

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



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

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**





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## *Foreword*

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and 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>Foreword</b> .....	<b>3</b>
<b>Table of contents</b> .....	<b>5</b>
<b>Abbreviations and acronyms</b> .....	<b>7</b>
<b>Executive summary</b> .....	<b>9</b>
<b>Introduction</b> .....	<b>11</b>
Available mechanisms in Switzerland to resolve tax treaty-related disputes.....	11
Recent developments in Switzerland .....	11
Basis for the peer review process .....	11
Overview of MAP caseload in Switzerland .....	12
General outline of the peer review report.....	13
<b>Bibliography</b> .....	<b>14</b>
<b>Part A Preventing Disputes</b> .....	<b>15</b>
[A.1] Include Article 25(3), first sentence, of the <i>OECD Model Tax Convention</i> in tax treaties.....	15
[A.2] Provide roll-back of bilateral APAs in appropriate cases .....	16
<b>Bibliography</b> .....	<b>18</b>
<b>Part B Availability and Access to MAP</b> .....	<b>19</b>
[B.1] Include Article 25(1) of the <i>OECD Model Tax Convention</i> in tax treaties.....	19
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process .....	22
[B.3] Provide access to MAP in transfer pricing cases .....	23
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions.....	24
[B.5] Provide access to MAP in cases of audit settlements .....	25
[B.6] Provide access to MAP if required information is submitted .....	26
[B.7] Include Article 25(3), second sentence, of the <i>OECD Model Tax Convention</i> in tax treaties ..	27
[B.8] Publish clear and comprehensive MAP guidance .....	28
[B.9] Make MAP guidance available and easily accessible and publish MAP profile .....	30
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP .....	31
<b>Part C Resolution of MAP Cases</b> .....	<b>35</b>
[C.1] Include Article 25(2), first sentence, of the <i>OECD Model Tax Convention</i> in tax treaties.....	35
[C.2] Seek to resolve MAP cases within a 24-month average timeframe .....	36
[C.3] Provide adequate resources to the MAP function .....	40
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty .....	42
[C.5] Use appropriate performance indicators for the MAP function.....	43
[C.6] Provide transparency with respect to the position on MAP arbitration .....	44

<b>Part D Implementation of MAP Agreements</b> .....	<b>47</b>
[D.1] Implement all MAP agreements .....	47
[D.2] Implement all MAP agreements on a timely basis .....	48
[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) .....	49
<b>Bibliography</b> .....	<b>51</b>
<b>Summary</b> .....	<b>53</b>
<b>Annex A tax treaty network of switzerland</b> .....	<b>57</b>
<b>Annex B map statistics pre-2016 cases</b> .....	<b>65</b>
<b>Glossary</b> .....	<b>67</b>

## Figures

Figure C.1	Switzerland's MAP inventory .....	37
Figure C.2	End inventory on 31 December 2016 (347 cases) .....	37
Figure C.3	Cases resolved during the Reporting Period (98 cases) .....	38
Figure C.4	Average time (in months) .....	41



## *Abbreviations and Acronyms*

<b>APA</b>	Advance Pricing Arrangement
<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

Switzerland has a large tax treaty network consisting of 90 tax treaties. Switzerland has an established 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 350 cases pending on 31 December 2016, and approximately 40% of which consist of attribution/allocation cases. Overall Switzerland meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Switzerland is working to address them.

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

- more than half of Switzerland's tax treaties do not contain a provision to implement any mutual agreement reached through MAP notwithstanding any time limits in the domestic law nor include the alternative provisions provided for in Article 9(1) and Article 7(2) of the *OECD Model Tax Convention (OECD, 2015)* to set a time limit for making transfer pricing adjustments; and
- more than a quarter of Switzerland's tax treaties do not contain a provision to implement any mutual agreement reached through MAP notwithstanding any time limits in the domestic law and only include the alternative provision provided for in Article 9(1).

In order to be fully compliant with the four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Switzerland therefore should include the second sentence of Article 25(2) of the *OECD Model Tax Convention (OECD, 2015)* in its tax treaties or be willing to accept both alternative provisions in Article 9(1) and Article 7(2). Furthermore, Switzerland needs to amend and update some of its tax treaties in other aspects. In this respect, Switzerland indicated that it recently signed the Multilateral Instrument potentially covering 14 of Switzerland's tax treaties but that for the issue of implementation of MAP agreements, it intends to implement this element via the inclusion of the alternatives provided for in article 9(1) and 7(2) and therefore will amend and update its treaties via bilateral negotiations. Furthermore, Switzerland opted for the arbitration part of the Multilateral Instrument.

Switzerland meets the Action 14 Minimum Standard concerning the prevention of disputes. It has long experience with bilateral APAs and allows taxpayers to request rollbacks of these bilateral APAs.

Switzerland also meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard but it needs to issue more comprehensive MAP guidance. Switzerland provides access to MAP in all eligible cases. It has a notification process in place for those situations in which Switzerland's competent authority considers the objection raised by taxpayers in a MAP request as not justified. In addition,

Switzerland has MAP guidance which already provides practical information on MAP. However, this document does not establish comprehensive MAP guidance.

Furthermore, Switzerland's competent authority uses a pragmatic approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. Switzerland therefore meets 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	141	53	54	140	27.42
Other cases	162	89	44	207	15.49
<b>Total</b>	<b>303</b>	<b>142</b>	<b>98</b>	<b>347</b>	<b>22.05</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, Switzerland used as a start date the date of filing of the MAP request and as the end date the earliest of the following dates: (i) the date when the taxpayer is informed of the outcome of the MAP, (ii) the date of the closing letter which is drafted upon taxpayer's approval of the agreement reached, or (iii) the date when the Swiss Competent Authority formally closed the case.

These figures point out that the number of MAP cases resolved by Switzerland during 2016 is considerably lower than the number of MAP cases started during 2016 and 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 Switzerland are in principle adequate, but more resources may be necessary to achieve a net reduction of its MAP inventory and manage the influx of new cases because fewer cases were resolved than were initiated. Although Switzerland's 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 (27.42 months) than other cases (15.49 months). This indicates that additional resources specifically dedicated to handling attribution/allocation cases may be necessary to accelerate the resolution of these cases.

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

## Introduction

### Available mechanisms in Switzerland to resolve tax treaty-related disputes

Switzerland has entered into 90 tax treaties on income (and/or capital) all of which are in force.<sup>1</sup> These 90 treaties apply to 105 jurisdictions.<sup>2</sup> All 90 of these tax treaties provide for a mutual agreement procedure (MAP) for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 26 of the 90 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.<sup>3</sup>

In Switzerland, the competent authority function to conduct MAP is performed by the State Secretariat for International Financial Matters. The competent authority of Switzerland currently employs 13 employees. The organisation of this competent authority function is governed by the Tax Division of the State Secretariat for International Financial Matters. The competent authority for mutual agreement procedures published a fact sheet in German, French, Italian and English on the mutual agreement procedures on its website. Guidelines regarding the request for mutual agreement procedure are provided in sections 4(ff) on pages 2 and 3 of the Federal Department of Finance State Secretariat for International Financial Matters Tax Division's Fact Sheet on the Mutual Agreement Procedure of June 2016.<sup>4</sup>

### Recent developments in Switzerland

Since the adoption of the Action 14 Minimum Standard, Switzerland has participated as an ad-hoc member of the sub-group on arbitration in the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ('**Multilateral Instrument**'). Switzerland constantly has ongoing negotiations for the revision of existing and the conclusion of new tax treaties. Switzerland intends to include the Action 14 Minimum Standard, as far as it is not met, in future tax treaties.

### Basis for the peer review process

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

For the purpose of this report in assessing whether Switzerland is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an

existing treaty currently in force. Furthermore, the treaty analysis also takes into account the treaty with former Serbia and Montenegro (see above). As it concerns one tax treaty that is being applied to multiple jurisdictions, this treaty is only counted as one for this purpose. In addition, the treaty with Denmark is also counted as one treaty, even though it is being applied to the Faroe Islands. Lastly, the 1954 treaty with the United Kingdom is being applied to 14 jurisdictions, not including the United Kingdom (which has a separate treaty with Switzerland). As this also concerns one treaty being applied to multiple jurisdictions, it is again counted as one for the treaty analysis. Reference is made to Annex A for the overview of Switzerland's tax treaties regarding the mutual agreement procedure.

The questionnaires for the peer review process were sent to Switzerland and the peers on 5 December 2016. While the commitment to Action 14 Minimum Standard only starts from 1 January 2016, Switzerland opted to provide information on the period starting as from 1 January 2014 (**'the look back period'**) and also requested peer input relating to the look back period. In addition to the assessment on the compliance with the Action 14 Minimum Standard, Switzerland also addressed best practices and asked for peer input on these best practices.

