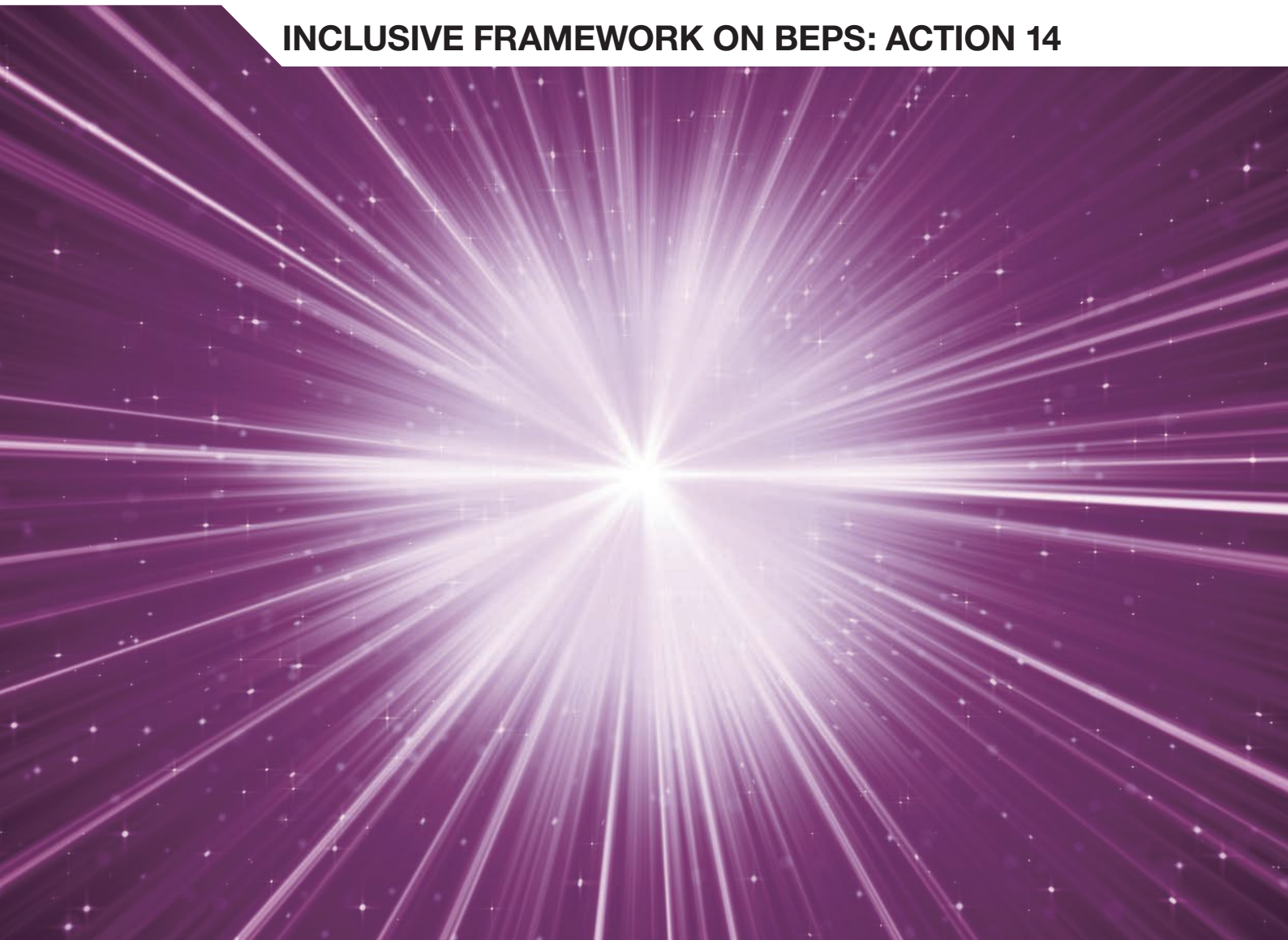


**OECD/G20 Base Erosion and Profit Shifting
Project**



Making Dispute Resolution More Effective – MAP Peer Review Report, Denmark (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the multilateral instrument 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.

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Abbreviations and acronyms

APA	Advance Pricing Agreement
BEPS	Base Erosion and Profit Shifting
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

Denmark has an extensive tax treaty network with over 75 tax treaties and has signed and ratified the EU Arbitration Convention. Denmark has an established MAP programme and has long-standing and large experience with resolving MAP cases. It has a relatively large MAP inventory, with a moderate number of new cases submitted each year and 178 cases pending on 31 December 2016. Of these cases, 78% concern allocation/attribution cases. Overall Denmark meets most of the elements of the Action 14 Minimum Standard.

All of Denmark's tax treaties include a provision relating to MAP. Those treaties generally follow paragraphs 1 through 3 of Article 25 of the *OECD Model Tax Convention* (OECD, 2015). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard:

- One-tenth of its tax treaties do not contain the equivalent of Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015), whereby the majority of these treaties do not contain the equivalent of Article 25(1), first sentence, as it read prior to the adoption of the final report on Action 14, since they do not allow taxpayers to submit a MAP request to the state of which it is a national, where its case comes under the non-discrimination provision;
- One-third of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments; and
- One-fifth of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the *OECD Model Tax Convention* (OECD, 2015) allowing competent authorities to consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Denmark needs to amend and update a portion of its tax treaties. In this respect, Denmark signed the Multilateral Instrument, through which a number of its tax treaties will be potentially modified to fulfil the requirements under the Action 14 Minimum Standard. Where tax treaties will not be modified by the Multilateral Instrument, Denmark reported that it does not intend to initiate bilateral treaty negotiations to fulfil those requirements

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

Denmark also meets most of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases. However, it has not in place a documented bilateral consultation or notification process for

those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Denmark has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention. However, Denmark does not address in its MAP guidance the relationship between audit settlements and MAP, which should be reflected.

Concerning the average time needed to close MAP cases, the MAP statistics for Denmark for the year 2016 are as follows:

2016	Opening inventory	Cases started	Cases closed	End inventory	Average time to close cases (in months)*
Attribution/ allocation cases	135	31	27	139	23.93
Other cases	37	19	17	39	28.42
Total	172	50	44	178	25.66

* 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, Denmark used as a start date for attribution/allocation cases the receipt of the MAP request (for cases under the EU Arbitration Convention the date of receipt of the request and the minimum information required) and for other cases the date of the first registration in the internal filing system. As the end date for attribution/allocation cases Denmark used the date of the taxpayer's acceptance of the MAP agreement and for other cases the date of closing the case in the internal filing system.

The number of cases Denmark closed is less than the number of all new cases started in 2016. Its MAP inventory as per 31 December 2016 increased slightly as compared to its inventory as per 1 January 2016 and is still four times the number of cases resolved during the year. Denmark's competent authority did not close MAP cases on average within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 25.66 months, whereby other cases were resolved with a higher average (28.42 months). The resolution of attribution/allocation cases, however, was just within the 24-month average. In this respect, Denmark specified that the median time taken to resolve MAP cases was below the 24-months average (approximately 20 months). In relation to the resources available for the MAP function, Denmark reported that more resources have recently been assigned to the competent authority for the resolution of MAP cases. It will be monitored whether these additional resources will contribute to a resolution of MAP cases in a more timely, effective and efficient manner.

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

Lastly, Denmark also meets the Action 14 Minimum Standard as regards implementation of MAP agreements. Denmark has a domestic statute of limitation for implementation of MAP agreements, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not include the equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015). In addition, Denmark does not monitor the implementation of MAP agreements, nevertheless no problems have surfaced throughout the process.

Introduction

Available mechanisms in Denmark to resolve tax treaty-related disputes

Denmark has entered into 78 tax treaties on income (and/or capital), 77 tax treaties of which are in force.¹ These 78 tax treaties apply to 82 jurisdictions.² All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. Furthermore, Denmark is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.³

In Denmark, the competent authority function to conduct MAP is delegated to the Danish Customs and Tax Administration (SKAT). Within SKAT, two departments are responsible to handle MAP cases. The Large Companies – Competent Authority is placed within the Large Companies department, which is part of the business area for Compliance and is responsible for handling attribution/allocation MAP cases as well as bilateral APA requests. It currently consists of 11 full time case handlers. Secondly, the Company, Shareholder and TP office is placed within the Law Department within the business area for General, HR and Staff and handles other MAP cases. It currently consists of one full time case handler and three part time case handlers.

The organisation of this competent authority function is detailed in the Danish Customs and Tax Administration’s (SKAT) public legal guidance, which also includes information specifically related to MAP (“MAP Guidance”). The MAP Guidance is divided into a general chapter providing general MAP guidance and a second chapter providing additional guidance with regard to transfer pricing issues within MAP. This can be found at:

<http://skat.dk/skat.aspx?oid=124&vid=2141264>

Recent developments in Denmark

Denmark recently signed new tax treaties with Azerbaijan (2017) and Japan (2017), which both have not entered into force, yet. Since the new tax treaty with Japan was concluded after the Review Period on 11 October 2017, the treaty analysis took into account the currently existing tax treaty with Japan. Denmark recently also signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), inter alia with a view to make the necessary modifications to the MAP article under its tax treaties to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. With the signing of the Multilateral Instrument, Denmark also submitted its list of notifications and reservations to that instrument.⁵ In relation to the Action 14 Minimum Standard, Denmark has not made any reservation to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

Basis for the peer review process

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

The questionnaires for the peer review process were sent to Denmark and the peers on 7 July 2017. The period for evaluating Denmark’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 July 2017 (“**Review Period**”). Denmark opted to provide information and requested peer input concerning the period starting as from 1 January 2015. While the period starting on 1 January 2015 is taken into account in the analysis in this report, the basis of conclusions only concerns the period starting on 1 January 2016. In addition to the assessment on Denmark’s compliance with the Action 14 Minimum Standard, Denmark also asked for peer input on best practices. Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Denmark’s implementation of this Minimum Standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

The treaty analysis takes into account the tax treaties/agreements with former Czechoslovakia, the former USSR and former Yugoslavia for those jurisdictions to which these treaties are still being applied by Denmark. Concerning the multilateral tax treaty between Denmark, Finland, Faroe Islands, Iceland, Norway and Sweden (“**Nordic Convention**”), this treaty is counted as one treaty, even though it is applicable to multiple jurisdictions. Reference is made to Annex A for the overview of Denmark’s tax treaties regarding the mutual agreement procedure.

In total 21 peers provided input: Australia, Belgium, Chile, China, France, Germany, Ireland, Italy, Japan, Korea, Lithuania, the Netherlands, Norway, Russia, Singapore, Slovenia, Spain, Sweden, Switzerland, Turkey and the United States. These peers represent approximately 70% of post-2015 MAP cases in Denmark’s inventory on 31 December 2016. Broadly, all peers indicated having a good relationship with the Danish competent authority with regard to MAP, some of them emphasising the ease of contact and good co-operation in resolving disputes.

Denmark provided informative answers in its questionnaire and detailed answers upon request, which were submitted on time. Denmark was very responsive in the course of the drafting of the peer review report by responding in a timely manner and comprehensively to requests for additional information, and provided further clarity where necessary. In addition, Denmark provided the following information:

- MAP profile⁶; and
- MAP statistics⁷ according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Denmark

The analysis of Denmark’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2016 (“**Statistics Reporting Period**”). According to the statistics provided by Denmark, on 31 December 2016 its MAP inventory was 178 cases, 139 of which concern attribution/allocation cases and 39 other cases. During the Statistics Reporting Period 50 cases were started and 44 cases were closed.

General outline of the peer review report

This report includes an evaluation of Denmark’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 to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁸ Apart from analysing Denmark’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Denmark. Furthermore, the report depicts the changes adopted and plans shared by Denmark 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 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 Denmark 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 Denmark has entered into are available at: www.skm.dk/love/internationalt/dobbeltbeskatningsoverenskomster. The treaty that is signed but has not yet entered into force is Azerbaijan (2017). In addition, a new tax treaty with Japan (2017) has been signed, which will replace the currently existing treaty once the newly negotiated treaty enters into force. Reference is made to Annex A for the overview of Denmark’s tax treaties.
2. Denmark is a signatory to the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
3. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.
4. Available at: <http://skat.dk/skat.aspx?oid=124&vid=214126> (in Danish) – The chapters relevant for MAP and APA are currently being translated into English.

5. Available at: www.oecd.org/tax/treaties/beps-mli-position-denmark.pdf.
6. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.
7. The MAP statistics of Denmark are included in Annex B and C of this report.
8. The terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective can be found in the Peer Review Documents (OECD, 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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

Part A

Preventing disputes

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

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

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

Current situation of Denmark’s tax treaties

2. Out of Denmark’s 78 tax treaties, 74¹ 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. The remaining 4 tax treaties are considered not having the equivalent of Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015). In 3 treaties the term “interpretation” is not included. In the fourth treaty the provision included stipulates that the competent authorities “may communicate with each other” rather than “shall endeavour”.

