

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



Making Dispute Resolution More Effective – MAP Peer Review Report, Curaçao (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 85 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

As a result, the OECD established the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), 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 136 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 11 December 2019 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

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

Executive summary

Curaçao has a small tax treaty network, with less than ten tax treaties and has limited experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and no cases pending on 31 December 2018. Overall Curaçao meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Curaçao is working to address some of them.

All of Curaçao's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention. Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Almost 40% of its tax treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention stating that the competent authorities shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of their tax treaties
- Half of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

These treaties all concern treaties entered into by the Netherlands Antilles Islands, which Curaçao continues to apply in relation to the respective treaty partners. Apart from this, the Kingdom of the Netherlands signed on behalf of Curaçao the Multilateral Instrument. In this respect, Curaçao opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties.

Curaçao in principle meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request rollbacks of bilateral APAs. However, no such cases have occurred during the period of review.

Curaçao further 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 requests. However, access to MAP may be denied in some cases that are defined in Curaçao's domestic law and which is contrary to the requirements under Article 25(1) of the OECD Model Tax Convention. Furthermore, Curaçao does not have 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. While Curaçao has in place guidance on the availability of MAP and how it applies this procedure in practice, the guidance is limited and further clarity should be provided. This in particular concerns the manner and form in which the taxpayer should submit its MAP

request, including the information to be included in such request. In addition, the MAP guidance does not describe the relationship between MAP and audit settlements.

Concerning the average time needed to close MAP cases, the MAP statistics for Curaçao for the period 2016-18 are as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2017	Average time to close cases (in months)*
Attribution/allocation cases	0	0	0	0	N/A
Other cases	0	11	11	0	4.44
Total	0	11	11	0	4.44

* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. There were no pre-2016 cases pending on 1 January 2016.

The number of cases Curaçao closed in the period 2016-18 is exactly the same as the number of all new cases started in those years. Its MAP inventory as per 31 December 2018 is the same as compared to its inventory as per 1 January 2016. During these years, MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 4.44 months following which Curaçao's competent authority is considered to be adequately resourced.

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

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

Introduction

Available mechanisms in Curaçao to resolve tax treaty-related disputes

Curaçao has entered into eight tax treaties on income (and/or capital), seven of which are in force.¹ These eight treaties are being applied to nine jurisdictions.² All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, two of these eight treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.³

In Curaçao, the competent authority function to conduct MAP is assigned to the Minister of Finance, who has delegated it to the Director of Fiscal Affairs of the Ministry of Finance. In practice, it is the Department of the Fiscal Affairs within this ministry which handles MAP cases, except for cases concerning the application of the corporate tiebreaker rule, which are mandated to the Inspectorate of Taxes. In this respect, Curaçao reported that given the limited number of MAP cases, it has not established a dedicated MAP unit, and all MAP cases it received concerned the application of the corporate tiebreaker rule, which all have been processed by the case handler within the Inspectorate of Taxes who is in charge of such cases.

Curaçao issued brief guidance on the governance and administration of the mutual agreement procedure (“MAP”), which is available at (in English):

www.minfin.cw/files/BEBS_MAP/Mutual_Agreement_Procedure_MAP_ENG.pdf

Recent developments in Curaçao

Curaçao reported it is in the process of finalising tax treaty negotiations with San Marino. Curaçao signed a treaty with Malta in 2015, which has not yet entered into force although it has been ratified by Malta.

Furthermore, on 20 December 2017 the Kingdom of the Netherlands submitted on behalf of Curaçao a provisional list of reservations and notifications in respect of Curaçao under the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. With the deposition of the instrument of acceptance by the Kingdom of the Netherlands on 29 March 2019, the list of reservations and notifications was also submitted in respect of tax treaties of Curaçao.⁴ The Multilateral Instrument for Curaçao entered into force on 1 July 2019. In relation to the Action 14 Minimum Standard, Curaçao reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the

submission of a MAP request to the competent authorities of either contracting state.⁵ This reservation is in line with the requirements of the Action 14 Minimum Standard. As all treaties are in line with the requirements under the Action 14 Minimum Standard, apart from three treaties of the former Netherlands Antilles that are continued to be applied by Curaçao, there is no need for bilateral modifications of these treaties.

Basis for the peer review process

The peer review process entails an evaluation of Curaçao'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 Curaçao, its peers and taxpayers. The questionnaires for the peer review process were sent to Curaçao and the peers on 27 March 2019. One peer provided input, which is the Netherlands. This peer represents 100% of post-2015 MAP cases in Curaçao's inventory in the period 1 January 2016 – 31 December 2018.

The period for evaluating Curaçao's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 March 2019 ("**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 Curaçao'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 Curaçao 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. Furthermore, the treaty analysis also takes into account the treaties of the former Netherlands Antilles that are still being applied by Curaçao to Denmark, Finland, Iceland and Sweden, as well as the former internal regulation for the Kingdom of the Netherlands to Aruba and Sint Maarten. Reference is made to Annex A for the overview of Curaçao's tax treaties regarding the mutual agreement procedure.

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

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

With respect to the MAP statistics, Curaçao, however, did not report its MAP statistics for the year 2016 until the peer review process was initiated in 2019. For the years 2017 and 2018 such statistics were provided. These statistics are taken into account in the report.

Finally, Curaçao is a member of the FTA MAP Forum and has shown good co-operation during the peer review process.

Overview of MAP caseload in Curaçao

The analysis of Curaçao’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018 (“**Statistics Reporting Period**”). According to the statistics provided by Curaçao, its MAP caseload during this period was as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2018
Attribution/allocation cases	0	0	0	0
Other cases	0	11	11	0
Total	0	11	11	0

General outline of the peer review report

This report includes an evaluation of Curaçao’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 implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁸ Furthermore, the report depicts the changes adopted and plans shared by Curaçao 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 Curaçao 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 Curaçao has entered into are available at: <https://verdragenbank.overheid.nl/nl>. The treaty that is signed but has not yet entered into force is with Malta (2015). This newly negotiated treaty is taken into account in the treaty analysis. Reference is made to Annex A for the overview of Curaçao’s tax treaties concerning the mutual agreement procedure.

