

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



Making Dispute Resolution More Effective – MAP Peer Review Report, Mexico (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 80 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

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

has more than 115 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on BEPS on 14 August 2018 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
SAT	Servicio de Administración Tributaria (Mexico's tax administration)

Executive summary

Mexico has a relatively large tax treaty network with over 60 tax treaties. Mexico has an established MAP programme and has modest experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 25 cases pending on 31 December 2016. Of these cases, more than 70% concern allocation/attribution cases. Overall Mexico meets half of the elements of the Action 14 Minimum Standard.

All of Mexico's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the *Model Tax Convention on Income and on Capital 2014 (OECD Model Tax Convention, OECD, 2015)*. Its treaty network is partly consistent with the requirements of the Action 14 Minimum Standard, which follows from the fact that:

- Except for one, all 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.
- Almost half of its tax treaties do not contain the equivalent of Article 25(2), first sentence to the OECD Model Tax Convention (OECD, 2015), as they contain a provision based on that sentence that is supplemented with additional language requiring the competent authority that received the MAP request to notify the other competent authority within a time limit of four and a half years from the due date or the date of filing the return in Mexico, whichever is later.
- Almost half of its tax treaties do not contain the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015) stating that the competent authorities may 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, Mexico needs to amend and update a significant number of its tax treaties. In this respect, Mexico signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard, save for those treaties mentioned in the first bullet point above that will not be modified. Where treaties will not be modified, upon entry into force of this Multilateral Instrument, Mexico reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations, but has not yet a plan in place for that purpose.

Mexico 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 roll-backs of bilateral APAs even though the requests received since 1 January 2016 are still under consideration by Mexico's competent authority.

Mexico meets some 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 although it has since 1 January 2016 not received any MAP request concerning the application of anti-abuse provisions (audit settlements are not possible in Mexico). It further 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. Mexico has clear guidance on the availability of MAP, which, however, does not contain information on how it applies this procedure in practice. Mexico further has an administrative/statutory dispute settlement or resolution process in place, which is independent from the audit and examination function and which can only be accessed through a request by the taxpayer. Requesting this procedure by taxpayers will lead to denial of access to MAP. The effect of this process on MAP, however, has not been described in the guidance on this process.

Concerning the average time needed to close MAP cases, the MAP statistics for Mexico for the period 2016-17 are as follows:

2016-17	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2017	Average time to close cases (in months)*
Attribution/allocation cases	10	13	5	18	26.02
Other cases	6	5	4	7	25.25
Total	16	18	9	25	25.68

* 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, Mexico used as a start date as the start date: the date in which the other Competent Authority informed Mexico about the MAP case, or the date of receipt of the MAP request from the taxpayer in Mexico (that depends of the jurisdiction in which the MAP case was initiated) and as the end date: the date of the official letter of the mutual agreement, or the date of the notification by or to the other Competent Authority of the mutual agreement, or even the date of the notification to the taxpayer.

The number of cases Mexico closed in 2016 and 2017 is less than half the number of all new cases started in those years. Its MAP inventory as per 31 December 2017 increased as compared to its inventory as per 1 January 2016. Mexico's competent authority did not close MAP cases on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 25.68 months. While Mexico specified that the median time to close MAP cases is below 24 months (22 months), its MAP inventory increased by more than 50% (and by 90% for attribution/allocation cases). This indicates that additional resources specifically dedicated to handling attribution/allocation cases may be necessary to achieve a reduction of its MAP inventory.

Furthermore, Mexico meets almost all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Mexico's competent authority adopts a co-operative approach to resolve MAP cases. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. However, there is a risk that its competent authority does not operate fully independently from the audit function of the tax authorities, as there have been instances where Mexico's competent authority did not seem to have received accurate information from the tax administration personnel who made the adjustment at issue.

Lastly, Mexico meets some of the requirements of the Action 14 Minimum Standard as regards the implementation of MAP agreements. It has implemented mutual agreements where needed so far, although it does not monitor the implementation of MAP agreements and even though Mexico 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 contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). However, certain steps in the implementation of the MAP agreement that Mexico needed to implement were not completed on a timely basis.

Introduction

Available mechanisms in Mexico to resolve tax treaty-related disputes

Mexico has entered into 61 tax treaties on income (and/or capital), 56 of which are in force.¹ These 61 treaties apply to 61 jurisdictions. 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. In addition, 11 of the 61 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

In Mexico, the competent authority function to conduct MAP is held by the Ministry of Finance and Public Credit and is delegated to the Mexico’s tax administration (“SAT”, for *Servicio de Administración Tributaria*). The competent authority of Mexico currently employs approximately 12 employees (some of them being also assigned other tasks). These employees work in three different departments, to which MAP cases are attributed according to the nature of the case:

- The “Central Administration for Transfer Pricing Audits” within the Large business and international division of SAT is responsible for attribution/allocation cases when they do not involve taxpayers dealing or related to upstream, midstream or downstream oil and gas industry.
- The “Central Administration for Legal Support and International Tax Legal Affairs” within the Large business and international division of SAT is responsible for other cases related to treaty interpretation.
- The “Central Administration for Tax and Legal Affairs (Hydrocarbons)” within the Hydrocarbons tax affairs division is responsible for both attribution/allocation cases and other cases when they involve taxpayers dealing or related to upstream, midstream or downstream oil and gas industry.

Mexico has published general information on the mutual agreement procedure (“MAP”) in Administrative rule 2.1.32, which is available (in Spanish) by searching on the following page:

<https://www.sat.gob.mx>

Recent developments in Mexico

Mexico is currently conducting tax treaty negotiations with a few jurisdictions. Mexico recently signed new treaties with Costa Rica, Guatemala, Jamaica, Philippines and Saudi Arabia, which have not yet entered into force.

Furthermore, Mexico signed on 7 June 2017 the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral**

Instrument²), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Where treaties will not be modified by the Multilateral Instrument, Mexico reported that it would evaluate the opportunity of amending such treaties but that it has no plan in place at this stage to amend these treaties. With the signing of the Multilateral Instrument, Mexico also submitted its list of notifications and reservations to that instrument.³ In relation to the Action 14 Minimum Standard, Mexico reserved, pursuant to Article 16(5)(c), the right not to apply the second sentence of Article 16(2) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to provide that mutual agreements shall be implemented notwithstanding any time limits in the domestic law of the Contracting Jurisdictions.⁴ This reservation is in line with the requirements of the Action 14 Minimum Standard.

Basis for the peer review process

The peer review process entails an evaluation of Mexico'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 Mexico and the peers on 29 December 2017.

The period for evaluating Mexico's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2017 ("**Review Period**"). 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 Mexico'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.

For the purpose of this report and the statistics below, in assessing whether Mexico is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of Mexico's tax treaties regarding the mutual agreement procedure. In total eight peers provided input: Canada, Germany, Japan, the Russian Federation, Sweden, Switzerland, Turkey and the United States. Out of these eight peers, five had MAP cases with Mexico that started on or after 1 January 2016. These five peers represent approximately 80% of post-2015 MAP cases in Mexico's inventory that started in 2016 or 2017. Input was also received from taxpayers. Generally, all peers indicated having good relationships with Mexico, some of them emphasising the difficulties they encountered to resolve MAP cases in a timely manner with Mexico's competent authority.

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

- MAP profile⁵

- MAP statistics⁶ according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Mexico

The analysis of Mexico’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017 (“**Statistics Reporting Period**”). According to the statistics provided by Mexico, its MAP caseload during this period was as follows:

2016-17	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017
Attribution/allocation cases	10	13	5	18
Other cases	6	5	4	7
Total	16	18	9	25

General outline of the peer review report

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

- A. Preventing disputes
- B. Availability and access to MAP
- C. Resolution of MAP cases
- D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁷ Apart from analysing Mexico’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Mexico. Furthermore, the report depicts the changes adopted and plans shared by Mexico to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that Mexico 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 Mexico has entered into are available at: <https://www.sat.gob.mx> (accessed on 18 July 2018). The treaties that are signed but have not yet entered into force are with Costa Rica, Guatemala, Jamaica, Philippines and Saudi Arabia. Reference is made to Annex A for the overview of Mexico’s tax treaties.
2. This concerns the treaties with Canada, Chile, Greece, Indonesia, Ireland, Israel, Luxembourg, Romania, Singapore, the United Kingdom and the United States.
3. Available at: www.oecd.org/tax/treaties/beps-mli-position-mexico.pdf.
4. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(c) of the Convention, Mexico reserves the right for the second sentence of Article 16(2) not to apply to its Covered Tax Agreements on the basis that for the purposes of all of its Covered Tax Agreements: (i) it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS package by accepting, in its bilateral treaty negotiations, a treaty provision providing that:
 - A) the Contracting Jurisdictions shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting Jurisdictions after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have been attributable to the permanent establishment (this provision shall not apply in the case of fraud, gross negligence or wilful default); and
 - B) the Contracting Jurisdictions shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but that by reason of the conditions referred to in a provision in the Covered Tax Agreement relating to associated enterprises have not so accrued, after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have accrued to the enterprise (this provision shall not apply in the case of fraud, gross negligence or wilful default)”.
5. Available at www.oecd.org/tax/dispute/Mexico-Dispute-Resolution-Profile.pdf.
6. The MAP statistics of Mexico are included in Annexes B and C of this report.
7. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

References

- 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 18 July 2018).
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).

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 Mexico’s tax treaties

2. Out of Mexico’s 61 tax treaties, 60 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. One treaty contains a provision based on Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2015) but does not contain the reference to “doubts”. For this reason, one treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

3. Mexico reported that irrespective of whether the applicable treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), this would not prevent Mexico from entering into interpretative MAP agreements in practice.

Anticipated modifications

Multilateral Instrument

4. Mexico 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 OECD Model Tax Convention (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. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

5. In regard of the tax treaty identified above that is considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), Mexico listed it as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), a notification that it does not contain a provision described in Article 16(4)(c)(i). The relevant treaty partner is a signatory to the Multilateral Instrument and listed its treaty with Mexico as a covered tax agreement. It also made such notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify the tax treaty identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

6. Mexico 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. All peers that provided input reported that their treaty with Mexico meets the requirements under element A.1. For the treaty identified above that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), the relevant treaty partner did not provide peer input.

Conclusion

	Areas for improvement	Recommendations
[A.1]	One out of 61 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Mexico 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 treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. In addition, Mexico should maintain its stated intention to include the required provision in all future tax 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.

8. 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.¹ 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.

Mexico’s APA programme

9. Mexico reported that it is authorised to enter into bilateral APAs, and that it has a formal bilateral APA programme in place, provided by Article 34-A of Mexico’s Federal Fiscal Code. The procedure and the form an APA request should follow is further described in Administrative rule 2.12.8, which is publically available.

10. Mexico reported that there is no specific timeline to follow to submit a bilateral APA request to its competent authority. Mexico reported that typically bilateral APAs run for a period of three years.

Roll-back of bilateral APAs

11. Mexico reported that it is possible to obtain a roll-back of bilateral APAs. There is no publically available information on the roll-back of bilateral APAs, apart from the information contained in Mexico’s MAP profile. With respect to the years potentially subject to roll-back, Mexico reported that usually the years that are still subject to amendments as per its domestic statute of limitation when the APA request is filed could be covered by the roll-back of bilateral APAs. Articles 67 and 146 of Mexico’s federal fiscal code provide that Mexico’s domestic statute of limitation is five years as from the day following the one on which the tax return was filed.

