

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



Making Dispute Resolution More Effective – MAP Peer Review Report, France (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, France (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

Please cite this publication as:

OECD (2020), *Making Dispute Resolution More Effective – MAP Peer Review Report, France (Stage 2): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris,
<https://doi.org/10.1787/a5d1cab8-en>.

ISBN 978-92-64-60600-5 (print)

ISBN 978-92-64-52642-6 (pdf)

OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

Photo credits: Cover © ninog-Fotolia.com.

Corrigenda to publications may be found on line at: www.oecd.org/about/publishing/corrigenda.htm.

© OECD 2020

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.

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.

Table of contents

Abbreviations and acronyms	7
Executive summary	9
Introduction	11
Reference	17
Part A. Preventing disputes	19
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties	19
[A.2] Provide roll-back of bilateral APAs in appropriate cases	22
References	24
Part B. Availability and access to MAP	25
[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties	25
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process	33
[B.3] Provide access to MAP in transfer pricing cases	35
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions	38
[B.5] Provide access to MAP in cases of audit settlements	40
[B.6] Provide access to MAP if required information is submitted	41
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties	42
[B.8] Publish clear and comprehensive MAP guidance	45
[B.9] Make MAP guidance available and easily accessible and publish MAP profile	48
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP	49
References	51
Part C. Resolution of MAP cases	53
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties	53
[C.2] Seek to resolve MAP cases within a 24-month average timeframe	56
[C.3] Provide adequate resources to the MAP function	64
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty	69
[C.5] Use appropriate performance indicators for the MAP function	71
[C.6] Provide transparency with respect to the position on MAP arbitration	72
References	75
Part D. Implementation of MAP Agreements	77
[D.1] Implement all MAP agreements	77

[D.2] Implement all MAP agreements on a timely basis.	78
[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)	80
Reference	83
Summary	85
Annex A. Tax treaty network of France	89
Annex B. MAP statistics pre-2016 cases	97
Annex C. MAP statistics post-2015 cases	98
Glossary	99
Figures	
Figure C.1 Evolution of France’s MAP caseload	57
Figure C.2 End inventory on 31 December 2017 (887 cases)	58
Figure C.3 Evolution of France’s MAP inventory	58
Figure C.4 Evolution of France’s MAP inventory	59
Figure C.5 Cases closed during 2016 and 2017 (594 cases)	60
Figure C.6 Average time (in months) to close cases in 2016 or 2017	65

Abbreviations and acronyms

APA	Advance Pricing Arrangement
DGFIP	Directorate General of Public Finance
MAP	Mutual Agreement Procedure
MEJEI	International Legal and Economic Expertise Mission
OECD	Organisation for Economic Co-operation and Development

Executive summary

France has a very large tax treaty network with 120 treaties and has signed and ratified the EU Arbitration Convention. France has an established MAP programme and has long-standing and large experience with resolving MAP cases. It has a very large MAP inventory with a very large number of new cases submitted each year and almost 900 cases pending on 31 December 2017. Of these cases, approximately 55% concern attribution/allocation cases. The outcome of the stage 1 peer review process was that overall France met most of the elements of the Action 14 Minimum Standard. Where deficiencies were identified, France worked to address some of them, which has been monitored in stage 2 of the process. In this respect, France has solved some of them.

Almost all of France's tax treaties contain a provision relating to MAP. These treaties generally 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 half of its tax treaties do not contain a provision allowing competent authorities to consult together for the elimination of double taxation in cases not provided in the convention or include a provision that is not equivalent to the second sentence of Article 25(3) of the OECD Model Tax Convention.
- One-third of its tax treaties do not contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Almost one-third of its tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, whereby they either do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention or provide for a shorter period than three years as from the first notification of the action resulting in taxation not in accordance with the tax treaty to submit a MAP request.

In order to be fully compliant with the four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, France signed and ratified, without any reservation on the MAP article, the Multilateral Instrument. Through this instrument the majority of the relevant tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Furthermore, France opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, France reported that it already initiated bilateral negotiations with some jurisdictions and that for the other treaties has put a plan in place to update them with a view to be compliant with the requirements of the Action 14 Minimum Standard. France thereby strives as much as is possible to realise this via the Multilateral Instrument, such by actively encouraging treaty

partners to either sign it or update the notifications under that instrument. In line with that plan, France has already undertaken several actions and further actions are envisaged.

France does not meet the Action 14 Minimum Standard concerning the prevention of disputes as it does not enable taxpayers to request roll-back of bilateral APAs even though it has a bilateral APA programme in place.

France meets almost all of the requirements regarding the availability and access to MAP. France provides access to MAP in all eligible cases, but access to MAP can be denied in cases where severe penalties are imposed and have become final. France has in place a documented notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. France has published clear and comprehensive MAP guidance on the availability of MAP and how it applies this procedure in practice.

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

2016-17	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2017	Average time to resolve cases (in months)*
Attribution/allocation cases	521	247	294	474	34.84
Other cases	323	385	300	408	20.41
Total	844	632	594	882	27.55

*The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, France used as a start date the date when the MAP request was received and as the end date, either the date of the closing letter sent to the taxpayer or the date of final closure of the case if no agreement was reached.

The number of cases France closed in 2016 or 2017 is lower than the number of all new cases started in those years. Its MAP inventory as per 31 December 2017 increased by 5% as compared to its inventory as per 1 January 2016. During these years, MAP cases were closed on average within a timeframe of more than 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016). However, France specified that the median time taken to resolve MAP cases was slightly lower than 24 months (approximately 23 months). The time needed to close attribution/allocation cases remains higher on average (almost 35 months) than the average time needed to close other cases (less than 21 months). In this respect, and while France has recently taken steps to hire new staff to work with its competent authority, it should closely monitor whether this will contribute to the acceleration of the resolution of MAP cases to ensure that France resolves all MAP cases in a timely, efficient and effective manner.

Furthermore, France meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. France'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, France also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Even though there is a risk that some agreements cannot be implemented because of the expiration of the time period to keep accounting documents, no issues have surfaced throughout the peer review process.

Introduction

Available mechanisms in France to resolve tax treaty-related disputes

France has entered into 120 tax treaties on income (and/or capital), of which 118 are in force.¹ These 120 treaties apply to 126 jurisdictions.² All but two of these 120 treaties allow taxpayers to request the opening of a mutual agreement procedure to resolve disputes on the interpretation and application of the provisions of the tax treaty.³ In addition, nine treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.⁴

France is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.⁵ Furthermore, France adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which has been implemented in its domestic legislation since 1 January 2019.⁶

In France, the competent authority in charge of the mutual agreement procedure is the Minister of Budget or his authorised representative. In practice, this is the International Legal and Economic Expertise Mission (MEJEI) of the Directorate General of Public Finance (DGFIP). France’s competent authority is composed of 11 persons, in charge of both mutual agreement procedures and advance pricing arrangements (“APAs”). The organisation of this function is described in detail in the administrative guidelines BOI-INT-DG-20-30-20 on the mutual agreement procedure.

Developments in France since 1 April 2017

Developments relating to the tax treaty network

France has signed a tax treaty with Colombia (2015), which has not yet entered into force, but has been ratified by France in 2016. France also signed a new treaty with Luxembourg (2018), which concerns the replacement of the existing treaty and which has not yet entered into force. In addition, the stage 1 peer review report of France did not yet take into account the treaty that is in force with Jersey. Taking these developments into consideration, the number of tax treaties of France is 120 treaties instead of 119 treaties that was taken as the basis in the stage 1 peer review report.

Furthermore, on 7 June 2017 France signed 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. It further opted for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. On 12 July 2018, France ratified the Multilateral Instrument by Law No. 2018-604, JORF

No. 0160. France subsequently deposited the instrument of its ratification on 26 September 2018, following which the Multilateral Instrument has for France entered into force on 1 January 2019. With the depositing of its instrument of ratification, France also submitted its list of notifications and reservations to the Multilateral Instrument.⁷ In relation to the Action 14 Minimum Standard, France has not made any reservation to Article 16 of the Multilateral Instrument (relating to the mutual agreement procedure).

In addition, France indicated that it is currently conducting negotiations with several jurisdictions. These negotiations should result in the conclusion of new tax treaties or amendments to existing tax treaties to include both the equivalent of Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention.

As a general principle, France reported that it considers the Multilateral Instrument to be the most relevant instrument to modify its tax treaty network and bring it in line with the Action 14 Minimum Standard. For those treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that have not been or will not be modified by the Multilateral Instrument, France reported that it has put a plan in place for bringing these treaties in line with the requirements under this standard, which, however, was only shared in September 2019. The details of this plan are as follows:

- Contacting those jurisdictions that have not signed the Multilateral Instrument with a view to learn about their intentions to sign the instrument in the coming period and subsequently encouraging them to sign this instrument, list the treaty with France as a covered tax agreement and accordingly make the appropriate notifications with respect to the Action 14 Minimum Standard
- Contacting those jurisdictions that already have signed the Multilateral Instrument, but have not listed their treaty with France as a covered tax agreement, with a view encouraging them to list this treaty as such and accordingly make the appropriate notifications with respect to the Action 14 Minimum Standard
- Updating the list of covered tax treaties under the Multilateral Instrument (irrespective of any pending bilateral negotiations), following which all of France's treaties would be listed under that instrument, and accordingly to update its notifications in relation to the mutual agreement procedure.

In view of this plan, France reported that it has already started working on these steps (see below). When these steps will eventually not lead to a modification of the tax treaty via the Multilateral Instrument, France reported that it will contact the relevant treaty partners with a view to initiating bilateral negotiations.

Further to the above, as part of its plan and in addition to that, France also reported that it has already initiated the following actions:

- An amendment to the tax treaty with New Caledonia has been signed, by which the treaty will be in line with the requirements under the Action 14 Minimum Standard.
- Negotiations have been completed with Malawi and Zambia, following which the former treaty with the United Kingdom will no longer be applicable in relation to these treaty partners and the new treaties will be in line with the requirements under the Action 14 Minimum Standard.
- A number of treaty partners were contacted to establish their intentions as to the notification of their agreement with France under the Multilateral Instrument.
- A number of treaty partners were contacted to suggest an amendment of their notification under the Multilateral Instrument as regards the treaty with France.

- Quebec was contacted to modify the relevant provision of the tax treaty and bring it in line with the requirements under the Action 14 Minimum Standard.
- France has participated through CREDAF in seminars with French-speaking African countries to promote the BEPS action programmes and in particular the benefits of the Multilateral Instrument in relation to Action 14. France reported that it is currently organising a symposium gathering several countries such as Benin, Burkina Faso, the Central African Republic, Congo, Madagascar, Mali, Mauritania, Senegal, Togo and Tunisia that will be held in France’s Senate in January 2020. France specified that this symposium will focus on the benefits of compliance with BEPS standards and particularly the Action 14 Minimum Standard.

Other developments

France reported that it introduced a documented consultation process that its competent authority applies in cases where it considers the objection raised by the taxpayer as not justified in order to give the other competent authority the opportunity to provide its views on the relevant case.