In total 20 peers provided input: Austria, Belgium, Canada, Denmark, France, Germany, Greece, India, Italy, Japan, Korea, Liechtenstein, Netherlands, Norway, People's Republic of China, Singapore, Spain, Sweden, the United Kingdom and the United States. All input was forwarded to Switzerland. These peers represent more than 90% of post-2015 MAP in Switzerland's inventory on 31 December 2016. Broadly, all peers indicated having good working relationships with Switzerland in regard of MAP and some of them emphasised the ease of contact with Switzerland's competent authority. Input was also received from taxpayers.

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

- MAP profile;<sup>5</sup>
- MAP statistics<sup>6</sup> according to the MAP Statistics Reporting Framework<sup>7</sup> (see below)

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

## Overview of MAP caseload in Switzerland

Switzerland provided their MAP statistics on the period starting on 1 January 2016 (the **'Reporting Period'** in advance of the due date on 31 May 2017 in order to be able to incorporate them in the report. According to these statistics, the MAP inventory of Switzerland was 347 cases on 31 December 2016, 140 of which concern attribution/allocation cases and 207 other cases. During the Reporting Period 142 cases were initiated and 98 cases were closed.

## General outline of the peer review report

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

- A. Preventing Disputes;
- B. Availability and Access to MAP;
- C. Resolution of MAP cases; 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>8</sup>. Apart from analysing Switzerland's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Switzerland. Furthermore, the report depicts the changes adopted and plans shared by Switzerland to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The 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 Switzerland continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

## Notes

1. The tax treaties Switzerland has entered into are available at: [www.admin.ch/opc/fr/classified-compilation/0.67.html](http://www.admin.ch/opc/fr/classified-compilation/0.67.html) (in French); [www.admin.ch/opc/de/classified-compilation/0.67.html](http://www.admin.ch/opc/de/classified-compilation/0.67.html) (in German); and [www.admin.ch/opc/it/classified-compilation/0.67.html](http://www.admin.ch/opc/it/classified-compilation/0.67.html) (in Italian); accessed on 10 September 2017.
2. The treaty with Denmark also applies to the Faroe Islands and the 1954 treaty with the United Kingdom continues to be applied to Anguilla, Antigua & Barbuda, Barbados, Belize, the British Virgin Islands, Dominica, Gambia, Grenada, Malawi, Montserrat, Saint Kitts & Nevis, Saint Lucia, Saint Vincent & Grenadines and Zambia, even though Switzerland and the United Kingdom have entered into a new convention in 1977. Switzerland also continues to apply the 2005 treaty with the former Serbia and Montenegro to both Serbia and Montenegro.
3. This concerns treaties with Albania, Australia, Austria, Belgium, Canada, Denmark, Estonia, France, Germany, Greece, Hong Kong (China), Iceland, Kazakhstan, Liechtenstein, Luxembourg, the Netherlands, Norway, Poland, the Slovak Republic, Slovenia, South Africa, Spain, Sweden, United Kingdom, United States and Uruguay. See for a discussion element C.6 of this report. Reference is made to Annex A for the overview of Switzerland's tax treaties that include an arbitration clause.
4. [www.sif.admin.ch/sif/en/home/themen/internationale-steuerpolitik/doppelbesteuerung-und-amtshilfe/dba-verstaendigungsverfahren.html](http://www.sif.admin.ch/sif/en/home/themen/internationale-steuerpolitik/doppelbesteuerung-und-amtshilfe/dba-verstaendigungsverfahren.html) (accessed on 10 September 2017).
5. [www.oecd.org/tax/dispute/Switzerland-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/Switzerland-Dispute-Resolution-Profile.pdf).
6. The MAP statistics of Switzerland are included in Annex B and C of this report.
7. 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)
8. 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).

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## *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 Switzerland's tax treaties***

2. Out of Switzerland's 90 tax treaties, 88 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.

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

3. For those treaties that do not contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015), Switzerland indicated that it intends to implement element A.1 by signing the Multilateral Instrument. In that regard, Switzerland envisages not making any reservations against the modifications made by Article 16 of the Multilateral Instrument for the tax treaties to be covered by that instrument, relating to this element. Furthermore, Switzerland has indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Switzerland reported that it intends to update its treaties via bilateral negotiations to be in line with element A.1. In addition, Switzerland will seek to include Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

## Conclusion

	Areas for Improvement	Recommendations
[A.1]	Two <sup>1</sup> out of 90 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015).	<p>Where treaties do not include the equivalent of Article 25(3), first 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, Switzerland should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the 1954 treaty with the United Kingdom that is being applied to 14 jurisdictions (not including the United Kingdom), and the treaty with former Serbia and Montenegro that continues to be applied to both Montenegro and Serbia, Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.</p> <p>In addition, Switzerland should maintain its stated intention to include the required provision in all future treaties.</p>

### [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<sup>2</sup>. The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

#### *Switzerland’s APA programme*

5. Switzerland is authorised to enter into bilateral APAs. However, Switzerland does not have a formal APA programme.

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

6. APAs including roll-back are provided directly on the basis of the dispute resolution provisions in the treaties. The only requirement for Switzerland’s APAs is that the roll-back period is within Switzerland’s domestic time limit of 10 years. Thus far, Switzerland has never had a case where they refused or limited the roll-back period.

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

7. Switzerland does not have in place a recordkeeping system that tracks (i) the number of APA requests that include the rollback of an APA and (ii) for which such requests a roll back was granted. In that regard, there is no data available on the number of cases for which taxpayers requested the rollback of an APA and in how many cases such rollback was granted and therefore does not have a figure of rollback requests it has received since 1 January 2014.

8. Peers providing input have indicated that roll-backs are possible in Switzerland and have been provided since 1 January 2014. Another peer wrote that requests for roll-back with Switzerland occurred and were addressed appropriately. Other peers expressed confidence that the competent authority of Switzerland would provide for a roll back when both sides agree to an APA.

### ***Anticipated modifications***

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

### ***Conclusion***

	Areas for Improvement	Recommendations
[A.2]	-	Switzerland should continue to provide for roll-back of bilateral APAs in 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, Switzerland could introduce a tracking system.

## **Notes**

1. These two treaties include the 1954 treaty with the United Kingdom that continues to be applied to 14 jurisdictions.
2. This description of an APA is based on the definition of an APA in the OECD Transfer Pricing Guidelines (OECD, 2017) for Multinational Enterprises and Tax Administrations.

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

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## *Part B*

### **Availability and Access to MAP**

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

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

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

#### ***Current situation of Switzerland's tax treaties***

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

11. Out of Switzerland's 90 tax treaties, 73 treaties contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the *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.

12. The 17 remaining tax treaties that do not contain a provision that is the full equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), either as changed by the Action 14 final report (OECD, 2015b) or as it read prior to that report 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 taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	14
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 taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are a national.	1
A provision included in the MAP article, but which does not assign specific rights to taxpayers to file a MAP request when he considers that there may or will be taxation not in accordance with the provisions of the convention and which procedure cannot be requested irrespective of domestic remedies.	1
A variation of Article 25(1), first sentence, of the <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

13. The 14 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, 12 of those 14 treaties are considered to be in line with this part of element B.1, as the non-discrimination provision included in these treaties 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. Furthermore, one treaty does not include a non-discrimination provision. The remaining treaty is, however, not in line with this part of element B.1, because the non-discrimination provision in that treaty also applies to nationals that are not resident of one of the contracting states.

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

14. Out of the 90 tax treaties, 75 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.

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

Provision	Number of treaties
Filing period less than three years for a MAP request (two years)	5
No filing period for a MAP request	10 <sup>1</sup>

16. With respect to the 10 treaties that do not include a filing period of a MAP request, Switzerland indicated that it applies its domestic 10 year time limit for the filing of such requests.

### *Anticipated modifications*

17. For those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), Switzerland indicated that it intends to implement element B.1 by signing the Multilateral Instrument. In that regard, Switzerland envisages not making any reservations against the modifications made by Article 16 of the Multilateral Instrument for the treaties to be covered by that instrument, relating to this element. Furthermore, Switzerland has indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Switzerland reported that it intends to update via bilateral negotiations all of its tax treaties to be in line with element B.1. In addition, Switzerland will seek to include Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

18. Several peers also reported that their tax treaty with Switzerland does not meet the relevant elements of the Action 14 Minimum Standard on all points and that they envisage implementing these elements by signing the Multilateral Instrument. One peer stated that its tax treaty with Switzerland is currently under negotiation and both parties are seeking to meet the Action 14 Minimum Standard.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.1]	<ul style="list-style-type: none"> <li>○ Two out of 90 tax treaties 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 final report on Action 14 or as amended by that final report;</li> <li>○ Four out of the 90 tax treaties 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. Under these treaties the filing period for a MAP request is two years; and</li> <li>○ One out of the 90 tax treaties does not contain a provision based on 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) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Switzerland 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 final report of Action 14; or</li> <li>b) As it read prior to the adoption of 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 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, Switzerland 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).