Practical application of roll-back of bilateral APAs

12. Concerning roll-backs of bilateral APAs, Mexico reported that since 1 January 2016 it received five requests, all of them being under consideration.

13. Of the eight peers that provided input, six indicated that their competent authority has not received any request from a taxpayer asking for a roll-back of a bilateral APA since 1 January 2016, one of them specifying that it has not entered into any bilateral APAs with Mexico.

14. The remaining two peers reported having received each two requests for bilateral APAs in which the taxpayer asked for a roll-back. While both peers confirmed that these requests are still under consideration, they also specified that they both endeavour to reach agreements with Mexico and provide for the roll-back of APAs if it is appropriate. One

of the latter peers specified that it has never reached any bilateral APA agreement with Mexico including a roll-back so far. On the other hand, the other peer reported that it has not yet received the position of Mexico's competent authority with respect to the granting of the roll-back in the cases at stake, but that Mexico's competent authority already engaged in co-operative discussions with its competent authority to develop a practical solution to apply a transfer pricing framework to years subject to a roll-back.

Anticipated modifications

15. Mexico did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	Mexico is in theory able to extend bilateral APAs to previous fiscal years. Even though Mexico received requests for roll-back of bilateral APAs during the Review Period, these requests are still under consideration. It was therefore not possible at this stage to evaluate the effective implementation of this element in practice.	

Note

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

References

OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en> (accessed on 18 July 2018).

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 18 July 2018).

OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en> (accessed on 18 July 2018).

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).

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.

16. 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 Mexico's tax treaties

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

17. Out of Mexico's 61 tax treaties, 49 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. In addition, one of Mexico's tax treaties contains 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.

18. The remaining 11 tax treaties can be categorised as follows:

Provision	Number of tax treaties
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 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.	10

19. The treaty mentioned in the first row of the table above allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this treaty limits such submission, as it requires that a domestic remedy should first be initiated before a case can be dealt with in MAP. For this reason, this treaty is considered not to contain 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).

20. The remaining ten 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 eight of those ten 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 and only applies to residents of one of the states (one treaty).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (seven treaties).

21. For the remaining two 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 the absence of or a limited scope of the non-discrimination provision, following which these two treaties are not in line with this part of element B.1.

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

22. Out of Mexico's 61 tax treaties, 38 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 no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

23. The remaining 23 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 less than three years for a MAP request (18 months or two years)	6
Filing period more than three years for a MAP request (four years)	4
Filing period more than three years for a MAP request (four and a half years) and with a different commencement date for filing a MAP request	1

24. The treaty in the last row of the table above provides that the starting point to file a MAP request is the expiry of the year in which the action resulting in taxation not in accordance with the provisions of the tax treaty was taken. Therefore, this starting point is later than the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty. As the filing period is also longer than three years, this treaty is considered in line with this part of element B.1. As a consequence, only the six tax treaties referred to in the second row of the table above are considered not in line with this part of element B.1 as they provide for a shorter period than three years to submit a MAP request.

25. With respect to the 12 tax treaties referred to in the first row of the table above and that do not contain any filing period to submit a MAP request, Mexico reported that no domestic rules would limit the period to submit such a MAP request, but that it would check whether Mexico's statute of limitation of five to ten years or whether the notification requirement contained in the treaty to enter into bilateral discussions is not elapsed before granting access to MAP.

26. Mexico also reported that it does not grant access to MAP in cases where the issue under dispute has already been decided via the judicial remedies provided by Mexico's domestic law, and that this results from Article 125 of Mexico's Federal fiscal code. This is specified in Mexico's MAP Guidance (Administrative rule 2.1.32.) and in Mexico's MAP profile.

Anticipated modifications

Multilateral Instrument

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

27. Mexico 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 amended by the final report on Action 14 (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). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14. Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty

partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

28. With the signing of the Multilateral Instrument, Mexico opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (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 Mexico's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, Mexico opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Mexico listed all of its 61 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for 60 of them 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).

29. In total, 11 of the relevant 60 treaty partners are not a signatory to the Multilateral Instrument, whereas two have not listed their treaty with Mexico as a covered tax agreement under that instrument and 17 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Of the remaining 30 treaty partners, 29 listed their treaty with Mexico 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). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify 29 treaties to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b).

30. The remaining treaty partner of the 30 treaty partners identified above did not make a notification on the basis of Article 16(6)(a) that its treaty with Mexico contains 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 final report on Action 14. As in this situation only one of the treaty partners made such a notification, the Multilateral Instrument will only supersede this treaty to the extent that the provision contained therein is incompatible with the first sentence of Article 16(1).

31. In view of the above and in relation to the three treaties identified in paragraphs 19 and 21 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), two will be modified via the Multilateral Instrument.

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

32. 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. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does

not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

33. In regard of the six tax treaties identified in paragraph 23 above that contain a filing period for MAP requests of less than three years, Mexico listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the relevant six treaty partners, two are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Mexico as a covered tax agreement under that instrument. All remaining three treaty partners also made such a notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify three of the six treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

34. Mexico reported that when the tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. Mexico, however, reported not having in place a specific plan for such negotiations.

35. With respect to the first sentence of Article 25(1), Mexico reported that it will in those bilateral negotiations propose to include the equivalent as it read after the adoption of the final report on Action 14 (OECD, 2015b). In addition, Mexico reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read after to the adoption of the final report on Action 14 (OECD, 2015b), in all of its future tax treaties.

Other anticipated modifications

36. With respect to the practice identified in paragraph 26 and that consists of denying access to MAP in cases where the issue under dispute has already been decided via the judicial remedies provided by Mexico's domestic law, Mexico reported that it is considering presenting the case to its treaty partner via exchange of information, while it would continue not to grant access to MAP in such cases.

Peer input

37. Almost all peers that provided input reported their tax treaty with Mexico meets the requirements under element B.1.

38. For the eight treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), two peers provided input and confirmed this analysis and the other six peers did not provide input.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Eight out of 61 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those eight tax treaties:</p> <ul style="list-style-type: none"> • One tax treaty does not contain the equivalent to 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. • Two tax treaties do not contain the equivalent to Article 25(1), first sentence. • Five 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>Mexico 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 modified by the Multilateral Instrument following its entry into force to include such equivalent, Mexico should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Mexico should put a plan in place on how it envisages updating these four treaties to include the required provision.</p> <p>In addition, Mexico should maintain its stated intention to include the required provision in all future tax treaties.</p>
	<p>Where tax treaties do not contain a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>	<p>Mexico should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from being granted access to MAP if a request thereto is made 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.</p>
	<p>There is a risk that access to MAP is denied in eligible cases where the issue under dispute has already been decided via the judicial remedies provided by Mexico's domestic law.</p>	<p>Mexico should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2015a) can access the MAP.</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).

39. 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

40. As discussed under element B.1, out of Mexico's 61 treaties, one currently contains 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, 30 of these 60 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, whereby one of these 30 treaties will be superseded by the Multilateral Instrument in relation to element B.1.

41. Mexico reported that it has not introduced a bilateral consultation or notification process which allows the other competent authority concerned to provide its views on the case when Mexico's competent authority considers the objection raised in the MAP request not to be justified.

Practical application

42. Mexico reported that since 1 January 2016 its competent authority has not considered any objection raised in a MAP request being not justified.

43. Almost all peers that provided input indicated not being aware of any cases for which Mexico's competent authority denied access to MAP. One peer reported that in one case the taxpayer had not been granted access to MAP initially but that after further exchanges with the taxpayer, Mexico's competent authority resolved the case unilaterally.

44. All peers that provided input reported not having been consulted/notified of a case where Mexico's competent authority considered the objection raised in a MAP request as not justified. One peer reported that it would appreciate receiving notifications from Mexico's competent authority for every MAP request that the latter would receive, both in situations where Mexico's competent authority would grant or deny access to the relevant cases.

Anticipated modifications

45. Mexico indicated that it will consider introducing in the future a bilateral consultation or notification process for those situations where its competent authority considers an objection raised in a MAP request as being not justified.

Conclusion

	Areas for improvement	Recommendations
[B.2]	60 of the 61 treaties do not contain a provision equivalent to Article 25(1) 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 partners. For these treaties no documented bilateral consultation or notification process is 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.	Mexico should introduce a documented notification and/or consultation procedure for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned 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. Jurisdictions should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

47. Out of Mexico's 61 tax treaties, 31 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, nine treaties do not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). The remaining 21 treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but deviate from this provision for the following reasons:

- Four treaties refer to the corresponding adjustment as a mere possibility ("may" make a corresponding adjustment instead of "shall")
- 15 treaties provide that the corresponding adjustment is only available through a mutual agreement procedure or a consultation between competent authorities or is made by the competent authority itself
- Two treaties both refer to the corresponding adjustment as a mere possibility and provide that the corresponding adjustment is only available through a mutual agreement procedure.

48. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Mexico's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Mexico indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments.

49. Mexico's MAP guidance does not clarify the relationship between access to MAP and transfer pricing but the Procedure form 244/CFF that Mexican taxpayers have to follow to submit a MAP request refers to transfer pricing cases. This is further discussed under element B.8. In addition, the Procedure form 244/CFF provides that for transfer pricing cases, Mexican taxpayers have to pay a cost recovery fee of MXN 216 308.51.

Application of legal and administrative framework in practice

50. Mexico reported that since 1 January 2016, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

51. Peers indicated not being aware of a denial of access to MAP by Mexico on the basis that the case concerned was a transfer pricing case.

52. Also taxpayers reported not being aware of such a limitation of access.

Anticipated modifications

53. Mexico 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 this provision in all of its future tax treaties. In that regard, Mexico 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, 2015a) – 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). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does for a tax treaty not take effect if one or both of the treaty partners to the tax treaty have, pursuant to Article 17(3), reserved the right to not 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 under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification 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. In regard of the 30 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), Mexico listed all of them as a covered tax agreement under the Multilateral Instrument and included 15 of them in the list of treaties for which Mexico has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. For the remaining 15 treaties Mexico did not make, pursuant to Article 17(4), a notification that these treaties do contain such equivalent. Of the relevant 15 treaty partners, three are not a signatory to the Multilateral Instrument and two have not listed their treaty with

Mexico under that instrument. Of the remaining ten treaty partners, 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 Mexico already contains the equivalent of Article 9(2), whereas another one made a reservation on the basis of Article 17(3) the right not to apply Article 17(2) in its entirety. Therefore, at this stage, the Multilateral Instrument will, upon entry into force, supersede the remaining eight treaties only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	As Mexico 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 Mexico's 61 tax treaties allows competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where 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 Mexico 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. Mexico reported that its domestic law and/or administrative processes do not contain a provision allowing their competent authority to limit access to MAP for cases when a domestic anti-abuse rule applies and that in practice it would grant access to MAP in such cases. While this information is publically available in Mexico's MAP profile, this is not specified in the information on MAP (Administrative Rule 2.1.32). This is further discussed in element B.8.

Practical application

58. Mexico reported that since 1 January 2016 it has not received any MAP request for a case 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 MAP in Mexico since 1 January 2016 in relation to the application of treaty and/or domestic anti-abuse provisions.

60. Also taxpayers reported not being aware of such a limitation of access.

Anticipated modifications

61. Mexico did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	Mexico reported it will give access to MAP in 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. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Mexico is therefore recommended to follow its policy and grant access to MAP in such 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.

62. 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***Audit settlements***

63. Mexico reported that under its domestic law it is not possible that taxpayers and the tax administration enter into an audit settlement.