In addition, France reported that it has taken steps to hire additional personnel to work with its competent authority and that one additional case worker position has been created as of 1 September 2019.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of France’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 France, its peers and taxpayers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, France’s implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 13 October 2017. This report identifies the strengths and shortcomings of France in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.⁸ Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by France. In this update report, France reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

For the purpose of this report and the statistics provided below, in assessing whether France 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 they concern a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaties concluded with former Czechoslovakia (1973) that France continues to apply to the Slovak Republic; the treaty with the former USSR (1985) that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan; the treaty with former Yugoslavia (1974) that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia; and the former treaty with the United Kingdom (1950) that France continues to apply to Malawi and Zambia. As it concerns tax treaties that are applicable to multiple jurisdictions, they are only counted as one treaty for this purpose. Reference is made to Annex A for an overview of France’s tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers

Stage 1 of the peer review process was for France launched on 7 March 2017, with the sending of questionnaires to France and its peers. The FTA MAP Forum has approved the stage 1 peer review report of France in September 2017, with the subsequent approval by the BEPS Inclusive Framework on 13 October 2017. On 2 November 2018, France submitted its update report, which initiated stage 2 of the process. While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, France opted to provide information on the period starting as from 1 January 2014 and also requested peer input relating to that period. The period for evaluating France’s implementation of this standard ranges from 1 January 2016 up to 31 March 2017 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 April 2017 and depicts all developments as from that date until 30 September 2018.

In total 20 peers provided input during stage 1: Australia, Belgium, Canada, Denmark, Germany, Greece, India, Ireland, Italy, Japan, the Netherlands, Portugal, Russia, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. In stage 1, these peers represent more than 80% of post-2015 MAP cases in France’s inventory that started in 2016. Input was also received from taxpayers. During stage 2, apart from Greece, the same peers provided input on the update report of France. Furthermore, also Austria, Korea, Norway, Singapore and Slovenia provided input during stage 2. For this stage, these peers represent almost 90% of post-2015 MAP cases in France’s inventory that started in 2016 or 2017.⁹ Peers have often pointed out that the time to resolve cases involving France was relatively long although they indicated that overall their experience with France was positive, some of them insisting on the pragmatism of France’s competent authority. Specifically with respect to stage 2, the peers that provided input reported that overall their relationship with France was positive although there remained some areas for improvement in terms of prevention and resolution of MAP cases.

Input by France and cooperation throughout the process

During stage 1, France provided complete answers to the questionnaire which was submitted on time. France also responded promptly and accurately to requests for additional information and provided clarification when necessary. In addition, France provided the following information:

- MAP profile¹⁰
- MAP statistics¹¹ according to the MAP Statistics Reporting Framework (see below).

Concerning stage 2 of the process, France did not submit its update report on time and the information included therein was informative. France was co-operative during stage 2 and the finalisation of the peer review process.

Finally, France is an active member of the FTA MAP Forum and has been co-operative during the peer review process. It provided detailed information on the other jurisdictions as part of their own peer review and made some constructive proposals to improve the process with the concerned jurisdictions.

Overview of MAP caseload in France

The analysis of France’s MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ended on 31 December 2016. For stage 2 the period ranges from 1 January 2017 to 31 December 2017. Both periods are taken into account in this report for analysing the MAP statistics of France. The analysis of France’s MAP caseload relates to the period starting on 1 January 2016 and ending 31 December 2017 (the “**Statistics Reporting Period**”). According to the statistics provided by France, its MAP caseload during this period was as follows:

2016-17	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2017
Attribution/allocation cases	521	247	294	474
Other cases	323	385	300	408
Total	844	632	594	882

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“Terms of Reference”).¹² Apart from analysing France’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by France, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by France 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 basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the

peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of France relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes in the recent development sections.

The objective of Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but France should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement and recommendation for this specific element.

Notes

1. The tax treaties France has entered into are available at: <https://www.impots.gouv.fr/portail/les-conventions-internationales>. The tax treaties that are signed but not have yet entered into force are with Colombia (2015) and Luxembourg (2018). The new treaty with Luxembourg will replace the existing treaty upon entry into force. The treaty with Colombia concerns a treaty partner with which there is currently no tax treaty into force. Annex A includes an overview of France's tax treaties with respect to the mutual agreement procedure. For purpose of this report and Annex, the newly negotiated treaty that replaces an existing treaty are taken into account.
2. France continues to apply the tax treaty with former Czechoslovakia (1973) to the Slovak Republic; the treaty with the former USSR (1985) to Belarus, Kyrgyzstan and Turkmenistan; the treaty with former Yugoslavia (1974) to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia; and the former treaty with the United Kingdom (1950) to Malawi and Zambia.
3. These two tax treaties are with Monaco and the former treaty with the United Kingdom that France continues to apply to Malawi and Zambia.
4. This concerns treaties with Canada, Colombia, Germany, Kazakhstan, Luxembourg, Quebec, Switzerland, the United Kingdom and the United States.
5. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.
6. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
7. Available at: www.oecd.org/tax/treaties/beps-mli-position-france-instrument-deposit.pdf.
8. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-france-stage-1-9789264285774-en.htm.
9. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework.
10. Available at: www.oecd.org/tax/dispute/France-Dispute-Resolution-Profile.pdf.
11. The MAP statistics of France are included in Annex B and C of this report.
12. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REV1).

Reference

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>.

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 France's tax treaties

2. Out of France's 120 tax treaties, 65 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. Furthermore, of the remaining 55 treaties, 54 contain a provision that is based on Article 25 (3), first sentence, but is considered not the equivalent thereof as not all terms used in that sentence are included.¹ This, for example, concerns provisions that provide only for the resolution of difficulties and not for the elimination of doubts, or which do not provide for the possibility of opening such a mutual agreement procedure in cases regarding the interpretation and application of the treaty. The remaining treaty does not contain a provision that is based on or equivalent to Article 25(3), first sentence.²

3. France reported that in practice it endeavours to resolve with its treaty partners by mutual agreement any difficulties or doubts arising as to the interpretation or application of tax treaties, regardless of whether the applicable treaty contains a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention*.

4. With respect to the 55 treaties that are not in line with element A.1., eight peers provided input. One mentioned that the treaty was already in line with the minimum standard, which is not in line with the above analysis. Five of them specified that they intend to modify their treaty with France via the Multilateral Instrument. Two of them mentioned that they are currently in bilateral negotiations with France and that their new tax treaty will be in line with the Action 14 Minimum Standard.

Recent developments

Bilateral modifications

5. France signed a new treaty with one treaty partner, which concerns the replacement of an existing tax treaty and which recently entered into force. This new treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, which also was the case for the treaty that has been replaced.

Multilateral Instrument

6. France signed the Multilateral Instrument and has deposited its instrument of ratification on 26 September 2018. The Multilateral Instrument has entered into force for France on 1 January 2019.

7. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention – 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.

8. In regard of the 55 treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, France listed 42 as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), for all these treaties a notification that they do not contain a provision described in Article 16(4)(c)(i).³ Of the relevant treaty partners, ten are not a signatory to the Multilateral Instrument, whereas two have not listed their treaty with France as a covered tax agreement under that instrument. Of the remaining 30 treaty partners, 26 also made a notification on the basis of Article 16(6)(d)(i).

9. Of the 26 treaty partners mentioned above, ten have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between France and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified ten treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. For the remaining 16 treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Other developments

10. France reported that it is currently negotiating a new treaty with one treaty partner *inter alia* to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, which is not the case for the treaty currently in force. It finalised negotiations with two treaty partners on a new treaty, for which it currently continues to apply the former treaty with the United Kingdom, and with a third treaty partner on the amendment of the existing treaty in force. All three treaties contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, which was not the case in the treaties currently in force.

Peer input

11. With respect to the 29 treaties that are not in line with element A.1 and that will not be modified by the Multilateral Instrument, two peers provided input in stage 2. One of them specified that the absence of the relevant provision did not prevent the two competent authorities entering into agreements of a general nature but did not refer to any actions to bring the treaty with France in line with this element of the minimum standard. The other peer did not comment on this specific element.

Anticipated modifications

12. As mentioned in the Introduction, for those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, and for which no negotiations are pending or about to be initiated, France has put a plan in place to bring, where necessary, the relevant treaties in line with this standard. This plan consists of updating the notifications under the Multilateral Instrument, to approach treaty partners to either sign that instrument or to also update the notifications in relation to the Action 14 Minimum Standard. France further reported that in line with that plan it has already contacted some jurisdictions in relation to the Multilateral Instrument and furthermore has requested one treaty partner to initiate bilateral negotiations to bring the relevant treaty in line with the requirements under this standard. Finally, France indicated that it will propose the inclusion of Article 25(3), first sentence, of the OECD Model Tax Convention in all future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	<p>55 out of 120 tax treaties do not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these 55 treaties:</p> <ul style="list-style-type: none"> • Ten have been modified by the Multilateral Instrument to contain the required provision. • 16 are expected to be modified by that instrument to contain the required provision. • 29 treaties will not be modified by that instrument. With respect to these 29 treaties: <ul style="list-style-type: none"> - For two treaties negotiations have been completed on the amendment or replacement of the existing treaty in force. - Two are included in the list of treaties for which negotiations are envisaged, scheduled or pending. - For the remaining 25, the relevant treaty partners have been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact them with a view to initiate bilateral negotiations. 	<p>France should as quickly as possible sign and ratify the new treaties or amendments to existing treaties to have in place the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention in two of the relevant 29 treaties.</p> <p>For 25 of the remaining 27 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, France should:</p> <ul style="list-style-type: none"> • continue negotiations with two treaty partners to include the required provision • continue to work in accordance with its plan to strive to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax via the Multilateral Instrument, in 23 tax treaties and where such turns out not to be possible, initiate bilateral negotiations. <p>Furthermore, specifically with respect to the treaty with the former USSR that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan and with former Yugoslavia that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, France should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p>

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

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

13. 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 time⁴. 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.

France’s APA programme

14. France has implemented a bilateral APA programme and part of its administrative guidelines⁵ is devoted to describing the scope, effects and procedure for the conclusion of such arrangements. In particular, the instruction specifies the information and documents to be provided to MEJEL, the latter being responsible for the processing of applications, the drafting and conclusion of arrangements.

15. As stated in the administrative guidelines⁶, the application for the conclusion of an APA must be made at least six months before the opening of the first financial year covered by the request for an arrangement. France applies bilateral APAs from the first year covered by the application, under the conditions set out above, irrespective of the date of conclusion of the arrangement by the competent authorities.

Roll-back of bilateral APAs

16. France does not provide for roll-back of bilateral APAs. In this regard, the administrative guidelines⁷ state that the advance arrangement cannot be retroactive in scope. France has indicated that this practice has a limited impact in practice insofar as the ordinary statute of limitation is three years from the end of a fiscal year. Given the time required to complete bilateral APAs, which is generally between 18 months and two years, tax years not specified when applying for bilateral APAs are specified during this procedure.

Recent developments

17. There have been no recent developments relating to element A.2.

Practical application of roll-back of bilateral APAs

Period 1 January 2014-31 March 2017 (stage 1)

18. Some peers indicated that they had received requests for roll-back of bilateral APAs involving France. One of these peers and another peer pointed out that, according to their understanding, France does not provide for such roll-back and the cases are still under discussion.

19. In practice, if after the conclusion of a bilateral APA, an adjustment is made in France or abroad that concerns an earlier period not covered by the bilateral APA, France will agree to open a mutual agreement procedure and apply in this procedure the elements on which it has agreed with the other jurisdiction involved in the bilateral APA, provided that the facts and circumstances are similar. Some peers have welcomed this practice in a positive manner.

20. All peers indicated that they had not received a request for roll-back of bilateral APAs with France.

Period 1 April 2017-30 September 2018 (stage 2)

21. France reported that no roll-back has been granted since 1 April 2017 as its legal framework does not allow for this possibility.