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

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

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

20. Out of Switzerland's 90 tax treaties, none contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b) allowing taxpayers to submit a MAP request to either treaty partner. Switzerland reported that as a matter of practice it notifies the other competent authority concerned when it considers that the objection raised by the taxpayer in a MAP request is not justified.

***Practical application***

21. From the MAP Statistics provided by Switzerland it follows that during the Reporting Period it has for no MAP cases considered the objection raised by the taxpayer not justified.

***Anticipated modifications***

22. For those treaties that do not contain a provision equivalent to Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) as amended by the Action 14 final report (OECD, 2015b), Switzerland indicated that it intends to modify its existing tax treaties by signing the Multilateral Instrument and by doing so allowing for the submission of MAP requests to the competent authority of either contracting state. Where a tax treaty will not be modified by the Multilateral Instrument, Switzerland intends to amend its treaties via bilateral negotiations with its treaty partners. In the meantime, Switzerland will continue to apply its bilateral notification process described above.



### Conclusion

	Areas for Improvement	Recommendations
[B.2]	Switzerland has in place a process to notify 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. Because for the period under review no such cases have occurred, it was not possible to assess whether the notification process is applied in practice.	

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

Jurisdictions should provide access to MAP in transfer pricing cases.

23. 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*

24. Out of Switzerland's 90 tax treaties 28 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. Furthermore, 41 treaties include a provision that is based on Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a), but contains deviating wording, for example because they do not require a corresponding adjustment to be made further to a primary adjustment but only suggests the competent authorities may consult with each other.

25. Notwithstanding whether the equivalent of Article 9(2) is included in Switzerland's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments, Switzerland indicated that it will always provide access to MAP for transfer pricing cases. It is not, however, specifically addressed that MAP is available for transfer pricing cases in the Swiss Federal Department of Finance State Secretariat for International Financial Matters Tax Division's Fact Sheet on the Mutual Agreement Procedure.

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

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

27. No peer indicated that it was aware of or that it had been notified of a case that would have been denied access to the MAP in Switzerland on the grounds that it was a transfer pricing case since 1 January 2014.

*Anticipated modifications*

28. Switzerland indicated that it did not anticipate any modifications in relation to element B.3.

*Conclusion*

	Areas for Improvement	Recommendations
[B.3]	-	As Switzerland 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.

29. 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*

30. None of Switzerland's 90 tax treaties allows competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

31. In Switzerland, there is a general legal principle allowing, but not requiring, its competent authority to limit access to MAP for cases when a domestic anti-abuse rule applies. Issues relating to the application of domestic anti-abuse provisions are covered within the scope of MAP provided such a provision impacts the application of a treaty in the specific case. It is not, however, specifically addressed that MAP is available in relation to the application of anti-abuse cases in the Swiss Federal Department of Finance State Secretariat for International Financial Matters Tax Division's Fact Sheet on the Mutual Agreement Procedure.

*Practical application*

32. While the Swiss competent authority is allowed to limit access to MAP for cases when a domestic anti-abuse rule applies, Switzerland reported that since 1 January 2014 it has not denied access to MAP requests 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.

33. Peers indicated not being aware of cases of denial of access to the MAP by Switzerland in relation to the application of treaty and/or domestic anti-abuse provision since 1 January 2014.

### *Anticipated modifications*

34. Switzerland did not indicate that it anticipates any modifications in relation to element B.4.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.4]	-	As Switzerland has thus far granted access to the MAP in all 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 provision 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.

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

### *Legal and administrative framework*

36. Switzerland reported that it does not have an audit settlement process.

37. There is no other administrative or statutory dispute settlement or resolution process(es) available whereby issues resolved via such process(es) may be denied access to MAP in Switzerland.

### *Practical application*

38. Switzerland 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.

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

### *Anticipated modifications*

40. Switzerland did not indicate that it anticipates any modifications in relation to element B.5.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.5]	-	-

## **[B.6] Provide access to MAP if required information is submitted**

Jurisdictions should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information based on the rules, guidelines and procedures made available to taxpayers on access to and the use of MAP.

41. 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*

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

### *Practical application*

43. According to Switzerland it provides access to MAP in all cases where taxpayers have complied with the information or documentation required by its competent authority and as set out in its MAP guidance. If a taxpayer does not provide the required information Switzerland will request the information within 60 days from the receipt of the request to initiate a MAP. Switzerland's competent authority does not set a specific timeframe within which the taxpayers is required to provide the requested information.

44. Since 1 January 2014 Switzerland has not limited access to MAP on the grounds that information in the MAP request was not the information or documentation required by its competent authority.

45. Peers indicated not being aware of denial of access to MAP by Switzerland in situations on the grounds that not enough information was provided.

### *Anticipated modifications*

46. Switzerland did not indicate that it anticipates any modifications in relation to element B.6.

### Conclusion

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

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

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

47. 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 Switzerland's tax treaties*

48. Out of Switzerland's 90 tax treaties, 85 contain a provision allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties. One of the five treaties that do not contain this provision is the 1954 treaty with the United Kingdom that Switzerland continues to apply to 14 jurisdictions.

#### *Anticipated modifications*

49. One of the five treaties that does not contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) is the 1954 treaty with the United Kingdom, which continues to be applied to 14 jurisdictions (except for the United Kingdom, as Switzerland entered into a separate treaty with this state in 1977) and which cannot be amended by Switzerland. For the other four treaties that also do not contain the required provision, Switzerland indicated that it intends to implement element B.7 by signing the Multilateral Instrument. In that regard, Switzerland envisages not making any reservations against the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure or all of its existing tax treaties to be covered by that instrument, relating to this element. Furthermore, Switzerland has indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Switzerland reported that it intends to update via bilateral negotiations its tax treaties to be in line with element B.7. In addition, Switzerland will seek to include Article 25(3), second sentence of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

50. One peer indicated that their treaty with Switzerland is under negotiation and that both contracting states are seeking to meet the Action 14 minimum standard.

### **Conclusion**

	Areas for Improvement	Recommendations
[B.7]	Five out of 90 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).	<p>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, Switzerland should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the 1954 treaty with the United Kingdom that is being applied to 14 jurisdictions (not including the United Kingdom), Switzerland should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p> <p>In addition, Switzerland should maintain its stated intention to include the required provision in all future treaties.</p>

### **[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.

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

#### ***Switzerland's MAP guidance***

52. Switzerland's competent authority for mutual agreement procedures publishes their MAP fact sheet in German, French, Italian and English. Guidelines regarding the request for MAP are provided in section 4(ff) on pages two and three of their MAP guidance. Switzerland's rules, guidelines and procedures are included in this document.<sup>2</sup> This contains basic 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) Relationship with domestic available remedies;
- (f) Time limits for filing a MAP request;
- (g) Access to MAP in transfer pricing cases and audit settlements;
- (h) Implementation of MAP agreements; and
- (i) Rights and role of taxpayers in the process

53. The above-described MAP guidance of Switzerland includes information on the availability and the use of the MAP and how its competent authority conducts the process in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP requests.<sup>3</sup>

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

54. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.<sup>4</sup> This agreed guidance is shown below. Switzerland's MAP guidance enumerating which items must be included in a request for MAP assistance is checked in the following list:

- Identity of the taxpayer(s) covered in the MAP request;
- The basis for the request;
- Facts of the case;
- Analysis of the issue(s) requested to be resolved via MAP;
- Whether the MAP request was also submitted to the competent authority of the other treaty partner;
- Whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes;
- Whether the issue(s) involved were dealt with previously; and
- 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.