2. Curaçao itself has entered into two tax treaties on income and capital, which is with Malta and Norway. One of the remaining six treaties concerns an internal regulation within the Kingdom of the Netherlands, which is called “Belastingregeling voor het Koninkrijk” (Internal tax regulation for the Kingdom of the Netherlands) and which applied between Curaçao and the Netherlands Antilles Islands. On 10 October 2010 the Netherlands Antilles were dissolved, whereby some of the islands became municipalities of the Netherlands, while others, including Curaçao, enjoy internal self-government within the Kingdom of the Netherlands. Since then Curaçao has entered into a separate internal tax regulation with the Netherlands (“Belastingregeling Nederland-Curaçao” – Internal Tax Regulation between the Netherlands and Curaçao). Curaçao continues to apply the Internal tax regulation for the Kingdom of the Netherlands in relation to Aruba and Sint Maarten. Both regulations are considered reciprocal legislation which is applied between these jurisdictions instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands, because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation functions in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the OECD Model Tax Convention. Furthermore, the remaining four treaties concern agreements to promote economic relations that the Netherlands Antilles concluded with Denmark, Finland, Iceland and Sweden. These agreements include a provision regarding the mutual agreement procedure similar to Article 25 of the OECD Model Tax Convention and which Curaçao also continues to apply with these states.
3. This concerns the treaties with Malta and the Netherlands.
4. Available at: www.oecd.org/tax/treaties/beps-mli-position-curacao-instrument-deposit.pdf.
5. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Curaçao reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified.”
6. Available at www.oecd.org/tax/dispute/curacao-dispute-resolution-profile.pdf.
7. The 2016-18 MAP statistics of Curaçao are included in Annex B and C of this report.
8. 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.

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- OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

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 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 Curaçao’s tax treaties

2. Out of Curaçao’s eight tax treaties, five contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.¹ The remaining three treaties contain a provision that is based on Article 25(3), first sentence, of the OECD Model Tax Convention, but are considered not being equivalent thereof due to the fact that the word “doubts” is not included.²

3. Curaçao reported that where a tax treaty does not contain the full equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, there are under its domestic legislation and/or administrative practice no obstructions that would prevent its competent authority to enter into discussions on the interpretation or application of the treaty.

Anticipated modifications

Multilateral Instrument

4. The Kingdom of the Netherlands signed the Multilateral Instrument and deposited its instrument of acceptance on 29 March 2019. With its deposition of the instrument of acceptance, the list of notifications and reservations under the Multilateral Instrument was also submitted in respect of tax treaties entered into by Curaçao. The Multilateral Instrument for Curaçao entered into force on 1 July 2019.

5. Article 16(4)(c)(i) of the Multilateral Instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

6. In regard of the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Curaçao did not list any of them as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, none of these three tax treaties will be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Bilateral modifications

7. The three tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, concern those treaties of the former Netherlands Antilles with Denmark, Finland and Iceland that Curaçao continues to apply to these jurisdictions. In that regard, there is no need for a bilateral modification of these treaties. Regardless, Curaçao reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

8. One peer provided input. This input, however, does not relate to its tax treaty with Curaçao.

Conclusion

	Areas for improvement	Recommendations
[A.1]	-	Curaçao should maintain its stated intention to include Article 25(3), first sentence, of the OECD Model Tax Convention 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.

9. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.³ 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.

Curaçao’s APA programme

10. Curaçao reported that although it has not established a formal bilateral APA programme, its competent authority is authorised to enter into bilateral and multilateral APAs on the basis of the MAP article contained in its tax treaties as well as on the basis of Article 61 of the National Ordinance on General National Taxes providing for unilateral and advance tax rulings. In this respect, Curaçao clarified that this article is interpreted broadly so as to allow the competent authority to enter into bilateral and multilateral APAs.

11. Curaçao further reported that there are no specific timelines for a taxpayer to submit an APA request, but since these requests are being treated similar to advanced tax rulings, the rules laid down in the Ministerial Decree on Rulings apply.⁴ In that regard, Curaçao specified that an APA request should ideally be submitted before the start of the first fiscal year to be covered by the APA. An APA will thereby take effect as of the date of issuing and can be applied retroactively to the start of the first fiscal year to be covered by the APA. A bilateral APA would run for a period of no more than three years and it can be renewed upon request of the taxpayer, provided that no material changes to the facts and circumstances have occurred and insofar the treaty partner agrees therewith.

Roll-back of bilateral APAs

12. Curaçao reported that given the fact that it has no formal APA programme in place, there are also no rules on whether roll-back of such APAs are possible, but that in practice it is possible to grant a roll-back of bilateral APAs when the competent authority of the other jurisdiction agrees herewith. The number of tax years for which the bilateral APA will be applied retroactively would thereby depend on the domestic laws of the involved jurisdictions as well as on the agreement reached between their competent authorities. However, Curaçao also reported that roll-back of a bilateral APA is subject to the domestic statute of limitation of five years starting at the end of the fiscal year in which the tax has been arisen.

Practical application of roll-back of bilateral APAs

13. Curaçao reported that it has not yet received any bilateral APA request or a request for a roll-back of such an APA.

14. One peer provided input. However, this input does not relate to element A.2.

Anticipated modifications

15. Curaçao indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	Curaçao is in theory able to provide roll-back of bilateral APAs. However, it was not possible at this stage to evaluate the effective implementation of this element in practice since Curaçao did not receive any request for roll-back of bilateral APAs during the Review Period.	

Notes

1. These five treaties include the treaties of the former Netherlands Antilles with Norway and Sweden that Curaçao continues to apply to both jurisdictions and the internal tax regulation of the Kingdom of the Netherlands that Curaçao applies to Aruba and Sint Maarten.
2. These three treaties include the treaties of the former Netherlands Antilles with Denmark, Finland and Iceland that Curaçao continues to apply to these jurisdictions.
3. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
4. Available at: https://www.gobiernu.cw/files/Wetten/2018/P.B._2018__no._26.pdf.

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- OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Part B

Availability and access to MAP

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

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

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

Current situation of Curaçao's tax treaties

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

17. Out of Curaçao's eight tax treaties, four contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, 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.¹

18. The remaining four treaties are considered not to contain the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article.² However, since these tax treaties do not contain a non-discrimination provision and the treaties do not cover individuals, those four treaties are considered to be in line with this part of element B.1.

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

19. All of Curaçao’s eight tax treaties contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention 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.

Practical application

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

20. As follows from paragraphs 16 and 17 above, all of Curaçao’s tax treaties allow taxpayers to submit a MAP request irrespective of domestic remedies. In this respect, Curaçao reported that access to MAP will be granted irrespective of whether domestic remedies have been initiated for the same case. The formal initiation of the process, however, is dependent on the finalisation of the domestic remedies. Curaçao’s MAP guidance, however, does not contain any information on the interaction between MAP and domestic remedies.

21. Further to the above, Curaçao reported that the access to MAP can be denied if there is a punishment imposed by the court for intentionally committing one of the offenses as referred to in Article 49 of the National Ordinance on General National Taxes. These offenses entail a failure to:

- file a tax return within the set period of time or filing it incorrectly or incompletely, except if the person files a correct and complete tax return before being challenged by the Tax Inspector
- provide information, data, or indications, or providing them incorrectly or incompletely, except if the person provides correct and complete information, data or indicators before being challenged by the Tax Inspector
- preserve data carriers or to allow the inspection of their contents, or making them available in a false, falsified or incomplete form
- keep administration and accounting records in accordance with the requirements laid down in a tax ordinance, or to lend co-operation to the Tax Inspector for the investigation of such records as provided under Article 43(5)
- provide the following annual lists, or providing them incompletely, to the Tax Inspector: (i) a list of third parties that were employed by or for this person during the past year, including managing directors, supervisory directors, and any persons other than commissionaires (Article 45(2)), and (ii) a list of third parties that performed any work or provided any services to or for this person during the past year without being employed (Article 45(3))
- record the ultimate beneficial owners or beneficiaries, as referred to in Article 45(6-11), or the retention of proof of identification as referred to in Article 45(12-13).

