision in all future treaties.</p>

	Areas for Improvement	Recommendations
[B.2]	No process in place to notify and/or consult the other competent authority in cases access to MAP is denied or where its competent authority considered the objection raised in a MAP request as not justified for those treaties that do not contain a provision equivalent to Article 25(1) of the <i>OECD Model Tax Convention</i> (OECD, 2015) as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners.	The Netherlands should finalise its ongoing process to introduce a bilateral notification and/or consultation procedure for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned by the request does not include Article 25(1) of the <i>OECD Model Tax Convention</i> (OECD, 2015) as amended in the final report of Action 14.
[B.3]	-	As the Netherlands has thus far granted access to the MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	-	As the Netherlands has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision has been met or whether the application of a domestic law anti-abuse provisions is in conflict with the provisions of a treaty, it should continue granting access for these cases.
[B.5]	-	As the Netherlands has thus far granted access to the MAP in eligible cases, even if there was an audit settlement between the tax authority and a taxpayer, it should continue granting access for these cases.
[B.6]	-	As the Netherlands has thus far granted access to the MAP in eligible cases when taxpayers have complied with the Netherlands' information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Six out of 92 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015).	Where treaties do not include the equivalent of Article 25(3), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, the Netherlands should request the inclusion of the required provision via bilateral negotiations.  In addition, the Netherlands should maintain its stated intention to include the required provision in all future treaties.
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of clarity, the Netherlands, when updating this guidance, could consider including in its MAP guidance information on where access to MAP would be granted in the case of double taxation resulting from bona fide taxpayer-initiated foreign adjustments and information on multilateral MAP guidance;  Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.
[B.9]	-	The Netherlands should ensure that future updates of its MAP guidance are made publicly available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.



	Areas for Improvement	Recommendations
[B.10]	The MAP guidance does not include information on the relationship between MAP and audit settlements.	The Netherlands should include in its MAP guidance a section clarifying the relationship between access to MAP and audit settlements, and that audit settlements do not preclude access to MAP.
<b>Part C: Resolution of MAP cases</b>		
[C.1]	-	The Netherlands should include the required provision in all future treaties.
[C.2]	<p>The Netherlands submitted timely comprehensive MAP statistics and indicated they have been matched with almost all of their MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether the Netherlands' MAP statistics match those of its treaty partners as reported by the latter.</p> <p>Within the context of the state of play outlined above and in relation to the MAP statistics provided by the Netherlands, it resolved during the Reporting Period 14.5% (16 out of 70 cases) of its post-2015 cases in 2.68 months on average. In that regard, the Netherlands is recommended to seek to resolve the remaining 85.5% (54 cases) of the post-2015 cases pending on 31 December 2016 within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.</p>	
[C.3]	-	<p>The Netherlands should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.</p> <p>Furthermore, as the Netherlands resolved attribution/ allocation cases in 34.38 months on average, it could consider devoting additional funding and resources to meet the competent authorities of its treaty partners more often to accelerate the resolution of these cases.</p>
[C.4]	<p>With regard to the resolution of attribution/allocation MAP cases, there is a close relationship between the Netherlands' competent authority and the CGTP in handling and resolving MAP cases. Although the CGTP endeavours to avoid having the auditors who were directly involved in the adjustment at the table, there remains a minor risk that personnel of the Netherlands tax administration directly involved in the adjustment at issue, are or become involved in the decision-making process and that therefore the Netherlands' competent authority function is not performed entirely independently from the approval or direction of the tax administration personnel directly involved in the adjustment at issue.</p> <p>Handling of corporate tiebreaker MAP cases is delegated to the Director Large Enterprises of the tax administration, which bears the risk that the tax administration personnel directly involved in the adjustments at issue and the decision making process of handling these MAP cases become intertwined and may influence the process of resolving these cases.</p>	<p>The Netherlands should ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue.</p> <p>The Netherlands should ensure that corporate tiebreaker MAP cases are handled by personnel that have the authority to resolve these cases without being dependent on the approval or the direction of the tax administration personnel directly involved in the adjustments at issue. The Netherlands should in this regard follow-up its stated intention to analyse whether the team that handles these MAP cases in practice also is within the legal framework of the delegated competent authority and make (legal) changes, if necessary.</p>