55. Taxpayer input suggested that the existing guidance provides full clarity on how to access and use the MAP process.

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

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

### Conclusion

	Areas for Improvement	Recommendations
[B.8]	MAP guidance is available but further clarity could be provided.	<p>Switzerland should improve the level of clarity of its MAP guidance.</p> <p>Additionally, although not part of the Action 14 Minimum Standard, in order to further improve the level of clarity, Switzerland could consider including in its MAP guidance information on:</p> <ul style="list-style-type: none"> <li>○ whether MAP is available in cases of (i) transfer pricing cases; (ii) the application of anti-abuse provisions; (iii) bona fide taxpayer-initiated adjustments; and (iv) multilateral disputes;</li> <li>○ the conditions for suspension of tax collection during the course of a MAP;</li> <li>○ the consideration of interest and penalties; and;</li> <li>○ the steps of the process and the timing of such steps for the implementation of MAP agreements.</li> </ul>

### [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.

57. 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>5</sup> further promotes the transparency and dissemination of the MAP programme.

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

58. The MAP guidance of Switzerland is published and can be found at:

<https://www.sif.admin.ch/sif/en/home/themen/internationale-steuerpolitik/doppelbesteuerung-und-amtshilfe/dba-verstaendigungsverfahren.html>

59. The guidance was last updated in June 2016. As regards its accessibility, it can be easily found online by searching for “double taxation” and “Switzerland.”

#### *MAP Profile*

60. The MAP profile of Switzerland is published on the website of the OECD. This MAP profile as of 1 September 2016 is complete and meets the baseline of what is required with minimal information. The MAP profile of Switzerland is published on the website of the OECD.<sup>6</sup> This profile includes external links which provide extra information and guidance.



*Anticipated modifications*

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

*Conclusion*

	Areas for Improvement	Recommendations
[B.9]	-	Switzerland should ensure that future updates of its MAP guidance are made publically 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.

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

*MAP and audit settlements in the MAP guidance*

63. As previously mentioned under element B.5, audit settlements are not available in Switzerland.

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

64. As previously mentioned under element B.5, Switzerland does not have an administrative or statutory dispute settlement / resolution process available.

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

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

***Anticipated modifications***

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

***Conclusion***

	Areas for Improvement	Recommendations
[B.10]	-	-

## Notes

1. These ten treaties include the 1954 treaty with the United Kingdom that continues to be applied to 14 jurisdictions.
2. [www.sif.admin.ch/sif/en/home/themen/internationale-steuerpolitik/doppelbesteuerung-und-amtshilfe/dba-verstaendigungsverfahren.html](http://www.sif.admin.ch/sif/en/home/themen/internationale-steuerpolitik/doppelbesteuerung-und-amtshilfe/dba-verstaendigungsverfahren.html) (accessed on 10 September 2017).
3. 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).
4. [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).
5. 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).
6. [www.oecd.org/tax/dispute/Switzerland-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/Switzerland-Dispute-Resolution-Profile.pdf).

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## *Part C*

### Resolution of MAP Cases

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

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

67. 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 Switzerland's tax treaties***

68. Out of Switzerland's 90 tax treaties 89 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. The one treaty that does not contain this provision is the 1954 treaty with the United Kingdom that Switzerland continues to apply to 14 jurisdictions.

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

69. As the one treaty that does not include the required provision is the 1954 treaty with the United Kingdom, which continues to be applied to 14 jurisdictions (except for the United Kingdom, as Switzerland entered into a separate treaty with this state in 1977), this treaty cannot be amended by Switzerland. As all of Switzerland's other tax treaties include the required provision, Switzerland has indicated that it does not anticipate any modifications in relation to element C.1 but that it will seek to include Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all future treaties.

## Conclusion

	Areas for Improvement	Recommendations
[C.1]	One out of 90 tax treaties does not contain a provision equivalent to Article 25(2), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a).	Switzerland should ensure that all its tax treaties include the equivalent of Article 25(2), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015a). As the one treaty that does not include such provision is the 1954 treaty with the United Kingdom that is being applied to 14 jurisdictions (not including the United Kingdom), Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.  In addition, Switzerland should maintain its stated intention to 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).

70. 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*

71. Statistics regarding all tax treaty related disputes concerning Switzerland are published on the website of the OECD as of 2007.<sup>1</sup> The FTA MAP Forum has agreed on rules for reporting of MAP statistics (**‘MAP Statistics Reporting Framework’**) for MAP requests submitted on or after 1 January 2016 (**‘post-2015 cases’**). Also, for MAP requests submitted prior to that date (**‘pre-2016 cases’**) the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Switzerland provided their MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Switzerland and of which its competent authority was aware. The statistics discussed below include both post-2015 and pre-2016 cases and the full statistics are attached to this report as Annex B and C respectively.<sup>2</sup> It is to be noted that the statistics for both reporting periods should be considered jointly for an understanding of the MAP caseload of Switzerland. With respect to post-2015 cases, Switzerland reported having reached out to all its MAP partners with a view to have their MAP statistics matching. Switzerland indicated that it matched its statistics with all of its MAP partners.

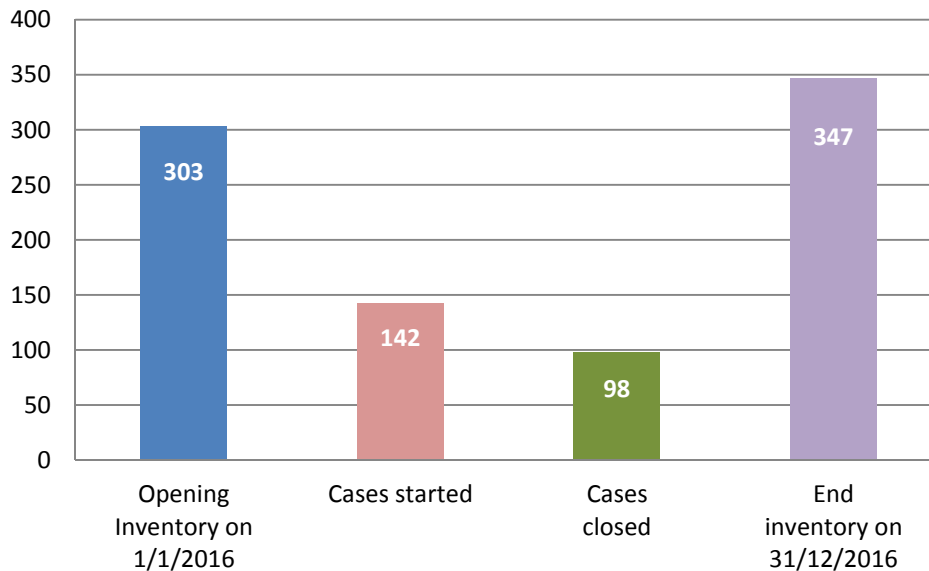
#### *Monitoring of MAP statistics*

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

### *Analysis of Switzerland's caseload*

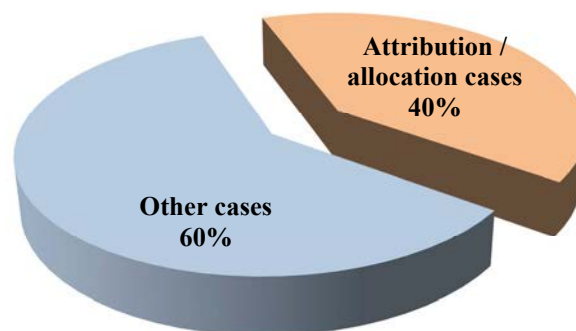
73. The analysis of Switzerland's MAP caseload relates to the period starting on 1 January 2016 (the 'Reporting Period'). The following graph shows the evolution of Switzerland's MAP caseload over the Reporting Period.