22. Two peers emphasised that France should provide for the roll-back of bilateral APAs in relevant cases. One of them noted that it would appreciate if France would consider allowing such roll-backs with a view to prevent or resolve potential transfer pricing disputes. One other peer reported that it received a roll-back request for a bilateral APA in 2018. France responded that it has not yet received any request from the relevant taxpayer and that it is not aware of any request for roll-back submitted to France's competent authority. Four other peers noted that they have not received a request for the roll-back of a bilateral APA.

Anticipated modifications

23. France indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	No roll-back of APAs will be granted, except in cases where an adjustment is made and for which the opening of a mutual agreement procedure can be requested.	France should provide for roll-back of bilateral APAs (subject to the applicable time limits) in appropriate cases.

Notes

1. These 54 treaties concerns the treaty with former Czechoslovakia that France continues to apply to the Slovak Republic; the treaty with former USSR that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan; the treaty with former Yugoslavia that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia.
2. This concerns the former treaty with the United Kingdom (1950) that France continues to apply to Malawi and Zambia.
3. These 42 treaties include the treaty with former Czechoslovakia that France continues to apply to the Slovak Republic. France also listed the treaty with former Yugoslavia and the former treaty with the United Kingdom as covered tax agreements, but only as regards Bosnia and Herzegovina, Serbia and Zambia. As Bosnia and Herzegovina and Zambia are not signatories to the Multilateral Instrument, these are not further taken into account in the counting. For Serbia, the Multilateral Instrument will modify the treaty with former Yugoslavia to include

Article 25(3), first sentence, of the OECD Model Tax Convention. This is separately reflected in Annex A, but not further taken into account in the analysis of this section.

4. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
5. BOI-SJ-RES-20-10-20170201, available online at <http://bofip.impots.gouv.fr/bofip/1053-PGP>.
6. BOI-SJ-RES-20-10-20170201 no. 70.
7. BOI-SJ-RES-20-10-20170201 no. 220.

References

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

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

24. 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 France’s tax treaties

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

25. Out of France’s 120 tax treaties, two contain a provision based on Article 25 (1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state 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 Furthermore, 66 treaties include a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of that report.

26. The remaining 52 treaties can be categorised as follows:

Provision	Number of tax treaties
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident	35

Provision	Number of tax treaties
A variation 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, whereby the taxpayer can only submit a MAP request for cases of double taxation and whereby taxpayers are not allowed to submit a MAP request irrespective of domestic remedies	10
A variation 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, whereby the taxpayer can only submit a MAP request for cases of double taxation	2
A variation 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, whereby the taxpayer has to prove that actions taken by one or both of the contracting states result for them in taxation not in accordance with the provisions of this convention and whereby taxpayers are not allowed to submit a MAP request irrespective of domestic remedies	1
A variation 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, whereby the provision only refers implicitly to the possibility for the taxpayer to submit a MAP request and whereby taxpayers are not allowed to submit a MAP request irrespective of domestic remedies	1
No MAP provision included in the treaty or the provision only provides for a MAP of a general nature	3

27. The 35 treaties mentioned in the first row of the table 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. However, for the following reasons 27 of these 35 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not include a non-discrimination provision and only applies to residents of one of the states (nine treaties).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (18 treaties).²

28. The non-discrimination provision in the remaining eight treaties is almost identical to Article 24(1) of the OECD Model Tax Convention and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention is therefore for these treaties not clarified by a limited scope of the non-discrimination article, following which they are considered not to be in line with this part of element B.1.³

29. Furthermore, the 14 treaties mentioned in the second until the fifth row of the table are also considered not to contain 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, *inter alia* because it requires “double taxation” for a MAP case and not “taxation not in accordance with the provisions of the tax treaty”, or whereby it further required that taxpayers show proof of the double taxation or do not allow taxpayers to submit a MAP request irrespective of domestic available remedies. For these reasons are all 14 treaties also considered not to be in line with this part of element B.1.

30. Lastly, the three treaties in the last row of the table are also considered not to contain 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, because one does not contain

a provision relating to the mutual agreement procedure, whereas the other two treaties either only allow for a MAP in a general sense, or provide the possibility for the competent authorities to resolve taxation not in accordance with the treaty, which happens, however, very rarely according to France. This latter treaty also stipulates that if the dispute is not resolved by agreement between the administrations, it shall automatically be submitted (at the request of either party but without possibility of refusal) to the Joint Tax Commission (Article 25 of the treaty). By this specific approach, France considers that the taxpayer whose situation entails a difference of opinion between the two administrations is certain that his case will be discussed mutually either upstream or in a commission, even if the treaty does not explicitly provide for the possibility for taxpayers to submit a MAP request. Nevertheless, all these treaties do not include the required provision and are therefore considered not being in line with this part of element B.1.⁴

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

31. Out of France's 120 tax treaties, 74 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

32. The remaining 46 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
Filing period less than three years for a MAP request (two years)	15
Filing period less than three years for a MAP request (six months)	2
No filing period for a MAP request*	26
No specific MAP provision**	3

* These 26 treaties include the treaty entered into with former Czechoslovakia (1973) that France continues to apply to the Slovak Republic; the treaty with former USSR (1985) that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan; the treaty with former Yugoslavia (1974) that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia; and the former treaty with the United Kingdom that France continues to apply to Malawi and Zambia.

**These three treaties include the former treaty with the United Kingdom that France continues to apply to Malawi and Zambia.

Peer input

33. With respect to the treaties that do not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention, four peers provided input. One mentioned that the treaty was already in line with the minimum standard, which is not in line with the above analysis. Two of them specified that they intend to modify their treaty with France via the Multilateral Instrument. One of them mentioned that it is currently in bilateral negotiations with France and that its new tax treaty will be in line with the Action 14 Minimum Standard.

34. With respect to the treaties that do contain a shorter period than 3 years to file a MAP request, one peer mentioned that the treaty was already in line with the minimum standard, which is not in line with the above analysis. Two of them specified that they intend to modify their treaty with France via the Multilateral Instrument.

35. The two peers whose tax treaty provides for a six-month period to file a MAP request, pointed out that in practice taxpayers were denied access to the MAP in several cases for not complying with the time limits provided in the treaty. One of these peers, however, mentioned that their treaty would soon be replaced by a new treaty under negotiation, which would be compliant with the Action 14 Minimum Standard. The other peer is one of the two that expects to have its treaty with France modified by the Multilateral Instrument and indicated that the cases submitted had, however, been opened on the basis of the EU Arbitration Convention, which provides for a longer period to file a MAP request.

Practical application

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

36. As noted in paragraphs 27-30 above, in all but 13 of France's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. France reported that access to MAP is granted irrespective of domestic remedies and clarified that taxpayers can submit a MAP request and pursue domestic remedies for the same case. France further clarified that its competent authority is bound by court decisions and that the implementation of a MAP agreement that would be reached before a court decision would be rendered would be subject to the withdrawal from domestic remedies. This is further clarified in paragraphs 670 to 700 of France's MAP guidance.

37. In practice, France has indicated that, in the absence of a provision allowing for the submission of a MAP request in the State of which the taxpayer is a national when his case concerns non-discrimination, France uses Article 25 (3) to resolve this difficulty and to offer the taxpayer the possibility to submit a MAP request in the state of which he is a national.

38. In addition, France's MAP guidance clarifies cases where access to MAP can be denied. Two of such situations will be further described below:

- where the taxpayer refers to double taxation but is unable to provide evidence supporting his allegations
- where measures leading to double taxation have been supplemented with severe penalties that have become final.

39. With respect to the situation referred to in the first bullet point, France clarified that this concerns only the cases where the tax treaty itself requires double taxation instead of taxation not in accordance with the tax treaty to submit a MAP request. France clarified that this situation has occurred in one case since 1 April 2017 where it turned out that the taxpayer did not pay taxes in either of the two states.

40. With respect to the situation referred to in the second bullet point, France clarified that this approach is justified by the fact that the objective of a tax treaty is to avoid situations of double taxation but also to prevent tax avoidance and tax fraud and that France's competent authority will not be obliged to provide access to MAP when the measures generating double taxation have been accompanied by serious penalties which have become final. However, France reported that such a case did not happen in practice since 1 April 2017 as it did not receive such requests.

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

41. As noted in paragraph 32 above, there is no filing period to submit a MAP request in 26 of France's tax treaties. In such cases, France reported that there is no time limit in

its domestic law that would apply and that a MAP request can be submitted with no time limits. However, France noted that it would use all reasonable means at its disposal to give access to MAP and that the taxpayer would be required to provide the relevant items to enable its competent authority to handle and analyse the MAP request. In this respect, France clarified that the statutory period to keep documents is six years,⁵ which implies that beyond this period France's tax administration may not have the relevant evidence to prove that a taxpayer has been taxed in France, and the taxpayer is then expected to provide such evidence. France noted that this is further clarified in its MAP guidance. In addition, France specified that since 1 April 2017 it has received 24 MAP requests under two tax treaties that do not contain a filing period and noted that it granted access to MAP to all of them. France further specified that some MAP cases were opened even though they concerned fiscal years that were more than six years before the opening of the case. Reference is also made the discussion on MAP guidance under element B.8 and on the implementation of MAP agreements under element D.1.

Recent developments

Bilateral modifications

42. France signed a new treaty with one treaty partner, which concerns the replacement of an existing tax treaty and which recently has entered into force. This new treaty contains a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention, which was not the case for the treaty that has been replaced. The effect of this new treaty has been reflected in the analysis above where it has relevance. This *inter alia* concerns a change of the number of tax treaties that now allow the filing of a MAP request to either contracting state from one to two and the number of treaties that allow a filing period of three years for such requests to 74.

Multilateral Instrument

43. France signed the Multilateral Instrument and has deposited its instrument of ratification on 26 September 2018. The Multilateral Instrument has entered into force for France on 1 January 2019.

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

44. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention 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 not take effect for a tax treaty 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.

45. With the signing of the Multilateral Instrument, France opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under France's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which they are a resident, France opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, France listed 88 of its 120 tax treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for 87 of them a notification that they 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.⁶ One of these 87 treaties, however, concerns one of the treaties mentioned in paragraph 25 above that already allow the submission of a MAP request to either competent authority and for that reason is not taken into account in the below analysis. In other words, only 86 treaties are taken into account.

46. In total, 17 of the 86 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas three did not list their treaty with France as a covered tax agreement under that instrument, 22 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties and one did not list its treaty with France under Article 16(6)(a).⁷ All remaining 43 treaty partners listed their treaty with France as having 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.

47. Of these 43 treaty partners, 14 already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between France and these treaty partners, and therefore has modified these 14 treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. For the remaining 29 treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

48. In view of the above, for those 26 treaties identified in paragraphs 27-30 above that are considered not containing 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, seven are included in the list of 43 treaties that have been or will be modified via the Multilateral Instrument.

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

49. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

50. In regard of the 17 tax treaties identified in paragraph 32 above that contain a filing period for MAP requests of less than three years, France listed 12 as a covered tax

agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), for all of them a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the relevant treaty partners, three are not a signatory to the Multilateral Instrument. The remaining nine treaty partners listed their tax treaty with France as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(b)(i).

51. Two of the relevant nine treaty partners have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between France and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified two treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention. The remaining seven treaties will, upon entry into force for the treaties concerned, be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Other developments

52. France reported that it is currently conducting bilateral negotiations with four treaty partners on either a new treaty or the replacement of an existing treaty, inter alia to include a provision equivalent to Article 25(1) of the OECD Model Tax Convention. France also reported that it finalised negotiations with two treaty partners on a new treaty, for which it currently continues to apply the former treaty with the United Kingdom, and with a third treaty partner on the amendment of the existing treaty in force. One of these six is party to a treaty that is not in line with element B.1 as regards the first and second sentence of Article 25(1), whereas for two the treaty does not contain the second sentence.