Administrative or statutory dispute settlement/resolution process

64. Mexico reported it has a statutory dispute settlement process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer. This statutory process is provided by Articles 69-C through 69-H of the Federal Fiscal Code and is available to taxpayers that do not agree with the facts or omissions as they are described by the tax authority in one of the audit reports, i.e. preliminary audit report or any preliminary resolution issued before the final assessment that may constitute a breach to tax provisions (e.g. official observations made during the audit), including in cases where there are no such reports or resolutions if the tax authority has qualified the facts or omissions, provided that the final assessment has not yet been notified to the taxpayer. In such cases, taxpayers may request the adoption of a so-called “conclusive agreement”, which is then definitive with regard to the facts or omissions it covers. In practice, Mexico reported that the process is handled through the taxpayer advocacy agency (“PRODECON” for “Procuraduría de la Defensa del Contribuyente”) which mediates actively between the taxpayer and the tax authority in order for them to reach an agreement, even though it is optional for the tax authority to accept the conclusive agreement proposed. Mexico further reported that PRODECON is not involved in the audit and the process itself is independent from the audit and the examination function of Mexico’s tax authority.

65. Mexico reported that this procedure guarantees transparency and ensures that fundamental rights of taxpayers are respected and that the conclusive agreement potentially reached is enforceable. As provided in Article 69-H of the Federal Fiscal Code, the conclusive agreements that are reached under the process described previously cannot be challenged. For this reason, Mexico reported that it will not give access to MAP in cases where a conclusive agreement was reached by the taxpayer and the tax authority. This is also specified in the information on MAP publically available (Administrative Rule 2.1.32), as it will be further discussed under element B.10.

Practical application

66. All peers indicated not being aware of a denial of access to MAP in Mexico since 1 January 2016 in cases where there was an audit settlement between the taxpayer and the tax administration, which can also be clarified by the fact that audit settlements are not available in Mexico.

Anticipated modifications

67. Mexico reported that it does not anticipate any modifications relating to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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 Mexico requires taxpayers to include in a request for MAP assistance are publically available in a procedure form and are discussed under element B.8.

70. In instances where the taxpayer did not provide the required information or documentation in its MAP request, Mexico reported that its competent authority would send an information request that would follow the list of information publically available and that taxpayers are given 10 business days to respond and provide the requested information. If the taxpayer fails to provide such information, Mexico reported that in the past, its request would be considered as unfiled. This practice is described in Mexico's MAP Guidance (Procedure form 244/CFF), even though Mexico reported that it would now register the case and close it with the outcome "objection not justified" in case the taxpayer would fail to provide the relevant information. Mexico also emphasised that the taxpayer has been allowed to submit a new MAP request for the same case.

Practical application

71. Mexico reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that since 1 January 2016 its competent authority it has not occurred that the taxpayer had not provided the required information or documentation.

72. All peers that provided input indicated not being aware of a limitation of access to MAP by Mexico since 1 January 2016 in situations where taxpayers complied with information and documentation requirements.

73. Also taxpayers reported not being aware of such a limitation of access.

Anticipated modifications

74. Mexico reported that it does not anticipate any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	As Mexico has thus far not limited access to MAP in eligible cases when taxpayers have complied with Mexico's information and documentation requirements for MAP requests, it should continue this practice.

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

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

75. 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 Mexico's tax treaties

76. Out of Mexico's 61 tax treaties, 34 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. Seven of these treaties contain a deviation that is 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 treaties provide for a scope of application that is at least as broad as that second sentence of Article 25(3), they are considered to be in line with element B.7.

77. The remaining 27 tax treaties do not contain any provision based on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Anticipated modifications

Multilateral Instrument

78. Mexico 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. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

79. In regard of the 27 tax treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) Mexico listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant 27 treaty partners, four are not a signatory to the Multilateral Instrument and one did not list its treaty with Mexico as a covered tax agreement. All the remaining 22 treaty partners also made such a notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify 22 of the 27 tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

80. Mexico 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 with a view to be compliant with element B.7. However, Mexico reported not having in place a specific plan for such negotiations. In addition, Mexico reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future tax treaties.

Peer input

81. Out of the eight peers that provided input, three indicated that their treaty with Mexico contains the required provision, which is confirmed by the analysis above.

82. For the 27 treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), five peers reported that their treaty with Mexico was not in line with element B.7 and the remaining relevant peers did not provide input. One of the five peers mentioned that its treaty with Mexico will be modified by the Multilateral Instrument, which is also confirmed by the above analysis.

Conclusion

	Areas for improvement	Recommendations
[B.7]	27 out of 61 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those 22 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 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, Mexico should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Mexico should put a plan in place on how it envisages updating these five treaties to include the required provision.</p> <p>In addition, Mexico should maintain its stated intention to include the required provision in all future tax treaties.</p>

[B.8] Publish clear and comprehensive MAP guidance

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

83. 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.

Mexico's MAP guidance

84. Mexico's rules, guidelines and procedures on MAP are included in the combination of two documents, being (i) Administrative rule 2.1.32 and (ii) Procedure form 244/CFF.

- The Administrative rule 2.1.32 can be found in page 34, in the Section "Resolución Miscelánea Fiscal para 2018", at: <https://www.sat.gob.mx>.
- The Procedure form 244/CFF can be found in page 59, in the Section "Anexo 1-A de la Resolución Miscelánea Fiscal para 2018", at: <https://www.sat.gob.mx>.

85. This contains basic information on:

- a. Contact information of the competent authority or the office in charge of MAP cases
- b. The manner and form in which the taxpayer should submit its MAP request
- c. The specific information and documentation that should be included in a MAP request (see also below)
- d. Relationship with domestic available remedies.

86. The MAP guidance of Mexico described above does not include detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice, which for instance concerns the steps of the process, how the MAP functions in terms of timing and the role of the competent authorities. However, 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.¹

87. As Mexico's MAP guidance does not include detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice, various subjects are not specifically discussed. This concerns information on:

- whether MAP is available in cases of: (i) transfer pricing cases, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the possibility of suspension of tax collection during the course of a MAP

- the consideration of interest and penalties in the MAP
- 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).

88. No peers provided input on the availability of Mexico's MAP guidance. Taxpayers did not report any issues on the clarity and availability of Mexico's MAP guidance.

Information and documentation to be included in a MAP request

89. 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.² This agreed guidance is shown below. Mexico'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 (including identification number and contact details)
- 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 (and include the relevant documentation)
- whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
- whether the issue(s) involved were dealt with previously
- a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

90. In addition to the information listed above, Mexico's competent authority requires the taxpayers to provide the following:

- whether the facts or circumstances related to the MAP request were subject to a domestic administrative or judicial procedure, in Mexico or in the other jurisdiction involved (and include the relevant documentation)
- whether the situation related to the MAP request was analysed or qualified by Mexico's competent authority or by the competent authority of its treaty partner within an APA, a Conclusive agreement procedure or any other similar procedure (and include the relevant documentation)
- whether the taxpayer(s) concerned or its related parties is/are subject to a tax audit in Mexico or in the other jurisdiction (mentioning the relevant tax years and the procedural stage)
- whether any changes might happen in the relation, situation or structure of the operation once the MAP request is submitted.

91. With respect to the language used, Mexico’s competent authority requires that the information and documentation should be filed in Spanish or with a translation into Spanish made by a certified expert, if the document is in a different language. In addition, the Procedure form 244/CFE requires the taxpayers to provide an English version of the MAP request so that Mexico can share it with the foreign competent authority. As discussed in element B.6, Mexico reported that even though its MAP guidance provides that a MAP request would be considered as unfiled if the taxpayer failed to provide the relevant information as described previously, this is no longer its competent authority’s practice, as the latter would now close the case with the outcome “objection not justified” in such a situation. In practice, Mexico further indicated that its competent authority has not considered any MAP request as unfiled since 1 January 2016.

92. As discussed under element B.3, especially for transfer pricing cases, the Procedure form 244/CFE provides that for transfer pricing cases, Mexican taxpayers have to pay a cost recovery fee of MXN 216 308.51.

93. No peers provided input on the documentation and information to submit in a MAP request. Taxpayers did not report any issues in this respect.

Anticipated modifications

94. Mexico reported that it may initiate an update of its publically available MAP guidance in 2019.

Conclusion

	Areas for improvement	Recommendations
[B.8]	MAP guidance is available with respect to access to MAP, but some further clarity should be provided with respect to the use of MAP. In addition, it is stated in the form listing the information and documentation to provide in order to submit an eligible MAP request that if the taxpayer fails to provide the relevant information, its request will be considered as unfiled, while it is no longer Mexico’s practice.	<p>Mexico should improve the level of clarity of its MAP guidance, especially with respect to the use of MAP. In particular, Mexico should clarify in its guidance that in case the taxpayer fails to provide the relevant information, the case will be considered closed, instead of the request considered as unfiled.</p> <p>Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Mexico could consider including information on:</p> <ul style="list-style-type: none"> • whether MAP is available in: (i) transfer pricing cases, (ii) cases of the application of anti-abuse provisions, (iii) cases of multilateral disputes and (iv) cases of bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the possibility of suspension of tax collection during the course of a MAP • the consideration of interest and penalties in the MAP • 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).

[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.³

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

96. The MAP guidance of Mexico is published and can be found at:

- The Administrative rule 2.1.32 can be found in page 34, in the Section “Resolución Miscelánea Fiscal para 2018”, at: <https://www.sat.gob.mx>.
- The Procedure form 244/CFE can be found in page 59, in the Section “Anexo 1-A de la Resolución Miscelánea Fiscal para 2018”, at: <https://www.sat.gob.mx>.

97. As regards its accessibility, Mexico’s MAP guidance can be found on the website of the tax administration website by searching for “mutual agreement procedure” in Spanish or by following the path described previously.

MAP profile

98. Mexico’s MAP profile is published on the website of the OECD. This MAP profile is complete and often with detailed information. This profile includes external links which provide extra information and guidance where appropriate.

Anticipated modifications

99. Mexico did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Mexico should ensure that its future updates of the MAP guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is 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 discussed under B.5, it is under Mexico's domestic law not possible that taxpayers and the tax administration enter into audit settlements.

102. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Mexico's MAP guidance, which also follows from the fact that audit settlements are not available in Mexico.

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

103. As previously mentioned under element B.5, Mexico has a statutory dispute settlement process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer. The relationship between access to MAP and internal administrative or statutory dispute settlement/resolution processes is included in item VI of Administrative rule 2.1.32 of Mexico's MAP Guidance, which clarifies that access to MAP is limited in cases where taxpayers reached a conclusive agreement through Mexico's statutory dispute settlement process. However, this is not addressed in the public guidance on Mexico's statutory dispute settlement process.⁴ Mexico further reported that it did not receive any MAP request for a case relating to a matter already resolved via a conclusive agreement during the Review Period.

104. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Mexico.

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

105. Mexico reported that it notified its treaty partners of this process through its MAP profile, which contains a reference to the process available in Mexico and its potential impact on MAP. Mexico also specified that at the meeting when the final report on Action 14 (OECD, 2015b) was discussed, it was stated that in Mexico an administrative or statutory dispute settlement/resolution process is available, which allowed Mexico to inform its treaty partners of such a procedure. This is considered in line with element B.10.

106. Irrespective of the above, all peers reported being not informed of the existence of this process and its effect on MAP.

Anticipated modifications

107. Mexico reported that SAT and PRODECON are currently analysing whether there is a need for any action or publication, apart from what is already published in the Administrative rule 2.1.32., to clarify for the taxpayers that a conclusive agreement limits access to MAP.