**Figure C.1 Switzerland's MAP inventory**



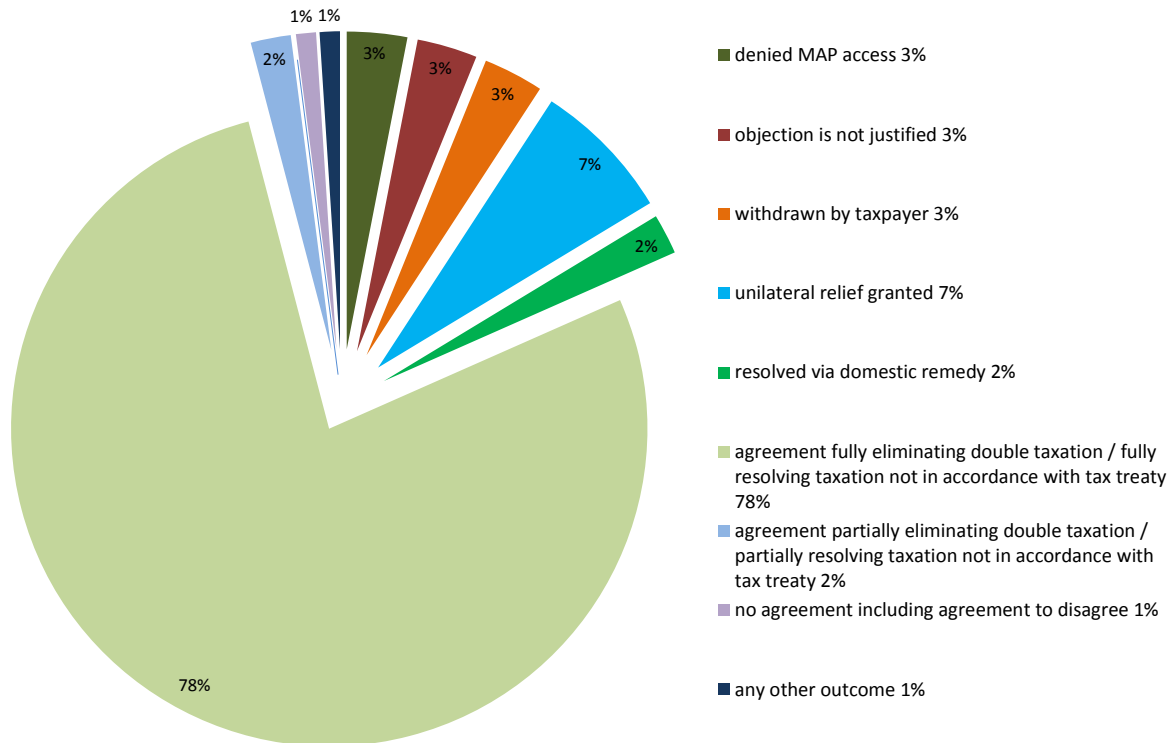
74. At the beginning of the Reporting Period Switzerland had 303 pending MAP cases, of which 141 were attribution/allocation cases and 162 other MAP cases.<sup>3</sup> At the end of the Reporting Period, Switzerland had 347 MAP cases in inventory, of which 140 are attribution/allocation cases and 207 are other MAP cases. The breakdown of the end inventory can be illustrated as follows:

**Figure C.2 End inventory on 31 December 2016 (347 cases)**



75. During the Reporting Period Switzerland resolved 98 MAP cases and the following outcomes were reported:

**Figure C.3 Cases resolved during the Reporting Period (98 cases)**



76. This chart points out that during the Reporting Period, 76 out of 98 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*

77. Switzerland reported that on average it needed 30.55 months to close attribution/allocation cases and 18.53 months to close other cases. This resulted in an average time needed of 25.39 months to close pre-2016 cases. For the purpose of computing the time to resolve pre-2016 cases, Switzerland used:

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

#### *Post-2015 cases*

78. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 12 months. Switzerland closed 9.86% of post-2015



cases during the Reporting Period. During these 12 months, eight cases closed concern other MAP cases and six cases concern attribution / allocation cases. Switzerland closed on average these attribution/allocation cases within 2.37 months. For other MAP cases, the average time to resolve the other cases was reported as 1.79 months.

#### *Pre-2016 and Post-2015 cases*

79. The average time needed to resolve MAP cases during the Reporting Period was 22.05 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution / Allocation cases	54	27.42
Other cases	44	15.49
<b>All cases</b>	<b>98</b>	<b>22.05</b>

#### *Peer input*

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

#### *Anticipated modifications*

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

#### *Conclusion*

	Areas for Improvement	Recommendations
[C.2]	Switzerland submitted timely comprehensive MAP statistics and indicated they have been matched with all of its 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 Switzerland's 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 Switzerland, it resolved during the Reporting Period 9.86% (14 out of 142 cases) of its post-2015 cases in 2.04 months on average. In that regard, Switzerland is recommended to seek to resolve the remaining 90.14% (128 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.

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

***Description of Switzerland's competent authority***

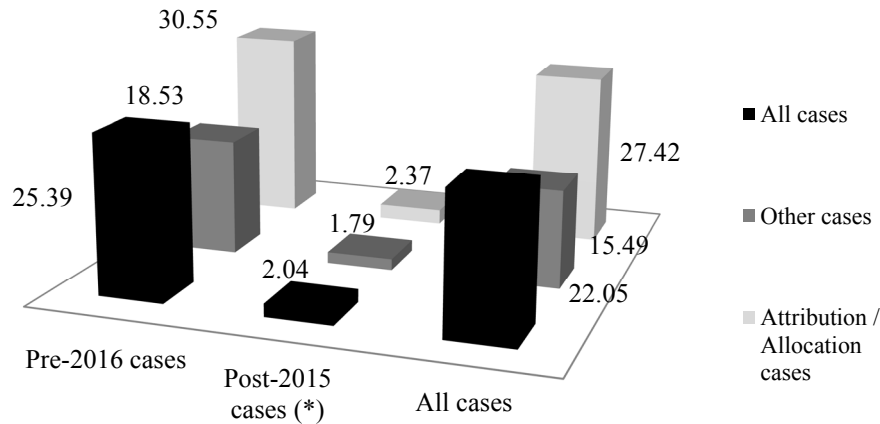
83. Switzerland's competent authority consists of 13 employees who work in the tax division of the State Secretariat for International Financial Matters. The State Secretariat for International Financial Matters is responsible for the coordination and strategic management of international financial, monetary and tax matters. The State Secretary represents Switzerland's interests in international financial and tax matters, and leads negotiations related to these. Of these 13 employees, six of them are partially dedicated to other activities such as the negotiation of tax treaties. Switzerland's competent authority is determined in the treaty and Switzerland publishes who the competent authority is on its competent authority website.<sup>4</sup>

***Monitoring mechanism***

84. The framework for the monitoring and assessment of whether such resources are adequate is based on the average time taken to complete a case and the number of pending cases on file. The mechanisms/procedure to request more staff to handle the increase of MAP inventory should such a case arise is not described by Switzerland's competent authority.

***Practical application***

85. As discussed under element C.2, Switzerland did not solve its MAP cases within the required 24-month average. There was also a discrepancy between the average time taken to solve attribution / allocation cases and other cases. This can be illustrated by the following graph:

**Figure C.4 Average time (in months)**

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

86. Based on these figures, it follows that on average it took Switzerland 22.05 months to resolve MAP cases. As it took Switzerland 27.42 months to resolve attribution / allocation cases this may indicate that additional resources specifically dedicated to the resolution of attribution / allocation cases are needed.

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

88. Peers have indicated that Switzerland has adequate resources for the MAP function. Face-to-face meetings with competent authority counterparts occur and Switzerland has been described as showing great efforts in finding ways to solve cases. One peer commented on their perception that the number of MAP cases per employee in Switzerland's competent authority is high.

### ***Anticipated modifications***

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

### Conclusion

	Areas for Improvement	Recommendations
[C.3]	-	Switzerland should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.  Furthermore, as Switzerland resolved attribution/allocation cases in 27.42 months on average, it could consider devoting additional funding and resources to accelerate the resolution of these cases.

### [C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty

Jurisdictions should ensure that the staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty, in particular without being dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty.

90. Ensuring that staff in charge of MAP can and will resolve cases, absent any approval/direction by the audit department of 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*

91. Switzerland has the following framework in place to monitor and evaluate the performance of the MAP function. When resolving MAP cases, staff in charge of MAP has to consider the provisions of the relevant treaty including relevant case law and available literature dealing with the relevant provisions, namely the commentary of the *OECD Model Tax Convention* (OECD, 2015a) and the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017* (OECD Transfer Pricing Guidelines, OECD 2017). In transfer pricing, all cases are handled by two employees working together. The relevant actions taken are subject to review by a third person, usually the head of section or the head of section's deputy. Particularly complex or out of the ordinary cases are discussed with the head of division and, if appropriate, with the head of the Swiss State Secretariat. Tax administration is involved primarily to gather the relevant facts and to get the tax authority's perspective of the case. The involvement of the tax administration is also necessary to make it aware of the MAP case in view of possible adjustments.

92. In practice, the competent authority in Switzerland operates independently and has full authority to resolve MAP cases. There is neither a (formal) system in place requiring the competent authority to ask tax administration personnel directly involved in the adjustment at issue for approval of any MAP agreements nor is the process for the discussion of MAP agreements influenced by policy considerations.

***Practical application***

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

***Anticipated modifications***

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

***Conclusion***

	Areas for Improvement	Recommendations
[C.4]	-	As it has done thus far, Switzerland should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue.