Peer input

53. With respect to the 14 treaties identified that do not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, five peers provided input. One of them noted that no actions have been taken as the treaty is expected to be modified by the Multilateral Instrument. The other peers did not comment on this element.

54. With respect to the eight treaties identified that provide a shorter filing period than Article 25(1), second sentence of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, no peers provided input.

Anticipated modifications

55. As mentioned in the Introduction, for those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, and for which no negotiations are already pending or about to be initiated, France has put a plan in place to bring, where necessary, the relevant treaties in line with the Action 14 Minimum Standard. This plan consists of updating the notifications under the Multilateral Instrument, to approach treaty partners to either sign that instrument or to also update the notifications in relation to this standard. France further reported that in line with that plan it has already contacted some jurisdictions in relation to the Multilateral Instrument and furthermore has requested one treaty partner to initiate bilateral negotiations to bring the relevant treaty in line with the requirements under this standard. It further renegotiated a new treaty. Finally, France indicated that it will seek to include Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>21 out of 120 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. Of these 21 treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. • Five are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. • 15 will not be modified by that instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - For one treaty negotiations have been completed on the replacement of the existing treaty in force. - One is included in the list of treaties for which negotiations are envisaged, scheduled or pending. <p>For the remaining 13, the relevant treaty partners have been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact them with a view to initiate bilateral negotiations.</p>	<p>France should as quickly as possible sign and ratify the new treaty to have in place the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention in one of the relevant 15 treaties.</p> <p>For 13 of the remaining 14 treaties that will not be modified or superseded by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as it read as amended in the Action 14 final report, France should:</p> <ul style="list-style-type: none"> • continue negotiations with one relevant treaty partner to include the required provision • continue to work in accordance with its plan to strive to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax via the Multilateral Instrument in 12 tax treaties, and where such turns out not to be possible, initiate bilateral negotiations. <p>In both instances this concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either:</p> <ul style="list-style-type: none"> • as amended in the Action 14 final report; or • as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision. <p>Specifically with respect to the treaty with former Yugoslavia that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, France should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p>
	<p>13 of 120 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention. Of these 13 treaties:</p> <ul style="list-style-type: none"> • Five are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention. • Eight will not be modified by that instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - For one negotiations have been completed on the replacement of the existing treaty in force. - One is included in the list of treaties for which negotiations are envisaged, scheduled or pending. - For the remaining six, the relevant treaty partners have been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact them with a view to initiate bilateral negotiations. 	<p>France should as quickly as possible sign and ratify the replacement of the existing treaty to have in place the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention in the relevant treaty.</p> <p>For seven of the remaining eight treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, France should:</p> <ul style="list-style-type: none"> • continue negotiations with one treaty partner to include the required provision • continue to work in accordance with its plan to strive to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax via the Multilateral Instrument in six tax treaties, and where such turns out not to be possible, initiate bilateral negotiations.

	Areas for improvement	Recommendations
[B.1]	<p>Four out of 120 tax treaties do not 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 or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these four treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include both the first and second sentence of Article 25(1) as amended by the Action 14 final report. • One is expected to be modified by the Multilateral Instrument to include both the first and second sentence of Article 25(1) as amended by the Action 14 final report. • One has been modified by the Multilateral Instrument to include the second sentence of Article 25(1), but not as regards the first sentence. • One is expected to be modified by the Multilateral Instrument to include the second sentence of Article 25(1), but not as regards the first sentence. <p>With respect to these last two treaties, the relevant treaty partners have been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact them with a view to initiate bilateral negotiations.</p>	<p>For the two treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, France should continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument, and where such turns out not to be possible, initiate bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ul style="list-style-type: none"> • as amended in the Action 14 final report; or • as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.
	<p>Access to MAP can be denied in cases where severe penalties are imposed and have become final.</p>	<p>France should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP.</p>

[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process

Jurisdictions should ensure that either (i) their tax treaties contain a provision which provides that the taxpayer can make a request for MAP assistance to the competent authority of either Contracting Party, or (ii) where the treaty does not permit a MAP request to be made to either Contracting Party and the competent authority who received the MAP request from the taxpayer does not consider the taxpayer's objection to be justified, the competent authority should implement a bilateral consultation or notification process which allows the other competent authority to provide its views on the case (such consultation shall not be interpreted as consultation as to how to resolve the case).

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

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

Domestic bilateral consultation or notification process in place

57. Out of France’s 120 tax treaties, two treaties currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended 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 discussed under element B.1, 43 of these 120 treaties will be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, also allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

58. France indicated that it uses a limited bilateral consultation process, implemented only in case of doubt. In such cases, France’s competent authority will send an email or a letter to the other competent authority concerned in order to obtain its opinion on the admissibility of the request. Following the response of the other competent authority, the case may be accepted or rejected.

Recent developments

59. France has introduced a notification process to inform the other competent authority in all cases where it considers that the objection raised by the taxpayer is not justified since 1 May 2017. This process is documented in an internal document to the competent authority that outlines all the steps to be taken by the competent authority staff for MAP cases and APA cases. This internal document states that France’s competent authority consults with the other competent authority concerned when it considers an objection raised by a taxpayer as not justified and shares with the other competent authority the underlying reasons for it. France further reported that its competent authority also informs the other relevant competent authority when it denies access to MAP, and that this process is also documented in the same internal guidance. France reported that the document further provides a timeline for both processes.

Practical application

Period 1 January 2014-31 March 2017 (stage 1)

60. Peers have generally indicated that they are not aware of cases where France’s competent authority has refused to open a mutual agreement procedure since 1 January 2014. Since 1 January 2016, France has considered that the objection raised by a taxpayer in a MAP request was not justified in 18 cases. Only one case resulted in consultation with its treaty partner, this because the process applied by France was implemented only in case of doubt. The corresponding peer confirmed this information.

Period 1 April 2017-30 September 2018 (stage 2)

61. France reported that since 1 April 2017, its competent authority has considered the objection raised by taxpayers as not justified in 21 MAP requests. France further reported that in all these cases its competent authority consulted with the relevant treaty partners and provided the following breakdown:

- In 16 cases, France’s competent authority considered the objection not justified because the taxpayer did not respond to its requests for additional information.
- In four cases, France’s competent authority considered the objection not justified because of the absence of taxation not in accordance with the treaty.

- In one case, France’s competent authority considered the objection not justified because the taxpayer did not respond to the other competent authority’s requests for additional information.
62. These 21 cases involved four different peers. All of them confirmed that they were consulted by France’s competent authority in the relevant cases.

Anticipated modifications

63. France indicated that it does not anticipate any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

64. Where two or more tax administrations take different positions on what constitutes arm’s length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner’s transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the main objective of tax treaties. Countries should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

65. Out of France’s 120 tax treaties, 45 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 made by the other treaty partner. Furthermore, four treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but are considered as not containing the equivalent thereof due to the following reasons:

- For two of them, the relevant provision states that the other state “can make an appropriate adjustment” or “shall consider the provision of relief” instead of “shall make a corresponding adjustment”.
- For one treaty, recourse to MAP should be had before a corresponding adjustment can be granted.
- For one treaty, the relevant provision does not refer to corresponding adjustments but only to the fact that double taxation will be avoided

66. The remaining 71 tax treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention.⁸

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

68. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in France's tax treaties and irrespective of whether its domestic legislation enables it to do corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, France considers that economic double taxation and adjustments to be made in the context of transfer pricing are in any event within the scope of the mutual agreement procedure, both for the assessment of the appropriateness of the adjustment and for the determination of its amount. Some treaties, for example, contain the equivalent of Article 25(3) of the OECD Model Tax Convention, allowing the competent authorities to consult on the allocation of profits between associated enterprises in accordance with the arm's length principle. France confirms that it will always grant access to MAP in transfer pricing cases.

69. In particular, Paragraphs 1 and 90 of France's MAP Guidance refer to the possibility to submit MAP requests in transfer pricing cases.⁹

Bilateral modifications

70. France signed a new treaty with one treaty partner, which concerns the replacement of an existing tax treaty and which has recently entered into force. This new treaty contains a provision that is equivalent to Article 9(2), of the OECD Model Tax Convention, which was not the case for the treaty that has been replaced. The new treaty has recently entered into force and the effect thereof has been reflected in the analysis above where it has relevance.

Multilateral Instrument

71. France signed the Multilateral Instrument and has deposited its instrument of ratification on 26 September 2018. The Multilateral Instrument has entered into force for France on 1 January 2019.

72. Article 17(2) of that 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).

73. France has not reserved, pursuant to Article 17(3), the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 74 tax treaties identified in paragraphs 64 and 65 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, France listed 51 as a covered tax agreement under the Multilateral Instrument and for six of these 51 treaties it did make a notification on the basis of Article 17(4).¹⁰

74. With regard to these six treaties, one treaty partner is not a signatory to the Multilateral Instrument, whereas one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with France already contains the equivalent of Article 9(2), and three of the four remaining treaty partners also made a notification on the basis of Article 17(4). Of these latter four treaty partners, three have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between France and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified two treaties and has superseded one treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention. The remaining treaty will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

75. With regard to the remaining 45 treaties for which France did not make a notification on the basis of Article 17(4), ten treaty partners are not a signatory to the Multilateral Instrument, whereas two did not list their tax treaty with France under that instrument and five, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with France already contains the equivalent of Article 9(2). Of the remaining 28 treaty partners, eight have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between France and these eight treaty partners.¹¹ Therefore, at this stage, the Multilateral Instrument has superseded eight treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).¹² The remaining 20 treaties will, upon its entry into force for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Other developments

76. There are no other recent developments in relation to element B.3.

Practical application

Period 1 January 2014-31 March 2017 (stage 1)

77. According to France, it provides access to MAP in all transfer pricing cases. Between 1 January 2014 and 31 March 2017, France received MAP requests for transfer pricing cases and did not deny access to MAP to these cases on the basis that the case concerned a transfer pricing case.

78. Peers indicated that they had no knowledge of cases in which access to the mutual agreement procedure had been refused by France on the ground that it concerned a transfer pricing case since 1 January 2014.

Period 1 April 2017-30 September 2018 (stage 2)

79. France reported that it received many requests relating to transfer pricing cases since 1 April 2017 and that it did not deny access to MAP to these cases on the basis that the case concerned a transfer pricing case, even when the relevant tax treaty did not contain the equivalent of Article 9(2) of the OECD Model Tax Convention.

80. Nine peers that provided input reported that the information provided by France fully reflects their experiences with France since 1 April 2017 or that there were no additions to the previous input given. The other peers that provided input and that commented on element B.3 reported that they were not aware of any cases that would have been denied access to MAP on the grounds that the relevant case was a transfer pricing case.

Anticipated modifications

81. France clarified that it seeks to have the Multilateral Instrument cover all the treaties with the other States or jurisdictions that are members of the ad hoc group. If a treaty is not amended by the Multilateral Instrument, France has indicated that it will propose the inclusion of Article 9 (2), in current or future negotiations on existing tax treaties. Furthermore, France has indicated that it will propose the inclusion of Article 9 (2), of the *OECD Model Tax Convention* in all future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

[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.