3. Denmark reported that irrespective of whether the applicable tax treaty contains a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015), it will be able to endeavour to solve any difficulties or doubts regarding the interpretation or application of its tax treaties.

Anticipated modifications

Multilateral Instrument

4. Denmark recently signed the Multilateral Instrument. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first

sentence, of the *APA* (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only if both contracting parties to the applicable treaty has listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

5. In regard of the 4 tax treaties identified above, Denmark listed all of them as a covered tax agreement under the Multilateral Instrument, but only for 2 treaties did Denmark make, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). Of the 2 relevant treaty partners, only one also made such notification. At this stage therefore, the Multilateral Instrument will, upon entry into force, modify 1 of the 4 tax treaties identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

6. Denmark further reported that when the tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations when it becomes relevant or necessary with a view to be compliant with element A.1. Denmark, however, reported not having in place a specific plan for such negotiations. Furthermore, Denmark reported its disagreement having an obligation to initiate bilateral tax treaty negotiations in cases a tax treaty does not meet an element of the Action 14 Minimum Standard and such a tax treaty will not be modified via the Multilateral Instrument. Denmark stated that it has chosen to implement the elements of the Action 14 Minimum Standard via the Multilateral Instrument and therefore invites jurisdictions, which have not yet joined that instrument, to sign it. Denmark further stated that it invites jurisdictions to initiate bilateral treaty negotiations, if a jurisdiction does not plan to sign the Multilateral Instrument, but wants its treaty with Denmark in line with the Action 14 Minimum Standard. In addition, Denmark reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future tax treaties.

Peer input

7. Two peers provided specific input with regard to element A.1, indicating that their tax treaties are in line with this element. 14 peers provided general input on their tax treaty with Denmark that it is in line with the Action 14 Minimum Standard and when this is not the case, that it is planned to be modified via the Multilateral Instrument. Two peers provided input that in case certain elements of the Action 14 Minimum Standard are missing in their tax treaty with Denmark, the tax treaty will be amended via a protocol or possible solutions will be discussed bilaterally. Another peer indicated that it did not had any contacts so far with Denmark or having any specific plan in place to update its treaty with Denmark. Lastly, two peers indicated that they do not have a tax treaty with Denmark in force, but are a signatory to the EU Arbitration Convention.

8. For the four tax treaties identified above that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), only one relevant peer provided input and indicated that its tax treaty with Denmark is in line with the Action 14 Minimum Standard in his view.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	Four out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Denmark should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining three treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Denmark should request the inclusion of the required provision via bilateral negotiations. To this end, Denmark should put a plan in place on how it envisages updating these three treaties to include such equivalent. In addition, Denmark should maintain its stated intention to include the required provision in all future treaties.

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

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

9. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.² The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Denmark’s APA programme

10. Denmark reported that it does not have established a formal bilateral APA programme, but its competent authority is authorised to enter into bilateral and multilateral APAs. The legal basis for entering into bilateral APAs is the MAP provision of the underlying tax treaty and the ground for such APAs is the arm’s length principle. Denmark’s interpretation of this principle is set out in Section 2 of the Danish Tax Assessment Act, which is based on the OECD Transfer Pricing Guidelines.

11. Guidance on Denmark’s APA programme is provided in section C.D.11.15.3 of its MAP Guidance. This guidance includes a definition of a bilateral/multilateral APA, the legal basis of an APA, the reasoning why to enter into a bilateral APA, an explanation of the APA process, guidance on which transactions can be covered by an APA and the process for submitting an APA request. The guidance further explains the term of an APA, the binding effect of the agreement and provides finally information on the process of notification of changes, amendment and revocation of the APA.

Roll-back of bilateral APAs

12. Denmark reported it has no specific timelines for filing an APA request, but that it applies bilateral APAs as from the first year covered by the request, irrespective of the date when the competent authorities reach an agreement. Generally, an APA is entered into for a period of five years. Tax years that have already expired can only be included in an APA via roll-back, such under the condition that the other competent authority agrees to the roll-back. In this respect, Denmark reported its competent authority is allowed to provide roll-backs of bilateral APAs.

13. In Denmark roll-backs of bilateral APAs are granted when the competent authority of the other jurisdiction agrees herewith. The number of tax years for which the bilateral APA will be applied retroactively depends on the domestic laws of the involved jurisdictions as well as on the agreement reached between their involved competent authorities. Guidance specifically related to roll-backs of APA is provided in the MAP Guidance in Section C.D.11.15.3.11.

Practical application of roll-back of bilateral APAs

14. Denmark publishes statistics on APAs in relation to EU and non-EU Member States on the website of the EU Joint Transfer Pricing Forum.³ The total number of APAs entered into and the number of APA requests still under consideration as per year end is also included in the annual report of the Danish Customs and Tax Administration (SKAT) to the Danish Parliament.⁴

15. Denmark reported that its competent authority has received 18 requests for a bilateral APA since 1 January 2015, of which five concern a request for roll-back. Denmark further reported that four of these 18 APAs requests have been granted and in one case the request was rejected. Concerning the roll-back requests, Denmark reported that in two cases such roll-back was granted during the Review Period.

16. Peers generally reported that they do negotiate and agree bilateral APAs with Denmark, although almost all peers that provided input indicated that they have not received a request for a roll-back of bilateral APAs concerning Denmark during the Review Period. Three peers indicated that each of them entered into a bilateral APA during the Review Period with Denmark, which also provided for a roll-back, whereby the APA request was submitted prior to the Review Period. Applying the roll-back of the APA did not raise any particular issues, but one of these peers mentioned that the case was time consuming and challenging for both competent authorities. Another peer noted that, while it had not received such requests since 1 January 2015, its understanding is that a roll-back of bilateral APAs is possible in Denmark.

Anticipated modifications

17. Denmark did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

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

Notes

1. These 74 treaties include the tax treaty with the former USSR that Denmark continues to apply to Belarus, the tax treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic, the tax treaty with former Yugoslavia that Denmark continues to apply to Montenegro and the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
3. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0152016enapastatistics.pdf. These statistics are up to tax year 2015.
4. Available at: www.ft.dk/samling/20161/almindel/sau/bilag/266/index.htm.

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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.

18. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties contain 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 Denmark's tax treaties

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

19. Out of Denmark's 78 tax treaties, 52¹ 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 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. None of Denmark's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as changed by the *Action 14 final report* (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state.

20. The remaining 26 treaties can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	24 ²
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer 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
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident and only when there is double taxation contrary to the principles of the agreement.	1

21. The 24 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, for the following reasons 19 of those 24 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision (seven tax treaties);
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (ten tax treaties); and
- The relevant tax treaty is only one-sided formulated in that they only apply to companies resident in Denmark and therefore it is logical that the MAP article is also only one-sided formulated (one tax treaty).

22. For the remaining six of the 24 tax treaties, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2015a) and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) is therefore not clarified by a limited scope of the non-discrimination article, following five of these six tax treaties are considered not to be in line with this part of element B.1. For the remaining tax treaty, paragraph 1 of the non-discrimination provision also only covers nationals that are resident of one of the contracting states, but by virtue of another paragraph the non-discrimination provision applies to both nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) is therefore not clarified by a limited scope of the non-discrimination article, following which this treaty is considered not to be in line with this part of element B.1.

23. Furthermore, with respect to the one tax treaty mentioned in the second row of the table above, the provision incorporated in the protocol to this tax treaty reads:

“(…) the expression ‘irrespective of the remedies provided by domestic law’ means that the mutual agreement procedure is not an alternative to the national contentious proceedings, which shall be, in any case, preventively initiated, when the claim is related with an assessment of taxes not in accordance with the Convention.”

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

25. The tax treaty included in the third row of the table above requires as a condition to submit a MAP request that there is (or will be) “double taxation” instead of “taxation not in accordance with the provisions of the convention”. As this requirement may potentially limit the submission of a MAP request, this provision is considered not being in line with this part of element B.1.

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

26. Out of Denmark’s 78 tax treaties, 61 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

27. The remaining 17 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	12
Filing period more than three years for a MAP request (five years)	1 ³
Filing period less than three years for a MAP request (two years)	3 ⁴
Filing period is less than three years limited by a protocol provision	1

28. For the tax treaties that do not specify a filing period, the Danish competent authority used to maintain the position up to July 2017 to apply domestic time limits for objections against tax assessment notices, which is generally three months. As per July 2017, Denmark changed Section C.F.8.2.2.25.2 of its MAP Guidance, now setting out that tax treaties not including Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) are to be considered as including such provision. In other words, Denmark will in those situations, as from July 2017, use a three year time period for filing of MAP requests as from the date of first notification of action resulting in taxation not in accordance with the convention.

29. The last tax treaty in the table above includes Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) but it includes a protocol provision that reads: “It is understood that, in the case of [...], the case must be presented to the competent authority within one year from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement. However, if such period has expired, the taxpayer may, in any case, present the case to the competent authority in [...] within a period of five years beginning on the first day of January of the calendar year next following the related taxable year. The related taxable year is the year in which the income subject to the action resulting in taxation not in accordance with the provisions of the Agreement is derived”. As the text of this provision bears the risk that a MAP request cannot be submitted within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty, this provision is considered not to be the equivalent of Article 25(1), second sentence.

Anticipated modifications

Multilateral Instrument

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

30. Denmark recently signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read after the adoption of the *Action 14 final report* (OECD, 2015b) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). This, however, only if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this tax treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a). Such modification will for a specific treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a) of the Multilateral Instrument, reserved the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties.

31. With the signing of the Multilateral Instrument, Denmark opted to introduce in all of its tax treaties, pursuant to Article 16(4)(a)(i) of that instrument, a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Denmark's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state in which it is a resident, Denmark opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Denmark listed 65 of its 78 treaties under the Multilateral Instrument and made, pursuant to Article 16(6)(a) of the Multilateral Instrument, for all 65 tax treaties the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b).

32. In total, 23 of the relevant 65 treaty partners are not a signatory to the Multilateral Instrument, six did not list their treaty with Denmark under the Multilateral Instrument and 16 reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. The remaining 20 treaty partners listed their treaty with Denmark as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify these 20 treaties to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read after the adoption of the final report on Action 14 (OECD, 2015b).

33. In view of the above and in relation to the seven treaties identified in paragraphs 20-25 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), three are part of the 20 treaties

that will be modified via the Multilateral Instrument. Of the remaining four treaty partners, two are not a signatory to the Multilateral Instrument, two are part of the 18 jurisdictions that made the reservation on the basis of Article 16(5)(a) of the Multilateral Instrument.

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

34. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. This, however, only if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

35. With regard to the three tax treaties identified in paragraph 27 above that contain a filing period for MAP requests of less than three years, Denmark listed two treaties as a covered tax agreement under the Multilateral Instrument, and made for all of them, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Both treaty partners also listed their treaty with Denmark as not having a time limit for filing of MAP requests of at least three years. At this stage therefore, the Multilateral Instrument will, upon entry into force, modify two of the three treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

36. With regard to the tax treaty identified in paragraph 27 above that includes a provision that is considered not the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a), Denmark listed this treaty as a covered tax agreement under the Multilateral Instrument. It did, pursuant to Article 16(6)(b)(i), not make a notification that it does not contain a provision described in Article 16(4)(a)(ii), nor did it make such a notification on the basis of Article 16(6)(b)(ii) that this treaty contains such a provision. The relevant treaty partner also listed its treaty with Denmark under the Multilateral Instrument and also not made a notification on the basis of either Article 16(6)(b)(i) or Article 16(6)(b)(ii). In this situation, Article 16(6)(b)(i) of the Multilateral Instrument stipulates that the second sentence of Article 16(1) – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will supersede the provision of the covered tax agreement to the extent it is incompatible with that second sentence. Since due to a protocol provision a MAP request cannot be submitted to the competent authority of the treaty partner within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty, the provision of the covered tax agreement is considered to be incompatible with the second sentence of Article 16(1). At this stage, the Multilateral Instrument will, upon entry into force, supersede the treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

37. Denmark reported that when tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations when it becomes relevant or necessary with a view to be compliant with element B.1. Denmark,

however, reported not having in place a specific plan for such negotiations. Furthermore, Denmark reported its disagreement having an obligation to initiate bilateral tax treaty negotiations in cases a tax treaty does not meet an element of the Action 14 Minimum Standard and such a tax treaty will not be modified via the Multilateral Instrument. Denmark stated that it has chosen to implement the elements of the Action 14 Minimum Standard via the Multilateral Instrument and therefore invites jurisdictions, which have not yet joined that instrument, to sign it. Denmark further stated that it invites jurisdictions to initiate bilateral treaty negotiations, if a jurisdiction does not plan to sign the Multilateral Instrument, but wants its treaty with Denmark in line with the Action 14 Minimum Standard. In addition, Denmark reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in all of its future tax treaties.