**[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.

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

***Performance indicators used by Switzerland***

96. Switzerland has the following system in place to evaluate the performance of staff in charge of MAP processes. MAP related performance indicators involve the average time for the resolution of MAP cases, the number of negotiations held per year or compliance with the determined MAP procedure. Each team member has one to three specific goals that are set every year during bilateral discussions with his or her superior. Performance indicators such as the average time for the resolution of MAP cases and the total number of negotiations held per year as well as the compliance with the determined MAP procedure all play a role in these evaluations. Follow up is done once or twice a year during a bilateral discussion and gives rise to a grade that has a very limited influence on the salary of the employee. Tax amounts are never relevant as a performance indicator. When resolving MAP cases, staff in charge of MAP has to consider the provisions of the relevant treaty including relevant case law and available literature dealing with the relevant provisions, namely the commentary of the *OECD Model Tax Convention* (OECD, 2015a) and the *OECD Transfer Pricing Guidelines* (OECD, 2017). Moreover the relevant actions taken by staff are subject to review by a third person, usually the head of section or the head of section's deputy. Particularly complex or out of

the ordinary cases are discussed with the head of division and, if appropriate, with the head of the Swiss State Secretariat.

97. The Action 14 final report (OECD, 2015b) includes examples for performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist:

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

### *Practical application*

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

### *Anticipated modifications*

99. Switzerland did not anticipate any modifications in relation to element C.5.

### *Conclusion*

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

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

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

100. 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*

101. In Switzerland there are no domestic law limitations for including MAP arbitration in its tax treaties. Switzerland declared that it is favourable to the use of arbitration as a means to ensure dispute resolution. Switzerland was furthermore a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument. Switzerland's MAP guidance does not specify its policy on arbitration or the availability of arbitration under tax treaties.

### ***Practical application***

102. Up to date, Switzerland has incorporated an arbitration clause in 26 tax treaties as a final stage to the MAP. In 23 treaties the arbitration clause is based on Article 25(5) of the *OECD Model Tax Convention* (OECD, 2015a).<sup>5</sup> In one treaty<sup>6</sup> this concerns a voluntary and binding arbitration clause and in two treaties this concerns a mandatory and binding arbitration clause.<sup>7</sup>

103. Furthermore, Switzerland included in 12 treaties a most-favoured nation clause concerning the inclusion of an arbitration provision. In 4 treaties<sup>8</sup> this concerns the automatic inclusion of such provision, whereas in 8 treaties<sup>9</sup> this concerns entering into negotiations for the inclusion of an arbitration provision, should Switzerland's treaty partner include an arbitration provision in a tax treaty with a third state.

### ***Anticipated modifications***

104. Switzerland has reported that it will opt for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.

### ***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). These statistics are up to and include fiscal year 2015.
2. For post-2015 cases, if the number of MAP cases in Switzerland's inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five, Switzerland's reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution / allocation cases and other cases).
3. For pre-2016 and post-2015 Switzerland follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. *Annex D of the MAP Statistics Reporting Framework provides that "an attribution/allocation MAP case is a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention (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."*
4. [www.sif.admin.ch/sif/en/home/themen/internationalesteuerpolitik/doppelbesteuerung-und-amtshilfe/dba-verstaendigungsverfahren.html](http://www.sif.admin.ch/sif/en/home/themen/internationalesteuerpolitik/doppelbesteuerung-und-amtshilfe/dba-verstaendigungsverfahren.html) (accessed on 10 September 2017).
5. This concerns treaties with Albania, Australia, Austria, Belgium, Canada, Denmark (including Faroe Islands), Estonia, France, Greece, Hong Kong (China), Iceland,

Kazakhstan, Liechtenstein, Luxembourg, Netherlands, Norway, Poland, Slovak Republic, Slovenia, Spain, Sweden, the United Kingdom and Uruguay.

6. This concerns the treaty with South Africa.
7. This concerns the treaty with Germany and the United States. The arbitration clause under the treaty with the United States has not yet entered into force.
8. This concerns treaties with Bulgaria, Cyprus, Malta and Romania. Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.  
  
Footnote by all the European Union Member States of the OECD and the European Union:  
The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.
9. This concerns treaties with the Czech Republic, Hungary, Ireland, Korea, Mexico, Peru, Portugal and Russia.

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## *Part D*

### **Implementation of MAP Agreements**

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

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

105. 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***

106. Switzerland informs taxpayers of the outcome of the mutual agreement procedure and in this respect, Switzerland requests the taxpayer concerned to give its consent to the agreement reached as a prerequisite for implementation. This applies for agreements reached as the result of the MAP, as well as for any agreements reached following the decision of an arbitration panel as a final stage to the MAP. Switzerland informs the taxpayer about the outcome of the mutual agreement procedure. Unless this agreement is rejected within 30 days, it is assumed that the taxpayer has accepted it. This 30-day deadline can be extended by the taxpayer via a written request. Once the agreement is accepted by the taxpayer, the State Secretariat for International Financial Matters informs the relevant tax authority in Switzerland about the outcome of the mutual agreement procedure who will, when necessary, implement it automatically.

107. In Switzerland, once a tax assessment has become final, it can only be amended later on the basis of certain grounds. A MAP agreement is considered to be one of these. According to Article 148 of the Federal Law on Direct Federal Tax, a change of assessment in favour of the taxpayer has to be requested within 90 days after having knowledge of the ground for revision but no longer than 10 years after the assessment was rendered. In the view of Switzerland this 10 year deadline is deemed to be met if the MAP request is filed before the end of that deadline. Switzerland reported that the length of the MAP will not negatively affect the taxpayer and indicated it will implement all agreements reached in MAP discussions given that the 10 year deadline is respected on the condition that it is requested within this 10 year time limit. Information on the implementation is not publically available. Switzerland implements all MAP agreements reached and makes appropriate adjustments to the tax assessed in transfer pricing cases, if required.

***Practical application***

108. Switzerland reported that it has implemented all MAP agreements since 1 January 2014. However, there is no mechanism in place that keeps track of the implementation of all MAP agreements.

109. No peer indicated that it was aware of any MAP agreement not implemented by Switzerland's competent authority.

***Anticipated modifications***

110. Switzerland considers requesting an explicit acceptance to the MAP agreement by taxpayers within 30 days after communication to them.

***Conclusion***

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Switzerland's tax treaties include the equivalent of Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015) or the alternatives provided in Article 9(1) and 7(2). There is a risk that for those tax treaties that do not include those provisions, not all MAP agreements can be implemented due to the 10 year time limit in Switzerland's domestic law.	Even though Switzerland has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.  In addition, to keep a record of whether all future MAP agreements are implemented, Switzerland 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.

111. 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***

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

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

### ***Practical application***

114. Peers have not indicated any problems with Switzerland regarding the implementation of MAP agreements reached on or after 1 January 2014 in general or on a timely basis, or that any MAP agreement reached was not implemented by Switzerland. One peer noted that it is their impression that MAP agreements are implemented in a timely and effective matter. Taxpayers also noted that they have not experienced any problems with respect to implementation of MAP agreements.

### ***Anticipated modifications***

115. Switzerland 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, Switzerland 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.

116. 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 Switzerland's tax treaties***

117. Pursuant to its domestic legislation, Switzerland is not allowed to implement MAP agreements if domestic time limits have passed and where they are not overwritten by a tax treaty. Furthermore, it reserved in the Commentary to Article 25 of the *OECD Model Tax Convention* (OECD, 2015) the right not to incorporate the second sentence of Article 25(2) in its tax treaties.<sup>1</sup>

118. Out of Switzerland's 90 tax treaties, 4 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. In addition, 3 tax treaties contain the alternatives provided for in Article 9(1) and Article 7(2), setting a time limit for making primary adjustments.

Furthermore, 28 treaties include the alternative provided for in Article 9(1) setting a time limit for making primary adjustments, but not the alternative provided for in Article 7(2).

### *Anticipated modifications*

119. For those treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015), Switzerland indicated that it is willing to implement element D.3 via the inclusion of the alternatives provided for in Article 9(1) and 7(2) in all these tax treaties. One treaty that does not include the required provision is the 1954 treaty with the United Kingdom, which continues to be applied to 14 jurisdictions (except for the United Kingdom, as Switzerland entered into a separate treaty with this state in 1977) and which cannot be amended by Switzerland. For the other treaties, Switzerland indicated that it will make a reservation to Article 16 of the Multilateral Instrument to not include Article 25(2), second sentence of the *OECD Model Tax Convention* (OECD, 2015), but instead is willing to incorporate the alternatives provided for in Article 9(1) and 7(2) via bilateral negotiations.

120. Several peers reported that their tax treaty with Switzerland does not meet the relevant elements of the Action 14 Minimum Standard on all points and that they envisage implementing these elements by signing the Multilateral Instrument. One peer indicated that its tax treaty with Switzerland is currently under negotiation and both parties are seeking to meet the Action 14 Minimum Standard.