82. 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

83. None of France's 120 tax treaties allows competent authorities to restrict access to MAP for cases when an anti-abuse provision applies.

84. France indicated that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty within the scope of the MAP. In addition, no

domestic law provision allows France 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 treaty anti-abuse provision apply or whether a domestic law anti-abuse provision comes into conflict with the provisions of a tax treaty.

Recent developments

85. There are no recent developments in relation to element B.4.

Practical application

Period 1 January 2014-31 March 2017 (stage 1)

86. France reported that between 1 January 2014 and 31 March 2017 it has not denied access to MAP 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 while it received such MAP requests. In addition, France indicated that the cases accepted were also resolved, except in cases where the other competent authority did not agree to open the MAP.

87. Peers indicated not being aware of a denial of access to MAP by France in relation to an anti-abuse provision between 1 January 2014 and 31 March 2017.

Period 1 April 2017-30 September 2018 (stage 2)

88. France reported that since 1 April 2017 it has not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty while it received such MAP requests. France clarified that it did not keep track of the number of such requests since those MAP requests are handled as any other MAP requests.

89. Nine peers that provided input reported that the information provided by France fully reflects their experiences with France since 1 April 2017 or that there were no additions to the previous input given. The other peers that provided input and that commented on element B.4 reported that they were not aware of any cases that would have been denied access to MAP on the grounds that the relevant case was a case discussing the application of an anti-abuse provision.

Anticipated modifications

90. France did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

[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.

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

Legal and administrative framework

92. Audit settlements are possible in France, but France will not refuse access to MAP in case of a settlement between the taxpayer and the tax authorities. As indicated below, this is specified in the administrative guidelines.

93. France has no administrative or statutory dispute settlement or resolution process(es) in place that allows France to deny access to MAP for issues resolved through that process.

Recent developments

94. There have been no recent developments in relation to element B.5.

Practical application

Period 1 January 2014-31 March 2017 (stage 1)

95. France reported that between 1 January 2014 and 31 March 2017, it did not deny access to MAP in cases where there was an audit settlement between the taxpayer and the tax authorities.

96. Peers indicated not being aware of denial of access to MAP by France in cases where there was an audit settlement between the taxpayer and the tax authorities between 1 January 2014 and 31 March 2017.

Period 1 April 2017-30 September 2018 (stage 2)

97. France reported that between 1 April 2017 and 30 September 2018, it did not deny access to MAP in cases where there was an audit settlement between the taxpayer and the tax authorities, while it received at least two of such requests.

98. Nine peers that provided input reported that the information provided by France fully reflects their experiences with France since 1 April 2017 or that there were no additions to the previous input given. The other peers that provided input and that commented on element B.5 reported that they were not aware of any cases that would have been denied access to MAP on the grounds that the relevant case was a case where there had been an audit settlement.

Anticipated modifications

99. France did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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

Legal framework on access to MAP and information to be submitted

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

Recent developments

102. There have been no recent developments in relation to element B.6.

Practical application

Period 1 January 2014-31 March 2017 (stage 1)

103. France indicated that it had denied access to MAP on the grounds that the information provided was insufficient in a limited number of cases since 1 January 2014 (8 cases in 2014, 3 cases in 2015 and 5 cases in 2016). In these circumstances, France’s competent authority has sent a letter to the taxpayers concerned in order to ask them to complete their request. In accordance with the administrative guidelines, the taxpayer must provide the additional information within two months.¹³ France indicated that a second letter would be sent in the absence of a reply to the first letter within a minimum of 60 days. In case there is no response to the second letter, the case is closed.

104. Peers generally indicated that they had no knowledge of a case in which access to MAP would have been denied by France in cases where the taxpayers have supplied the information requested since 1 January 2014. However, one peer has reported that it is currently in discussions with France’s competent authority as to whether the taxpayer has provided the information required under the EU Arbitration Convention within the 3 year period provided for in this convention.

Period 1 April 2017-30 September 2018 (stage 2)

105. As discussed under element B.2., France reported that between 1 April 2017 and 30 September 2018 its competent authority considered the objection not justified because

the taxpayer did not respond to its requests for additional information in 16 cases. It further reported that it consulted its relevant treaty partners in all these cases, which was confirmed by the relevant peers.

106. Nine peers that provided input reported that the information provided by France fully reflects their experiences with France since 1 April 2017 or that there were no additions to the previous input given. The other peers that provided input and that commented on element B.6 reported that they were not aware of any cases that would have been denied access to MAP on the grounds that not enough information was provided, while the information required under France’s MAP guidance would have been provided.

Anticipated modifications

107. France did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]		-

[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.

108. 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 France’s tax treaties

109. Out of France’s 120 tax treaties, 110 contain a provision allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties.¹⁴ The remaining 10 treaties do not contain a provision that is based on or equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.¹⁵

110. Furthermore, one of these 120 treaties has a limited scope of application.¹⁶ This concerns a tax treaty that only applies 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 this treaty was 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 this treaty with a limited scope of application.

111. With respect to the nine comprehensive treaties that do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention, three peers provided input. One mentioned that the treaty was already in line with the minimum standard, which is not in line with the above analysis. One of them specified that it intends to modify its treaty with France via the Multilateral Instrument. One of them mentioned that it is currently in bilateral negotiations with France and that its new tax treaty will be in line with the Action 14 Minimum Standard.

Recent developments

Bilateral modifications

112. France signed a new treaty with one treaty partner, which concerns the replacement of an existing tax treaty and which has recently entered into force. This new treaty contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, which was also the case for the treaty that has been replaced.

Multilateral Instrument

113. France signed the Multilateral Instrument and has deposited its instrument of ratification on 26 September 2018. The Multilateral Instrument has entered into force for France on 1 January 2019.

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

115. In regard of the nine comprehensive tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, France listed six as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), for all of them a notification that they do not contain a provision described in Article 16(4)(c)(ii).¹⁷ All relevant treaty partners are a signatory to the Multilateral Instrument, listed their tax treaty with France under that instrument and also made a notification pursuant to Article 16(6)(d)(ii).

116. Of the six treaty partners mentioned above, two have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between France and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. For the remaining four treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Other developments

117. France reported that it finalised negotiations with two treaty partners on a new treaty, for which it currently continues to apply the former treaty with the United Kingdom, and

with a third treaty partner on the amendment of the existing treaty in force. In all these treaties the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention is included, which was not the case for the former treaty with the United Kingdom.

Peer input

118. With respect to the three comprehensive treaties that do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, no peers provided input.

Anticipated modifications

119. As mentioned in the Introduction, for those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, and for which no negotiations are pending or about to be initiated, France has put a plan in place to bring, where necessary, the relevant treaties in line with this standard. This plan consists of updating the notifications under the Multilateral Instrument, to approach treaty partners to either sign that instrument or to also update the notifications in relation to the Action 14 Minimum Standard. France further reported that in line with that plan it has already contacted some jurisdictions in relation to the Multilateral Instrument and furthermore has requested one treaty partner to initiate bilateral negotiations to bring the relevant treaty in line with the requirements under this standard. It further renegotiated a new treaty. Finally, France indicated that it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>Ten out of 120 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these ten treaties, one treaty concerns a tax treaty with a limited scope of application. With respect to the nine remaining comprehensive treaties:</p> <ul style="list-style-type: none"> • Two have been modified by the Multilateral Instrument to include the required provision. • Four are expected to be modified by that instrument to contain the required provision. • Three treaties will not be modified by that instrument. With respect to these three treaties: <ul style="list-style-type: none"> - For one treaty negotiations have been completed on the amendment or replacement of the existing treaty in force. - One is included in the list of treaties for which negotiations are envisaged, scheduled or pending. - For the remaining one, the relevant treaty partner has been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact this treaty partner with a view to initiate bilateral negotiations. 	<p>France should as quickly as possible sign and ratify the new treaty or amendments to existing treaty to have in place the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention in one of the relevant three comprehensive tax treaties</p> <p>For the two remaining comprehensive treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, France should continue to work in accordance with its plan to strive to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax in these tax treaties via the Multilateral Instrument, and where such turns out not to be possible, initiate bilateral negotiations.</p>

[B.8] Publish clear and comprehensive MAP guidance

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

120. 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.

France's MAP guidance

121. France's rules, guidelines and procedures are included in its administrative guidelines and are available at:

<http://bofip.impots.gouv.fr/bofip/5344-PGP.html>

122. This contains information on:

- a. contact information of the competent authority or the office in charge of MAP cases
- b. the manner and form in which the taxpayer should submit its MAP request
- c. the specific information and documentation that should be included in a MAP request (see also below)
- d. how the MAP function in terms of timing and the role of the competent authorities
- e. information on availability of arbitration (including the EU Arbitration Convention)
- f. relationship with domestic available remedies
- g. access to MAP in transfer pricing cases
- h. access (not available) to MAP where the taxpayer has made a self-adjustment
- i. implementation of MAP agreements
- j. rights and role of the taxpayer in the process
- k. (non)-suspension of tax collection
- l. the treatment of interest and penalties.

123. France's MAP guidance includes detailed information on the availability and the use of the MAP and how its competent authority conducts the process in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance¹⁸, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request. In particular, the France's MAP guidance explains that a copy of the MAP request must be sent to (i) the competent audit office in case of double taxation generated by an adjustment made by France's tax authorities and, in any case, (ii) the office in charge of its tax file.¹⁹ In practice, France clarified that if a taxpayer submits his MAP request to another DGFIP service or to the Minister of Budget, his request will be addressed directly by this office to the competent authority in charge of MAP.

124. In addition, France's MAP guidance clarifies the cases where access to MAP can be denied.²⁰ This concerns the following cases:

- where the taxpayer refers to double taxation but is unable to provide evidence supporting his allegations
- where measures leading to double taxation have been supplemented with severe penalties that have become final
- where the taxpayer has made a self-adjustment to his income or profits on the ground that another State has made an adjustment on the same income or profits
- where the taxation in respect of which the request is made concerns a year earlier than six years from the date of the request.

125. As regards the cases in which the taxpayer is unable to prove that there has been double taxation or in which the taxation covered by the request concerns a year earlier than six years from the date of the request, as discussed under element B.1., France explained that despite what is stated in its MAP guidance, these are not general grounds for denying access to MAP and that access to MAP could be granted in practice. Specific guidelines on the functioning of the mutual agreement procedure in cases subject to the EU Arbitration Convention are also included in the administrative guidelines²¹. Further guidance on the functioning of the arbitration procedure in tax treaties is also available in the administrative guidelines²².

126. One taxpayer indicated that, to the best of his knowledge, only a French version of the MAP guidance is available, while having an English version would make it more accessible. In response, France clarified that French is the working language of France's administration, in accordance with the law on the use of the French language. However, France's competent authority accepts to receive only an English version of all information and documents during a mutual agreement procedure and also communicates in English. France indicated that it has published on the website of France's administration the main information for access to MAP in an English version.²³

127. One taxpayer indicated that the consequences of opening a MAP case in terms of suspension of collection and the relationship of MAP with domestic remedies is not always clear. In reply, France indicated that, as far as it was concerned, these details had already been provided. They do indeed appear in paragraphs 670 and following of the MAP guidance. In particular, the MAP guidance explains²⁴ that domestic remedies can be applied simultaneously with a MAP request. On the other hand, the implementation of the MAP agreement will be subject to the withdrawal of the domestic remedies by the taxpayer.