	Areas for Improvement	Recommendations
[C.5]	-	The Netherlands could consider using the performance indicators as agreed by the FTA MAP Forum to evaluate staff in charge of the MAP function.
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	-	As it has done thus far, the Netherlands should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled. To keep a record of whether all future MAP agreements are implemented, the Netherlands could introduce a tracking system.
[D.2]	-	As it has done thus far, the Netherlands should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	<p>26 out of 92 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015) nor the alternative provisions provided for in Article 9(1) and Article 7(2).</p> <p>One out of 92 tax treaties do not contain a provision that is equivalent to Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015), but includes the alternative provision provided for in Article 9(1) and 7(2).</p>	<p>Where treaties do not include the equivalent of Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015), or include both alternatives provided in Article 9(1) and Article 7(2), and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, the Netherlands should request the inclusion of the required provision or be willing to accept the inclusion of both alternatives via bilateral negotiations.</p> <p>Specifically with respect to the treaty with the former USSR that continues to be applied to Tajikistan and the treaty with the former Yugoslavia that is continued to be applied to Bosnia and Herzegovina, Montenegro, and Serbia, the Netherlands should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>In addition, the Netherlands should maintain its stated intention to include the required provision or be willing to accept the inclusion of both alternative provisions in all future treaties.</p>

## Annex A

### Tax Treaty Network of the Netherlands

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.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 sentence 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 sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		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?				
	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, others 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	Y = yes  N = no

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1	B.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 sentence 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 sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Albania	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Argentina	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Armenia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Australia	Y	O	Y	Y	i	Y	Y	Y	N	N	
Austria	Y	O	i	i	i	Y	N	Y	Y	N	
Azerbaijan	Y	O	Y	Y	i	Y	Y	Y	Y	Y	ii
Bahrain	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Bangladesh	Y	O	Y	Y	i	Y	Y	Y	Y	N	ii
Barbados	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Belarus	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Belgium	Y	O	Y	Y	i	Y	Y	Y	N	N	
Bermuda	Y	O	Y	i	i	Y	Y	Y	Y	Y	iii
Bosnia and Herzegovina	Y	O	ii (5 years)	i	i	Y	N	Y	Y	N	
Brazil	Y	O	ii (5 years)	i	i	Y	N	Y	N	N	
Bulgaria	Y	O	Y	Y	i	Y	Y	Y	Y	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.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 sentence 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 sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Canada	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	Y	iii
China	Y	O	Y	Y	i	Y	Y	Y	Y	N	ii
Chinese Taipei	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Croatia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	ii
Curacao	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Czech Republic	Y	N	i	i		Y	N	Y	Y	N	
Denmark	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Egypt	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Estonia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Ethiopia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Finland	Y	O	Y	Y	i	Y	Y	Y	Y	N	
France	Y	N	Y	i	i	Y	Y	N	Y	N	iii
Georgia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Germany	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Ghana	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1	B.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 sentence 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 sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Greece	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Hong Kong, China	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Hungary	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Iceland	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
India	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Indonesia	Y	O	Y	Y	i	Y	N	Y	Y	N	iii
Ireland	Y	O	i	i	i	Y	N	Y	Y	N	
Israel	Y	N	i	i	i	Y	N	Y	Y	N	
Italy	Y	N	ii (2 years)	i	i	Y	N	Y	N	N	
Japan	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Jordan	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Kazakhstan	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Kenya	N	O	Y	Y	i	Y	Y	Y	Y	Y	i
Korea	Y	O	i	i	i	Y	N	Y	Y	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.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 sentence 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 sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Kuwait	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Latvia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Lithuania	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Luxembourg	Y	N	i	i	i	Y	N	Y	Y	N	ii
Macedonia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Malawi	N	O	Y	Y	i	Y	Y	Y	Y	Y	i
Malaysia	Y	O	ii (2 years)	i	i	Y	N	Y	Y	N	
Malta	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Mexico	Y	O	Y	Y	i	Y	N	Y	N	N	
Moldova	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Montenegro	Y	O	ii (5 years)	i	i	Y	N	Y	Y	N	
Morocco	Y	N	i	i	i	Y	N	Y	Y	N	
New Zealand	Y	N	ii (5 years)	Y	i	Y	Y	Y	Y	N	
Nigeria	Y	O	Y	Y	i	Y	N	Y	N	N	
Norway	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Oman	Y	O	Y	Y	i	Y	Y	Y	Y	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1	B.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 sentence 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 sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Pakistan	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Panama	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Philippines	Y	O	ii (2 years)	i	i	Y	N	Y	Y	N	
Poland	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Portugal	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Qatar	Y	O	ii (2 years)	Y	i	Y	Y	Y	Y	Y	i
Romania	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Russia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Saudi Arabia	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Serbia	Y	O	ii (5 years)	i	i	Y	N	Y	Y	N	
Singapore	Y	O	i	i	i	Y	N	Y	Y	N	
Slovak Republic	Y	N	i	i	i	Y	N	Y	Y	N	
Slovenia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
South Africa	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Spain	Y	N	i	i	i	Y	N	Y	Y	N	