### *Conclusion*

	Areas for Improvement	Recommendations
[D.3]	<p>83 out of 90 treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015), nor the alternative provisions in both Article 9(1) and Article 7(2).</p> <p>Of those 83 treaties:</p> <ul style="list-style-type: none"> <li>○ 55 out of 90 tax treaties do not contain a provision to implement any mutual agreement reached through MAP notwithstanding any time limits in the domestic law nor include the alternative provisions provided for in Article 9(1) and Article 7(2).</li> <li>○ 28 out of 90 tax treaties do not contain a provision to implement any mutual agreement reached through MAP notwithstanding any time limits in the domestic law and only include the alternative provision provided for in Article 9(1).</li> </ul>	<p>Switzerland should ensure that all its tax treaties include the equivalent of Article 25(2) second sentence, of the OECD Model Tax Convention (OECD, 2015) or be willing to accept the inclusion of both alternative provisions.</p> <p>Specifically with respect to the 1954 treaty with the United Kingdom that is being applied to 14 jurisdictions (not including the United Kingdom), Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>In addition, Switzerland should include the required provision, or be willing to accept the inclusion of both alternative provisions, in all future treaties.</p>

## Notes

1. Paragraph 98 of the OECD Model Tax Convention Commentary on Article 25 reads: “Chile, Greece, Italy, Mexico, Poland, Portugal, and Switzerland reserve their positions on the second sentence of paragraph 2. These countries consider that the implementation of reliefs and refunds following a mutual agreement ought to remain linked to time limits prescribed by their domestic laws.” (OECD, 2015)

## *Bibliography*

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



## Summary

	Areas for Improvement	Recommendations
<b>Part A: Preventing disputes</b>		
<b>[A.1]</b>	Two out of 90 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015).	<p>Where treaties do not include the equivalent of Article 25(3), first 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, Switzerland should request the inclusions of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the 1954 treaty with the United Kingdom that is being applied to 14 jurisdictions (not including the United Kingdom), and the treaty with the former Serbia and Montenegro that continues to be applied to both Montenegro and Serbia, Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.</p> <p>In addition, Switzerland should maintain its stated intention to include the required provision in all future treaties.</p>
<b>[A.2]</b>	-	<p>Switzerland should continue to provide for roll-back of bilateral APAs in 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, Switzerland could introduce a tracking system.</p>
<b>Part B: Availability and access to MAP</b>		
<b>[B.1]</b>	<ul style="list-style-type: none"> <li>○ Two out of 90 tax treaties do not contain a provision that is the equivalent of Article 25(1) 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;</li> <li>○ Four out of the 90 tax treaties 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. Under these treaties the filing period for a MAP request is two years; and</li> <li>○ One out of the 90 tax treaties does not contain a provision based on 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) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Switzerland 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 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 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, Switzerland should maintain its stated intention to include the required provision in all future treaties</p>

	Areas for Improvement	Recommendations
[B.2]	Switzerland has in place a process to notify 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. Because for the period under review no such cases have occurred, it was not possible to assess whether the notification process is applied in practice.	
[B.3]	-	As Switzerland has thus far granted access to the MAP in eligible transfer pricing cases it should continue granting access for these cases.
[B.4]	-	As Switzerland has thus far granted access to the MAP in all 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 provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.
[B.5]	-	-
[B.6]	-	As Switzerland has thus far granted access to the MAP in eligible cases when taxpayers have complied with Switzerland's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Five out of 90 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).	<p>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, Switzerland should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the 1954 treaty with the United Kingdom that is being applied to 14 jurisdictions (not including the United Kingdom), Switzerland should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p> <p>In addition, Switzerland should maintain its stated intention to include the required provision in all future treaties.</p>
[B.8]	MAP guidance is available but further clarity could be provided.	<p>Switzerland should improve the level of clarity of its MAP guidance.</p> <p>Additionally, although not part of the Action 14 Minimum Standard, in order to further improve the level of clarity, Switzerland could consider including in its MAP guidance information on:</p> <ul style="list-style-type: none"> <li>○ Whether MAP is available in cases of (i) transfer pricing cases; (ii) the application of anti-abuse provisions; (iii) bona fide taxpayer-initiated adjustments; and (iv) multilateral disputes;</li> <li>○ The conditions for suspension of tax collection during the course of a MAP;</li> <li>○ The consideration of interest and penalties; and</li> <li>○ The steps of the process and the timing of such steps for the implementation of MAP agreements.</li> </ul>



	Areas for Improvement	Recommendations
[B.9]	-	Switzerland should ensure that future updates of its MAP guidance are made publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.
[B.10]	-	-
<b>Part C: Resolution of MAP cases</b>		
[C.1]	One out of 90 tax treaties does not contain a provision equivalent to Article 25(2), first sentence of the <i>OECD Model Tax Convention</i> (OECD, 2015).	Switzerland should ensure that all its tax treaties include the equivalent of Article 25(2), first sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015). As the one treaty that does not include such provision is the 1954 treaty with the United Kingdom that is being applied to 14 jurisdictions (not including the United Kingdom), Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.  In addition, Switzerland should maintain its stated intention to include the required provision in all future treaties.
[C.2]	Switzerland submitted timely comprehensive MAP statistics and indicated they have been matched with all of its 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 Switzerland's 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 Switzerland, it resolved during the Reporting Period resolved 9.86% (14 out of 142 cases) of its post-2015 cases in 2.04 months on average. In that regard, Switzerland is recommended to seek to resolve the remaining 90.14% (128 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]	-	Switzerland should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.  Furthermore, as Switzerland resolved attribution/allocation cases in 27.42 months on average, it could consider devoting additional funding and resources to accelerate the resolution of these cases.
[C.4]	-	As it has done thus far, Switzerland should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue.
[C.5]	-	As it has done thus far, Switzerland should continue to use appropriate performance indicators.
[C.6]	-	-

Part D: Implementation of MAP agreements		
<b>[D.1]</b>	<p>As will be discussed under element D.3 not all of Switzerland's tax treaties include the equivalent of Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015) or the alternatives provided in Article 9(1) and 7(2). There is a risk that for those tax treaties that do not include those provisions, not all MAP agreements can be implemented due to the 10 year time limit in Switzerland's domestic law.</p>	<p>Even though Switzerland has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.</p> <p>In addition, to keep a record of whether all future MAP agreements are implemented, Switzerland could introduce a tracking system.</p>
<b>[D.2]</b>	-	<p>As it has done thus far, Switzerland should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.</p>
<b>[D.3]</b>	<p>83 out of 90 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 in both Article 9(1) and Article 7(2).</p> <p>Of those 83 treaties:</p> <ul style="list-style-type: none"> <li>○ 55 out of 90 tax treaties do not contain a provision to implement any mutual agreement reached through MAP notwithstanding any time limits in the domestic law nor include the alternative provisions provided for in Article 9(1) and Article 7(2).</li> <li>○ 28 out of 90 tax treaties do not contain a provision to implement any mutual agreement reached through MAP notwithstanding any time limits in the domestic law and only include the alternative provision provided for in Article 9(1).</li> </ul>	<p>Switzerland should ensure that all its tax treaties include the equivalent of Article 25(2) second sentence, of the <i>OECD Model Tax Convention</i> (OECD, 2015) or be willing to accept the inclusion of both alternative provisions.</p> <p>Specifically with respect to the 1954 treaty with the United Kingdom that is being applied to 14 jurisdictions (not including the United Kingdom), Switzerland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>In addition, Switzerland should 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 Switzerland

		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 if yes: i-Art. 25(5) ii-mandatory other iii - voluntary N = no	
Albania	Y	O	Y	i	i	Y	ii	Y	Y	Y	i
Algeria	Y	O	Y	i	i	Y	N	Y	Y	N	
Anguilla	Y	O	i	i	i	N	N	N	N	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?	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?				
Antigua and Barbuda	Y	O	i	i	i	N	N	N	N	N	
Argentina	Y	O	Y	i	i	Y	iii	Y	Y	N	
Armenia	Y	O	Y	i	i	Y	ii	Y	Y	N	
Australia	Y	O	Y	Y	i	Y	N	Y	Y	Y	i
Austria	Y	O	i	i	i	Y	N	Y	Y	Y	i
Azerbaijan	Y	O	Y	i	i	Y	ii	Y	Y	N	
Bangladesh	Y	O	Y	i	i	Y	N	Y	Y	N	
Barbados	Y	O	i	i	i	N	N	N	N	N	
Belarus	Y	O	Y	i	i	Y	N	Y	Y	N	
Belgium	Y	O	Y	Y	i	Y	N	Y	N	Y	i
Belize	Y	O	i	i	i	N	N	N	N	N	
British Virgin Islands	Y	O	i	i	i	N	N	N	N	N	
Bulgaria	Y	O	Y	Y	i	Y	N	Y	Y	N	iv
Canada	Y	O	Y	i	i	Y	Y	Y	Y	Y	i