Peer input

38. Two peers provided specific input with regard to element B.1, indicating that their tax treaties are in line with this element. 12 peers provided general input on their tax treaty with Denmark and noted that it is in line with the Action 14 Minimum Standard and when this is not the case, that it is planned to be modified via the Multilateral Instrument. Two peers provided input, that in case certain elements of the Action 14 Minimum Standard are missing in its tax treaty with Denmark, the tax treaty will be amended via a protocol or possible solutions will be discussed bilaterally. Another peer indicated that it had not any contacts so far with Denmark or has any specific plan in place to update its treaty with Denmark. Lastly, two peers indicated that their jurisdictions do not have a tax treaty with Denmark in force, but are a signatory to the EU Arbitration Convention.

39. Three peers, which were identified above as not having the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), provided specifically input, indicating that their treaties are not in line with element B.1. Two of those jurisdictions indicated that the tax treaties will be modified via the Multilateral Instrument. The third jurisdiction specified that it is currently in the process of finalising negotiations for a new treaty with Denmark, which will be in line with the Action 14 Minimum Standard.

Conclusion

	Areas for Improvement	Recommendations
[B.1]	<p>Nine out of 78 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the final report on Action 14 (OECD, 2015b) or as amended by that report. Of those nine tax treaties:</p> <ul style="list-style-type: none"> • two tax treaties do not incorporate the equivalent of Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty; • five tax treaties do not contain the equivalent of Article 25(1), first sentence; • two tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. 	<p>Denmark should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both:</p> <ul style="list-style-type: none"> • A provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ul style="list-style-type: none"> a. As amended in the final report of Action 14 (OECD, 2015b); or b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision; and • A provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>For the remaining treaties that will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Denmark should request the inclusion of the required provision via bilateral negotiations. To this end, Denmark should put a plan in place on how it envisages updating the remaining treaties to include such equivalent.</p> <p>Specifically with respect to the treaty with the former USSR Denmark should, once it enters into negotiations with the jurisdiction to which it applies that treaty, request the inclusion of the required provision.</p> <p>In addition, Denmark should maintain its stated intention to request the inclusion 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).

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

- i. of either treaty partner; or in the absence of such provision;
- ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases,

jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

Domestic bilateral consultation or notification process in place

41. As discussed under element B.1, out of Denmark's 78 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 the competent authority of either treaty partner. However, as was also discussed under element B.1, 20 of these 78 treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

42. Denmark reported that it has not introduced a documented bilateral consultation or notification process, which allows the other competent authority concerned to provide its views on the case when the Danish competent authority considers the objection raised in the MAP request not to be justified. However, as there were no cases of an objection not justified in the Review Period, Denmark considered there was no need to inform the other competent authority via a bilateral consultation or notification process.

Practical application

43. From the MAP Statistics provided by Denmark it follows that during the Statistics Reporting Period its competent authority did not consider the objection raised by the taxpayer in a MAP request as not being justified. Denmark, however, reported that it denied access to one tax treaty MAP case and to three EU Arbitration Convention MAP cases during the Review Period due to incomplete information provided by the taxpayer. Denmark reported that all four treaty partners were notified about the MAP requests and of Denmark's position concerning the lack of information. Three of the four decisions were appealed in court and all were made prior to 2016. The court case is discussed in more detail under element B.6. Denmark reported that it notified the relevant treaty partners after the final judgement of the court to grant access, which Denmark did.

44. All peers that provided input indicated not being aware of or that it had been consulted/notified of a case where the Danish competent authority considered the objection raised in a MAP request as not being justified since 1 January 2015. This can be explained by the fact that no such cases occurred in Denmark as of that date.

Anticipated modifications

45. As previously discussed under element B.1, Denmark has recently signed the Multilateral Instrument, *inter alia* with the intention to modify covered tax agreements to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Where tax treaties will not be modified via the Multilateral Instrument, Denmark declared it will apply a bilateral consultation or notification process to be established when its competent authority considers the objection raised in a MAP request not to be justified. In this respect, Denmark reported that it anticipates introducing an informal bilateral consultation or notification process. This process will likely be introduced as a best practice in the Danish competent authority's internal working procedures/check lists.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	For those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner, there is no bilateral consultation or notification process in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Denmark should introduce a documented bilateral consultation or notification process for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report of Action 14 (OECD, 2015b).

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

Jurisdictions should provide access to MAP in transfer pricing cases.

46. 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

47. Out of Denmark's 78 tax treaties, 50⁵ contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) requiring their competent authorities to make a corresponding adjustment in case a transfer pricing adjustment is made by the treaty partner. Furthermore, 21 treaties do not contain such a provision that is based on or is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a).⁶ For the remaining seven treaties the following specifications can be made:

- one tax treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but which does not allow competent authorities to consult each other where necessary;
- three tax treaties contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but whereby a corresponding adjustment is only possible through consultations between the competent authorities;
- one tax treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but whereby a corresponding adjustment is optional ("may"); and
- two tax treaties contain a provision that has similarities with Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but is not the equivalent thereof as they include deviating language.

48. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) is contained in Denmark's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Denmark indicated that it will always

provide access to MAP for transfer pricing cases. Denmark’s MAP Guidance explains in Section C.D.11.15.1 how cases of double taxation arising from transfer pricing adjustments can be resolved, as also the availability of MAP in transfer pricing cases. Furthermore, Section C.F.8.2.2.25.1 of Denmark’s MAP Guidance explicitly mentions that MAP is available in transfer pricing cases. Also the website of Denmark’s tax authorities includes a webpage on transfer pricing, which includes a section on the relationship between MAP and transfer pricing.

49. Furthermore, taxpayers can, pursuant to Article 27(1), sub 4, of the Danish Tax Assessment Act request for an “extraordinary assessment” in case of foreign-initiated adjustments, which are acknowledged by the Danish Tax Administration. Such request has to be submitted within 6 months from the date on which the taxpayer becomes aware of the foreign adjustment. Further to the above, Denmark mentioned that corresponding adjustments regarding transactions between associated enterprises or changes in the attribution of profits to a permanent establishment will not be performed unless it is documented that the corresponding amounts have already been taxed in the other jurisdiction concerned. This “subject to tax” clause is a unilateral Danish provision, which is intended to avoid double non-taxation and also applies when a tax treaty contains the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). The legal basis for this requirement is Section 2(6) of the Danish Tax Assessment Act, which reads as follows:

“Before making a downward adjustment of the taxable or distributable income with reference to Section 2(1), it is a prerequisite that a corresponding upward adjustment of the other party’s taxable income must be undertaken. It is a prerequisite for increasing the acquisition prices that a corresponding assessment of the other party’s prices is undertaken. Concerning controlled transactions with foreign natural or legal persons and permanent establishments, it is a prerequisite that the corresponding income is included in the income statement in the other country in question.”

50. Even though this provision being in place and regardless of whether the corresponding amounts have already been taxed in the other jurisdiction concerned, Denmark reported that such cases could be examined in MAP and that access to MAP will be granted for such cases.

Application of legal and administrative framework in practice

51. Denmark reported that it has not denied access to MAP on the basis that the case concerned was a transfer pricing case since 1 January 2015.

52. Peers indicated not being aware of a denial of access to MAP by Denmark on the grounds that it was a transfer pricing case since 1 January 2015.

Anticipated modifications

53. Denmark reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) in all of its future tax treaties. In that regard, Denmark recently signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015aa) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). This, however, only if both contracting

parties to the applicable treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect, if one or both of the signatory states to the tax treaty reserved, pursuant to Article 17(3), the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), or not to apply Article 17(2) in the absence of such equivalent, on the basis that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification of whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). Where such a notification is made by both of them the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention [OECD, 2015a]).

54. Denmark has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). In regard of the 28 treaties identified in paragraph 47 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), Denmark listed 18 of them as a covered tax agreement under the Multilateral Instrument and included three of them in the list of treaties for which Denmark has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Furthermore, Denmark did not make a notification on the basis of Article 17(4) for the remaining 15 treaties. Of the relevant 15 treaty partners, eight are not a signatory to the Multilateral Instrument, whereas one has not listed its treaty with Denmark under that instrument and one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with Denmark already contains the equivalent of Article 9(2). At this stage therefore, Article 17(1) of the Multilateral Instrument will, upon entry into force, supersede the remaining five treaties only to the extent that the provisions included in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Conclusion

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

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

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

55. 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

56. None of Denmark's 78 tax treaties allow competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Denmark do not contain a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

57. Denmark's MAP Guidance does not specifically address whether taxpayers have access to MAP in cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse have been met or whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

Practical application

58. Denmark reported that since 1 January 2015 it has not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

59. Peers indicated not being aware of cases that have been denied access to the MAP by Denmark since 1 January 2015 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

60. Denmark did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

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

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

Legal and administrative framework

62. Denmark reported that audit settlements can be entered into by the Danish Tax Administration and taxpayers. During a tax audit the taxpayer can admit that there were mistakes in the tax return and therefore agree with the result of the tax audit. The tax auditor will then ask the taxpayer to submit a request for a reassessment of the taxable income in accordance with the result of the tax audit. The legal basis for such a reassessment request or audit settlements can be found in the Danish Tax Administration Act. Article 26(2) of this act stipulates that the taxpayer can ask for a reassessment of its taxable income according to its discussions/agreement with the tax auditor (“ordinary assessment”). Such request has, pursuant to Article 26(2), to be submitted no later than 1 May of the fourth year after the end of the relevant tax year or, pursuant to Article 26(5), of the sixth year after the end of the relevant tax year for controlled transactions with related parties or income attribution to permanent establishments.

63. When the Danish Tax Administration and taxpayers have entered into an audit settlement, Denmark reported that such settlement does not preclude taxpayer’s access to MAP.

64. Further to the above, Denmark also reported that 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.

Practical application

65. Denmark reported that since 1 January 2015 it has not denied access to MAP in cases where the Danish Tax Administration and taxpayers have entered into an audit settlement.

66. Peers have indicated not being aware of a denial of access to MAP by Denmark in cases of audit settlements since 1 January 2015. One peer explicitly confirmed that Denmark granted access to MAP after an audit settlement. In addition, peers also indicated not being aware of the existence of any other administrative or statutory dispute settlement or resolution process(es).

Anticipated modifications

67. Denmark did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

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

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

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

68. 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

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

70. Denmark reported that within two months from the reception of a MAP request by the Danish competent authority, or a notification of a MAP request submitted with the other competent authority concerned, the case handler of the Danish competent authority will review the MAP request and analyses whether it includes the required minimum information as specified in Denmark's MAP Guidance (which for the EU Arbitration Convention concerns the list information as included in Section 5(a) of the Code of Conduct to that convention). If any information is missing according to the initial analysis by the case handler, the case handler reaches out to the taxpayer and asks for the missing information. Such request has to be made within two months from receipt of the MAP request by the Danish competent authority, or within two months from the notification

of such request by the competent authority of its treaty partner. In this respect, Denmark mentioned that since 2016 the Danish competent authority started to set a time limit for replying to a request for information. Such time limit is generally 1-3 months and is dependent on the complexity of the requested information. If the taxpayer does not provide the requested information within this timeframe, the case handler reminds the taxpayer to provide the outstanding information within 14 days.

71. If that information is then still not submitted, the Danish competent authority has two possibilities. These are:

- For MAP requests submitted under a tax treaty: Initiating the MAP based on available information; or
- For MAP requests submitted under the EU Arbitration Convention: Sending a decision proposal to the taxpayer stating that access to MAP will be denied due to missing minimum information. Upon receipt of the decision proposal the taxpayer can still provide missing information within a set timeline. If the Danish competent authority finally establishes that the minimum information requirements are not fulfilled, a decision will be issued entailing a denial of access to MAP. This decision includes guidance on how to appeal the decision within a three-month period.

Practical application

72. According to Denmark it provides access to MAP in all cases where taxpayers have complied with the information and documentation required by its competent authority and as set out in its MAP Guidance. Denmark reported that since 1 January 2015 it has denied access to MAP in four cases where taxpayers have not complied with the information and documentation requirements. This concerned three cases under the EU Arbitration Convention and one case under a tax treaty.