		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.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 sentence 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 sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Sri Lanka	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Suriname	Y	N	i	Y	i	Y	N	Y	Y	N	
Sweden	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Switzerland	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Saint Maarten	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Tajikistan	Y	O	Y	i	i	Y	N	Y	Y	N	
Thailand	Y	N	i	i	i	Y	N	Y	Y	N	
Tunisia	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Turkey	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Uganda	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Ukraine	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
United Arab Emirates	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
United Kingdom	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
United States	Y	O	i	Y	i	Y	N	Y	Y	Y	iii

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.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 sentence 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 sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		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?				
Uzbekistan	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Venezuela	Y	O	ii (2 years)	Y	i	Y	Y	Y	Y	N	
Viet Nam	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Zambia	Y	O	i	i	i	Y	N	Y	Y	Y	i
Zimbabwe	Y	O	Y	Y	i	Y	Y	Y	Y	N	

\* 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 recognizes 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 recognized 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.

***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	110	0	0	0	2	4	6	1	0	0	0	97	36.68
Others	144	1	0	1	0	5	31	0	0	3	0	103	25.18
Total	254	1	0	1	2	9	37	1	0	3	0	200	27.99

**Annex C**  
**Map statistics post-2015 cases**

Category of cases	No. Of pre-2016 cases in MAP inventory on 1 January 2016	No. Of post-2015 cases started during the reporting period	Number of pre-2016 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 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	Column 15
Attribution/ Allocation	0	27	0	0	0	0	0	1	0	0	0	0	26	4.50
Others	0	83	1	2	2	2	1	7	0	0	0	0	68	2.55
Total	0	110	1	2	2	2	1	8	0	0	0	0	94	2.68

## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>APA guidance</b>	Advance Pricing Agreement (APA) Decree of 11 August 2004 (IFZ2004/124)
<b>Look-back period</b>	Period starting from 1 January 2014 for which the Netherlands wished to provide information and requested peer input
<b>MAP guidance</b>	Decree of the Netherlands State Secretary of Finance (IFZ2008/248M) of 29 September 2008
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	<i>OECD Model Tax Convention</i> on Income and on Capital as it read on 15 July 2014
<b>Pre-2016 cases</b>	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
<b>Post-2015 cases</b>	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
<b>Reporting period</b>	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2016



## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

## OECD/G20 Base Erosion and Profit Shifting Project

# Making Dispute Resolution More Effective – MAP Peer Review Report, The Netherlands (Stage 1)

## INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Addressing base erosion and profit shifting is a key priority of governments around the globe. In 2013, OECD and G20 countries, working together on an equal footing, adopted a 15-point Action Plan to address BEPS. Beyond securing revenues by realigning taxation with economic activities and value creation, the OECD/G20 BEPS Project aims to create a single set of consensus-based international tax rules to address BEPS, and hence to protect tax bases while offering increased certainty and predictability to taxpayers. In 2015, the OECD and G20 established an Inclusive Framework on BEPS to allow interested countries and jurisdictions to work with OECD and G20 members to develop standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package.

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

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

Consult this publication on line at <http://dx.doi.org/10.1787/9789264282629-en>.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases. Visit [www.oecd-ilibrary.org](http://www.oecd-ilibrary.org) for more information.