22. These circumstance may limit access to MAP while such limitations are not allowed under Article 25(1), first sentence, of the OECD Model Tax Convention.

Anticipated modifications

Multilateral Instrument

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

23. The Kingdom of the Netherlands signed the Multilateral Instrument and deposited its instrument of acceptance on 29 March 2019. With its deposition of the instrument of acceptance, the list of notifications and reservations under the Multilateral Instrument was also submitted in respect of tax treaties entered into by Curaçao. The Multilateral Instrument for Curaçao entered into force on 1 July 2019.

24. Article 16(4)(a)(i) of the Multilateral Instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. 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.

25. Curaçao has, pursuant to Article 16(5)(a) of the Multilateral Instrument, reserved the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.³ In this reservation, Curaçao declared that it would ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report. It subsequently declared it would implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction and application of such process will be further discussed under element B.2.

26. In view of the above, following the reservation made by Curaçao, none of its eight treaties will be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

Bilateral modifications

27. Curaçao reported it will seek to include Article 25(1) of the OECD Model Tax Convention in all of its future tax treaties, either as it read prior to the adoption of the Action 14 final report or as amended by that report.

Peer input

28. One peer provided input. This input, however, does not relate to its tax treaty with Curaçao.

Conclusion

	Areas for improvement	Recommendations
	-	Curaçao should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention, either as it read prior to the adoption of the Action 14 final report or as amended by that report, in all future tax treaties.
[B.1]	Access to MAP can be denied under certain circumstances defined in Article 49 of the National Ordinance on General National Taxes, while such limitations are not allowed under Article 25(1), first sentence, of the OECD Model Tax Convention.	Curaçao should ensure that taxpayers that meet the requirements of Article 25(1), first sentence, of the OECD Model Tax Convention can access the MAP process and such access should not be limited by the circumstances defined in Article 49 of the National Ordinance on General National Taxes.

[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).

29. 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

30. As discussed under element B.1, none of Curaçao's eight treaties currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, none of these eight treaties will be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

31. Curaçao reported that it has not introduced a documented bilateral consultation or notification process that allows the other competent authority concerned to provide its

views on the case when Curaçao’s competent authority considers the objection raised in the MAP request not to be justified. Nevertheless, Curaçao’s MAP guidance, under the section “Rejection of MAP requests” stipulates that in cases where its competent authority arrives at the preliminary conclusion that a MAP request is inadmissible, or that the objection raised in the request is not justified, it will write the other competent authority concerned setting out the reasons why it arrived at this conclusion. Subsequently, Curaçao’s competent authority will solicit the other competent authority to provide its views before taking a final decision to reject the MAP request.

Practical application

32. Curaçao reported that since 1 January 2016 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016-18 MAP statistics submitted by Curaçao also show that none of its MAP cases was closed with the outcome “objection not justified”.⁴

33. One peer provided input and indicated not being aware of any cases for which Curaçao’s competent authority denied access to MAP since 1 January 2016. This peer also reported not having being consulted/notified of a case where the competent authority of Curaçao considered the objection raised in a MAP request as not justified, which can be clarified by the fact that no such instances have occurred in Curaçao since that date.

Anticipated modifications

34. Curaçao reported that it will document a bilateral consultation process as soon as possible in order to be in compliance with the Action 14 Minimum Standard.

Conclusion

	Areas for improvement	Recommendations
[B.2]	All eight tax treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, 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.	Curaçao should without further delay follow its stated intention and document its consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Curaçao should apply its consultation process for future 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 as amended by the Action 14 final report.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

35. 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

36. Out of Curaçao's eight tax treaties, two contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. The remaining six treaties do not contain such an equivalent, which for four of them can be clarified by the fact that these do not contain Article 9 at all.⁵

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

Practical application

38. Curaçao reported that since 1 January 2016, it has not received any MAP requests concerning transfer pricing cases and therefore has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

39. One peer provided input and indicated not being aware of a denial of access to MAP by Curaçao since 1 January 2016 on the basis that the case concerned was a transfer pricing cases.

Anticipated modifications

40. Curaçao reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties.

41. The Kingdom of the Netherlands signed the Multilateral Instrument and deposited its instrument of acceptance on 29 March 2019. With its deposition of the instrument of acceptance, the list of notifications and reservations under the Multilateral Instrument was also submitted in respect of tax treaties entered into by Curaçao. The Multilateral Instrument for Curaçao entered into force on 1 July 2019.

42. Article 17(2) of the Multilateral Instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Where such a notification is made by

both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention).

43. Curaçao has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument to its covered tax agreements. Therefore, at this stage, none of the two tax treaties identified in paragraph 35 above will be modified or be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

Conclusion

	Areas for improvement	Recommendations
[B.3]	Curaçao reported that it will provide access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP request of this kind during the Review Period Curaçao is therefore recommended to follow its policy and grant access to MAP when such cases surface.	

[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.

44. 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

45. None of Curaçao's eight tax treaties allow 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, the domestic law and/or administrative processes of Curaçao does 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.

46. Curaçao reported that it will give access to MAP for cases concerning the application of anti-abuse provisions. Curaçao's MAP guidance, however, does not clarify that access to MAP will be given in such cases.

Practical application

47. Curaçao reported that since 1 January 2016 it has not denied access to MAP for cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received since that date.

48. One peer provided input and indicated not being aware of a denial of access to MAP by Curaçao in relation to the application of treaty and/or domestic anti-abuse provisions since 1 January 2016.

Anticipated modifications

49. Curaçao indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	Curaçao 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. Curaçao 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.

50. 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***

51. Curaçao reported that under its domestic law it is possible that taxpayers and the tax administration enter into a settlement agreement after the ending of an audit. After such audit is concluded, the taxpayer is given the opportunity to provide a reaction to the findings of the audit and the proposed corrections. Upon accepting these proposed corrections, they and tax amounts payable will be concluded in a settlement agreement. Curaçao clarified that this process was put in place primarily to ensure that taxes are paid within the agreed period of time and to provide taxpayers certainty with respect to their tax position. In any case, Curaçao reported that audit settlements do not limit taxpayers' rights on access to MAP.

Administrative or statutory dispute settlement/resolution process

52. Curaçao reported it does not have in place an administrative or statutory dispute settlement/resolution process, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Practical application

53. Curaçao reported that since 1 January 2016 it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request had already been resolved through an audit settlement between the taxpayer and the tax administration. However, no such cases in relation hereto were received since that date.