73. With respect to the three cases of denied access under the EU Arbitration Convention, Denmark reported that its competent authority is very strict on the information and documentation requirements, as set out in Section 5(a) of the Code of Conduct and adopted in the Danish MAP Guidance. Denmark noted that access was denied for a request concerning three tax jurisdictions with regard to the EU Arbitration Convention since the taxpayer had not specified the disputed amounts per jurisdiction and therefore not provided the minimum information according to Section 5(a)ii of the Code of Conduct. The MAP request was based on a Danish transfer pricing adjustment concerning compensation to a Danish entity for closing down their business. Because of lack of information from the taxpayer during the audit process the Danish tax audit performed a lump-sum transfer pricing adjustment without specifying any specific related party to the transaction. The taxpayer appealed the denial to MAP according to the EU Arbitration Convention in front of the Danish Western High Court. The taxpayer argued that the case has been presented correctly within the 3-year deadline of Article 6(1) of the EU Arbitration Convention, all the more since that provision does not contain any special requirements on which information should be presented. The Section 5(a) of the Code of Conduct contains a list of minimum information to be provided by the taxpayer of which paragraph ii states: “details of the relevant facts and circumstances of the case (including details of the relations between the enterprise and the other parties to the relevant transactions)” but no express requirements for the amounts to be apportioned out. The Danish Western High Court agreed with the taxpayer that the Danish competent authority could not deny access to MAP under the EU Arbitration Convention. The court thereby pointed out that neither Article 6(1) of the EU Arbitration Convention nor Section 5(a) of the Code of Conduct or

Denmark's MAP Guidance contain any specific requirements for the adjustment amount to be apportioned to certain related parties. Against the information presented in the court case, the court ruled that there was not sufficient basis for rejecting the request on the basis of lack of information and decided that the Danish competent authority should initiate the proceedings under the EU Arbitration Convention.

74. With respect to the one case mentioned above for which access was denied under a tax treaty, Denmark specified that in this case a Danish taxpayer could not provide information requested by the Danish competent authority to substantiate his claim that there was a permanent establishment was in existence and subject to tax in the treaty partner's state. The other jurisdiction involved did not accept the existence of such permanent establishment. The MAP request was received in 2013 and access to MAP was denied in 2015.

75. Generally, peers indicated not being aware of a limitation of access to MAP by Denmark in situations where taxpayers have complied with information and documentation requirements set out in the MAP Guidance. However, two peers provided specific input in relation to element B.6. specifically with respect to the EU Arbitration Convention. One peer indicated that Denmark seems to place such an onerous burden on the taxpayer regarding the minimum information to be provided to initiate a MAP under the EU Arbitration Convention that it is practically impossible for taxpayers to comply. This peer added that the consequence hereof is that there is a real risk that double taxation will not be eliminated for those cases where taxpayers submit a MAP request in Denmark under the EU Arbitration Convention. The second peer indicated that, although it is not aware of any MAP request for which the Danish competent authority denied access to MAP, it also reported that for one case the Danish competent authority deemed a case to be closed in April 2017 (the MAP request was filed in August 2016 at the peer's competent authority), as in its view the taxpayer was not registered as a resident in Denmark. The taxpayer in question submitted a tax residence certificate to the competent authority of the peer, which it subsequently forwarded in May 2017 to the Danish competent authority. This peer mentioned that the case is under further investigation.

Anticipated modifications

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

Conclusion

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

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

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

77. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties contain 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 Denmark's tax treaties

78. Out of Denmark's 78 tax treaties, 62⁷ contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. Furthermore, 15 do not contain a provision that is based on or is the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). The remaining tax treaty contains a provision similar to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), but this provision refers to the *consultation regarding cases not provided for in the convention*, whereas the second sentence of Article 25(3) refers to the *consultation for the elimination of double taxation in cases not provided for in the convention*. As the particular tax treaty provides for a scope of application, that is at least as broad as the second sentence of Article 25(3), it is considered to be in line with element B.7.

Anticipated modifications

Multilateral Instrument

79. Denmark recently signed the Multilateral Instrument. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

80. With regard to the 15 tax treaties identified above, Denmark listed eight of them as a covered tax agreement under the Multilateral Instrument and for all of them did Denmark make, pursuant to Article 16(6)(d)(ii), a notification that it does not contain a provision described in Article 16(4)(c)(ii). Of the relevant eight treaty partners, two are not a signatory to the Multilateral Instrument and one treaty partner did not list its agreement with Denmark as a covered tax agreement under that instrument. All five remaining treaty partners did also make a notification that their treaty with Denmark does not contain the

equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify five of the 15 treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

81. Denmark further reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations when it becomes relevant or necessary with a view to be compliant with element B.7. Denmark, however, reported not having in place a specific plan for such negotiations. Furthermore, Denmark reported its disagreement having an obligation to initiate bilateral tax treaty negotiations in cases a tax treaty does not meet an element of the Action 14 Minimum Standard and such a tax treaty will not be modified via the Multilateral Instrument. Denmark stated that it has chosen to implement the elements of the Action 14 Minimum Standard via the Multilateral Instrument and therefore invites jurisdictions, which have not yet joined that instrument, to sign it. Denmark further stated that it invites jurisdictions to initiate bilateral treaty negotiations, if a jurisdiction does not plan to sign the Multilateral Instrument, but wants its treaty with Denmark in line with the Action 14 Minimum Standard. In addition, Denmark reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future comprehensive tax treaties.

82. Further to the above, Denmark has reported that it does not intend to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in tax treaties with a limited scope as such inclusion would contradict the purpose of those treaties. When states agree on a comprehensive treaty, the intention is to cover all or close to all cases. Against this background, it is Denmark's understanding that Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) should enable the competent authorities to deal with rare and exceptional cases, i.e. function as a backup-clause. The opposite applies for treaties with a limited scope. The intention here is to cover only a certain type of situations. Accordingly, in Denmark's view it is inappropriate to give the competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of the treaty.

Peer input

83. One peer provided specifically input with regard to element B.7 indicating that the treaty is in line with the element. Furthermore, 12 peers provided general input on their tax treaty with Denmark that it is in line with the Action 14 Minimum Standard or when this is not the case, that it is planned to modify the tax treaty via the Multilateral Instrument. Two peers provided input that in case certain elements of the Action 14 Minimum Standard are missing in its tax treaty with Denmark, the tax treaty will be amended via a protocol or possible solutions will be discussed bilaterally.

84. For the 15 tax treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), three peers provided input and mentioned that their treaties with Denmark do not meet element B.7. Two of these peers mentioned not having commenced discussions with Denmark to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), although one peer mentioned that the treaty will be modified via the Multilateral

Instrument. This is indeed the case for this peer’s treaty with Denmark. Another peer indicated that it had not any contacts so far with Denmark or has any specific plan in place to update its treaty with Denmark.

Conclusion

	Areas for Improvement	Recommendations
[B.7]	15 out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Denmark should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those five treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the ten treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Denmark should request the inclusion of the required provision via bilateral negotiations. To this end, Denmark should put a plan in place on how it envisages updating these 11 treaties to include such equivalent. In addition, Denmark should maintain its stated intention to include the required provision in all future treaties.

[B.8] Publish clear and comprehensive MAP guidance

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

85. 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.

Denmark’s MAP guidance

86. Denmark’s rules, guidelines and procedures are included in the public legal guidance of the Danish Customs and Tax Administration’s (SKAT) and is available at:

<http://skat.dk/skat.aspx?oid=124&vid=214126>

87. This public legal guidance includes two sections in relation to MAP (hereinafter referred to as “MAP Guidance”), the first providing general MAP guidance (Section C.F.8.2.2.25) related to the MAP articles of Denmark’s tax treaties and the second additional specific guidance with regard to transfer pricing issues within MAP (Section C.D.11.15). Furthermore, Denmark also includes on the website of the Danish Tax Administration information on transfer pricing, with a specific section on MAP. Currently, the MAP Guidance is only available in Danish, but Denmark reported that a translation into English is being prepared.

88. More specifically, Denmark’s MAP Guidance contains information on:

Section C.F.8.2.2.25 defines juridical/economic double taxation, the taxpayer’s request for MAP as well as the functioning of the competent authority and is structured as follows:

1. Mutual Agreement Procedure (MAP) Cases
 - a. Principal rule;
 - b. International juridical double taxation;
 - c. International economic double taxation;
 - d. MAP at the request of a taxpayer;
 - e. MAP on the interpretation of issues of a general nature;
 - f. MAP on the elimination of double taxation in any other case;
 - g. Complaints-handling under national law.
2. The Taxpayer’s Request for MAP
 - a. Basis for the taxpayer’s request;
 - b. Submission of the request including the contact information of the competent authority;
 - c. Time limit for the submission of a request;
 - d. Procedural requirements including the specific documentation and information that should be included in the Map request;
 - e. Fees.
3. Function of the Competent Authority
 - a. Approval of the taxpayer’s request;
 - b. Termination of the case without initiating the MAP;
 - c. Initiation of the MAP;
 - d. Deferred payment of tax and interest;
 - e. Discussions with the competent authority of the other country;
 - f. Consent of the taxpayer to the agreement;
 - g. Arbitration provision.

Section C.D.11.15 of Denmark’s MAP Guidance includes additional specific guidance on double taxation in transfer pricing cases, the EU Arbitration Convention and APAs and is structured as follows:

1. How to Avoid Transfer Pricing Double Taxation
 - a. What is Transfer Pricing Double Taxation
 - i. Economic double taxation;
 - ii. How double taxation arises;
 - iii. Where adjustments are made to the taxable income.

2. How to Cancel Transfer Pricing Double Taxation
 - a. Reopening of the tax assessment
 - i. Reopening;
 - ii. Where the authorities agree;
 - iii. Where the authorities disagree.
 - b. Double taxation conventions
 - i. Presenting the case;
 - ii. Negotiations commitments;
 - iii. Result of the negotiations.
 - c. EU Arbitration Convention.
 - i. Scope of the convention;
 - ii. Submitting a case including required minimum information;
 - iii. Advisory commission;
 - iv. Result of the discussions.
 - d. Advance Pricing Agreements

89. The above-described MAP Guidance includes detailed information on the availability and the use of MAP in Denmark and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.⁸ Although Denmark's MAP Guidance is considered comprehensive, some subjects are not specifically discussed. This concerns whether MAP is available in cases of: (i) audit settlements, (ii) the application of anti-abuse provisions, (iii) multilateral MAPs and (iv) bona fide foreign-initiated self-adjustments. In addition, Denmark's MAP Guidance also not specifies: (a) whether taxpayers can request for the multi-year resolution of recurring issues through MAP, (b) the consideration of penalties in MAP and (c) the process how MAP agreements are implemented in terms of steps to be taken and timing of these steps, including any actions to be taken by taxpayers (if any).

90. One peer provided input in relation to element B.8 and indicated that from Denmark's MAP profile it seems that its MAP Guidance is only available in Danish. Although this peer acknowledged that under the Action 14 Minimum Standard there is no requirement to publish MAP guidance in English, it deemed that such English translation might be useful.

Information and documentation to be included in a MAP request

91. Section C.F.8.2.2.25.3 of Denmark's MAP Guidance mentions that there are under Danish law no specific prescriptions of what should be included in a MAP request. In accordance with the general rules governing the filing of a notice of objection to a tax assessment, a MAP request must clarify the facts and circumstances of the case under review in such manner that the competent authority of receipt is able to decide whether the request is admissible. Denmark reported that in practice it follows the rules as set

out in OECD's Manual on Effective Mutual Agreement Procedures (MEMAP) on which information and documentation taxpayers should include in their MAP request, when it is submitted under a tax treaty. This concerns:

- Taxpayer's name, address and tax identification number;
- Information on the tax authority of the other jurisdiction concerned that has made, or is proposing to issue a tax assessment that is not in accordance with the provisions of a tax treaty (if applicable);
- The tax year(s) covered by the request;
- A summary of the facts and circumstance of the issue in dispute (including financial statements of the income in question);
- An indication of the tax treaty provision, which the taxpayer believes were not applied properly;
- The taxpayer's perception on how the specific treaty provision should be interpreted;
- Details of any previous MAP request to the other competent authority involved on the same issue;
- Details of any notice of objection against the tax assessment in question; and
- For transfer pricing cases: the taxpayer identification number of the other taxpayer involved and a description of the controlled transactions and how the transfer prices are determined.

92. For MAP requests submitted under the EU Arbitration Convention, Denmark's MAP Guidance adopted in Section C.D.11.15.2.3 the minimum information requirements as set out in section 5(a) of the Code of Conduct to the Arbitration Convention. This concerns the following information:

- Taxpayer's name, address and tax identification number and identification of the other parties to the relevant controlled transactions;
- Details of the relevant facts and circumstances of the case (including details of the relations between the taxpayer and the other parties to the transactions in question);
- Identification of the tax periods concerned;
- Copies of the tax assessment notices, tax audit reports or equivalent leading to the contested double taxation;
- Details of appeals and legal proceedings initiated by the enterprise or the other parties to the relevant transactions and any court decisions in the case;
- A statement from the enterprise establishing why it believes that the principles set out in Article 4 of the Arbitration Convention have not been observed;
- A commitment from the enterprise to respond as completely and as quickly as possible to all reasonable and appropriate requests made by a competent authority and provide the competent authorities with documentation; and
- Any specific additional information requested by the competent authority within two months upon receipt of the taxpayer's request.