Conclusion

	Areas for improvement	Recommendations
[B.10]	The effects of the administrative or statutory dispute/resolution settlement processes on MAP are not addressed in the guidance on such process.	The guidance on the administrative or statutory dispute settlement/resolution process available in Mexico should clarify the effects on MAP when the case was resolved through such dispute settlement/resolution process.

Notes

1. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
2. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
3. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
4. A public explanation of the conclusive agreement is available at: www.prodecon.gob.mx/index.php/home/p/acuerdos-conclusivos and public guidelines are also available at: www.prodecon.gob.mx/Documentos/MarcoNormativo/3-LineamientosAtribucionesSustantivasProdecon.pdf (accessed on 18 July 2018).

References

- 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 18 July 2018).
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en> (accessed on 18 July 2018).

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.

108. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also contain the equivalent of 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 Mexico's tax treaties

109. Out of Mexico's 61 tax treaties, 34 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.

110. The remaining 27 tax treaties contain a provision based on Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) but also additional language that sets a condition for the provision to apply. This condition consists of a notification from the competent authority that received the MAP request within a time limit of four and a half years from the due date or the date of filing the return in Mexico, whichever is later. Such an obligation may prevent that cases are effectively dealt with in MAP. These treaties are therefore considered as not having the full equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Anticipated modifications

Multilateral Instrument

111. Mexico 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. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

112. In regard of the 27 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015a), Mexico listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), a notification that they do not contain a provision described in Article 16(4)(b)(i). Of the relevant 27 treaty partners, five are not a signatory to the Multilateral Instrument and one did not list its treaty with Mexico as a covered tax agreement. Of the remaining 21 treaty partners, 18 also made such a notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify 18 of the 27 tax treaties identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

113. Mexico 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 with a view to be compliant with element C.1. Mexico, however, reported not having in place a specific plan for such negotiations. In addition, Mexico 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 and taxpayer input

114. Almost all peers that provided input reported that their tax treaty with Mexico meets the requirements under element C.1.

115. For the 27 treaties identified that do not contain the equivalent of Article 25(2), first sentence of the OECD Model Tax Convention (OECD, 2015a), only one provided input and confirmed this analysis and the other 26 peers did not provide input. The relevant treaty will not be modified by the Multilateral Instrument. The latter peer specified that the deviating provision is not contained in its own model tax treaty and that the current language including in the treaty could actually lead to limitations to enter into the bilateral phase of the MAP. This peer reported that it experienced several cases where Mexico did not accept to enter into discussions with its competent authority, referring to the fact that the notification requirement contained in the MAP provision had not been met whereas the peer reported having sent a formal letter to Mexico's competent authority and having operated

in line with the MAP provision contained in their tax treaty but there have been some cases where the Mexican taxpayer was notified of the adjustment after or shortly before the period during which the notification from one competent authority to another shall be made under the relevant treaty. The peer reported having discussed with Mexico's competent authority to convince them that the notification requirement was met, but Mexico did not agree to enter into discussions with this peer regarding the underlying cases. Mexico indicated that two conditions need to be met for the notification to be taken into account being (i) the notification needs to be registered (which is the case if it is a fax, an official letter notified by mail courier or an e-mail) and (ii) the notification needs to be received within the timeframe specified in the treaty. Nevertheless, Mexico reported that it is currently discussing with the relevant peer to interpret the relevant provision of their tax treaty in line with the requirements of the Action 14 Minimum Standard. Mexico's MAP statistics show that one attribution/allocation case was closed in 2017 for this reason as Mexico reported that the MAP case was not timely notified by the other competent authority as required in the relevant tax treaty.

116. An association of taxpayers also reported that its members have experienced 13 cases where taxpayers have submitted MAP requests to the peer and filed MAP requests to Mexico's competent authority but the case could not be opened because the peer did not notify Mexico's competent authority within the timeframe specified in the treaty. In response, Mexico specified that the issue had only been encountered in one case since 1 January 2016. Mexico also clarified that it did not receive any MAP request but was merely informed by the taxpayer of the MAP request submitted in the other country.

117. On a global perspective, Mexico reported that when an audit is initiated, the audit team notifies the taxpayer about the time constraints contained in the relevant tax treaty that may impact access to MAP. Mexico further indicated that in the last few years, it has adopted a real time approach to audit most recent years, which has contributed to limit the number of MAP cases that were denied access because of the notification period contained in the tax treaty. In addition, Mexico reported having since then published an administrative rule and provided a corresponding form (Administrative rule 2.1.48 and Form 249/CFF) that allows taxpayers to suspend the period during which the notification shall be made from one competent authority to another under the relevant treaty, provided the request is made before the expiration of the timeframe provided in the treaty. Mexico reported that this administrative rule was published on 23 December 2016 and applicable as from 1 January 2017. Mexico also specified that this administrative rule can be applied as long as the timeframe provided under the treaty has not expired even though the MAP request was submitted in the other country before the entry into force of the administrative rule. Finally, Mexico reported that while this administrative rule currently only covers the cases submitted under the tax treaty that Mexico has with the relevant peer, it is currently evaluating whether the solution found could be extended to other treaties containing similar wording.

118. In this respect, the relevant peer mentioned that it appreciates Mexico's efforts to implement administrative practices to mitigate the effect of their interpretation of the deviating provision, but that such administrative practices do not entirely solve the problem. With regard to the notification of the taxpayer upon initiation of a tax audit, the peer emphasised that audits can begin after the end of the notification period contained in the tax treaty as, under Mexican law, they can begin up to five years after the later of the filing or the due date of the return, and such audits can be completed within a period up to seven years after that date. This peer also indicated that auditing on a more real-time basis may therefore not address the situation of all taxpayers. Given these concerns, this peer welcomes its recent engagement with Mexico to mutually determine the scope of application of this provision.

Conclusion

	Areas for improvement	Recommendations
[C.1]	27 out of 61 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in those 18 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining treaties 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, Mexico should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Mexico should put a plan in place on how it envisages updating these nine treaties to include the required provision.</p> <p>In addition, Mexico should maintain its stated intention to include the required provision in all future tax treaties.</p>

[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).

119. 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

120. Statistics regarding all tax treaty related disputes concerning Mexico are published on the website of the OECD as of 2007.¹ Mexico also publishes MAP statistics on SAT's website² where it indicates, in addition to the MAP statistics available on the OECD website, the treaty provisions that are disputed and the treaty partners involved.

121. 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. Mexico provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Mexico 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 Annexes B and C respectively³ and should be considered jointly for an understanding of the MAP caseload of Mexico. With respect to post-2015 cases, Mexico reported having reached out to all its MAP partners with a view to have their MAP statistics matching. In that regard, Mexico reported that it could match its statistics with all its MAP partners.

Monitoring of MAP statistics

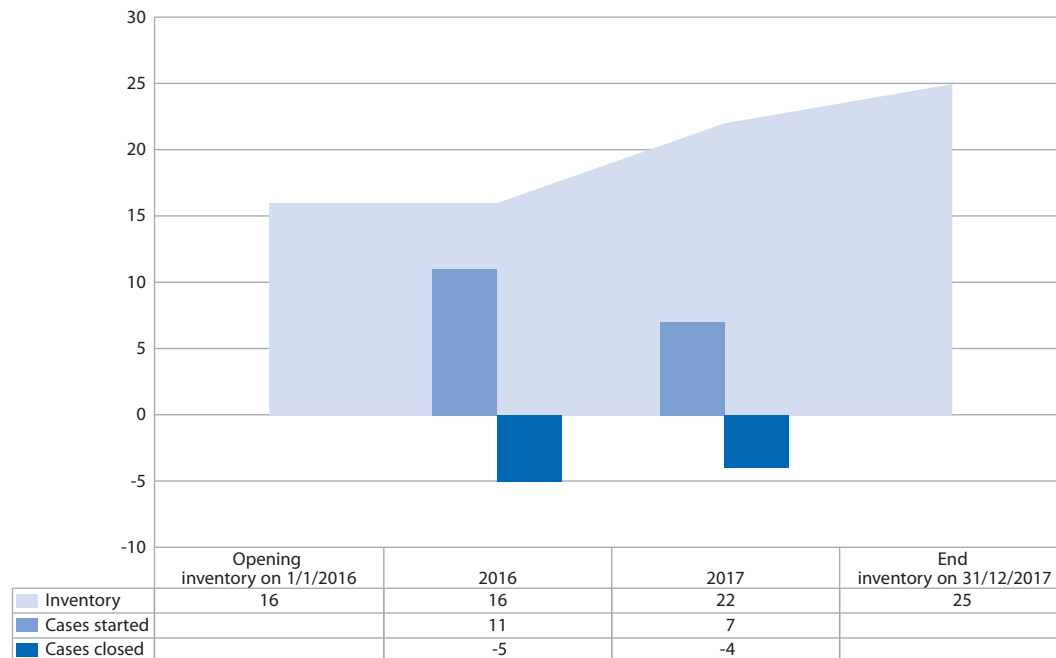
122. Mexico reported that it has a system in place that monitors and manages the MAP caseload. Mexico reported that it keeps track, among other indicators, of relevant stages of the MAP process, such as: the filing date of the MAP request, the notification date to the other competent authority and the date of issuance of the MAP agreement. Mexico reported that the purpose of this monitoring is to ensure that MAP cases are on average closed in a 24-month timeframe.

Analysis of Mexico's MAP caseload

Global overview

123. Figure C.1 shows the evolution of Mexico's MAP caseload over the Statistics Reporting Period.

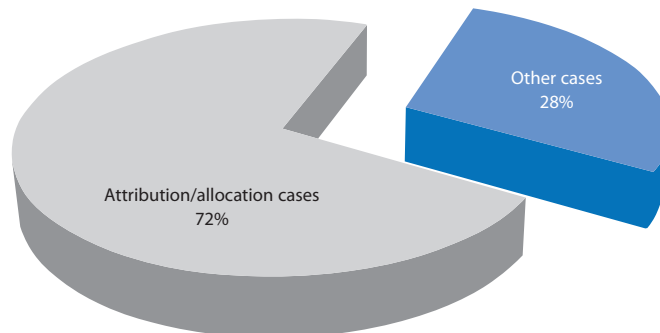
Figure C.1. Evolution of Mexico's MAP caseload



124. At the beginning of the Statistics Reporting Period Mexico had 16 pending MAP cases, of which 10 were attribution/allocation cases and six other MAP cases.⁴ At the end of the Statistics Reporting Period, Mexico had 25 MAP cases in its inventory, of which 18 are attribution/allocation cases and seven are other MAP cases. Mexico's MAP caseload has increased by 56% during the Statistics Reporting Period, with an 80% increase of the number of attribution/allocation cases in inventory and an increase by 17% of the number of other cases in inventory.