54. One peer provided input and indicated not being aware of a denial of access to MAP by Curaçao since 1 January 2016.

Anticipated modifications

55. Curaçao indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	Curaçao reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Curaçao is therefore recommended to follow its policy and grant access to MAP when such cases surface.	

[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.

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

Legal framework on access to MAP and information to be submitted

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

58. Curaçao's MAP guidance, under the heading "How to make a MAP request" states that there is no standard form of presentation for a MAP request and that it is required that sufficient information and documentation is provided to enable the competent authority to fully access the request for MAP. In that regard, the MAP guidance clarifies that it is advisable that taxpayers consult the relevant treaty provisions and to contact the competent authority to seek for guidance on the information and documentation that needs to be provided.

59. Further to the above, Curaçao reported that upon receipt of a MAP request its competent authority will assess whether the taxpayer has provided all required information, and, if necessary, request additional information from the taxpayer. Taxpayers are given the opportunity to supplement the necessary information within a reasonable timeframe, whereby the length of this timeframe is determined by Curaçao's competent authority taking into account the extent and nature of the missing information. If a taxpayer does not provide the requested information within the given timeframe, a reminder will be sent including a new deadline for submitting the additional information. To this Curaçao added that if taxpayer then still does not provide the required information, a MAP request could be considered as inadmissible or not justified and subsequently be closed.

Practical application

60. Curaçao reported that it provided 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 it has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation. In that regard, Curaçao specified that it has only dealt with corporate tie-breaker MAP cases, for which it experienced that taxpayers have always provided the requested missing information within a short timeframe after being requested so, since they needed a confirmation on their residency for tax purposes.

61. One peer provided input and indicated not being aware of a limitation of access to MAP by Curaçao since 1 January 2016 in situations where taxpayers complied with information and documentation requirements set out in the MAP guidance of Curaçao

Anticipated modifications

62. Curaçao indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	As Curaçao has thus far not limited access to MAP in eligible cases when taxpayers have complied with Curaçao'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.

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

Current situation of Curaçao’s tax treaties

64. Out of Curaçao’s eight tax treaties, four contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.⁶

65. The remaining four treaties do not contain such equivalent, which follows from the fact that they have a limited scope of application.⁷ This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention are not followed. As these treaties were intentionally negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, therefore, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention for those four treaties with a limited scope of application.

Anticipated modifications

66. As the four treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, have a limited scope of application, no bilateral modifications are necessary in order to bring these treaties in line with element B.7. Furthermore, since these four concern those treaties of the former Netherlands Antilles with Denmark, Finland, Iceland and Sweden that Curaçao continues to apply to these jurisdictions, there is no need for a bilateral modification of the treaty in any case.

67. Regardless, Curaçao reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

68. One peer provided input. This input, however, does not relate to its tax treaty with Curaçao.

Conclusion

	Areas for improvement	Recommendations
[B.7]	-	Curaçao should maintain its stated intention to include Article 25(3), second sentence, of the OECD Model Tax Convention in all future tax treaties.

[B.8] Publish clear and comprehensive MAP guidance

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

69. 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.

Curaçao's MAP guidance

70. Curaçao has issued rules, guidelines and procedures relating to the MAP processes, which are included in the document titled Mutual Agreement Procedure (MAP) and which is available at:

www.minfin.cw/files/BEBS_MAP/Mutual_Agreement_Procedure_MAP_ENG.pdf

71. This document includes very basic information on the availability and practical application of the MAP under the tax treaties Curaçao entered into. In particular this concerns:

- a. contact information of the competent authority or the office in charge of MAP cases
- b. how the MAP functions in terms of timing and the role of the competent authorities
- c. implementation of MAP agreements; agreements (including the steps of the process and the timing of such steps for the implementation of MAP agreements, and any actions to be taken by taxpayers).

72. The above-described MAP guidance of Curaçao contains only very brief information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: contact information of the competent authority or the office in charge of MAP cases, but does not describe the manner and form in which the taxpayer should submit its MAP request.⁸ In that regard, various subjects are not reflected in Curaçao's MAP guidance. This concerns information on:

- whether MAP is available in cases of: (i) transfer pricing adjustments, (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
- suspension of tax collection
- the consideration of interest and penalties in the MAP process.

Information and documentation to be included in a MAP request

73. 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.⁹ This agreed guidance is shown below.

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case

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

74. Curaçao’s MAP guidance, under the heading “How to make a MAP request” states that there is no standard form of presentation for a MAP request and that it is required that sufficient information and documentation is provided to enable the competent authority to fully access the request for MAP. In that regard, the MAP guidance clarifies that it is advisable that taxpayers consult the relevant treaty provisions and to contact the competent authority to seek for guidance on the information and documentation that needs to be provided.

Anticipated modifications

75. Curaçao indicated that it does not anticipate any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
	Guidance on MAP is available, but further clarity should be provided.	<p>Curaçao should improve the level of clarity of its MAP guidance.</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 Curaçao could consider including information on:</p> <ul style="list-style-type: none"> • whether MAP is available in cases of: (i) transfer pricing adjustments, (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 suspension of tax collection • the consideration of interest and penalties in the MAP process.
[B.8]	The information necessary for submitting a MAP request is not available in the published MAP guidance.	<p>Curaçao should clarify in its MAP guidance the manner and form in which taxpayers should submit their MAP request. In particular, the following items could be included:</p> <ul style="list-style-type: none"> • facts of the case • analysis of the issue(s) requested to be resolved via MAP • Whether the MAP request was also submitted to the competent authority of the other treaty partner • whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes • whether the issue(s) involved were dealt with previously • a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

[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.

76. 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.¹⁰

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

77. The MAP guidance of Curaçao is published and can be found at:

www.minfin.cw/files/BEBS_MAP/Mutual_Agreement_Procedure_MAP_ENG.pdf

78. As regards the accessibility to Curaçao’s MAP guidance, it can easily be found on the website of the Ministry of Finance by searching for e.g. “MAP”.

MAP profile

79. The MAP profile of Curaçao is published on the website of the OECD.¹¹ This MAP profile is complete and sometimes with detailed information. This profile also sometimes includes external links that provide extra information and guidance where appropriate.

Anticipated modifications

80. Curaçao indicated that it does not anticipate 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, Curaçao should ensure that its future updates to the MAP guidance continue to be publicly 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.

81. 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

82. As previously discussed under B.5, under Curaçao’s domestic law it is possible that taxpayers and the tax administration enter into audit settlements. Furthermore, it is stated that Curaçao will grant access to MAP where the issue presented by the taxpayer has already been resolved through an audit settlement between the taxpayer and the tax administration. However, the relationship between audit settlements and MAP is not described in Curaçao’s MAP guidance.

83. One peer provided input, but not raise an issue with respect to the availability of audit settlements and the inclusion of information hereon in Curaçao’s MAP guidance.