93. 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 request for MAP assistance. This agreed guidance is shown below. Denmark's MAP Guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

Anticipated modifications

94. Currently, Denmark's MAP Guidance is only available in Danish. Denmark indicated that it anticipates publishing an English translation of its MAP Guidance on the website of the Danish Tax Administration. It also mentioned envisaging making a more direct guidance available to taxpayers on this website.

Conclusion

	Areas for Improvement	Recommendations
[B.8]		<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP Guidance Denmark's could consider including information on:</p> <ul style="list-style-type: none"> • Whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments; • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; • The consideration of penalties in MAP; and • The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any). <p>Recommendations on guidance in relation to audit settlements and access to the MAP are discussed in element B.10.</p>

[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.

95. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.⁹

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

96. Denmark's rules, guidelines and procedures in relation to MAP are included in the public legal guidance of the Danish Customs and Tax Administration (SKAT), which can be found at:

<http://skat.dk/skat.aspx?oid=124&vid=214126>

97. As regards its accessibility, the information on MAP is logically grouped on the website of the Danish Customs and Tax Administration (SKAT) and as such easily accessible. In addition, Denmark reported that the public legal guidance is updated twice per year.

MAP profile

98. The MAP profile of Denmark is published on the website of the OECD.¹⁰ This MAP profile is complete and often with detailed information, except for Denmark's position on arbitration, which will be further discussed under element C.6. This profile includes external links which provide extra information and guidance where appropriate.

Anticipated modifications

99. As mentioned under element B.8, Denmark indicates that it anticipates to make a more direct MAP Guidance available on its website and to provide an English version of the MAP Guidance.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	-	Denmark 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.

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

MAP and audit settlements in the MAP guidance

101. As previously mentioned under element B.5, in Denmark it is possible that the Danish Tax Administration and taxpayers enter into audit settlements or that the taxpayer asks for a reassessment of the taxable income in accordance with the result of the audit. The Danish MAP Guidance, however, does not specifically address that taxpayers have access to MAP in cases where they entered into an audit settlement.

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

102. As previously mentioned under element B.5, Denmark does not have an administrative or statutory dispute settlement/resolution process available and for that reason its MAP Guidance does not address this issue.

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

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

104. All peers, who provided input indicated not being aware of an administrative or statutory dispute settlement or resolution processes being in place in Denmark. However, one peer assumed that Denmark has such a process based on the information included in Denmark's MAP profile, but mentioned not being notified hereof by Denmark. As mentioned above, there is no such need for notification, as such process is not in place in Denmark.

Anticipated modifications

105. Denmark did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	MAP guidance does not include information on the relationship between MAP and audit settlements.	Denmark's MAP Guidance should clarify that taxpayers have access to MAP in case of audit settlements.

Notes

1. These 52 treaties include the tax treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic, the tax treaty with former Yugoslavia that Denmark continues to apply to Montenegro and the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
2. These 24 treaties include the tax treaty with the former USSR that Denmark continues to apply to Belarus.
3. This treaty concerns the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
4. These three treaties include the treaty with the former USSR that Denmark continues to apply to Belarus.
5. These 50 treaties include the tax treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic and the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
6. These 21 treaties include the tax treaty with the former USSR that Denmark continues to apply to Belarus and the tax treaty with Yugoslavia that Denmark continues to apply to Montenegro.
7. These 62 treaties include the tax treaty with the former USSR that Denmark continues to apply to Belarus, the tax treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic, the tax treaty with former Yugoslavia that Denmark continues to apply to Montenegro and the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
8. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
9. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
10. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.

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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.

106. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also contain 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 Denmark’s tax treaties

107. Out of Denmark’s 78 tax treaties, 75¹ contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

108. For the remaining three tax treaties the following analysis is made:

- One tax treaty references to the avoidance of “double taxation” instead of “taxation not in accordance with the provisions of the convention”. As this reference may potentially limit the scope of application of MAP, this tax treaty is considered as being not equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a);
- One tax treaty contains an additional requirement that the taxpayer shows proof of “satisfaction” of its objection to the approached competent authority. As this requirement is an addition to the requirement under Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), this provision is considered not being the equivalent thereof; and

- One tax treaty contains the text of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), but also contains additional language that limits the possibility to discuss cases bilaterally, as this additional language reads: “(..) provided that the competent authority of the other Contracting State is notified of the case within three years from the due date or the date of filing of the return in that other State, whichever is later”. Therefore, this tax treaty is considered not being equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Anticipated modifications

Multilateral Instrument

109. Denmark recently signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

110. With regard to the three tax treaties identified above, Denmark listed all of them as a covered tax agreement under the Multilateral Instrument, but only for two treaties did Denmark, pursuant to Article 16(6)(c)(i), make a notification that it does not contain a provision described in Article 16(4)(b)(i). Both relevant treaty partners are a signatory to the Multilateral Instrument and also made a notification that their treaty with Denmark does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify these two tax treaties to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

111. Denmark further reported that when the tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations when it becomes relevant or necessary with a view to be compliant with element C.1. Denmark, however, reported not having in place a specific plan for such negotiations. Furthermore, Denmark reported its disagreement having an obligation to initiate bilateral tax treaty negotiations in cases a tax treaty does not meet an element of the Action 14 Minimum Standard and such a tax treaty will not be modified via the Multilateral Instrument. Denmark stated that it has chosen to implement the elements of the Action 14 Minimum Standard via the Multilateral Instrument and therefore invites jurisdictions, which have not yet joined that instrument, to sign it. Denmark further stated that it invites jurisdictions to initiate bilateral treaty negotiations, if a jurisdiction does not plan to sign the Multilateral Instrument, but wants its treaty with Denmark in line with the Action 14 Minimum Standard. In addition, Denmark reported it will seek to include

Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future tax treaties.

Peer input

112. Three peers provided specifically input with regard to element C.1 indicating that their tax treaties are in line with element C.1. Furthermore, 13 peers provided general input on their tax treaty with Denmark, stating that it is in line with the Action 14 Minimum Standard and when this is not the case, that it is planned to modify the tax treaty via the Multilateral Instrument. Two peers provided input that in case certain elements of the Action 14 Minimum Standard are missing in its tax treaty with Denmark, the tax treaty will be amended via a protocol or possible solutions will be discussed bilaterally.

113. For the three treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015a), only one of the relevant peers provided input. This peer indicated that it had not any contacts so far with Denmark or has any specific plan in place to update its treaty with Denmark.

Conclusion

	Areas for Improvement	Recommendations
[C.1]	Three out of 78 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	Denmark should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Denmark should request the inclusion of the required provision via bilateral negotiations. To this end, Denmark should put a plan in place on how it envisages updating the remaining treaties to include such equivalent. In addition, Denmark 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).

114. 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

115. Statistics regarding all tax treaty related disputes concerning Denmark are published on the website of the OECD as of 2007.² Denmark also publishes MAP statistics regarding transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.³

116. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“MAP Statistics Reporting Framework”) for MAP requests submitted on or after January 1, 2016 (“post-2015 cases”). Also, for MAP requests submitted prior to that date (“pre-2016 cases”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Denmark provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Denmark and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively⁴ and should be considered jointly for an understanding of the MAP caseload of Denmark. With respect to post-2015 cases, Denmark reported that it matched its MAP statistics with all of its treaty partners.

Monitoring of MAP statistics

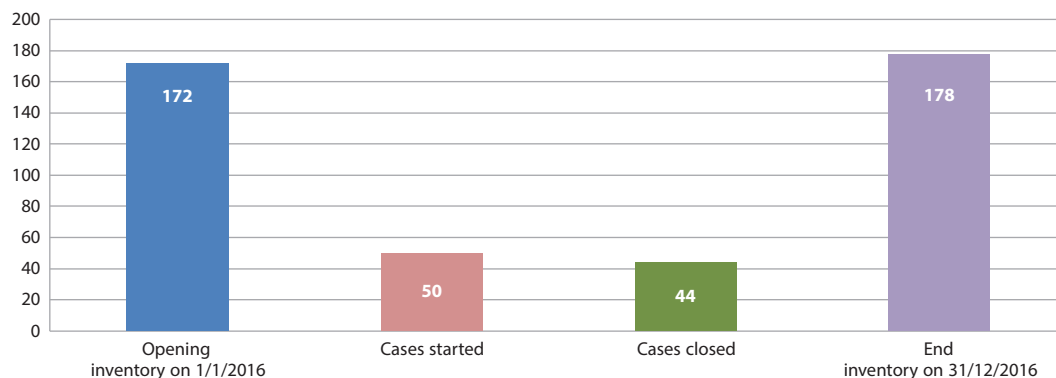
117. Denmark reported that it has an internal monitoring system in place, which keeps track of new MAP requests and the time to resolve MAP cases. In this respect, Denmark mentioned that it in general uses the timeframes for MAP cases as described in OECD’s Manual on Effective Mutual Agreement Procedures (MEMAP) and the Code of Conduct to the EU Arbitration Convention. When a MAP request relates to a transfer pricing adjustment by the Danish Tax Administration, it strives at issuing a position paper within a period of 4-6 months after having received the minimum information required. For the further process, there are no specific timing steps, other than to respond as quickly as possible and to speed up processes in the preparation for a face-to-face meeting with the other competent authority concerned.

Analysis of Denmark’s MAP caseload

Global overview of the MAP caseload

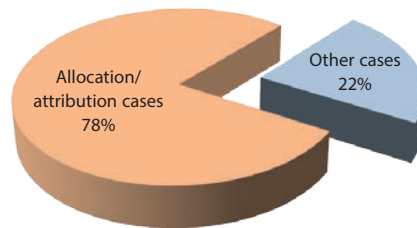
118. The following graph shows the evolution of Denmark’s MAP caseload over the Statistics Reporting Period.

Figure C.1. **Denmark’s MAP inventory**



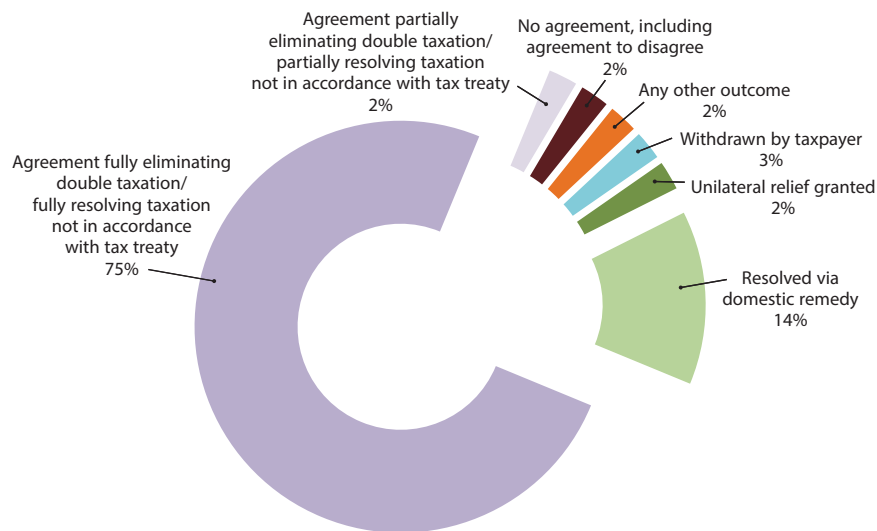
119. At the beginning of the Statistics Reporting Period Denmark had 172 pending MAP cases, of which 135 are attribution/allocation cases and 37 other MAP cases.⁵ At the end of the Statistics Reporting Period, Denmark had 178 MAP cases in inventory, of which 139 are attribution/allocation cases and 39 other MAP cases. This end inventory can be illustrated as follows:

Figure C.2. End inventory on 31 December 2016 (178 cases)



120. During the Statistics Reporting Period Denmark closed 44 MAP cases and the following outcomes were reported:

Figure C.3. Cases closed during the Statistics Reporting Period (44 cases)



121. This chart shows that during the Statistics Reporting Period, 33 out of 44 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Pre-2016 cases

122. At the beginning of the Statistics Reporting Period, Denmark's MAP inventory of pre-2016 MAP cases consisted of 172 cases, of which were 135 attribution/allocation cases and 37 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 142 cases, consisting of 114 attribution/allocation cases and 28 other cases. This decrease concerns approximately 17% of the total opening inventory,

which can be broken down in a decrease of 16% for attribution allocation cases and a decrease of 24% for other cases.