125. The breakdown of the end inventory can be shown as in Figure C.2.

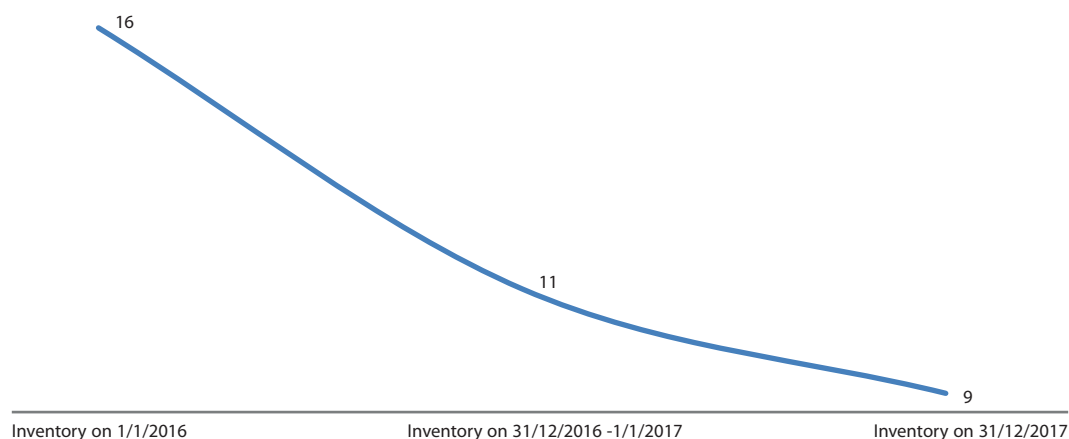
Figure C.2. End inventory on 31 December 2017 (25 cases)



Pre-2016 cases

126. Figure C.3 shows the evolution of Mexico's pre-2016 MAP cases over the Statistics Reporting Period.

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



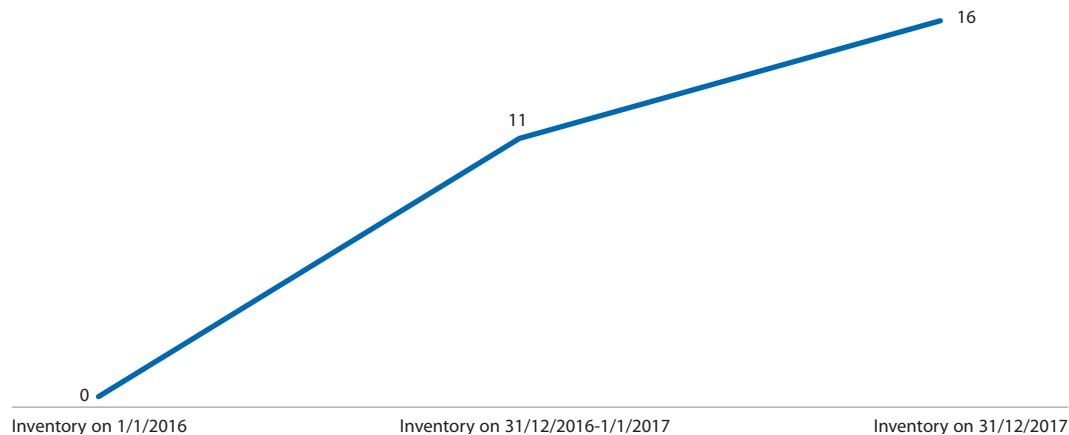
127. At the beginning of the Statistics Reporting Period, Mexico's MAP inventory of pre-2016 MAP cases consisted of 16 cases, of which were 10 attribution/allocation cases and six other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to nine cases, consisting of seven attribution/allocation cases and two other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

Pre-2016 cases only	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016+2017)
Attribution/allocation cases	-20%	-13%	-30%
Other cases	-50%	-33%	-67%

Post-2015 cases

128. Figure C.4 shows the evolution of Mexico’s post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of Mexico’s MAP inventory Post-2015 cases



129. In total, 18 MAP cases started during the Statistics Reporting Period, 13 of which concerned attribution/allocation cases and five other cases. At the end of this period the total number of post-2015 cases in the inventory was 16 cases, consisting of 11 attribution/allocation cases and five other cases. Conclusively, Mexico closed two post-2015 case during the Statistics Reporting Period, both being attribution/allocation cases. These attribution/allocation cases closed represent 15% of the number of post-2015 attribution/allocation cases that started during the Statistics Reporting Period and 11% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution/allocation cases	0%	33%	14%
Other cases	0%	0%	0%

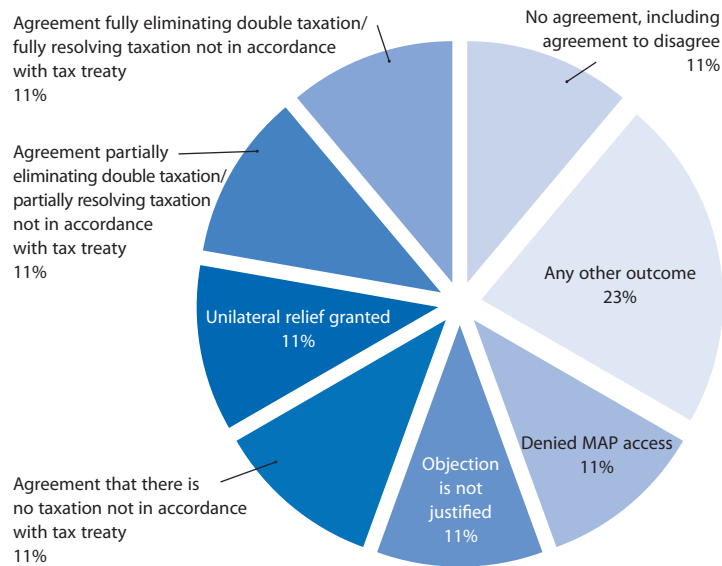
Overview of cases closed during the Statistics Reporting Period

Reported outcomes

131. During the Statistics Reporting Period Mexico in total closed nine MAP cases for which the outcomes shown in Figure C.5 were reported.

132. Figure C.5 shows that during the Statistics Reporting Period, one out of nine cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Figure C.5. Cases closed during the Statistics Reporting Period (9 cases)



Reported outcomes for attribution/allocation cases

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

- Denied MAP access (20%)
- Unilateral relief granted (20%)
- Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (20%)
- Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty (20%)
- Agreement that there is no taxation not in accordance with tax treaty (20%)

Reported outcomes for other cases

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

- Any other outcome (50%)
- No agreement including agreement to disagree (25%)
- Objection not justified (25%)

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

135. The average time needed to close MAP cases during the Statistics Reporting Period was 28.50 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	5	26.02
Other cases	4	25.25
All cases	8	25.68

Pre-2016 cases

136. For pre-2016 cases Mexico reported that on average it needed 36.67 months to close attribution/allocation cases and 25.25 months to close other cases. This resulted in an average time needed of 30.14 months to close seven pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Mexico reported that it uses the following dates:

- *Start date*: the date on which the other Competent Authority informed Mexico about the MAP case, or the date of receipt of the MAP request from the taxpayer in Mexico (that depends of the jurisdiction in which the MAP case was initiated)
- *End date*: the date of the official letter of the mutual agreement, or the date of the notification by or to the other Competent Authority of the mutual agreement, or even the date of the notification to the taxpayer.

Post-2015 cases

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

138. For post-2015 cases Mexico reported that it needed 10.06 months to close two attribution/allocation cases and that no other cases were closed.

Peer input

139. Three of the peers that provided input did not comment on the timeliness of the resolution of MAP cases with Mexico's competent authority. Three peers with limited MAP experience with Mexico commented on the time needed during their exchanges with Mexico's competent authority, one of them mentioning that Mexico's competent authority endeavours to resolve MAP cases in a reasonable timeframe whereas the other peers reported they had been waiting for a long time for a position paper from Mexico's competent authority, both occurring in cases where the adjustment at issue was made by Mexico's tax authority. One of the latter peers specified that the MAP request was received in June 2016 and that it was still waiting for Mexico's competent authority's position paper at the end of the Review Period and the other peer referred to a very long time in its input.

140. Another peer with limited MAP experience with Mexico's competent authority reported having experienced some delays, which in its opinion may result from the fact the information shared by the tax auditor with that Mexico's competent authority differed

from the information on the Mexican adjustments provided by the taxpayer to this peer. This opinion is based on the fact that Mexico's competent authority denied an important element of the adjustment. Mexico responded in describing its competent authority's working process, which consists of (i) reviewing the information provided by the taxpayer, in order to determine whether the objection raised is justified and then (ii) collecting additional information from the tax administration personnel who made the adjustment at issue, which is compared with the information provided by the taxpayer. Mexico further reported that when it was necessary, its competent authority investigated further to clarify any mismatch in the information collected from the taxpayer and the tax administration personnel. This peer also reported that according to taxpayer's information, Mexico's competent authority would be in contact with other jurisdictions to resolve similar issues to the ones involving this peer and Mexico's competent authority would have decided to suspend the discussions with this peer as long as the case with the other jurisdiction is not resolved, which resulted in delays. This peer questioned whether the corresponding cases have been prioritised efficiently by Mexico's competent authority. Mexico responded that the impression of this peer is based on feedback it might have received from the taxpayer and not on its own experience. Mexico further clarified that its position is not subject to the outcome of a discussion with another treaty partner and that MAP cases are handled separately, and that the timing for handling MAP cases depends on its competent authority's and its treaty partner's competent authority's availability.

141. One last peer, who is a significant MAP partner for Mexico, also commented on the timeliness of the resolution of MAP cases involving Mexico. This peer reported that considerable time was taken by Mexico's competent authority to (i) send position papers, (ii) be ready to discuss a MAP case or (iii) exchange closing documents after reaching a MAP agreement. This peer specified that the time needed to meet such milestones was also significant when the disputed adjustment had been made by Mexico's tax authority. This latter peer also reported having experienced extensive delays before receiving Mexico's competent authority's written confirmation of its interpretation of a treaty provision impacting the opening of bilateral discussions, which is also discussed under element C.1.

Anticipated modifications

142. Mexico did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Mexico submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Mexico's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.	In addition, Mexico's MAP statistics show that during the Statistics Reporting Period it closed 11% (2 out of 18 cases) of its post-2015 cases in 10.06 months on average. In that regard, Mexico is recommended to seek to resolve the remaining 89% of the post-2015 cases pending on 31 December 2017 (16 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.

143. 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 Mexico’s competent authority

144. Mexico reported that the competent authority function to conduct MAP is held by the Ministry of Finance and Public Credit and is delegated to Mexico’s tax administration (“SAT”, for *Servicio de Administración Tributaria*). Mexico’s competent authority consists of 12 people, some of them dealing partly with MAP cases along with other tasks such as advance pricing agreements or other assignments. Within Mexico’s tax administration, three departments are involved in MAP cases, depending on the type of MAP cases each of them handles:

- The “Central Administration for Transfer Pricing Audits” within the Large business and international division of SAT is responsible for attribution/allocation cases when they do not involve taxpayers dealing or related to upstream, midstream or downstream oil and gas industry. The corresponding team consists of two people.
- The “Central Administration for Legal Support and International Tax Legal Affairs” within the Large business and international division of SAT is responsible for other cases related to treaty interpretation and consists of five people who are also assigned other tasks.
- The “Central Administration for Tax and Legal Affairs (Hydrocarbons)” within the Hydrocarbons tax affairs division is responsible for both attribution/allocation cases and other cases when they involve taxpayers dealing or related to upstream, midstream or downstream oil and gas industry. The corresponding team consists of five people.

145. Mexico reported that the staff of its competent authority has background in economics, finance, accounting and law, which are considered as areas of relevance to deal with MAP cases. Mexico further reported that it strives to hire experienced staff and that SAT’s annual training programme contains mandatory sessions on the issues often encountered within MAP. Finally, Mexico reported that the budget available for the competent authority function seems adequate and enables its staff to have face-to-face meetings annually with its most relevant treaty partners.