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

84. As previously mentioned under element B.5, Curaçao does not have an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer. In this regard, Curaçao’s MAP guidance, under the heading “Acceptance into MAP”, contains the statement that there are no administrative or statutory dispute resolution processes in Curaçao that limit access to MAP.

85. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Curaçao, which can be clarified by the fact that such process is not in place.

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

86. Since Curaçao does not have an internal administrative or statutory dispute settlement/resolution process that impact MAP process, there is no need for notifying treaty partners of such process.

Anticipated modifications

87. Curaçao indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

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

Notes

1. These four treaties include the internal tax regulation of the Kingdom of the Netherlands that Curaçao applies to Aruba and Sint Maarten.
2. These four treaties include the treaties of the former Netherlands Antilles with Denmark, Finland, Iceland and Sweden that Curaçao continues to apply to these jurisdictions.
3. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Curaçao reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified.”. An overview of Curaçao’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-curaçao-instrument-deposit.pdf.
4. With respect to the MAP statistics, Curaçao did not report its MAP statistics for the year 2016 until the peer review process was initiated in 2019. These statistics are taken into account in the report.
5. These six treaties include the treaties of the former Netherlands Antilles with Denmark, Finland, Iceland, Norway and Sweden that Curaçao continues to apply to these jurisdictions, and the internal tax regulation of the Kingdom of the Netherlands that Curaçao applies to Aruba and Sint Maarten.
6. These four treaties include the treaty of the former Netherlands Antilles with Norway that Curaçao continues to apply, and the internal tax regulation of the Kingdom of the Netherlands that Curaçao applies to Aruba and Sint Maarten.
7. These four treaties include the treaties of the former Netherlands Antilles with Denmark, Finland, Iceland and Sweden that Curaçao continues to apply to these jurisdictions.
8. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

9. Ibid.
10. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
11. Available at: www.oecd.org/tax/dispute/curacao-dispute-resolution-profile.pdf.

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. <https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Part C

Resolution of MAP cases

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

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

88. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention, 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 Curaçao’s tax treaties

89. All of Curaçao’s eight tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is 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.

Anticipated modifications

90. As all of Curaçao’s tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, there is no need for bilateral modifications. In this respect, Curaçao reported that it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

91. One peer provided input. This input, however, does not relate to its tax treaty with Curaçao.

Conclusion

	Areas for improvement	Recommendations
[C.1]	-	Curaçao should maintain its stated intention to include the required provision in all future tax treaties.

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

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

92. 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

93. Statistics regarding all tax treaty related disputes concerning Curaçao are published on the website of the OECD as of 2017.¹

94. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template.

95. For the years 2017-18 Curaçao provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline. For the year 2016 MAP statistics, however, were only submitted after the commencement of the peer review process.

96. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and Annex C respectively and should be considered jointly to understand the MAP caseload of Curaçao.² With respect to post-2015 cases, Curaçao reported that it had only one MAP partner and that it has contact with this partner in terms of communication, whereby there is always a consultation as to the matching of MAP statistics before they are submitted. Based on the information provided by Curaçao’s MAP partners, its post-2015 MAP statistics for the years 2017 and 2018 actually match those of its treaty partner as reported by the latter.

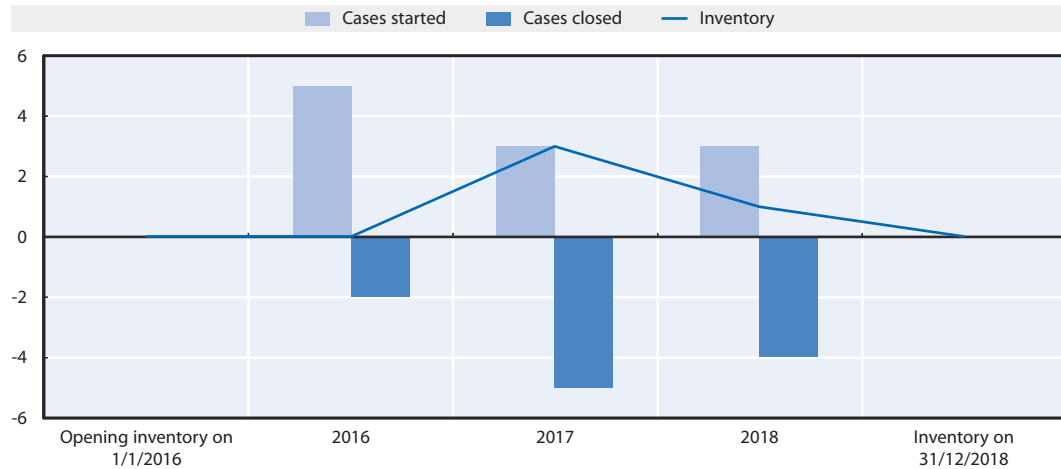
Monitoring of MAP statistics

97. Curaçao reported that its competent authority monitors its MAP inventory, by keeping track of the relevant data points as required under the MAP Statistics Reporting Framework, including start dates and end dates. In this respect, Curaçao stated that since all of its MAP cases were corporate tie-breaker cases, the person who is in charge of such cases monitors each case as to whether it can be resolved within the timeframe of 24 months.

Analysis of Curaçao's MAP caseload

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

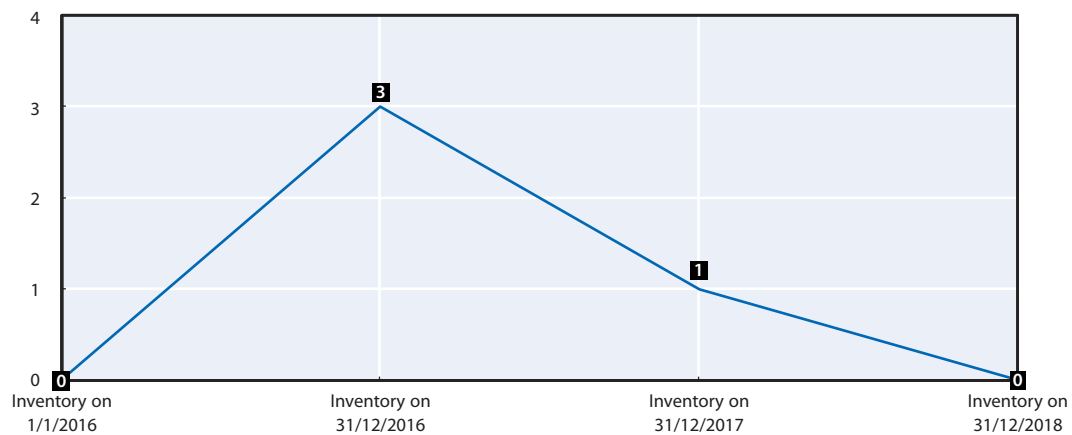
Figure C.1. Evolution of Curaçao's MAP caseload



99. At the beginning and the ending of the Statistics Reporting Period Curaçao had no pending MAP cases in its inventory. All of Curaçao's MAP cases that started in 2016, 2017 or 2018 were closed during these years.