Post-2015 cases

123. As mentioned previously, 50 MAP cases were started on or after 1 January 2016, 31 of which concerned attribution/allocation cases and 19 other cases. At the end of the Statistics Reporting Period the total post-2015 cases inventory had decreased to 36 cases, consisting of 25 attribution/allocation cases and 11 other cases. Denmark in total resolved 14 post-2015 cases during the Statistics Reporting Period, 6 of them being attribution/allocation cases and 8 of them being other cases. The total number of resolved cases represents approximately 28% of the total number of post-2015 cases that started during the Statistics Reporting Period, which can be broken down in a decrease of 19% for attribution allocation cases and a decrease of 42% for other cases. The outcome of the 14 resolved cases can be specified as follows:

- Withdrawn by taxpayer (one case);
- Resolved via domestic remedy (four cases); and
- Agreement fully eliminating double taxation/fully resolving taxation not in accordance with the convention (nine cases).

Average timeframe needed to resolve MAP cases

Pre-2016 cases

124. Denmark reported that on average it needed 30.57 months to resolve attribution/allocation cases and 51.22 months to resolve other cases. This resulted in an average time needed of 36.77 months to close pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Denmark used as:

Start date:

- Attribution/allocation cases: Receipt of the MAP request (when the request is submitted under the EU Arbitration Convention: the date of receipt of the request and the minimum information required), or, when the MAP request is submitted in the other state concerned, the date of notification of such request and the request itself;
- Other cases: The date of the first registration in the internal filing system (other cases);

End date:

- Attribution/allocation cases: The date of informing the taxpayer of the MAP agreement (as from 2016), or the date of receipt of the taxpayer's acceptance of the MAP agreement (prior to 2016);
- Other cases: The date of closing the case in the internal filing system.

Post-2015 cases

125. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 12 months.

126. During the Statistics Reporting Period, Denmark closed 14 post-2015 cases. 6 of which concerned attribution/allocation cases and eight of which concerned other cases. These closed cases represent 28% of the new received post-2015 cases during the Statistics Reporting Period. The six attribution/allocation cases were on average closed within 0.69 months and the other MAP cases within 2.77 months. The total average for resolving post-2015 cases is 1.88 months.

All cases closed during the Statistics Reporting Period

127. The average time needed to close MAP cases during the Statistics Reporting Period was 25.66 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	27	23.93
Other cases	17	28.42
All cases	44	25.66

Peer input

128. On an overall level, all peers that provided input to Denmark’s implementation of the Action 14 Minimum Standard reported a good working relationship with the Danish competent authority, which is further discussed under element C.3 below. Peers reported that contacts with the competent authority of Denmark are easy and professional. Concerning the resolution of MAP cases, peers provided mostly positive input and considered the Danish competent authority to be solution-orientated. However, concerns were raised with regard to the occurrence of delayed responses/notification by the Danish competent authority as well as the high inventory of long pending cases.

Anticipated modifications

129. Denmark did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for Improvement	Recommendations
[C.2]	Denmark submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework. Based on the information provided by Denmark’s MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.	Denmark’s MAP statistics point out that during the Statistics Reporting Period it closed 28% (14 out of 50 cases) of its post-2015 cases in 1.88 months on average. In that regard, Denmark is recommended to seek to resolve the remaining 72% of the post-2015 cases pending on 31 December 2016 (36 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

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

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

130. 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 Denmark's competent authority***Organisational structure***

131. In Denmark the competent authority function is, by Danish Order No. 1029 of 24 October 2005, delegated to the Danish Customs and Tax Administration (SKAT), which is an organisational unit within the Danish Ministry of Taxation.⁶ Within SKAT, the following two teams are responsible for handling MAP cases:

- Large Companies Department; and
- Law Department.

132. The Large Companies – Competent Authority is placed within the Large Companies Department, which is part of the business area for Compliance and is responsible for handling attribution/allocation MAP cases as well as bilateral APA requests. It currently consists of 11 full time case handlers, which is an increase of 4 case handlers since 1 January 2016. In this respect, Denmark reported that a number of case handlers have substantial experience with transfer pricing audits, a number have several years of MAP experience and some have started gaining experience on MAP.

133. The Company, Shareholder and TP office is placed within the Law Department, which is part of the business area for General, HR and Staff and handles other MAP cases. It currently consists of one full time case handler and three part time case handlers, which is an increase of three case handlers since 1 January 2016. In this respect, Denmark reported that one case handler has more than 20 years MAP experience, whereas the other case handlers have mixed experience with MAP.

134. Specifically with respect to funding of staff in charge of MAP, Denmark reported that, where necessary, the number of case handlers will be increased. This may in particular be necessary given the increase in number of MAP and APA requests, and developments at the EU level. In this respect, Denmark reported the Danish Customs and Tax Administration (SKAT) receives the budget from the central government on a 4-year annual basis. Part of this budget is allocated to the competent authority function, whereby it is possible, if necessary, to scale up the budget within the budget limits allocated to the department. The budget for staff in charge of MAP has, due to the increase in number of MAP and APA cases, increased over the last years. In that regard, Denmark reported that it considered the number of staff currently available as sufficient. It also reported that it has sufficient budget available for *inter alia* scheduling face-to-face meetings with other competent authorities.

135. Lastly, concerning the training of staff in charge of MAP, specifically those handling attribution/allocation cases, Denmark reported they attend bi-annual seminars organised by the Danish Customs and Tax Administration (SKAT). Topics of these seminars are: (i) updates from delegates of OECD Working Party 6 regarding development on the OECD Transfer Pricing Guidelines and BEPS and (ii) presentation of current tax audit issues.

Handling MAP cases

136. Denmark reported that the contact details of its competent authority are included in Denmark’s MAP profile. Treaty partners will generally not be notified when personnel changes within the competent authority take place, but such notification will be made where appropriate, for example during a face-to-face meeting.

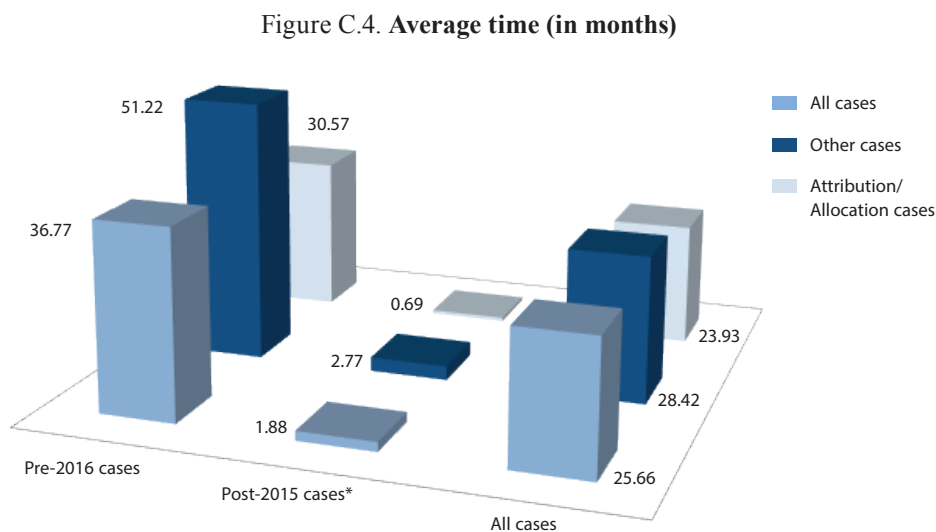
137. Concerning attribution/allocation cases, Denmark reported that when a MAP request is submitted in Denmark, it will be assigned to a case handler within one or two days.⁷ This case handler is then the main responsible person and has to inform the other competent authority concerned as soon as possible of the request submitted. Depending on the complexity of the case, one or two additional case handlers can be added, for example for complex cases or valuation issues. Within two months upon receipt of the request, the case handler will analyse whether all required information and documentation was submitted and where necessary ask for additional information. The moment all this information and documentation is submitted, the case handler will as soon as possible issue a position paper for the other competent authority concerned, if the case under review concerns a Danish-initiated adjustment. Afterwards, the case will be further discussed via various means of communication, such as telephone calls or face-to-face meetings.

138. Concerning other cases, Denmark reported that the case handler will, if it is a Danish-initiated non-transfer pricing case, as soon as possible issue a position paper. Also here, thereafter the case will be further discussed via various means of communication, such as telephone calls or face-to-face meetings.

Practical application

MAP statistics

139. As discussed under element C.2, Denmark has resolved its MAP cases during the Statistics Reporting Period not within the pursued 24-month average. This can be illustrated by the following graph:



* Note that post-2015 cases only concern cases opened and closed during 2016.

140. In relation to these averages, Denmark mentioned that due to complexity of cases it took for some cases longer on average than 24 months to resolve. Other reasons specified by Denmark are that (i) some cases also awaited a court decision prior to being actively dealt with in MAP, (ii) the cancellation of a treaty during the period a MAP was pending, (iii) the need for further investigation of a case and (iv) delays in communications between the competent authorities concerned. In this respect, Denmark specified the number of cases that took longer to resolve. This concerns:

	Year	Number of cases resolved	Average time (in months)	Cases > 24 months
Attribution/Allocation cases	2015	25	19.00	10
	2016	27	22.20	13
Other cases	2015	19	24.50	6
	2016	17	28.42	7

141. Further to the above, Denmark also provided the median timeframe to resolve both pre-2016 MAP cases and all MAP cases. This median is as follows:

Cases resolved	Pre-2016 cases		Post-2015 cases		All	
	Number of cases	Median time	Number of cases	Median time	Number of cases	Median time
				Start to End		
Attribution/Allocation cases	21	28.00	6	0.53	27	24.00
Other cases	9	49.00	8	2.37	17	11.00
All cases	30	34.00	14	1.28	44	20.00

Peer input

General

142. In total 20 of the 21 peers that provided input provided details in relation to their contacts with the Danish competent authority and their experiences in resolving MAP cases during the Review Period.

Contacts and correspondence with the Danish competent authority

143. Most peers reported having good contacts with the Danish competent authority. One peer reported that it has a well-established relationship with the Danish competent authority on the resolution of MAP cases, whereby contacts are generally easy and frequent via letters, e-mail, conference calls and face-to-face meetings. Another peer reported having a productive relationship with Denmark and considers its competent authority professional and willing to cooperate. The ease of liaising has been echoed by almost all other peers, thereby pointing out that there were no difficulties encountered. In addition, one peer that only has recent and very limited MAP experience with Denmark reported responsive correspondence by the Danish competent authority and also appreciated the easiness of contact.

144. Further to the above, one peer that is one of Denmark's main MAP partners reported having an excellent working relationship and considers the dialog between the competent authorities as collaborative and solution-oriented.

Organisation of face-to-face meetings

145. 11 of the 20 peers pointed out that they hold at regular intervals face-to-face meetings with the Danish competent authority for resolving MAP cases (up to twice per year) or that these face-to-face meetings have already been scheduled for the future.

Resolving MAP cases

146. Generally, peers consider the Danish competent authority solution-oriented and most of them reported no impediments in resolving MAP cases. One peer in particular considered the staff in charge of MAP well trained to handle MAP requests and another peer mentioned that in its opinion the Danish competent authority is pragmatic in finding resolutions. One peer however, reported a significant delay in acknowledgment of receipt of its letter (for 2 cases this peer mentioned the reply took more than 6 months and for 1 case even more than one and a half year). In addition, this peer reported that notifications from the Danish competent authority are often incomplete and e.g. miss the date of receipt of the MAP request. A second peer raised that it had not been notified about the submission of a MAP request in Denmark in an attribution/allocation case. This peer only learned about the MAP request in Denmark from its local taxpayer.

147. Further to the above, two peers pointed out that for their cases with the Danish competent authority it is sometimes challenging to comply with the timelines specified within the EU Code of Conduct for the Effective Implementation of the Arbitration Convention.

Suggestions for improvement

148. Only 1 out of the 20 peers provided input for suggestions and improvements. This peer suggested improving the response time to other competent authorities.

Anticipated modifications

149. Denmark did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for Improvement	Recommendations
[C.3]	-	Denmark should closely monitor whether the additional resources recently provided to the MAP function will contribute to the resolution of MAP cases in a timely, efficient and effective manner. In addition, Denmark could consider allocating additional resources specifically dedicated to handle other MAP cases in order to accelerate their resolution.

[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.

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

Functioning of staff in charge of MAP

151. Denmark reported that when a MAP request is received by its competent authority, the head of the competent authority attributes it to a specific case handler within the competent authority. This case handler is in charge of all steps of the MAP process under the supervision of the head of department. For more complex cases, a second case handler will generally be co-responsible for handling the case. If the case concerns a Danish-initiated adjustment, the case handler liaises with the tax auditor within the local tax administration to receive the reasons for the adjustment and copies of all relevant underlying documents. Where position papers are issued, the head of the competent authority has to approve it before it can be shared with the other competent authority concerned. The same applies when entering into MAP agreements.