Monitoring mechanism

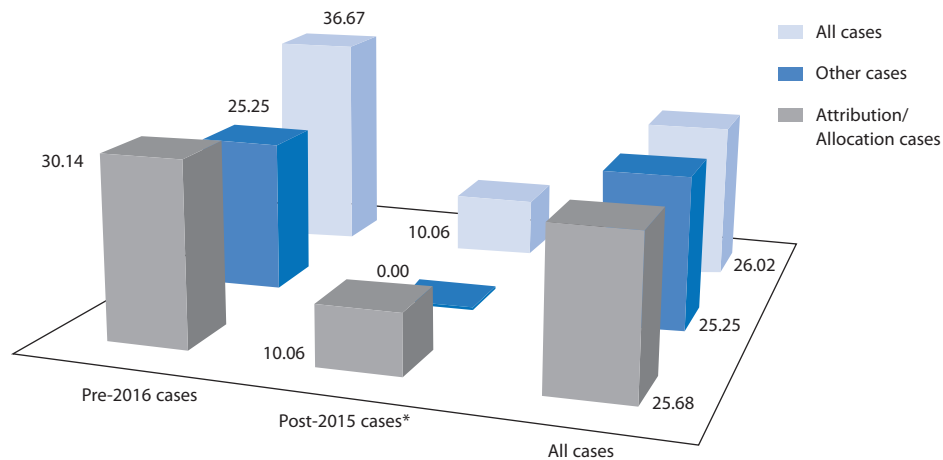
146. Mexico reported that the framework for the monitoring of whether such resources are adequate consists of ensuring that MAP cases are resolved within the 24-month timeframe. When it is noticed that there is a risk that the 24-month timeframe is not met for a given case, Mexico reported that it would assign more resources to the resolution of the relevant case.

Practical application

MAP statistics

147. As discussed under element C.2 Mexico did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average. In addition, the average time taken to close attribution/allocation cases is higher than the average time needed for other cases. This can be illustrated by Figure C.6.

Figure C.6. Average time (in months) to close cases in 2016 or 2017



*Note that post-2015 cases only concern cases started and closed during 2016 or 2017.

148. Based on these figures, it follows that on average it took Mexico 25.68 months to close eight MAP cases during the Statistics Reporting Period. In this respect, Mexico provided the following explanations:

- the median time taken to close MAP cases was approximately 22 months
- in one attribution/allocation case, significant delays resulted from tax authorities' late notification and insufficient information and documentation provided by the taxpayer
- one case was a complex attribution/allocation case
- one case was an "other" case which was brought to the attention of the Mexican Supreme Court, as a consequence of an appeal formulated on the same issue by another taxpayer. In such a case, Mexico's competent authority considered appropriate, for the sake of consistency, to wait for the Supreme Court making a final determination on the case.

149. The analysis of Mexico's MAP statistics also shows that Mexico's MAP caseload has increased during the Statistics Reporting Period. The overview of Mexico's MAP inventory can be illustrated as follows:

2016-17	Opening inventory	Cases started	Cases closed	End inventory	Evolution of MAP inventory
Attribution/allocation cases	10	13	5	18	+80%
Other cases	6	5	4	7	+17%
Total	16	18	9	25	+56%

Peer input

150. Out of the eight peers that provided input, five specified that their experience with Mexico is limited and mentioned that the number of pending MAP cases is relatively modest. Two peers mentioned that Mexico is an important MAP partner for their jurisdiction.

151. With respect to the contacts and correspondence with Mexico's competent authority, one peer with limited experience with Mexico mentioned that it has had some difficulties in establishing a contact with Mexico's competent authority. The other peers reported that they could have contacts with Mexico's competent authority, via e-mails and phone calls. One significant MAP partner for Mexico reported that the communication with Mexico's competent authority occurs on a regular and timely basis.

152. Two peers reported that face-to-face meetings were held with Mexico's competent authority, one of them appreciating the fact that Mexico's competent authority could travel to its jurisdiction. The remaining peers did not provide input on the scheduling of face-to-face meetings.

153. With respect to the resolution of MAP cases, the majority of peers that provided input, be they major or other MAP partners, commented on the time taken by Mexico's competent authority to provide position papers, especially in cases where the initial adjustment was made by Mexico's tax authority. This is further discussed in element C.2.

154. Some peers formulated suggestions for improvement. These suggestions relate to decreasing the time needed to issue and share a position paper, by ensuring that the information shared from the tax administration personnel who made the adjustment at issue is correct or by requesting additional information from taxpayers through its treaty partner if it could help. One of these peers also suggested that the discussion with Mexico's competent authority is more transparent to better understand Mexico's competent authority's analysis, concerns and potential constraints (e.g. negotiation timing affected by a domestic administrative or judicial processes or resources constraints). In particular, this peer invited Mexico to share any questions and concerns about a factual, legal, or analytical issue when it first arises, in order to co-operate and address the issue and move the case forward more swiftly.

Anticipated modifications

155. Mexico did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	As Mexico's MAP caseload has increased significantly since 1 January 2016, this might indicate that Mexico's competent authority is not adequately resourced while no specific actions have been taken by Mexico to address this in the meantime.	Mexico should ensure that the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner.

[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.

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

Functioning of staff in charge of MAP

157. Mexico reported that the legal and administrative framework in place provides that staff of its competent authority takes into consideration the merits of cases only when handling MAP cases. Mexico reported that in practice, staff in charge of the MAP case makes a thorough analysis in order to draft a position paper. Mexico reported that each position paper needs to be approved by a nominated supervisor within the competent authority and in the end also approved by the head of Mexico's competent authority. While the head of Mexico's competent authority for transfer pricing cases is also the head of the audit department, Mexico reported that its competent authority neither consults nor involves any other personnel involved in the audit at issue when dealing with MAP cases.

158. In regard of the above, Mexico reported that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations.

Practical application

159. Peers generally reported no impediments in Mexico to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. One peer specifically mentioned that it is not aware that staff in charge of the MAP in Mexico is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review. Another peer, however, had a concern based on its experience with Mexico that if insufficient or inaccurate information is shared by the tax administration personnel who made the adjustment at issue, this might affect authority and independency of Mexico's competent authority and suggested that in such cases Mexico ensures that sufficient and accurate information is shared by the tax administration. Mexico responded as a general answer that the analysis made by its competent authority is not influenced by the personnel in charge of audits, since it has full capacity and formal authority to enter into MAP agreements. Mexico further emphasised that Mexico's competent authority relies on the tax administration personnel who made the adjustment at issue to collect facts only and that the latter does not influence Mexico's competent authority's position in a given case.

Anticipated modifications

160. Mexico did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	There is a risk that staff in charge of MAP depends on the direction given by the tax administration personnel directly involved in the adjustment at issue as in some cases staff in charge of MAP did not seem to have received accurate information from the tax administration personnel who made the adjustment at issue.	Mexico should ensure that staff in charge of MAP can access all relevant information to enter into MAP agreements from the tax administration personnel who made the adjustment at issue. In addition, Mexico should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases absent any policy considerations that Mexico 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.

161. 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 Mexico

162. Mexico reported that it has a system in place to monitor and evaluate annually the performance of staff in charge of MAP processes according to internal objectives. In practice, Mexico reported that staff in its competent authority is mainly assessed on whether they made thorough analysis of each MAP case. Mexico further reported that it uses performance indicators relating to the time taken to resolve MAP cases, while taking into account the complexities of each case.

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

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

164. Further to the above, Mexico also reported that it does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions

in terms of the amount of sustained audit adjustments or maintained tax revenue. In other words, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions

Practical application

165. Peers generally provided no specific input relating to this element of the Action 14 Minimum Standard. One peer particularly noted that it was not aware of the use of performance indicators by Mexico that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Anticipated modifications

166. Mexico 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, Mexico 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.

167. 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

168. Mexico reported that it has no domestic law limitations for including MAP arbitration in its tax treaties but its tax treaty policy is not to include a mandatory and binding arbitration provision in its bilateral tax treaties. Mexico was a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument but Mexico reported that it did not opt for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.⁵

169. In addition, Mexico 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 but it is open to include a voluntary arbitration clause in some tax treaties, which position is reflected in its MAP profile.

Practical application

170. Up to date, Mexico has incorporated an arbitration clause in 11 of 61 treaties as a final stage to the MAP. These clauses are all providing voluntary and binding arbitration.⁶ However, Mexico reported in its MAP profiles that the relevant clauses require the

exchange of diplomatic notes in order to come into effect, which have not yet occurred with any of Mexico’s treaty partners.

171. In addition, four of Mexico’s tax treaties contain an arbitration provision based on a most-favoured nation clause.⁷

172. No peers provided input related to this element.

Anticipated modifications

173. Mexico did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2016.
2. See <https://www.sat.gob.mx> (accessed on 18 July 2018).
3. For post-2015 cases, if the number of MAP cases in Mexico’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Mexico reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
4. For pre – 2016 and post-2015 Mexico 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”.
5. An overview of Mexico’s position on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-mexico.pdf.
6. This concerns the treaties with Canada, Chile, Greece, Indonesia, Ireland, Israel, Luxembourg, Romania, Singapore, the United Kingdom and the United States. Reference is made to Annex A for the overview of Mexico’s tax treaties.
7. This concerns the treaties with Belgium, the Netherlands, Spain and Switzerland.

References

- 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 18 July 2018).
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en> (accessed on 18 July 2018).

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.

174. 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

175. Mexico reported that the implementation of MAP agreements is subject to domestic time limits between five and 10 years after the filing date of the taxpayers' tax return, which is provided by Article 67 and 146 of Mexico's Federal Fiscal Code. The statute of limitation always applies as none of Mexico's tax treaties contain the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015), as discussed under element D.3. Mexico clarified that the statute of limitation is, however, suspended:

- when a tax audit is undertaken by Mexico's tax authority (until the notification of the assessment resulting from the audit)
- when an administrative appeal or trial is filed in Mexico.

176. Therefore, Mexico reported that the taxpayer could benefit from a suspension of the statute of limitation if it opens a case before Mexico's courts and obtains a solution via MAP before the judgment is rendered. This, however, does not apply if the audit is undertaken by a foreign tax authority or if the taxpayer does not appeal the final assessment made by Mexico's tax authority.

177. Mexico reported that in practice the taxpayers are notified of the MAP agreements reached, and are requested to file (i) relevant information and (ii) an amended annual tax return within a 30-day timeframe. If taxpayers fail to file the amended tax return within the specified timeframe, Mexico reported that:

- in case of an upward adjustment, Mexico's tax authority would send a letter to the taxpayer to request a payment of corresponding taxes and an audit process might be triggered.
- In case of a downward adjustment, the authority in Mexico in charge of the tax refund process would nevertheless allow the refund, as long as it is still possible under its domestic statute of limitations.

178. In addition, Mexico reported that, if taxpayers have to request a tax refund, they must file a tax refund petition to a separate administrative unit from Mexico's competent authority, in accordance with domestic regulations provided in Article 22 of the Federal Fiscal Code.

179. While Mexico's MAP Guidance (Administrative Rule 2.1.32) mentions that the taxpayer will be informed of the MAP agreement reached, it does not specify the process it needs to follow to ensure implementation of such an agreement. This is not specified in Mexico's MAP profile either. This is further addressed in element B.8.

180. Mexico further reported that its competent authority follows up the implementation of MAP agreements by requesting information from the taxpayer to ensure the MAP agreement is implemented in transfer pricing cases and by notifying the MAP agreement to be implemented to the office in charge of implementation in other cases.

Practical application

181. As a preliminary remark, Mexico reported that its statute of limitation is taken into account by its competent authority when entering into a MAP agreement, which leads to the fact that all MAP agreements reached can be implemented. Mexico further reported that since 1 January 2016 it has reached the following number of MAP agreements:

Year	MAP agreements
2016	2
2017	0

182. In view of these closed MAP cases, one required an implementation by Mexico. In this respect, Mexico reported that it was implemented.