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

Figure C.2. Evolution of Curaçao's MAP inventory Post-2015 cases



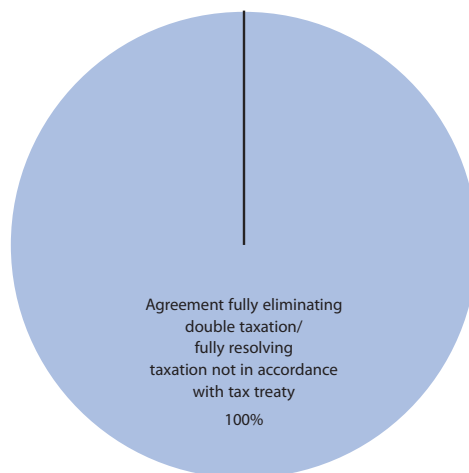
101. In total, 11 post-2015 cases started during the Statistics Reporting Period, all of which concerned other cases. At the end of this period all these cases were resolved.

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

102. During the Statistics Reporting Period Curaçao in total closed 11 MAP cases, which all had the outcome agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty.

Figure C.3. **Cases closed in 2016, 2017 or 2018 (11 cases)**



Average timeframe needed to resolve MAP cases

103. The average time needed to close 11 MAP cases during the Statistics Reporting Period was 4.44 months, which all concerned post-2015 other cases.

Peer input

104. The peer input regarding to the resolution of MAP cases is discussed under element C.3.

Anticipated modifications

105. As will be further discussed under element C.6, Curaçao's tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties, to provide that treaty-related disputes will be resolved within a specified timeframe, which should globally improve the time needed to settle MAP cases. Apart from this, Curaçao indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	<p>Curaçao submitted comprehensive MAP statistics on time on the basis of the MAP statistics Reporting Framework for the years 2017 and 2018. Based on the information provided by Curaçao's MAP partners, its post-2015 MAP statistics for these years actually match those of its treaty partners as reported by the latter.</p> <p>However, Curaçao did not submit 2016 MAP statistics within the required timeline, but only during the course of its peer review. In that regard, Curaçao is recommended to submit its MAP statistics on time in the future.</p> <p>Curaçao's MAP statistics show that during the Statistics Reporting Period it closed 100% (11 cases) of its post-2015 cases in 4.44 months on average. In that regard, Curaçao is recommended to seek to resolve future post-2015 cases within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.</p>	

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

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

106. 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 Curaçao’s competent authority

Organisation of the competent authority function

107. Under the tax treaties Curaçao entered into, the competent authority function is assigned to the Minister of Finance. Within this Ministry, the function has been delegated to the Director of the Department of Fiscal Affairs, by Ministerial decision of 1 March 2019, which has retroactive effect to 1 January 2016. This director is authorised to handle both MAP and APA cases. APA cases can also be handled by the Inspector of Taxes. Curaçao clarified that so far the number of MAP cases has been limited and for that reason it has not established a dedicated MAP unit. Furthermore, the MAP cases handled so far are only with one treaty partner and concerned corporate tie-breaker cases. These type of cases generally amounted to 0-5 per year. Other types of cases so far have not been received.

108. Concerning these corporate tiebreaker cases, Curaçao reported the mandate for handling these cases has been further sub-delegated to a specific and experienced employee with the Inspectorate of Taxes, such by a delegation order of 1 March 2019, which also has retroactive effect to 1 January 2016. This person would on average spend one day per year on handling MAP cases.

109. As for the training of staff in charge of MAP cases, Curaçao reported that it does not give specific training to staff handling MAP cases, but that such training on the MAP process will be provided if the treaty network grows and more MAP cases would be received, such with the aim to ensure that staff in charge of MAP cases is in a better position to be able to resolve issues in a more timely and efficient manner. Nevertheless, this staff member has received training on transfer pricing.

Handling and resolving of MAP cases

110. Curaçao’s MAP guidance, under the heading “Acceptance into MAP” defines the intention of its competent authority when handling MAP cases. This is to:

- eliminate as early as possible taxation that is not in accordance with the provisions of the tax treaty, by initiating early consultations
- process all MAP requests
- seek to resolve MAP cases within 24 months
- seek as far as possible to limit the costs of the MAP process
- ensure that MAP cases are handled as transparent as possible and inform taxpayers as soon as possible in case of any expected changes in the course of the process.

111. Further to the above, Curaçao clarified that as regards the handling and resolving of MAP cases, when its competent authority would receive a MAP request (not relating to the corporate tiebreaker rule), the Director of Fiscal Affairs would attribute the request to

one of the employees within the I Fiscal Affairs department. It is this department that is responsible for the MAP case throughout the entire process under the supervision of the Director of Fiscal Affairs.

112. Where a position paper is to be issued, Curaçao reported that this director has to approve it before it can be shared with the other competent authority concerned. In the preparation of such a position paper, employees within the Fiscal Affairs department may consult with the Inspectorate of Taxes to obtain information on the reasoning behind an adjustment (if it was made in Curaçao) and to receive the relevant information on the case under review.

Monitoring mechanism

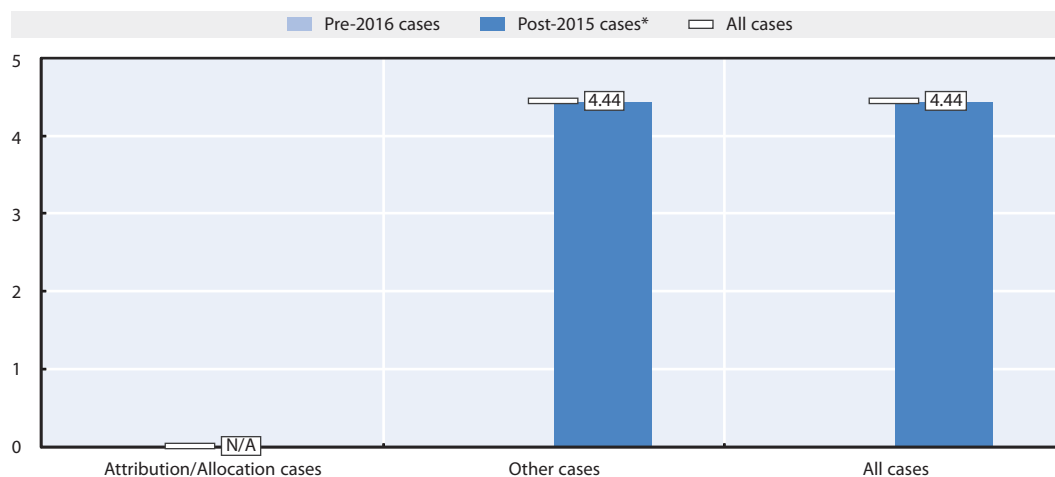
113. Curaçao reported that its competent authority monitors whether the available resources are sufficient based on the number of MAP requests received every year. In that regard, it reported that it considers that it currently has sufficient resources, given the limited number of MAP cases and the fact that all but one of the MAP cases were closed within 24 months. Curaçao added that if at a point in time more resources are needed, either the Inspector of Taxes or the Director of Fiscal Affairs will determine whether or not devoting additional resources from other departments to address the needs, or if necessary to hire new employees.