152. In regard of the above, Denmark report that its competent authority does not depend on the tax audit function or any other unit within the Danish Customs and Tax Administration (SKAT) for the approval of tentative MAP agreements, nor is the process for resolving MAP cases influenced by policy considerations that the jurisdictions would like to see reflected in future amendments to the treaty. In other words, Denmark mentioned that the decision-making process for MAP cases is solely performed within its competent authority.

Practical application

153. All but two peers did not provide specific input in relation to the independent functioning of the Danish competent authority. These two peers specifically mentioned that they are not aware that the Danish competent authority would be formally dependent on the approval or direct of the tax administration personnel that made the adjustment at issue.

Anticipated modifications

154. Denmark 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, Denmark should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent of any policy considerations that the jurisdictions would like to see reflected in future amendments to the treaty.

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

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

155. 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 Denmark

156. Denmark reported that for purposes of evaluating the performance of staff in charge of MAP processes, case handlers have an employee development meeting twice per year and one-on-one discussions six times per year with the head of the competent authority. Issues discussed during these performance meetings are:

- Workload of the employee;
- Requirement for additional education of the employee;
- Desire of the employee for new working opportunities;
- Salary questions;
- Work results; and
- Co-operation between case handlers.

157. In regard of the above, Denmark mentioned that the focus while evaluating the case handlers lies on the consistency of the resolution and the co-operation between the case handlers, thereby taking into account each case handler’s working capacity, education and experience. Specifically concerning the use of performance indicators, Denmark reported that there are no individual performance indicators set, but that case handlers are expected to resolve MAP cases as correctly and in as timely a manner as possible. Important factors thereby are whether the case has been handled correctly. For attribution/allocation cases, this for example concerns whether the Transfer Pricing Guidelines have been correctly applied and whether the Danish position is understandable for both the taxpayer and the other competent authority concerned. To this end, Denmark in particular noted that it does not use performance indicators that are based on the number of cases handled per employee, the number of cases resolved, the number of “won” or “lost” cases, or the amounts of tax withheld.

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

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

Practical application

159. Peers generally indicated that they were not aware of any impediments in Denmark in relation to element C.5. One peer specifically noted that they are not aware of the use of performance indicators by Denmark that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Anticipated modifications

160. Denmark did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for Improvement	Recommendations
[C.5]	-	As it has done thus far, Denmark 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.

161. 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

162. Denmark reported that it has no domestic legal basis for introducing an arbitration procedure as final stage of a MAP and is therefore not in favour of including arbitration in tax treaties. Denmark was a participant in the sub-group on arbitration as part of the Multilateral Instrument of Action 15 of the BEPS project but finally reserved the right not to opt in for arbitration in the Multilateral Instrument. In addition, Denmark reserved the right in the commentary to the 2017 OECD Model Tax Convention (OECD, 2015a) not to include paragraph 5 of Article 25 in its tax treaties. Nevertheless, Denmark is a signatory to the EU Arbitration Convention. As Denmark's position on arbitration could

be misunderstood based on the MAP profile, Denmark reported to update and clarify the MAP profile in this regard.

Practical application

163. Up to date, Denmark has incorporated an arbitration clause in none of its 78⁸ tax treaties as a final stage to the MAP, which is the equivalent of Article 25(5) of the OECD Model Tax Convention (OECD, 2015a). However, two tax treaties include a most-favoured nation clause, which stipulates that when the relevant treaty partner includes an arbitration provision in a tax treaty with a third state, it should enter into negotiations for the inclusion of an arbitration provision under its treaty with Denmark. Denmark considers that there is no legal basis for introducing an arbitration provision in tax treaties, which is clearly stated in Section C.D.11.15.2.2 and C.F.8.2.2.25.3 of Denmark’s MAP Guidance. For the most favoured nation clause to become effective, Denmark reported its domestic law needs to be amended first.

Anticipated modifications

164. As reported above, Denmark envisages clarifying its MAP profile with regard to its position on arbitration.

Conclusion

	Areas for Improvement	Recommendations
[C.6]	No correct specification in the MAP profile on whether there are any legal limitations in its domestic law to include MAP arbitration in tax treaties.	Denmark should correctly specify in its MAP profile whether there are any legal limitations in its domestic law to include MAP arbitration in tax treaties.

Notes

1. These 75 treaties include the treaty with the former USSR that Denmark continues to apply to Belarus, the tax treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic, the tax treaty with former Yugoslavia that Denmark continues to apply to Montenegro and the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2015.
3. Available at: http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to and include fiscal year 2015.
4. For post-2015 cases, if the number of MAP cases in Denmark’s inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five for any treaty partner, Denmark reports its MAP caseload for such treaty partner on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).

5. For both pre- 2016 and post-2015 Denmark follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the *OECD Model Tax Convention* [OECD, 2015]); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the *OECD Model Tax Convention* [OECD, 2015]), which is also known as a transfer pricing MAP case”.
6. For the EU Arbitration Convention this is Danish Order No. 260 of 21 March 2006.
7. In practice, it is possible that a MAP request is not submitted to the Danish competent authority, but, for example, to another department within the Danish Customs and Tax Administration (SKAT). Denmark reported that in such situation, the request will be send to its competent authority as soon as possible.
8. These 78 treaties include the treaty with the former U.S.S.R. which Denmark continues to apply to Belarus, the tax treaty with former Czechoslovakia, which Denmark continues to apply to the Slovak Republic, the tax treaty with former Yugoslavia that Denmark continues to apply to Montenegro and the Nordic convention which for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.

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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.

165. 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

166. When competent authorities reach a MAP agreement, the Danish competent authority informs the taxpayer hereof and requests its approval in written form within 14 days from the date the agreement was reached. The taxpayer has to give its consent to the agreement within one month of being notified thereof and, where appropriate, to withdraw any pending administrative or legal procedures in relation to the case for which a MAP agreement is included.

167. Sections C.D.11.15.2.2 and C.D.11.15.2.3 of Denmark’s MAP Guidance note that taxpayers will always be invited to approve the MAP agreement reached. This both concerns the situation an agreement is reached under a tax treaty, or under the EU Arbitration Convention. Furthermore, the latter section, as also Section C.F.8.2.2.25.3, specifically mentions that the taxpayer has to withdraw any pending appeals as a prerequisite for implementing MAP agreements.

168. Denmark reported it has a domestic statute of limitation for a reassessment of a tax assessment notice. Pursuant to Article 26(2) of Denmark’s Tax Administration Act, this time limit is four years after the end of the relevant tax year, or, pursuant to Article 26(5), six years for transfer pricing cases (including cases concerning the attribution of profits to permanent establishments). Denmark reported that the length of the MAP will not negatively affect the taxpayer and indicated it will implement all agreements reached in MAP discussions and it will make appropriate adjustments to the tax assessed, if required.

Practical application

169. Denmark reported that all MAP agreements reached since 1 January 2015, once accepted by taxpayers, have or will be implemented. Denmark reported that it monitors the implementation of MAP agreements as in practice the local tax office will provide the competent authority with the tax assessment notice that implements the MAP agreement.

170. Almost all peers that provided input reported not being aware of any MAP agreement reached on or after 1 January 2015 that was not implemented by Denmark. Two peers noted that during the Review Period it has not reached a MAP agreement with Denmark. Furthermore, one peer specified that in one transfer pricing case the agreement reached with Denmark was not implemented by both states, as the taxpayer did not reply to the competent authorities' notification of the MAP agreement reached, even after being specifically reminded. For that reason the peer's competent authority closed the case in 2016. This peer reported that Denmark, so far, has not closed the case due to a different practice on obtaining taxpayer approval for implementing MAP agreements.

Anticipated modifications

171. Denmark did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for Improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Denmark's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the 4/6 year time limits in its domestic law.	Even though Denmark 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.

[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.

172. 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

173. Denmark reported it has in its domestic legislation and/or administrative framework no timeframe for implementation of MAP agreements reached. This regards both the situation in which the MAP agreement leads to additional tax to be paid or to a refund of tax in Denmark. Furthermore, Denmark's MAP Guidance also does not include information in relation to the process of implementation of MAP agreements, such in terms of steps to be taken and timing of these steps.

174. In view of the above, Denmark reported that, upon receipt of the approval by the taxpayer of the MAP agreement, the case handler of the Danish competent authority will typically within two weeks liaise with the local tax administration, which is responsible for implementing MAP agreements via a reassessment. The local tax administration typically performs such reassessment within one month, which is being reported to the Danish competent authority. In complex cases (e.g. cases affecting more than five tax years, group

taxation with a significant number of entities, or cases where losses are to be carried forward) implementation can take longer.

Practical application

175. Denmark reported that all MAP agreements that were reached on or after 1 January 2015, once accepted by taxpayers, have been or will be implemented on a timely basis.

176. All peers that provided input reported not being aware of any MAP agreement reached on or after 1 January 2015 that was not implemented by Denmark in general or not on a timely basis.

Anticipated modifications

177. Denmark 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, Denmark 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.

178. 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 Denmark's tax treaties

179. Out of Denmark's 78 tax treaties, 51¹ 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, two tax treaties contain a provision in the MAP article setting a time limit for making primary adjustments. Both provisions are considered to be equivalent to such a provision in Article 9(1) and Article 7(2) of the OECD Model Tax Convention (OECD, 2015). Furthermore, 23² tax treaties do not contain such equivalent or the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making primary adjustments.

180. For the remaining two tax treaties the following analysis can be made:

- In one treaty a provision based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is contained, but includes additional wording following which the implementation of MAP agreements is subject to the timely filing of a MAP request. This additional wording reads: “as long as the request is filed before the statute of limitations of the other Contracting State has expired”. As this provision may limit the implementation of MAP agreements, it is considered not being equivalent to Article 25(2), second sentence; and
- In one tax treaty a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is contained, but also includes wording that a MAP agreement must be implemented within ten years from the due date or the date of filing of the return in that other state. As this bears the risk that MAP agreements cannot be implemented due to time constraints in domestic law of the treaty partners, this treaty therefore, is considered not being equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Anticipated modifications

Multilateral Instrument

181. Denmark recently signed the Multilateral Instrument. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Furthermore, Article 16(4)(b)(ii) of the Multilateral Instrument does not take effect, if one or both of the signatory states to the tax treaty has, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) of the OECD Model Tax Convention (OECD, 2015) concerning the introduction of a time limit for making transfer pricing profit adjustments.

182. With regard to the 27 tax treaties above that are considered not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), Denmark listed 24 tax treaties as covered tax agreements under the Multilateral Instrument, but only for 23 tax treaties did it make, pursuant to Article 16(6)(c)(ii), a notification that it does not contain a provision described in Article 16(4)(b)(ii) of the Multilateral Instrument. Of the relevant 23 treaty partners, nine are not a signatory to the Multilateral Instrument and one did not list its tax treaty with Denmark as a covered tax agreement under that instrument. Of the remaining 13 treaty partners, 11 also made a notification that their treaty with Denmark does not contain such provision. At this stage therefore, the Multilateral Instrument will, upon entry into force, modify 11 of the 27 tax treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

183. Denmark further reported that when the tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations when it becomes relevant or necessary with a view to be compliant with element D.3. Denmark, however, reported not having in place a specific plan for such negotiations. Furthermore, Denmark reported its disagreement having an obligation to initiate bilateral tax treaty negotiations in cases a tax treaty does not meet an element of the Action 14 Minimum Standard and such a tax treaty will not be modified via the Multilateral Instrument. Denmark stated that it has chosen to implement the elements of the Action 14 Minimum Standard via the Multilateral Instrument and therefore invites jurisdictions, which have not yet joined that instrument, to sign it. Denmark further stated that it invites jurisdictions to initiate bilateral treaty negotiations, if a jurisdiction does not plan to sign the Multilateral Instrument, but wants its treaty with Denmark in line with the Action 14 Minimum Standard. In addition, Denmark reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future tax treaties.

Peer input

184. Two peers provided specifically input with regard to element D.3 indicating that their tax treaties are in line with this element. Furthermore, 11 peers provided general input on their tax treaty with Denmark that it is in line with the Action 14 Minimum Standard and when this is not the case, that it is planned to modify the tax treaty via the Multilateral Instrument. Two peers provided input that in case certain elements of the Action 14 Minimum Standard are missing in its tax treaty with Denmark, the tax treaty will be amended via a protocol or possible solutions will be discussed bilaterally. Lastly, two peers indicated that their jurisdictions do not have a treaty with Denmark in force, but are signatory to the EU Arbitration Convention.