183. Almost all peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2016 that was not implemented by the Mexico.

184. Taxpayers reported no difficulties in relation to implementation of MAP agreements.

Anticipated modifications

185. Mexico 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 none of Mexico'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 time limits of five to ten years in its domestic law.	Even though Mexico 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. To ensure that all MAP agreements continue to be implemented if the conditions for such implementation are fulfilled, Mexico could introduce a tracking system.
	There is a risk that not all MAP agreements will be implemented because of the requirement for taxpayers to file an amended annual tax return within a period of 30 days after being notified of the MAP agreement reached as a prerequisite for having such a MAP agreement implemented.	Additionally, Mexico should closely monitor whether the requirements for taxpayers to file an amended tax return within a period of 30 days results in obstructions in practice concerning the implementation of MAP agreements. Where this is the case, Mexico should consider amending this process with a view to enable the implementation of all MAP agreements.

[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.

186. 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

187. As discussed under element D.1., the taxpayer is given 30 days to file an amended tax return and provide the necessary information to implement MAP agreements. This timeframe is not specified in Mexico's MAP guidance, which is discussed under element B.8. Apart from the time given to the taxpayer to submit an amended tax return in order for the MAP agreement to be implemented, Mexico reported that no timeline applies to Mexico's tax authority to effectively implement MAP agreements, provided that it can be implemented in Mexico.

Practical application

188. As discussed under element D.1, since 1 January 2016, Mexico reported that it entered into one MAP agreement that required implementation by Mexico out of the two MAP agreements that were reached. In this respect, Mexico reported having implemented such an agreement.

189. Almost all peers that provided input have not indicated experiencing any problems with Mexico regarding the implementation of MAP agreements reached on a timely basis. One peer specifically mentioned that it is aware of one MAP agreement which was not implemented timely and that it experienced delays in exchanging closing notes after reaching a MAP agreement with Mexico. Therefore, this peer suggests to Mexico's competent authority identifying the actions it could take to accelerate the implementation of MAP agreements, and provide insight to peers if Mexico's competent authority office is experiencing internal delays. Mexico responded that these delays resulted from administrative procedures that must be followed within the Mexican government in order to implement a MAP agreement and that some of these procedures require co-ordination with, and handling by, departments or agencies outside of Mexico's competent authority. Mexico further reported that for this reason, its competent authority does not have complete control over the timing of the implementation process of MAP agreements (such as in the case of refunds). Mexico recognised that without clear communication with the peer, uncertainties can arise as to the reason for the delay or how long the delay will last. Accordingly, Mexico reported that its competent authority will endeavour to enhance communication with peers when delays affect the implementation of a MAP agreement.

Anticipated modifications

190. As noted previously, Mexico reported that its competent authority will endeavour to enhance communication with peers if delays affect the implementation of a MAP agreement.

Conclusion

	Areas for improvement	Recommendations
[D.2]	Certain steps in the implementation of one MAP agreement were not completed on a timely basis.	Mexico should complete all the steps towards implementation of 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.

191. 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 Mexico's tax treaties

192. As discussed under element D.1, Mexico's domestic legislation includes a statute of limitations of five to 10 years for implementing MAP agreements, unless overridden by tax treaties. Mexico also reserved the right in the commentary to the 2017 OECD Model Tax Convention (OECD, 2015) not to include the second sentence of paragraph 2 of Article 25 in its tax treaties.

193. None of Mexico's 61 tax treaties 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. One treaty contains a provision based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) but also contains another provision stating that any agreement reached shall be implemented within ten years from the due date or the date of filing of the tax return, which limits the timeframe within which the agreement can be implemented. Therefore, this treaty does not contain the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015).

194. Furthermore, one tax treaty contains the alternative provisions in both Article 9(1) and Article 7(2), setting a time limit for making adjustments. Two tax treaties contain the alternative provision in Article 9(1) only. The remaining 58 tax treaties do not contain such equivalent or the alternative provisions.

Anticipated modifications

Multilateral Instrument

195. Mexico has, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, of the Multilateral Instrument. Therefore, at this stage the Multilateral Instrument will not modify the 60 treaties referred to previously to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

196. Mexico further reported that when tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or both alternatives provided for in Articles 9(1) and 7(2), it intends to update them via bilateral negotiations with a view to be compliant with element D.3. In this respect, Mexico reported that it would accept the alternative provisions relative to Articles 7 and 9 referred to in this element when amending or re-negotiating a treaty.

197. Mexico, however, reported not having in place a specific plan for such negotiations. In addition, Mexico reported it would accept to include both alternatives in all of its future tax treaties.

Peer input

198. Almost all peers that provided input reported that their treaty with Mexico was not in line with element D.3 and mentioned that they were aware of Mexico's reservation to the Multilateral Instrument. One peer expressed concerns about the current wording of its tax treaty with Mexico might obstruct the implementation of MAP agreements by Mexico when they are later than ten years after the due date or the date of filing of the tax return. This peer expressed that its expectations were that Mexico's practice does not obstruct the implementation of MAP agreements and that they enter into discussions to amend this treaty.

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>60 out of 61 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these 60:</p> <ul style="list-style-type: none"> • 58 contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor any of the alternative provisions. • Two do not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and only the alternative provision provided in Article 9(1). 	<p>As the 60 treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) will at this time not be modified via the Multilateral Instrument, Mexico should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, Mexico should put a plan in place on how it envisages updating these 60 treaties to include the required provision or its alternatives.</p> <p>In addition, Mexico should maintain its stated intention to be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p>

Reference

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).

Summary

	Areas for improvement	Recommendations
Part A. Preventing disputes		
[A.1]	One out of 61 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Mexico 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 treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. In addition, Mexico should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	Mexico is in theory able to extend bilateral APAs to previous fiscal years. Even though Mexico received requests for roll-back of bilateral APAs during the Review Period, these requests are still under consideration. It was therefore not possible at this stage to evaluate the effective implementation of this element in practice.	
Part B. Availability and access to MAP		
[B.1]	Eight out of 61 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those eight tax treaties: <ul style="list-style-type: none"> • One tax treaty does not contain the equivalent to 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. • Two tax treaties do not contain the equivalent to Article 25(1), first sentence. • Five 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. 	Mexico 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. <p>For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Mexico should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Mexico should put a plan in place on how it envisages updating these four treaties to include the required provision.</p> <p>In addition, Mexico should maintain its stated intention to include the required provision in all future tax treaties.</p>

	Areas for improvement	Recommendations
[B.1] <i>cont.</i>	Where tax treaties do not contain a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Mexico should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from being granted access to MAP if a request thereto is made 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.
	There is a risk that access to MAP is denied in eligible cases where the issue under dispute has already been decided via the judicial remedies provided by Mexico's domestic law.	Mexico should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2015a) can access the MAP.
[B.2]	60 of the 61 treaties do not contain a provision equivalent to Article 25(1) 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 partners. For these treaties no documented bilateral consultation or notification process is 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.	Mexico should introduce a documented notification and/or consultation procedure for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned 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 Mexico has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	Mexico reported it will give access to MAP in 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. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Mexico is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	-	-
[B.6]	-	As Mexico has thus far not limited access to MAP in eligible cases when taxpayers have complied with Mexico's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	27 out of 61 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those 22 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 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, Mexico should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Mexico should put a plan in place on how it envisages updating these five treaties to include the required provision.</p> <p>In addition, Mexico should maintain its stated intention to include the required provision in all future tax treaties.</p>

	Areas for improvement	Recommendations
[B.8]	MAP guidance is available with respect to access to MAP, but some further clarity should be provided with respect to the use of MAP. In addition, it is stated in the form listing the information and documentation to provide in order to submit an eligible MAP request that if the taxpayer fails to provide the relevant information, its request will be considered as unfiled, while it is no longer Mexico's practice.	<p>Mexico should improve the level of clarity of its MAP guidance, especially with respect to the use of MAP. In particular, Mexico should clarify in its guidance that in case the taxpayer fails to provide the relevant information, the case will be considered closed, instead of the request considered as unfiled.</p> <p>Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Mexico could consider including information on:</p> <ul style="list-style-type: none"> • whether MAP is available in: (i) transfer pricing cases, (ii) cases of the application of anti-abuse provisions, (iii) cases of multilateral disputes and (iv) cases of bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the possibility of suspension of tax collection during the course of a MAP • the consideration of interest and penalties in the MAP • 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).
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Mexico should ensure that its future updates of the MAP guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	The effects of the administrative or statutory dispute/resolution settlement processes on MAP are not addressed in the guidance on such process.	The guidance on the administrative or statutory dispute settlement/resolution process available in Mexico should clarify the effects on MAP when the case was resolved through such dispute settlement/resolution process.
Part C. Resolution of MAP cases		
[C.1]	27 out of 61 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in those 18 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining treaties 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, Mexico should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Mexico should put a plan in place on how it envisages updating these nine treaties to include the required provision.</p> <p>In addition, Mexico should maintain its stated intention to include the required provision in all future tax treaties.</p>

	Areas for improvement	Recommendations
[C.2]	<p>Mexico submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Mexico's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.</p> <p>Mexico's MAP statistics show that during the Statistics Reporting Period it closed 11% (2 out of 18 cases) of its post-2015 cases in 10.06 months on average. In that regard, Mexico is recommended to seek to resolve the remaining 89% of the post-2015 cases pending on 31 December 2017 (16 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.</p>	
[C.3]	As Mexico's MAP caseload has increased significantly since 1 January 2016, this might indicate that Mexico's competent authority is not adequately resourced while no specific actions have been taken by Mexico to address this in the meantime.	Mexico should ensure that the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner.
[C.4]	There is a risk that staff in charge of MAP depends on the direction given by the tax administration personnel directly involved in the adjustment at issue as in some cases staff in charge of MAP did not seem to have received accurate information from the tax administration personnel who made the adjustment at issue.	<p>Mexico should ensure that staff in charge of MAP can access all relevant information to enter into MAP agreements from the tax administration personnel who made the adjustment at issue.</p> <p>In addition, Mexico should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases absent any policy considerations that Mexico would like to see reflected in future amendments to the treaty.</p>
[C.5]	-	As it has done thus far, Mexico should continue to use appropriate performance indicators.
[C.6]	-	-
Part D. Implementation of MAP agreements		
[D.1]	<p>As will be discussed under element D.3 none of Mexico'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 time limits of five to ten years in its domestic law.</p> <p>There is a risk that not all MAP agreements will be implemented because of the requirement for taxpayers to file an amended annual tax return within a period of 30 days after being notified of the MAP agreement reached as a prerequisite for having such a MAP agreement implemented.</p>	<p>Even though Mexico has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.</p> <p>To ensure that all MAP agreements continue to be implemented if the conditions for such implementation are fulfilled, Mexico could introduce a tracking system.</p> <p>Additionally, Mexico should closely monitor whether the requirements for taxpayers to file an amended tax return within a period of 30 days results in obstructions in practice concerning the implementation of MAP agreements. Where this is the case, Mexico should consider amending this process with a view to enable the implementation of all MAP agreements.</p>
[D.2]	Certain steps in the implementation of one MAP agreement were not completed on a timely basis.	Mexico should complete all the steps towards implementation of all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	<p>60 out of 61 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these 60:</p> <ul style="list-style-type: none"> • 58 contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor any of the alternative provisions. • Two do not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and only the alternative provision provided in Article 9(1). 	<p>As the 60 treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) will at this time not be modified via the Multilateral Instrument, Mexico should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, Mexico should put a plan in place on how it envisages updating these 60 treaties to include the required provision or its alternatives.</p> <p>In addition, Mexico should maintain its stated intention to be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p>