128. In addition, the MAP guidance specifies the possible interactions between the competent authority and the taxpayer during the MAP²⁵. One taxpayer reported that, apart from the acknowledgment of receipt of his request filed in 2016, he received no further information from the competent authority. Regarding four other previously submitted requests, the same taxpayer stated that he had received no information from France's competent authority. France has indicated that France's competent authority is endeavouring to inform taxpayers of the progress of their MAP case and of the discussions which have taken place with the other competent authorities concerned. Moreover, in response, France has indicated that it is prepared to respond to taxpayers who contact its competent authority in order to obtain information on the progress of their case. Finally, with regard to the 4 cases indicated by the taxpayer, France clarified that these concerned transactions involving a treaty partner with whom it was impossible to organise a face-to-face meeting

in previous years, despite requests France’s competent authority. A face-to-face was held at the end of 2016 with this treaty partner.

129. Another taxpayer reported that he had not received a formal letter indicating the opening of the MAP case. In response, France indicated that the competent authority had mentioned this orally at a meeting organised with the taxpayer prior to the opening of the case. However, France takes note of this expectation and will endeavour to send written notification of the opening of the case even if a meeting has been held.

130. Finally, certain topics are not dealt with in France’s MAP guidance. These include (i) the availability of MAP in case of multilateral disputes, (ii) whether taxpayers can request for the multi-year resolution of recurring issues through MAP, even where no tax audit has yet been carried out on these tax years and (iii) an indicative timetable for the implementation of the MAP agreements.

Information and documentation to be included in a MAP request

131. 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 assistance²⁶. This agreed guidance is shown below. The information and documents requested in France’s MAP guidance²⁷ are checked below:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case
- analysis of the issue(s) requested to be resolved via MAP
- whether the MAP request was also submitted to the competent authority of the other treaty partner
- whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
- 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.

132. In addition, France requires the taxpayer to provide detailed information on any administrative or judiciary appeals and any judicial decisions concerning the case. In particular, France has also concluded an agreement with the United States on all the information required by the two competent authorities so that the case concerned is eligible for arbitration.

Recent developments

133. There have been no recent developments in relation to element B.8.

Anticipated modifications

134. France reported that it intends to update its MAP guidance at a later stage to incorporate expected changes relating to arbitration under the Multilateral Instrument and the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

[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.

135. 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 platform²⁸ further promotes the transparency and dissemination of the MAP programme.

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

136. France’s MAP guidance is published and available at:

<http://bofip.impots.gouv.fr/bofip/5344-PGP.html>

137. This document is accessible from the MAP profile, by using in a search engine the references mentioned in the MAP profile. It is also accessible from the DGFIP website²⁹, by using the words “*double imposition*” or “*procédure amiable*” in the search engine of that website. Finally, the website of the DGFIP also provides a brief presentation of the mutual agreement procedure³⁰.

MAP Profile

138. The MAP profile of France is published on the website of the OECD. This MAP profile is complete, often with detailed information and the links to the website of France’s tax administration provide additional information and guidance. In addition, the answers in the MAP profile are provided in French and in English.

Recent developments

139. There are no recent developments in relation to element B.9.

Anticipated modifications

140. France did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

[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.

141. 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 processes mentioned previously.

MAP and audit settlements in the MAP guidance

142. As previously mentioned in element B.5, France's MAP guidance³¹ clearly explains that access to MAP remains possible after the conclusion of an audit settlement:

The explicit or implicit acceptance of a supplement by a taxpayer, even pursuant to an audit settlement, does not deprive the taxpayer of the right to request the opening of a MAP.

143. Peers indicated no issues regarding element B.10 in relation to audit settlements.

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

144. There is no other administrative or statutory dispute settlement/resolution process in France that impacts the access to MAP.

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

145. There is no need for notification of treaty partners as France does not deny access to MAP in cases that may be solved through an administrative or statutory dispute settlement or resolution process.

Recent developments

146. There are no recent developments in relation to element B.10.

Anticipated modifications

147. France did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These two treaties include the treaty with the former USSR that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan.
2. These 18 treaties include the treaty with former Czechoslovakia that France continues to apply to the Slovak Republic.
3. These eight treaties include the treaty with former Yugoslavia that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia.
4. These three treaties include the former treaty with the United Kingdom that France continues to apply to Malawi and Zambia.
5. Article L.102 B of French Tax Procedure Code.
6. These 87 treaties include the treaty with former Czechoslovakia (1973) that France continues to apply to the Slovak Republic. France also listed the treaty with former Yugoslavia (1974) and the former treaty with the United Kingdom (1950) as covered tax agreements, but only as regards Bosnia and Herzegovina, Serbia and Zambia. As Bosnia and Herzegovina and Zambia are not signatories to the Multilateral Instrument, these are not further taken into account in the counting. For Serbia, the Multilateral Instrument will not modify the treaty with former Yugoslavia, due to Serbia's reservation under Article 16(5)(a).
7. These 22 treaties include the treaty with former Czechoslovakia (1973) that France continues to apply to the Slovak Republic. The Multilateral Instrument will modify the treaty with former Czechoslovakia as regards the Czech Republic, but this is not further taken into account in the list of treaties that will be modified by the Multilateral Instrument.
8. These 71 treaties include the treaty with former Czechoslovakia that France continues to apply to the Slovak Republic; the treaty with the former USSR that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan; the treaty with former Yugoslavia that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia; and the former treaty with the United Kingdom that France continues to apply to Malawi and Zambia.
9. BOI-INT-DG-20-30-10-20170201 no. 1 and no. 90 in particular.
10. These 51 treaties include the treaty with former Czechoslovakia that France continues to apply to the Slovak Republic. France also listed the treaty with former Yugoslavia and the former treaty with the United Kingdom as covered tax agreements, but only as regards Bosnia and Herzegovina and Serbia, and Zambia. As Bosnia and Herzegovina and Zambia are not signatories to the Multilateral Instrument, these are not further taken into account in the counting. For Serbia, the Multilateral Instrument will modify the treaty with former Yugoslavia to include Article 9(2), but only but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

11. These eight treaties include the treaty with former Czechoslovakia that France continues to apply to the Slovak Republic.
12. Ibid.
13. BOI-INT-DG-20-30-10-20170201 no. 190.
14. These 110 treaties include the treaty with former Czechoslovakia that France continues to apply to the Slovak Republic; the treaty with former USSR that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan; and the treaty with former Yugoslavia that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia.
15. These ten treaties include the former treaty with the United Kingdom that France continues to apply to Malawi and Zambia.
16. This concerns treaties with Jersey.
17. France also listed the treaty with the former United Kingdom as covered tax agreements, but only as regards Zambia. As Zambia is not a signatories to the Multilateral Instrument, it not further taken into account in the counting.
18. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
19. BOI-INT-DG-20-30-10-20170201 no. 180.
20. BOI-INT-DG-20-30-10-20170201 no. 140, 150 and 220.
21. Available at <http://bofip.impots.gouv.fr/bofip/5353-PGP.html>.
22. Available at <http://bofip.impots.gouv.fr/bofip/5353-PGP.html>.
23. Available at <https://www.impots.gouv.fr/portail/international-professionnel/mutual-agreement-procedure>.
24. BOI-INT-DG-20-30-10-20170201 no. 680.
25. BOI-INT-DG-20-30-10-20170201 no. 530.
26. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
27. BOI-INT-DG-20-30-10-20170201 no. 190.
28. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
29. <https://www.impots.gouv.fr/portail/>.
30. <https://www.impots.gouv.fr/portail/international-professionnel/la-procedure-amiable>.
31. BOI-INT-DG-20-30-10-20170201 no. 130.

References

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

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.

143. 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 France’s tax treaties

144. Out of France’s 120 tax treaties, 103 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 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.¹

145. For the remaining 18 treaties the following analysis is made:

- 15 include a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention, but are considered as not containing the equivalent thereof, because they do not provide the necessity for the competent authorities to explore the possibility of a unilateral satisfactory solution to a dispute. Of these 15 treaties, 12 also provide that the objective of the MAP is to avoid “double taxation” instead of “taxation not in accordance with the convention”, which is consistent with the fact that these treaties only allow taxpayers to submit a MAP request in case of double taxation.²
- Three do not contain a provision that is based on or equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.³

146. For those treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, France clarified that the examination whether the

objection raised in a MAP request is justified necessarily implies for France's competent authority to question its capacity to resolve the case unilaterally, to the extent that the MAP guidance refers to Article 25(2) of the OECD Model Tax Convention.⁴ Thus, according to France, even if the treaty does not contain an indication that the competent authorities must explore the possibility of a unilateral satisfactory solution to a dispute, France's competent authority still will explore this possibility.

147. With respect to the 17 treaties that do not contain the equivalent of Article 25(2), first sentence of the OECD Model Tax Convention, two peers provided input. One of them specified that it intends to modify its treaty with France via the Multilateral Instrument. One other mentioned that it is currently in bilateral negotiations with France and that its new tax treaty will be in line with the Action 14 Minimum Standard.

Recent developments

Bilateral modifications

148. France signed a new treaty with one treaty partner, which concerns the replacement of an existing tax treaty and which has recently entered into force. This new treaty contains a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, which was not the case for the treaty that has been replaced. The effect of this new treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

149. France signed the Multilateral Instrument and has deposited its instrument of ratification on 26 September 2018. The Multilateral Instrument has entered into force for France on 1 January 2019.

150. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

151. In regard of the 18 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, France listed nine of them as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(c)(i), a notification that they do not contain a provision described in Article 16(4)(b)(i).⁵ Of the relevant nine treaty partners, three are not a signatory to the Multilateral Instrument. The remaining six treaty partners listed their treaty with France as a covered tax agreement and also made a notification on the basis of Article 16(6)(c)(i). One of these six treaty partners has already deposited its instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between France and this treaty partner. Therefore, at this stage, the Multilateral Instrument has modified one treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention. For the remaining five treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Other developments

152. France reported that it finalised negotiations with two treaty partners on a new treaty, for which it currently continues to apply the former treaty with the United Kingdom, and with a third treaty partner on the amendment of the existing treaty in force. In all these treaties the equivalent of Article 25(2), first sentence of the OECD Model Tax Convention is included, which was not the case for the former treaty with the United Kingdom.

Peer input

153. With respect to the treaties that do not contain the equivalent of Article 25(2), first sentence of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, one peer provided input but did not comment on this specific element.

Anticipated modifications

154. As mentioned in the Introduction, for those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, and for which no negotiations are pending or about to be initiated, France has put a plan in place to bring, where necessary, the relevant treaties in line with this standard. This plan consists of updating the notifications under the Multilateral Instrument, to approach treaty partners to either sign that instrument or to also update the notifications in relation to the Action 14 Minimum Standard. France further reported that in line with that plan it has already contacted some jurisdictions in relation to the Multilateral Instrument and furthermore has requested one treaty partner to initiate bilateral negotiations to bring the relevant treaty in line with the requirements under this standard. Finally, France indicated that it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[C.1]	<p>18 out of 120 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these 18 treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the required provision. • Five are expected to be modified by that instrument to include the required provision. • 12 treaties will not be modified by that instrument. <p>With respect to these 12 treaties:</p> <ul style="list-style-type: none"> - For one treaty negotiations have been completed on the amendment or replacement of the existing treaty in force. - For the remaining 11, the relevant treaty partners have been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact them with a view to initiate bilateral negotiations. 	<p>France should as quickly as possible sign and ratify the new treaties or amendments to existing treaties to have in place the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention in one of the relevant 12 treaties.</p> <p>For 10 of the remaining 11 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, France should continue to work in accordance with its plan to strive to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax via the Multilateral Instrument in these tax treaties, and where such turns out not to be possible, initiate bilateral negotiations. Specifically with respect to the treaty with the former USSR that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan, France should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p>

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

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

155. 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

156. Statistics regarding all tax treaty related disputes are published on the website of the OECD as of 2007.⁶ Other statistics regarding transfer pricing disputes with EU Member States are also published on the website of the EU Joint Transfer Pricing Forum⁷.