Practical application

MAP statistics

114. As discussed under element C.2 Curaçao closed its 11 MAP cases during the Statistics Reporting Period within the pursued 24-month average. These cases all concerned non-attribution/allocation cases. This can be illustrated by the following graph:

Figure C.4. Average time (in months) to close cases in 2016-18



*Note that post-2015 cases only concern cases started and closed during 2016-18.

115. Based on these figures, it follows that on average it took 4.44 months to close 11 MAP cases during the Statistics Reporting Period, which is within the pursued average of 24 months.

Peer input

116. One peer provided input and stated that its working relationship with Curaçao in relation to the handling and resolving of MAP cases is good. It specified that the contacts with Curaçao’s competent authority is smooth, most of which is via email. This peer further stated that it only started handling MAP cases with Curaçao due to the tax treaty recently entered into force. In that regard working guidelines had to be established for MAP cases regarding the application of the corporate tie-breaker rule, but upon establishment thereof MAP cases were handled in a swift and good manner, which has remained so.

Anticipated modifications

117. Curaçao indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	Curaçao should continue to monitor whether it remains to have adequate resources in place to ensure that future MAP cases are resolved 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.

118. 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

Handling MAP cases other than corporate tiebreaker cases

119. As discussed under element C.3, Curaçao reported that the Department of Fiscal Affairs is responsible for handling all MAP cases, except those concerning the application of the corporate tiebreaker rule. In this respect, the department is in charge of all steps of MAP process under the supervision of the Director of Fiscal Affairs, who approves positions papers and the conclusion of MAP agreements. It also reported that there is no formal requirement for the staff of the Department to consult or involve any personnel in Inspectorate of Taxes to process MAP cases. While in the process of resolving MAP cases,

the Department may consult with the Inspectorate of Taxes, Curaçao stressed that such consultation is only for the purpose of obtaining information for cases under review. In addition, Curaçao clarified that also professional experts can be consulted or involved in MAP cases if necessary, but they do not have any authority to approve or reject any aspect of the MAP process.

120. In regard of the above, Curaçao 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. That being said, it also stated that so far it has not received any MAP requests other than relating to the application of the corporate tie-breaker rule.

Handling corporate tiebreaker MAP cases

121. As was also discussed under element C.3, the competence to handle MAP cases has been delegated to the Director of the Department of Fiscal Affairs, by Ministerial decision of 1 March 2019 and specifically concerning the corporate tie-breaker rule to the Inspectorate of Taxes. In this respect, Curaçao reported that this person is not involved in audits, as audits are performed by a separate department and not within the Inspectorate of Taxes.

Practical application

122. One peer provided input. This input, however, does not relate to element C.4.

Anticipated modifications

123. Curaçao indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

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

124. 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 Curaçao

125. The Action 14 final report includes examples of performance indicators that are considered appropriate. These indicators are shown below:

- 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).

126. Curaçao reported that since its competent authority receives less than five MAP cases per year, no targets are set for the MAP staff in terms of the number of MAP cases closed and the time taken to close such cases. Curaçao further noted that in general, the performance of staff in charge of MAP is evaluated based on general performance indicators that apply to all personnel within the Ministry of Finance and the entire government of Curaçao.

127. Further to the above, Curaçao indicated 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

128. One peer provided input. This input, however, does not relate to element C.5. Anticipated modifications

129. Curaçao reported that if it concludes more tax treaties and consequently has more MAP cases, it will consider to set specific performance indicators and targets for its staff in charge of MAP cases.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	Curaçao could consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes.

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

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

130. 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

131. Curaçao reported that there are no domestic law limitations for including MAP arbitration in its tax treaties. Furthermore, Curaçao’s tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties.

132. Curaçao also reported that it opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision. Pursuant to Article 26(4) Curaçao reserved the right not to apply part VI to one of the two treaties mentioned below that already provides for a mandatory and binding arbitration procedure.

133. Curaçao’s MAP guidance contains a reference stating that at the taxpayer’s request, the matter may progress to arbitration provided that the relevant treaty contains an arbitration provision.

Practical application

134. Up to date, Curaçao has incorporated an arbitration clause in two of its eight treaties as a final stage to the MAP. These clauses are equivalent to Article 25(5) of the OECD Model Tax Convention.

Anticipated modifications

135. Curaçao indicated that it does not anticipate 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 included are up to the year 2018.
2. For post-2015 cases, if the number of MAP cases in Curaçao’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, Curaçao reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).

References

- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. <https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.
- OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

136. 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

137. Curaçao reported that it has a domestic statute of limitation that applies both to upward and downward adjustments and which is defined in Article 13 and 17 of the General Ordinance of National Taxes (Algemene landsverordening Landsbelastingen).

138. . For upward adjustments the statute of limitation is between five to ten years, depending on the specific situation. For downward adjustments, the statute of limitation is five years. Curaçao further reported that the domestic statute of limitation of both types of adjustments does not apply when the tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. As will be discussed under element D.3, since this is the case for all of Curaçao’s tax treaties, in all cases and as regards the implementation of MAP agreements, the statute of limitation is lifted.

139. Concerning the process for implementing MAP agreements, Curaçao reported that once a tentative MAP agreement is reached, the taxpayer is hereof notified in writing and is provided with an explanation of the result. Upon taxpayer’s acceptance of the MAP agreement, a written confirmation of the agreement is exchanged between the competent authorities and provided to the taxpayer. The results are then processed by the tax administration and relief of double taxation is granted, provided that the MAP agreement entails that Curaçao has to provide such relief. If the taxpayer does not accept the MAP agreement, then the MAP process will be deemed to be terminated and no agreement will be implemented.

140. Curaçao’s MAP guidance, under the heading “Mutual agreement procedure” includes information on the process to implement MAP agreements, which is the same as outlined above.

Practical application

141. Curaçao reported that since 1 January 2016 it entered into several MAP agreements, which only related to cases concerning the application of the corporate tiebreaker rule. These agreements did not require any adjustments to be made by Curaçao per se, but were implemented by way of removing the taxpayers from the files of the tax administration, when the agreement stated that taxpayers were not a resident of Curaçao for tax purposes.

142. One peer provided input and indicated not having experienced any issues with Curaçao regarding the implementation of MAP agreements reached since 1 January 2016.

Anticipated modifications

143. Curaçao indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	As it has done thus far, Curaçao should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.

[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.