Annex A

Tax treaty network of Mexico

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Action 25(1) of the OECD Model Tax Convention ("MTC")	Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration											
					B.1	B.2	A.1	A.2		B.7	B.8	B.9	B.10	B.11	B.12					
		B.1	B.2	B.3	B.4	B.5	B.6	B.7	B.8	B.9	B.10	B.11	B.12	B.13	B.14	B.15	B.16	B.17	B.18	B.19
		Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	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?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?											
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes if yes N = no i-Art. 25(5) ii - mandatory other iii - voluntary											
Argentina	Y	E = yes, either CAs O = yes, only one CA N = No	if ii, specify period	Y	i	N*	Y	N*	N	N	N	Y	N	N	Y	Y	Y	Y	N	N/A
Australia	Y	O*	N/A	Y	i	N*	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y	N	N/A
Austria	Y	O	N/A	i	i	N	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y	N	N/A
Bahrain	Y	O	4 years	ii	i	N	Y	Y	N	N	N	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		Column 11	
	DTC in force?		B.1	B.1	B.3	B.4	B.3	B.3	B.4	C.1	D.3	A.1	A.1	B.7	C.6	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		Arbitration							
			B.1	B.1	B.3	B.4	B.3	B.4	C.1	D.3	A.1	A.1	B.7	C.6	Arbitration					
Barbados	Y	N/A	O*	Y	N/A	N/A	i	i	N*	N	Y	Y	N*	N	N/A					
Belgium	Y	N/A	O*	Y	N/A	N/A	i**	i	Y	N	Y	Y	N*	N	N/A					
Brazil	Y	N/A	O	i	N/A	N/A	i	i	Y	N	Y	Y	N	N	N/A					
Canada	Y	N/A	O	Y	N/A	N/A	Y	i	Y	iii	Y	Y	N*	Y	iii					
Chile	Y	N/A	O	i	N/A	N/A	Y	i	Y	ii	Y	Y	N*	Y	iii					
China	Y	N/A	O	Y	N/A	N/A	i**	i	N*	N	Y	Y	N*	N	N/A					
Colombia	Y	N/A	O*	ii*	18 months	N/A	Y	i	Y	N	Y	Y	N*	N	N/A					
Costa Rica	N	09-06-2015	O**	Y	N/A	N/A	Y	i	Y	N	Y	Y	Y	N	N/A					
Czech Republic	Y	N/A	O*	ii	4 years	N/A	i	i	N*	N	Y	Y	Y	N	N/A					
Denmark	Y	N/A	O*	i	N/A	N/A	i	i	N*	N	Y	Y	Y	N	N/A					
Ecuador	Y	N/A	O	ii	2 years	N/A	i	i	Y	N	Y	Y	N	N	N/A					
Estonia	Y	N/A	O	Y	N/A	N/A	Y	i	N	N	Y	Y	Y	N	N/A					
Finland	Y	N/A	O*	Y	N/A	N/A	Y	i	N*	N	Y	Y	Y	N	N/A					
France	Y	N/A	O*	ii*	2 years	N/A	i**	i	Y	N	N*	N*	N*	N	N/A					
Germany	Y	N/A	O	Y	N/A	N/A	i	i	Y	N	Y	Y	Y	N	N/A					
Greece	Y	N/A	O*	Y	N/A	N/A	Y	i	Y	N	Y	Y	N*	Y	iii					
Guatemala	N	13-03-2015	E	Y	N/A	N/A	Y	i	Y	N	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		Column 11		
	DTC in force?	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) of the OECD MTC (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) second sentence? (Note 4)	Inclusion Art. 25(2) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Arbitration	Article 25(3) of the OECD MTC	Article 25(2) of the OECD MTC	Anti-abuse	Article 9(2) of the OECD MTC	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.3	B.4	C.1	C.6
Hong Kong, China	Y	O*	N/A	Y	Y	N/A	N/A	Y	i	Y	N	Y	i	Y	Y	Y	Y	Y	Y	N	N/A
Hungary	Y	O	N/A	Y	Y	N/A	N/A	Y	i	Y	N	Y	i	Y	Y	Y	Y	Y	Y	N	N/A
Iceland	Y	O*	N/A	Y	Y	N/A	N/A	Y	i	Y	N	Y	i	Y	Y	Y	Y	Y	Y	N	N/A
India	Y	O	N/A	Y	Y	N/A	N/A	Y	i	Y	N	Y	i	Y	Y	Y	Y	Y	Y	N	N/A
Indonesia	Y	O	N/A	i	Y	N/A	N/A	Y	i	Y	N	Y	i	Y	Y	Y	Y	Y	Y	Y	iii
Ireland	Y	N*	N/A	i	Y	N/A	N/A	Y	i	Y	N	Y	i	Y	N*	Y	Y	Y	Y	Y	iii
Israel	Y	O	N/A	Y	Y	N/A	N/A	Y	i	Y	N	Y	i	Y	Y	Y	Y	Y	Y	Y	iii
Italy	Y	N	N/A	ii*	Y	N/A	2 years	i**	i	Y	N	Y	i	Y	N*	Y	Y	Y	Y	N	N/A
Jamaica	N	O*	18-05-2016	Y	Y	N/A		Y	i	Y	N	Y	i	Y	Y	Y	Y	Y	Y	N	N/A
Japan	Y	O*	N/A	Y	Y	N/A	N/A	Y	i	Y	N	Y	i	Y	N*	Y	Y	Y	Y	N	N/A
Korea	Y	O*	N/A	i	Y	N/A	N/A	i**	i	N*	N	Y	i	Y	Y	Y	Y	Y	Y	N	N/A
Kuwait	Y	O*	N/A	Y	Y	N/A	N/A	Y	i	Y	N	Y	i	Y	Y	Y	Y	Y	Y	N	N/A
Latvia	Y	O	N/A	Y	Y	N/A	N/A	Y	i	N*	N	Y	i	Y	Y	Y	Y	Y	Y	N	N/A
Lithuania	Y	O*	N/A	Y	Y	N/A	N/A	Y	i	Y	N	Y	i	Y	Y	Y	Y	Y	Y	Y	N/A
Luxembourg	Y	O*	N/A	Y	Y	N/A	N/A	Y	i	Y	N	Y	i	Y	Y	Y	Y	Y	Y	Y	iii
Malta	Y	O*	N/A	Y	Y	N/A	N/A	Y	i	N*	N	Y	i	Y	Y	Y	Y	Y	Y	N	N/A
Netherlands	Y	O*	N/A	Y	Y	N/A	N/A	Y	i	Y	N	Y	i	Y	N*	Y	Y	Y	Y	N	N/A

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	Treaty partner	DTC in force?	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)	Inclusion Art. 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	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Arbitration
New Zealand	Y	N/A	O*	ii	4 years	i	i	N*	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Norway	Y	N/A	O*	Y	N/A	i**	i	N*	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Panama	Y	N/A	O*	Y	N/A	i	i	N*	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Peru	Y	N/A	O	Y	N/A	Y	i	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Philippines	N	17-11-2015	O	Y		Y	i	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Poland	Y	N/A	O	i	N/A	i**	i	N*	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Qatar	Y	N/A	O	ii	2 years	i	i	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Romania	Y	N/A	O	Y	N/A	i	i	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	iii
Russia	Y	N/A	N*	i	N/A	i	i	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Saudi Arabia	N	17-01-2016	O	Y		Y	i	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Singapore	Y	N/A	O	i	N/A	i**	i	N*	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	iii
Slovak Republic	Y	N/A	O	Y	N/A	Y	i	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
South Africa	Y	N/A	O	Y	N/A	i	i	N*	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Spain	Y	N/A	O	Y	N/A	Y	i	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A

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									
B.1	B.1	B.3	B.4	B.1	B.3	B.4	B.3	B.4	B.3	B.4	B.3	B.4	B.3	B.4	B.3	B.4	B.3	B.4	B.3	B.4
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) if no, will your CA provide access to MAP in TP cases?	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)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons																	
Sweden	Y	N/A	O*	iv	Y	i	Y	i	Y	N	Y	N*	Y	N	Y	N*	Y	N	Y	N/A
Switzerland	Y	N/A	O	ii	i	i	Y	i	Y	ii	Y	N	Y	N	Y	N	Y	N	Y	N/A
Turkey	Y	N/A	O*	Y	Y	i	Y	i	Y	N	Y	Y	Y	N	Y	Y	Y	N	Y	N/A
Ukraine	Y	N/A	O	Y	i	i	N	i	N	N	Y	Y	Y	N	Y	Y	Y	N	Y	N/A
United Arab Emirates	Y	N/A	O	Y	Y	i	Y	i	Y	N	Y	Y	Y	N	Y	Y	Y	N	Y	N/A
United Kingdom	Y	N/A	O*	i	Y	i	Y	i	Y	N	Y	N*	Y	Y	Y	N*	Y	Y	Y	iii
United States	Y	N/A	O	i	i	i	N	i	N	N	Y	Y	Y	N	Y	Y	Y	Y	Y	iii
Uruguay	Y	N/A	O*	ii	i	i	N*	i	N*	N	Y	N*	Y	N	Y	N*	Y	N	Y	N/A

* Treaties that will be modified upon entry into force 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 16 or 17 of the Multilateral Instrument.

Annex B

MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for pre-2016 cases

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	10	0	0	0	0	0	1	1	0	0	0	8	44.00
Others	6	0	0	0	0	0	0	0	0	1	2	3	28.00
Total	16	0	0	0	0	0	1	1	0	1	2	11	34.40

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	8	0	0	0	0	0	0	0	1	0	0	7	22.00
Others	3	0	1	0	0	0	0	0	0	0	0	2	17.00
Total	11	0	1	0	0	0	0	0	1	0	0	9	19.50

Annex C

MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for post-2015 cases

2016 MAP Statistics																	
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period				
		Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	8	0	0	0	0	0	0	0	0	0	0	0	0	0	8	n.a.
Others	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	3	n.a.
Total	0	11	0	0	0	0	0	0	0	0	0	0	0	0	0	11	n.a.

Note: The number of post-2015 cases started in 2016 is different from the number of cases in Mexico's published MAP statistics. This results from a mismatch in the computation of MAP cases with one of Mexico's treaty partners while one additional MAP case should have been considered initiated in 2016. This was corrected in 2017.

2017 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/ Allocation	8	5	1	0	0	1	0	0	0	0	0	0	0	11	10.06
Others	3	2	0	0	0	0	0	0	0	0	0	0	0	5	n.a.
Total	11	7	1	0	0	1	0	0	0	0	0	0	0	16	10.06

Note: In the case at stake Mexico denied MAP access because the MAP case was not timely notified by the other CA as provided in the relevant tax treaty.

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	Administrative rule 2.1.32 addressing MAP in Mexico combined with Procedure form 244/CFF applicable to submit a MAP request in Mexico
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
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 that are pending resolution on 31 December 2015
PRODECON	Procuraduría de la Defensa del Contribuyente, Mexico’s taxpayers’ advocacy agency
Post-2015 cases	MAP cases that are 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 December 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

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OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Mexico (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 1 peer review of the implementation of the Action 14 Minimum Standard by Mexico.

Consult this publication on line at <https://doi.org/10.1787/9789264304345-en>.

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