185. For the 27 tax treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), four relevant peers provided corresponding input that its treaty is not in line with Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). One of those jurisdictions indicated that the Multilateral Instrument will modify its tax treaty with Denmark. The second of these jurisdictions specified that it is currently in the process of finalising negotiations of a new treaty with Denmark, which will be in line with the Action 14 Minimum Standard. The third jurisdiction indicated that although the current tax treaty does not meet the Action 14 Minimum Standard, the jurisdiction is willing to accept alternative provisions for element D.3. The fourth peer indicated that it had not any contacts so far with Denmark or has any specific plan in place to update its treaty with Denmark.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	25 out of 78 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015), nor contain the alternatives provisions in Article 9(1) and Article 7(2) of the OECD Model Tax Convention (OECD, 2015).	<p>Denmark should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those ten treaties, that currently do not contain such equivalent, or the alternative provisions provided in Article 9(1) and Article 7(2), as also the one treaty that currently contains these alternative provisions, and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 14 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Denmark should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, Denmark should put a plan in place on how it envisages updating these 14 treaties to include such equivalent.</p> <p>Specifically with respect to the treaty with the former USSR and former Yugoslavia Denmark should, once it enters into negotiations with the jurisdiction to which it applies that treaty, request the inclusion of the required provision.</p> <p>In addition, Denmark should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future treaties.</p>

Notes

1. These 51 treaties include the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
2. These 23 treaties include the treaty with the former USSR that Denmark continues to apply to Belarus, the tax treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic and the tax treaty with former Yugoslavia that Denmark continues to apply to Montenegro.

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Summary

	Areas for Improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Four out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Denmark should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining three treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Denmark should request the inclusion of the required provision via bilateral negotiations. To this end, Denmark should put a plan in place on how it envisages updating these three treaties to include such equivalent. In addition, Denmark should maintain its stated intention to include the required provision in all future treaties.
[A.2]	-	Denmark should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far.
Part B: Availability and access to MAP		
[B.1]	Nine out of 78 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the final report on Action 14 (OECD, 2015b) or as amended by that report. Of those nine tax treaties: <ul style="list-style-type: none"> • two tax treaties do not incorporate the equivalent of Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty; • five tax treaties do not contain the equivalent of Article 25(1), first sentence; • two tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. 	Denmark should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both: <ul style="list-style-type: none"> • A provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ol style="list-style-type: none"> a. As amended in the final report of Action 14 (OECD, 2015b) ; or b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision; and • A provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. For the remaining treaties that will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Denmark should request the inclusion of the required provision via bilateral negotiations. To this end, Denmark should put a plan in place on how it envisages updating the remaining treaties to include such equivalent. Specifically with respect to the treaty with the former USSR Denmark should, once it enters into negotiations with the jurisdiction to which it applies that treaty, request the inclusion of the required provision. In addition, Denmark should maintain its stated intention to request the inclusion the required provision in all future treaties.

	Areas for Improvement	Recommendations
[B.2]	For those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner, there is no bilateral consultation or notification process in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Denmark should introduce a documented bilateral consultation or notification process for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report of Action 14 (OECD, 2015b).
[B.3]	-	As Denmark has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	-	As Denmark has thus far granted access to MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.
[B.5]	-	As Denmark has thus far granted access to MAP in eligible cases, even if there was an audit settlement between the tax authority and a taxpayer, it should continue granting access for these cases.
[B.6]	-	As it has done thus far, Denmark should continue to grant access to MAP in eligible cases when taxpayers have complied with Denmark's information and documentation requirements for MAP requests.
[B.7]	15 out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Denmark should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those five treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the ten treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Denmark should request the inclusion of the required provision via bilateral negotiations. To this end, Denmark should put a plan in place on how it envisages updating these 11 treaties to include such equivalent. In addition, Denmark should maintain its stated intention to include the required provision in all future treaties.
[B.8]		Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP Guidance Denmark's could consider including information on: <ul style="list-style-type: none"> • Whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments; • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; • The consideration of penalties in MAP; and • The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any). Recommendations on guidance in relation to audit settlements and access to the MAP are discussed in element B.10.
[B.9]	-	Denmark 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.

	Areas for Improvement	Recommendations
[B.10]	MAP guidance does not include information on the relationship between MAP and audit settlements.	Denmark's MAP Guidance should clarify that taxpayers have access to MAP in case of audit settlements.
Part C: Resolution of MAP cases		
[C.1]	Three out of 78 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	Denmark should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Denmark should request the inclusion of the required provision via bilateral negotiations. To this end, Denmark should put a plan in place on how it envisages updating the remaining treaties to include such equivalent. In addition, Denmark should maintain its stated intention to include the required provision in all future treaties.
[C.2]	Denmark submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework. Based on the information provided by Denmark's MAP partners, its MAP statistics actually match those of its treaty partners as reported by the latter. Denmark's MAP statistics point out that during the Statistics Reporting Period it closed 28% (14 out of 50 cases) of its post-2015 cases in 1.88 months on average. In that regard, Denmark is recommended to seek to resolve the remaining 72% of the post-2015 cases pending on 31 December 2016 (36 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	-	Denmark should closely monitor whether the additional resources recently provided to the MAP function will contribute to the resolution of MAP cases in a timely, efficient and effective manner. In addition, Denmark could consider allocating additional resources specifically dedicated to handle other MAP cases in order to accelerate their resolution.
[C.4]	-	As it has done thus far, Denmark should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent of any policy considerations that the jurisdictions would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Denmark should continue to use appropriate performance indicators.
[C.6]	No correct specification in the MAP profile on whether there are any legal limitations in its domestic law to include MAP arbitration in tax treaties.	Denmark should correctly specify in its MAP profile whether there are any legal limitations in its domestic law to include MAP arbitration in tax treaties.
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of Denmark's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the 4/6 year time limits in its domestic law.	Even though Denmark 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.
[D.2]	-	As it has done thus far, Denmark should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.

	Areas for Improvement	Recommendations
[D.3]	<p>25 out of 78 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015), nor contain the alternatives provisions in Article 9(1) and Article 7(2) of the OECD Model Tax Convention (OECD, 2015).</p>	<p>Denmark should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those ten treaties, that currently do not contain such equivalent, or the alternative provisions provided in Article 9(1) and Article 7(2), as also the one treaty that currently contains these alternative provisions, and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 14 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Denmark should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, Denmark should put a plan in place on how it envisages updating these 14 treaties to include such equivalent.</p> <p>Specifically with respect to the treaty with the former USSR and former Yugoslavia Denmark should, once it enters into negotiations with the jurisdiction to which it applies that treaty, request the inclusion of the required provision.</p> <p>In addition, Denmark should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future treaties.</p>

Annex A

Tax treaty network of Denmark

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

Treaty partner	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 25(1) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.3	B.4	C.1	C.3	D.3	A.1	B.7	C.6													
Bangladesh	Y	O	Y	Y	N/A		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Belarus	Y	O	ii	ii	2 years		i	i	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Belgium	Y	N**	iii/iii*	iii/iii*	2 years		i****	i	N**	N**	N**	N**	N**	N**	N**	N**	N**	N**	N**	N**	N	N/A
Bermuda	Y	O	Y	Y	N/A		i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Brazil	Y	O	i	i	N/A		i	i	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
British Virgin Islands	Y	O	Y	Y	N/A		i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Bulgaria	Y	O**	Y	Y	N/A		i****	i	Y	N**	N**	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Canada	Y	O	i	i	N/A		i	i	Y	Y	iii	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Cayman Islands	Y	O	Y	Y	N/A		i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Chile	Y	O	Y	Y	N/A		Y	i	Y	Y	N**	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
China	Y	O	Y	Y	N/A		Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Chinese Taipei	Y	O	Y	Y	N/A		Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Croatia	Y	O	Y	Y	N/A		Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Cyprus*	Y	O**	Y	Y	N/A		Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Czech Republic	Y	O**	Y	Y	N/A		i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Egypt	Y	O**	Y	Y	N/A		i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Estonia	Y	O	Y	Y	N/A		Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Faroe Islands	Y	O	ii	ii	5-years		Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Finland	Y	O	ii	ii	5-years		Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Georgia	Y	O	Y	Y	N/A		Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Arbitration
	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	Article 9(2) of the OECD MTC	B.3	Anti-abuse	Article 25(2) of the OECD MTC		C.1	D.3	A.1	B.7	C.6							
	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2)	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)										
Germany	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Ghana	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Greece	Y	O**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Greenland	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Guernsey	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Hungary	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Iceland	Y	O	Y	ii	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
India	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Indonesia	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Ireland	Y	O**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Isle of Man	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Israel	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Italy	Y	N	Y	ii**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Jamaica	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Japan	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Jersey	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Kenya	Y	O	Y	iii	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Korea	Y	N**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Kuwait	Y	O**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Latvia	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Lithuania	Y	O**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Arbitration	
	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		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration					
	B.1	B.3	B.4	C.1	C.3	C.4	C.5	C.6	C.7	C.8	C.9	C.10	C.11	C.12	C.13	C.14	C.15	C.16	C.17	
Luxembourg	Y	O**	Y	Y	N/A	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Macedonia	Y	O	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Malaysia	Y	N	i	i	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	N	Inclusion Art. 25(3) first sentence? (Note 5)	N	N	Inclusion Art. 25(3) second sentence? (Note 6)	N	N	N/A
Malta	Y	O**	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Mexico	Y	O**	i	i	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N**	N	N	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Montenegro	Y	O	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Morocco	Y	O	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Netherlands	Y	O	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
New Zealand	Y	O**	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Norway	Y	O	ii	ii	5-years	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Pakistan	Y	O**	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Philippines	Y	O	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Poland	Y	O	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Portugal	Y	O	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Romania	Y	N	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Russia	Y	N**	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Serbia	Y	O	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Singapore	Y	O	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Slovak Republic	Y	O	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
Slovenia	Y	O	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A
South Africa	Y	O	Y	Y	N/A	Inclusion Art. 25(1) first sentence? (Note 1)	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A

Treaty partner	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	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		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration			
	B.1	B.3	B.4	C.1	C.3	C.4	C.5	C.6	C.7	C.8	C.9	C.10	C.11	C.12	C.13	C.14	C.15	C.16	C.17	C.18	C.19	C.20
Sri Lanka	Y	O	Y	Y	N/A	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Sweden	Y	O	ii	Y	5-years	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Switzerland	Y	O	i	Y	N/A	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Tanzania	Y	N	Y	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Thailand	Y	O	Y	Y	N/A	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Trinidad and Tobago	Y	O	i	Y	N/A	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Tobago	Y	O	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Tunisia	Y	O	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Turkey	Y	O**	iv***	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Uganda	Y	O	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Ukraine	Y	O	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
United Kingdom	Y	O**	i	Y	N/A	i****	Y	Y	Y	N**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
United States	Y	O	i	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Venezuela	Y	O	Y	Y	N/A	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Viet-Nam	Y	O	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Zambia	Y	O	i	Y	N/A	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A

* Footnote by Turkey: The information in this document with reference to «Cyprus» relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey 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.

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

*** The treaty will be modified upon entry into force of the Multilateral Instrument as the existing treaty provision is incompatible with the second sentence of Article 16(1) of the Multilateral Instrument.

**** Treaties will be modified upon entry into force of the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of Article 17 of the Multilateral Instrument.

Annex B

MAP Statistics: pre-2016 cases

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										Average time taken (in months) for closing pre-2016 cases during the reporting period		
		Column 3 Denied MAP access	Column 4 Objection is not justified	Column 5 Withdrawn by taxpayer	Column 6 Unilateral relief granted	Column 7 Resolved via domestic remedy	Column 8 Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Column 9 Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Column 10 Agreement that there is no taxation not in accordance with tax treaty	Column 11 No agreement, including agreement to disagree	Column 12 Any other outcome		Column 13 No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	
Attribution/Allocation	135	0	0	0	1	1	19	0	0	0	0	0	114	30.57
Others	37	0	0	0	0	1	5	1	0	1	1	1	28	51.22
Total	172	0	0	0	1	2	24	1	0	1	1	1	142	36.77

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										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		No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	
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	31	0	0	0	0	0	6	0	0	0	0	0	25	0.69
Others	0	19	0	0	1	0	4	3	0	0	0	0	0	11	2.77
Total	0	50	0	0	1	0	4	9	0	0	0	0	0	36	1.88

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Guidance	The Danish Customs and Tax Administration’s (SKAT) public legal guidance
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention (OECD, 2015)	OECD Model Tax Convention (OECD, 2015) on Income and on Capital as it read on 15 July 2014
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory pending resolution on 31 December 2015
Post-2015 cases	MAP cases received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2016 and ended on 31 July 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2016
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

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OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Denmark (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 2016, 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. Over 100 countries and jurisdictions have joined the Inclusive Framework.

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 Denmark, 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/10.1787/9789264190184-en>.

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