157. The FTA MAP Forum has agreed on rules for the 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. France provided its MAP statistics pursuant to the MAP Statistics Reporting Framework. In particular, France reported having included in its statistics all MAP cases involving France and of which its competent authority was aware.⁸ The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively,⁹ and should be considered jointly for an understanding of the MAP caseload of France. With respect to post-2015 cases, France reported having reached out to all its MAP partners with a view to have their MAP statistics matching. For the year 2016, France reported indicated that it could ensure of such a matching with most of its MAP partners. However, there is a risk that the statistics for post-2015 cases do not match those submitted by eight MAP partners for attribution/allocation cases and seven MAP partners for other cases, as these jurisdictions did not respond to requests from France to match their statistics. France had clarified that the cases pending on 31 December 2016 with these jurisdictions represent less than 15% of attribution/allocation cases and 6% of other cases pending at that date. For the 2017 MAP statistics, France reported that it reached out to all its MAP partners and could match its statistics with them.

Monitoring of MAP statistics

158. France analyses annually the average time to resolve MAP cases and the evolution of the MAP inventory. In addition, France’s MAP guidance provides that “in the context of the treatment of all the dispute resolution procedures made available to the taxpayer . . ., France intends to implement the code of conduct adopted by the Council of the European Union”.¹⁰ The MAP guidance refers in particular to the following elements:

- If France’s competent authority considers that the taxpayer has not forwarded the minimum information necessary for the opening of the MAP, it shall inform him of the missing elements within two months of receipt of the MAP request.¹¹

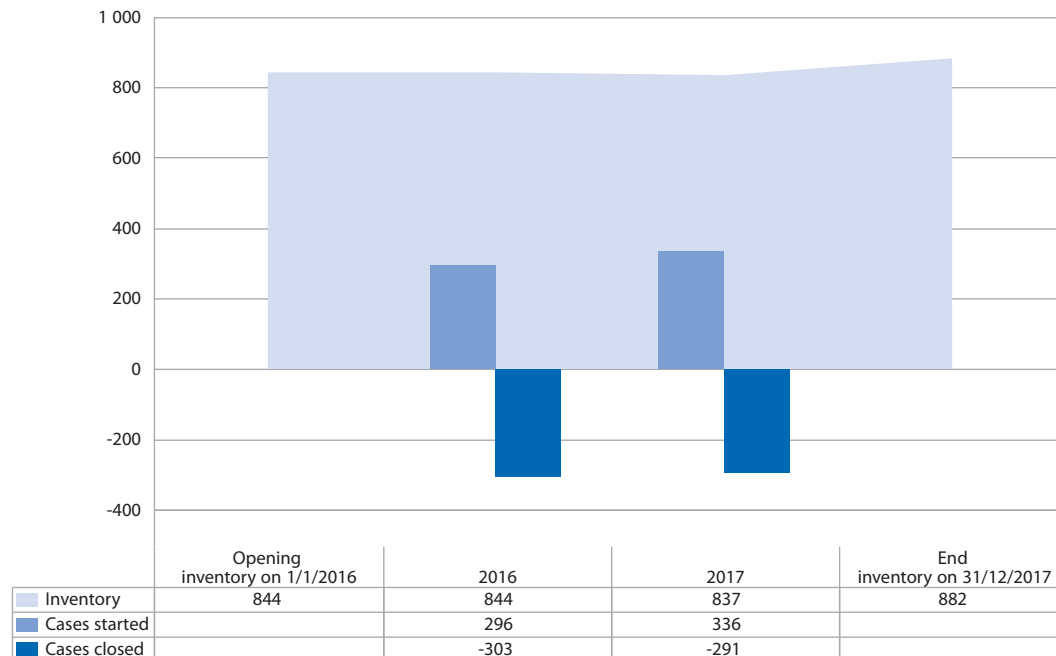
- France’s competent authority shall notify the competent authorities of the other States concerned within one month of receipt of the MAP request that is considered complete and where the objection is considered justified.¹²
- If the event which caused double taxation is generated by another state, France’s competent authority shall endeavour to reply (i) within 6 months of the date of receipt of the position paper of the other competent authority for attribution/allocation cases and (ii) within 4 months for other cases.¹³ If France is at the origin of the event that caused double taxation, France’s competent authority shall transmit its position paper as soon as possible, including a complete proposal which may lead to the elimination of double taxation.¹⁴
- Overall, the MAP must generally be settled within a period not exceeding 24 months.¹⁵

Analysis of France’s MAP caseload

Global overview of the MAP caseload

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

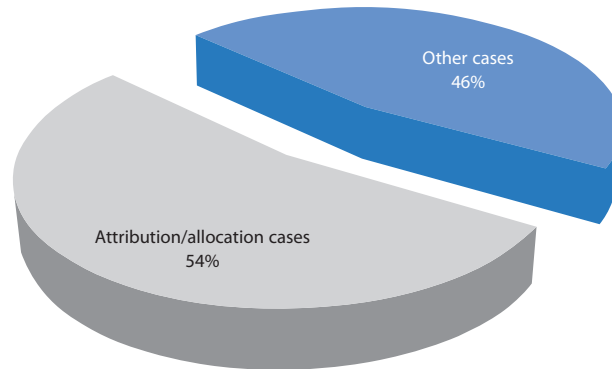
Figure C.1. Evolution of France’s MAP caseload



160. At the beginning of the Statistics Reporting Period France had 844 pending MAP cases, of which 521 were attribution/allocation cases¹⁶ and 323 other MAP cases. At the end of the Statistics Reporting Period, France had 882 MAP cases in inventory, of which 474 are attribution/allocation cases and 408 other MAP cases. While the total number of cases increased by 5% during the Statistics Reporting Period, the number of attribution/allocation cases decreased by approximately 9% and the number of other cases increased by approximately 26% over the same period.

161. The breakdown of the end inventory can be illustrated as follows:

Figure C.2. End inventory on 31 December 2017 (887 cases)

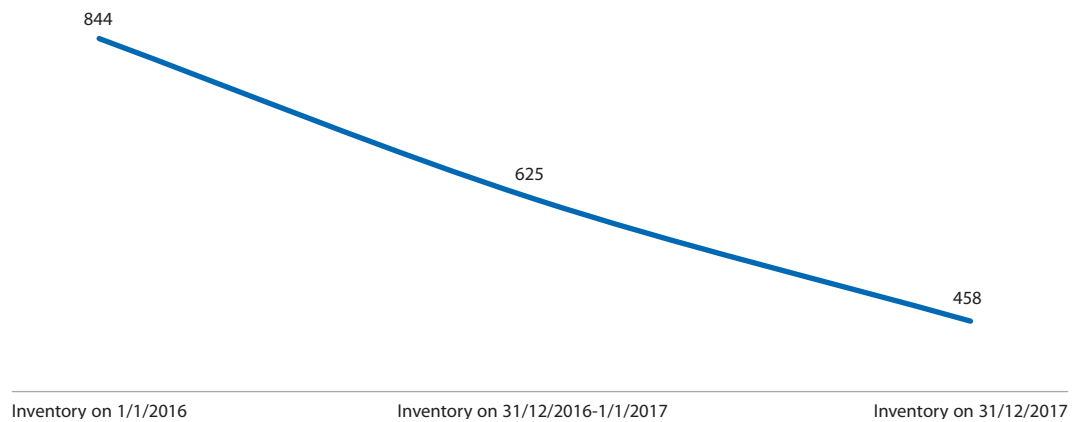


Pre-2016 cases

162. The following graph shows the evolution of France's pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of France's MAP inventory

Pre-2016 cases



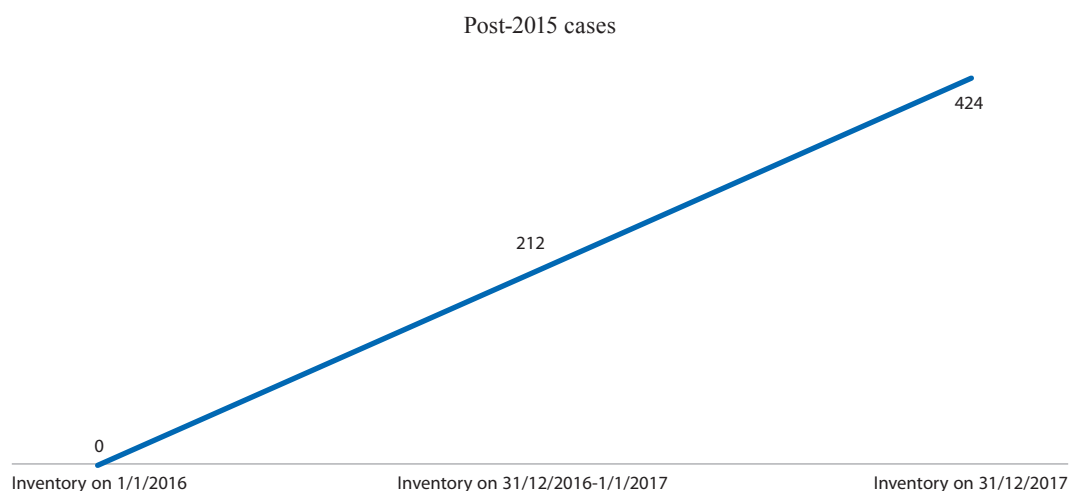
163. At the beginning of the Statistics Reporting Period, France's MAP inventory of pre-2016 MAP cases consisted of 844 cases, of which were 521 attribution/allocation cases and 323 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 458 cases, consisting of 297 attribution/allocation cases and 161 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

Pre-2016 cases only	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016 + 2017)
Attribution/allocation cases	-23%	-26%	-43%
Other cases	-30%	-29%	-50%

Post-2015 cases

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

Figure C.4. Evolution of France's MAP inventory



165. In total, 632 MAP cases started during the Statistics Reporting Period, 247 of which concerned attribution/allocation cases and 385 other cases. At the end of this period, the total number of post-2015 cases in the inventory was 424 cases, consisting of 177 attribution/allocation cases and 247 other cases. Conclusively, France closed 208 post-2015 cases during the Statistics Reporting Period, 70 of them being attribution/allocation cases and 138 of them being other cases. The total number of closed cases represents 33% of the total number of post-2015 cases that started during the Statistics Reporting Period. In this respect, the number of attribution/allocation cases closed during this period represents 28% of the number of attribution/allocation post-2015 cases started while the number of other post-2015 cases closed amounts to 36% of the number of cases started.