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.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?				
Chile	Y	O	Y	Y	i	Y	ii	Y	N	N	
China	Y	O	Y	Y	i	Y	N	Y	Y	N	
Colombia	Y	O	Y	Y	i	Y	ii	Y	Y	N	
Côte d'Ivoire	Y	O	Y	i	i	Y	N	Y	Y	N	
Cyprus*	Y	O	Y	Y	i	Y	N	Y	Y	N	iv
Czech Republic	Y	O	Y	i	i	Y	N	Y	Y	N	iv
Denmark	Y	O	i	i	i	Y	N	Y	Y	Y	i
Dominica	Y	O	i	i	i	N	N	N	N	N	
Ecuador	Y	O	Y	i	i	Y	ii	Y	Y	N	
Egypt	Y	O	Y	i	i	Y	iii	Y	Y	N	
Estonia	Y	O	Y	Y	i	Y	N	Y	Y	Y	i
Faroe Islands	Y	O	i	i	i	Y	N	Y	Y	Y	i
Finland	Y	O	Y	i	i	Y	ii	Y	Y	N	
France	Y	O	Y	i	i	Y	N	N	Y	Y	i
Gambia	Y	O	i	i	i	N	N	N	N	N	
Georgia	Y	O	Y	i	i	Y	ii	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?	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?				
Germany	Y	O	i	i	i	Y	N	Y	Y	Y	ii
Ghana	Y	O	Y	i	i	Y	ii	Y	Y	N	
Greece	Y	O	Y	i	i	Y	N	Y	Y	Y	i
Grenada	Y	O	i	i	i	N	N	N	N	N	
Hong Kong, China	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
Hungary	Y	O	Y	Y	i	Y	N	Y	Y	N	iv
Iceland	Y	O	Y	Y	i	Y	N	Y	Y	Y	i
India	Y	N	Y	Y	i	Y	N	Y	Y	N	
Indonesia	Y	N	ii (2 years)	i	i	Y	N	Y	Y	N	
Iran	Y	O	Y	i	i	Y	N	Y	Y	N	
Ireland	Y	O	i	Y	i	Y	N	Y	Y	N	iv
Israel	Y	O	Y	i	i	Y	N	Y	Y	N	
Italy	Y	O	N	i	i	Y	Y	Y	Y	N	
Jamaica	Y	O	Y	i	i	Y	ii	Y	Y	N	
Japan	Y	O	Y	Y	i	Y	ii	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?	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?				
Kazakhstan	Y	O	Y	i	i	Y	ii	Y	Y	Y	i
Korea	Y	O	Y	Y	i	Y	N	Y	Y	N	iv
Kuwait	Y	O	Y	i	i	Y	N	Y	Y	N	
Kyrgyzstan	Y	O	Y	i	i	Y	N	Y	Y	N	
Latvia	Y	O	Y	i	i	Y	N	Y	Y	N	
Liechtenstein	Y	O	Y	Y	i	Y	N	Y	Y	Y	i
Lithuania	Y	O	Y	i	i	Y	N	Y	Y	N	
Luxembourg	Y	O	Y	i	i	Y	ii	Y	Y	Y	i
Macedonia	Y	O	Y	i	i	Y	ii	Y	Y	N	
Malawi	Y	O	i	i	i	N	N	N	N	N	
Malaysia	Y	O	i	i	i	Y	N	Y	Y	N	
Malta	Y	O	Y	Y	i	Y	N	Y	Y	N	iv
Mexico	Y	O	ii (2 years)	i	i	Y	ii	Y	N	N	iv
Moldova	Y	O	Y	i	i	Y	N	Y	Y	N	
Mongolia	Y	O	Y	i	i	Y	ii	Y	Y	N	
Montenegro	Y	O	Y	i	i	Y	ii	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?	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?				
Montserrat	Y	O	i	i	i	N	N	N	N	N	
Morocco	Y	O	Y	i	i	Y	N	Y	Y	N	
Netherlands	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
New Zealand	Y	O	Y	i	i	Y	N	Y	Y	N	
Norway	Y	O	Y	i	i	Y	N	Y	Y	Y	i
Oman	Y	O	Y	Y	i	Y	N	Y	Y	N	
Pakistan	Y	O	Y	i	i	Y	N	Y	Y	N	
Peru	Y	O	Y	Y	i	Y	N	Y	Y	N	iv
Philippines	Y	O	ii (2 years)	i	i	Y	iii	Y	Y	N	
Poland	Y	O	Y	i	i	Y	ii	Y	Y	Y	i
Portugal	Y	O	ii (2 years)	Y	i	Y	N	Y	Y	N	iv
Qatar	Y	O	Y	Y	i	Y	N	Y	Y	N	
Romania	Y	O	Y	i	i	Y	ii	Y	Y	N	iv
Russia	Y	O	Y	i	i	Y	ii	Y	Y	N	iv
Saint Kitts and Nevis	Y	O	i	i	i	N	N	N	N	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?	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?				
Saint Lucia	Y	O	i	i	i	N	N	N	N	N	
Saint Vicent and Grenadines	Y	O	i	i	i	N	N	N	N	N	
Serbia	Y	O	Y	i	i	Y	ii	Y	Y	N	
Singapore	Y	O	Y	Y	i	Y	N	Y	Y	N	
Slovak Republic	Y	O	Y	i	i	Y	ii	Y	Y	Y	i
Slovenia	Y	O	Y	Y	i	Y	N	Y	Y	Y	i
South Africa	Y	O	Y	Y	i	Y	ii	Y	Y	Y	iii
Spain	Y	O	Y	Y	i	Y	N	Y	Y	Y	i
Sri Lanka	Y	O	Y	i	i	Y	N	Y	Y	N	
Sweden	Y	O	i	Y	i	Y	N	Y	Y	Y	i
Taiwan	Y	O	Y	Y	i	Y	N	Y	Y	N	
Tajikistan	Y	O	Y	i	i	Y	N	Y	Y	N	
Thailand	Y	O	Y	i	i	Y	N	Y	Y	N	
Trinidad and Tobago	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?	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?				
Tunisia	Y	O	Y	i	i	Y	N	Y	Y	N	
Turkey	Y	O	i	i	i	Y	ii	Y	Y	N	
Ukraine	Y	O	Y	i	i	Y	ii	Y	N	N	
United Arab Emirates	Y	O	Y	i	i	Y	ii	Y	Y	N	
United Kingdom	Y	O	Y	i	i	Y	N	Y	Y	Y	i
United States	Y	O	i	i	i	Y	N	Y	Y	Y	ii
Uruguay	Y	O	Y	i	i	Y	ii	Y	Y	Y	i
Uzbekistan	Y	O	Y	i	i	Y	ii	Y	Y	N	
Venezuela	Y	O	ii (2 years)	i	i	Y	ii	Y	Y	N	
Viet Nam	Y	O	Y	i	i	Y	N	Y	Y	N	
Zambia	Y	O	i	i	i	N	N	N	N	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	141	2	0	0	1	0	45	0	0	0	0	93	30.55
Others	162	0	3	1	3	0	26	1	0	1	1	126	18.53
Total	303	2	3	1	4	0	71	1	0	1	1	219	25.39

### *Annex C*

#### MAP Statistics post-2015 cases

Category of cases	No. Of post-2015 cases in MAP inventory on 1 January 2016	No. Of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome:										No. Of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	53	0	0	0	0	0	5	1	0	0	0	47	2.37
Others	0	89	1	0	2	3	2	0	0	0	0	0	81	1.79
Total	0	142	1	0	2	3	2	5	1	0	0	0	128	2.04

## *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>Look-back period</b>	Period starting from 1 January 2014 for which Switzerland wished to provide information and request peer input
<b>MAP guidance</b>	Federal Department of Finance State Secretariat for International Financial Matters Tax Division's Fact Sheet on the Mutual Agreement Procedure, June 2016
<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><i>OECD Model Tax Convention</i></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
<b>Terms of Reference</b>	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective



## **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.

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## OECD/G20 Base Erosion and Profit Shifting Project

# Making Dispute Resolution More Effective – MAP Peer Review Report, Switzerland (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 Switzerland, 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/10.1787/9789264282650-en>.

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