144. Delays in implementing 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

145. Curaçao reported that there are no time limits to be applied for the implementation of MAP agreements.

Practical application

146. As described under element D.1, since 1 January 2016 Curaçao has only reached MAP agreements on corporate tiebreaker cases, which were implemented by way of removing the taxpayers from the files of the tax administration, when the MAP agreements entailed that taxpayers were not a resident of Curaçao for tax purposes. In that regard, Curaçao reported no delays occurred in this process.

147. One peer provided input and indicated not having experienced any issues with Curaçao regarding the implementation of MAP agreements reached since 1 January 2016 in general or on a timely basis.

Anticipated modifications

148. Curaçao indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

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

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

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

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

Legal framework and current situation of Curaçao's tax treaties

150. As discussed under element D.1, Curaçao's domestic legislation includes a statute of limitation of five to ten years, unless overridden by tax treaties that contain Article 25(2), second sentence, of the OECD Model Tax Convention. In this regard, all of Curaçao's eight tax treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.

Anticipated modifications

151. Curaçao reported that it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

152. One peer provided input. This input, however, does not relate to its tax treaty with Curaçao.

Conclusion

	Areas for improvement	Recommendations
[D.3]	-	Curaçao should maintain its stated intention to include Article 25(2), second sentence, of the OECD Model Tax Convention, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Reference

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	Curaçao should maintain its stated intention to include Article 25(3), first sentence, of the OECD Model Tax Convention in all future tax treaties.
[A.2]	Curaçao is in theory able to provide roll-back of bilateral APAs. However, it was not possible at this stage to evaluate the effective implementation of this element in practice since Curaçao did not receive any request for roll-back of bilateral APAs during the Review Period.	
Part B: Availability and access to MAP		
	-	Curaçao should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention, either as it read prior to the adoption of the Action 14 final report or as amended by that report, in all future tax treaties.
[B.1]	Access to MAP can be denied under certain circumstances defined in Article 49 of the National Ordinance on General National Taxes, while such limitations are not allowed under Article 25(1), first sentence, of the OECD Model Tax Convention.	Curaçao should ensure that taxpayers that meet the requirements of Article 25(1), first sentence, of the OECD Model Tax Convention can access the MAP process and such access should not be limited by the circumstances defined in Article 49 of the National Ordinance on General National Taxes.
[B.2]	All eight tax treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, 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.	Curaçao should without further delay follow its stated intention and document its consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Curaçao should apply its consultation process for future 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 as amended by the Action 14 final report.
[B.3]	Curaçao reported it will give access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Curaçao is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.4]	Curaçao 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. Curaçao is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	Curaçao reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Curaçao is therefore recommended to follow its policy and grant access to MAP when such cases surface.	

	Areas for improvement	Recommendations
[B.6]	-	As Curaçao has thus far not limited access to MAP in eligible cases when taxpayers have complied with Curaçao's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	-	Curaçao should maintain its stated intention to include Article 25(3), second sentence, of the OECD Model Tax Convention in all future tax treaties.
	Guidance on MAP is available, but further clarity should be provided.	<p>Curaçao should improve the level of clarity of its MAP guidance.</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 Curaçao could consider including information on:</p> <ul style="list-style-type: none"> • whether MAP is available in cases of: (i) transfer pricing adjustments, (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 suspension of tax collection • the consideration of interest and penalties in the MAP process.
[B.8]	The information necessary for submitting a MAP request is not available in the published MAP guidance.	<p>Curaçao should clarify in its MAP guidance the manner and form in which taxpayers should submit their MAP request. In particular, the following items could be included:</p> <ul style="list-style-type: none"> • facts of the case • analysis of the issue(s) requested to be resolved via MAP • whether the MAP request was also submitted to the competent authority of the other treaty partner • whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes • whether the issue(s) involved were dealt with previously • a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Curaçao should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	MAP guidance does not include information on the relationship between MAP and audit settlements between tax authorities and taxpayers.	Curaçao's MAP guidance should clarify that taxpayers have access to MAP in case of audit settlements between tax authorities and taxpayers.

	Areas for improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	-	Curaçao should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]		<p>Curaçao submitted comprehensive MAP statistics on time on the basis of the MAP statistics Reporting Framework for the years 2017 and 2018. Based on the information provided by Curaçao's MAP partners, its post-2015 MAP statistics for these years actually match those of its treaty partners as reported by the latter.</p> <p>However, Curaçao did not submit 2016 MAP statistics within the required timeline, but only during the course of its peer review. In that regard, Curaçao is recommended to submit its MAP statistics on time in the future.</p> <p>Curaçao's MAP statistics show that during the Statistics Reporting Period it closed 100% (11 cases) of its post-2015 cases in 4.44 months on average. In that regard, Curaçao is recommended to seek to resolve future post-2015 cases within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.</p>
[C.3]	-	Curaçao should continue to monitor whether it remains to have adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.
[C.4]		As it has done thus far, Curaçao should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that the Curaçao would like to see reflected in future amendments to the treaty.
[C.5]	-	Curaçao could consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	As it has done thus far, Curaçao should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.
[D.2]	-	As it has done thus far, Curaçao should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	-	Curaçao should maintain its stated intention to include Article 25(2), second sentence, of the OECD Model Tax Convention, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Annex A

Tax treaty network of Curaçao

		Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?		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(2) second sentence? (Note 4)	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			If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)			
	Y = yes N = signed pending ratification	If N, date of signing	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no
Aruba	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Denmark	Y	N/A	O	Y	N/A	N/A	i	Y	Y	N	N	N
Finland	Y	N/A	O	Y	N/A	N/A	i	Y	Y	N	N	N

Iceland	Y	N/A	O	Y	N/A	N/A	i	Y	Y	N	N	N
Malta	N	18-11-2015	O	Y	N/A	Y	i	Y	Y	Y	Y	Y
Netherlands	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y
Norway	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Sweden	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	N	N
Sint Maartin	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N

Legend

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

Annex B

MAP statistics pre-2016 cases

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
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

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
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2018 MAP statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	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 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

Annex C

MAP statistics post-2015 cases

2016 MAP statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	5	0	0	0	0	0	2	0	0	0	0	3	5.74
Total	0	5	0	0	0	0	0	2	0	0	0	0	3	5.74

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	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	3	3	0	0	0	0	0	5	0	0	0	0	1	5.41
Total	3	3	0	0	0	0	0	5	0	0	0	0	1	5.41

2018 MAP statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	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 2018	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	1	3	0	0	0	0	0	4	0	0	0	0	0	2.58
Total	1	3	0	0	0	0	0	4	0	0	0	0	0	2.58

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	Mutual Agreement Procedure (MAP), published by the Minister of Finance of Curaçao
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 2016
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 March 2019
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2018
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

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Curaçao (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 Curaçao.

Consult this publication on line at <https://doi.org/10.1787/7f84d697-en>.

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