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

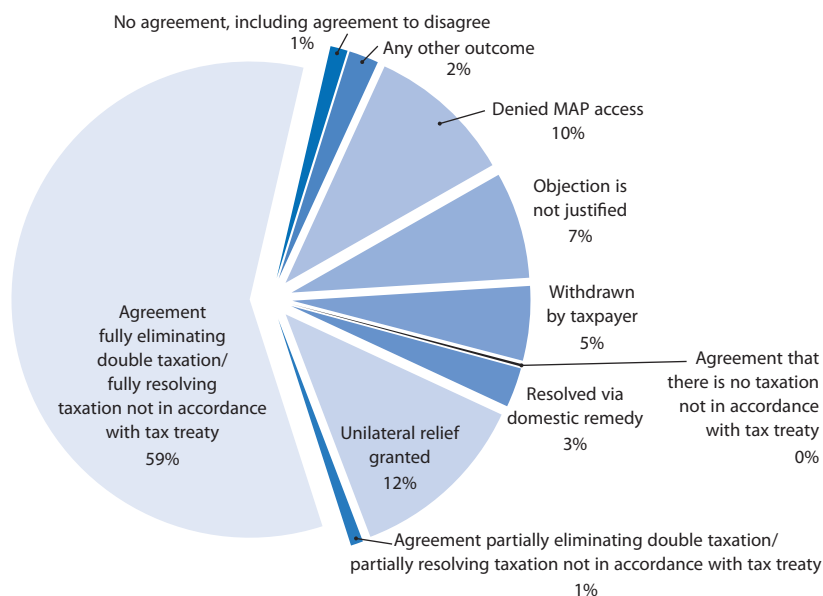
Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016 + 2017)
Attribution/allocation cases	29%	27%	28%
Other cases	28%	42%	36%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

167. During the Statistics Reporting Period France closed 594 MAP cases and the following outcomes were reported:

Figure C.5. Cases closed during 2016 and 2017 (594 cases)



168. Figure C.5 shows that during the Statistics Reporting Period, 348 out of 594 cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

169. In total, 294 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (70%)
- unilateral relief granted (13%).

Reported outcomes for other cases

170. In total, 300 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (47%)
- denied MAP access (15%)
- objection is not justified (13%)
- unilateral relief granted (12%).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

171. The average time needed to close MAP cases during the Statistics Reporting Period was 27.55 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/allocation cases	294	34.84
Other cases	300	20.41
All cases	594	27.55

Pre-2016 cases

172. For pre-2016 cases France reported that on average it needed 43.92 months to close 224 attribution/allocation cases and 33.85 months to close other cases. This resulted in an average time needed of 39.69 months to close 386 pre-2016 cases. For the purpose of computing the time needed to close pre-2016 cases, France reported that it used the following dates:

- as the start date, the date when the MAP request was received
- as the end date, either the date of the closing letter sent to the taxpayer or the date of final closure of the case if no agreement was reached.

Post-2015 cases

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

174. For post-2015 cases, France reported that on average it needed 5.77 months to close 70 attribution/allocation cases and 4.64 months to close 138 other cases. This resulted in an average time needed of 5.02 months to close 208 post-2015 cases.

Peer input

Period 1 January 2014-31 March 2017 (stage 1)

175. Several peers indicated that they had no difficulty resolving MAP cases within a reasonable timeframe with France, one of them pointing out that cases were generally resolved before the end of the delay after which the arbitration procedure contained in their treaty with France may be opened. One peer also observed that most MAP cases initiated with France were resolved within 2 years. One peer reported that cases submitted after 1 January 2016 had already been discussed at meetings held during the year.

176. Several peers have, however, encountered delays in the resolution of MAP cases. Several peers pointed out that intermediate steps (such as the communication of a position paper) were not always achieved within the expected timeframe (e.g. as foreseen in the European Union Code of Conduct on the implementation of the arbitration convention). Other peers reported that some cases lasted for a long time and that a solution had not yet been found. In particular, these peers mentioned that significant delays could be observed before France's competent authority communicates its position paper or replies to a request for information. For one of these cases, a peer has been waiting since May 2016 for France's competent authority to communicate its position on a case that results from an adjustment

made in France. Finally, this peer suggested that France's competent authority should engage itself to respond in a timely manner to requests for information in order to resolve cases more quickly. Another peer indicated that the competent authorities in France and in his country had agreed to make greater use of e-mails in order to send documents or requests for information and to advance in the procedures.

177. One peer reported that there have been four MAP cases in relation to France, where the peer has repeatedly requested resolution of these cases and sent the position papers. France's competent authority responded that it requested information from France's local tax office and provided one position paper to the peer. As a result, the cases concerned have been open over several years, the oldest one being open for 6 years. This peer submitted a request for a face-to-face meeting in June 2017. France replied that in September it will propose a date for holding the meeting and reported that the meeting took place on 8 February 2018.

Period 1 April 2017-31 August 2018 (stage 2)

178. Several peers indicated that they experienced difficulties in resolving MAP cases with France's competent authority on a timely basis. Two peers that had experienced such difficulties in stage 1 reported that they do not have any additions to the input given in that stage. Other peers reported having experienced delays specifically in stage 2. One peer reported that for cases involving individuals, during 2017 there had been a few cases where this peer is still waiting for France's competent authority's view of the issue. Another peer reported that no MAP cases had been resolved with France since 1 April 2017. This peer noted that the cases it has with France mainly relate to withholding taxes levied in France in excess of the rate provided by the tax treaty. In this regard, the peer reported that it has been waiting for a response to its letters in the above-mentioned cases since mid and, respectively, the end of 2016, and that it sent a reminder in August 2018, which has remained unanswered thus far. One peer reported that it has three cases in progress with France that started before 2018 and that on average, these cases have been opened for 29.14 months.

179. Some peers reported having experienced delays in obtaining position papers from France. One peer reported that achieving the target timeframe in the Code of Conduct for the EU Arbitration Convention for position papers is often challenging for both years 2017 and 2018. This peer further reported that France's competent authority generally does not include a copy of the respective MAP requests received by France when informing it about such requests and only forwards a copy after explicitly being asked to do so. This peer further noted that even then, appendices to these MAP requests, especially the French audit report, are often not provided at all, which contributes to lengthier MAP procedures.

180. France responded it performs an analysis of all the documents available before sending a summarised position to the treaty partner and that when a competent authority has, after analysing this position, additional questions relating to the case, France's competent authority makes all efforts to respond to it. France further clarified that the annexes that are not transmitted are the procedural documents because they are often very large, and they often contain information concerning other countries, or other corrections that are out of the scope of the MAP, and therefore not intended to be shared with another state. France further clarified that this has been explained, both by mail and verbally to this peer's competent authority. Finally, France noted that this peer's competent authority does not systematically send audit reports and both practices are similar in this respect.

181. Another peer experienced delays in receiving position papers. This peer reported that it received a notification of a filed MAP request early 2016 further to an audit that was made in France, but that it has not yet received a position paper from France's competent authority or details regarding the issue in dispute. This peer noted that according to the correspondence it had with France's competent authority, the latter is waiting for the information from the local tax office. This peer noted that it has a number of significantly old MAP cases with France and that reducing the time taken to communicate information and position papers for cases where the audit was made in France would help both jurisdictions resolve MAP cases in a timely manner. One other peer experienced delays where France's competent authority explained that they had not received the information from France's tax authority while the adjustment was made in France.

182. One other peer, currently having four post-2015 transfer pricing MAP cases with France, experienced that for two of the MAP cases that started in April 2017, this peer received the position paper in June 2018 and the cases are pending its review. This peer reported that it is waiting for the position paper from France on the other two MAP cases that started in January 2018. France responded that out of these four cases, two were resolved and two other cases should be closed with a unilateral relief granted by France shortly.

183. Some peers reported their positive experiences in dealing with MAP cases with France's competent authority. One peer noted that despite the delays it experienced in a few cases involving individuals, it noted that the engagement with France is good with regard to attribution/allocation cases. This peer also observed that although it still remains the case that most transfer pricing cases resulted from adjustments initiated by France since 1 April 2017, France's competent authority takes pro-active steps to ensure the timely resolution of MAP cases where possible, despite its significant caseload. One peer reported its progress with France's competent authority, and specified that 11 pre-2016 transfer pricing MAP cases were closed in 2017 and 2018 and the mutual agreements have already been implemented or are expected to be done soon. This peer noted that the remaining transfer pricing MAP cases are progressing in due form. Regarding other MAP cases, this peer noted that one pre-2016 case and two post-2015 cases were closed in the relevant period. This peer added that an upcoming bilateral meeting is scheduled for the first semester of 2019.

Recent developments

184. As to the matching of the MAP statistics, France reported that there were no changes to the process put in place for the matching of the MAP statistic since 1 January 2017. France reported that its competent authority sent at the end of January, beginning of February an excerpt of its tracking table to all its MAP partners so that the latter can check whether there is any mismatch in MAP statistics. France further reported that e-mails were then exchanged in order to reach an agreement on the MAP statistics. In addition, in order to facilitate this process, France reported that its competent authority agreed with some competent authorities to update the MAP statistics during the various joint commissions.

Anticipated modifications

185. As it will be discussed in element C.6, France's tax treaty policy is to provide for mandatory and binding MAP arbitration in its bilateral tax treaties, as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

186. 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 France’s competent authority

187. In 2013, a reorganisation took place within France’s competent authority, bringing together the teams responsible for APAs (previously under the responsibility of the CF3 Bureau within the sub-directorate CF of the central administration) and MAPs (previously under the responsibility of the EI Bureau of the DLF) within the Legal Department of Taxation of the central administration and more particularly in the MEJEL. Contact information of France’s competent authority is available on the OECD website¹⁷ and the website of the EU Joint Transfer Pricing Forum¹⁸. France indicated that it informs the other competent authorities of any changes to this information.

188. During the reorganisation, the number of caseworkers in charge of the analysis of cases submitted to MAP doubled. Prior to the reorganisation, two caseworkers were in charge of MAPs, and two others were in charge of APAs. At the end of the reorganisation, 8 caseworkers were in charge of both the APAs and the MAPs. France’s competent authority now consists of 11 persons, including 7 caseworkers, two team leaders and one head of mission. Team leaders have a double profile, having both experience in tax auditing of large enterprises, particularly on transfer pricing issues, and experience in international taxation, for example by having been involved in tax treaties negotiations or in MAPs regarding general issues. The seven caseworkers are organised by country, and generally have one or the other of the following profiles: (i) a first profile of experienced caseworkers, who have experience in auditing large enterprises, especially on transfer pricing issues and (ii) a second profile of caseworkers hired at the end of their training courses, that have a particularly attractive profile for international aspects. The caseworkers of this second profile are trained within the administration for one year and deal during that year with the issues of (i) transfer pricing, (ii) interpretation and application of tax treaties, (iii) domiciliation and territoriality applicable to individuals (iv) domiciliation and territoriality applicable to legal entities and permanent establishments, and (v) use of the appropriate databases (e.g. to carry out research on comparables for transfer pricing issues). France requires from all its caseworkers that they can work in English. In addition, France’s competent authority has delegated the processing of certain cases to the Regional Direction of Public Finance of Hauts-de-France and the Department of the North. In practice, four inspectors from this direction are in charge, among other activities, of the MAPs relating to Belgian cross-border workers.

189. The MAP guidance stipulates that France’s competent authority shall take all necessary steps to accelerate, as far as possible, the treatment of MAPs. In this respect, it is indicated¹⁹ that:

France’s competent authority proposes to its main partners to organise regularly, at least once a year, meetings between competent authorities in order to discuss face-to-face all the pending MAP cases.

190. At this moment, the budget allocated to France’s competent authority allows the staff to organise about 15 face-to-face meetings per year, half of which are held abroad.

Monitoring mechanism

191. France has indicated that, each year, the resources allocated to the competent authority are analysed in the framework of review of the resources of France’s tax administration. In particular, the activity of France’s competent authority is summarised in an annual report, which is reviewed by the Director of DGFIP. This annual report specifies in particular the number of face-to-face meetings held, the average time-frame for resolving MAP cases and the evolution of the MAP inventory.

Recent developments

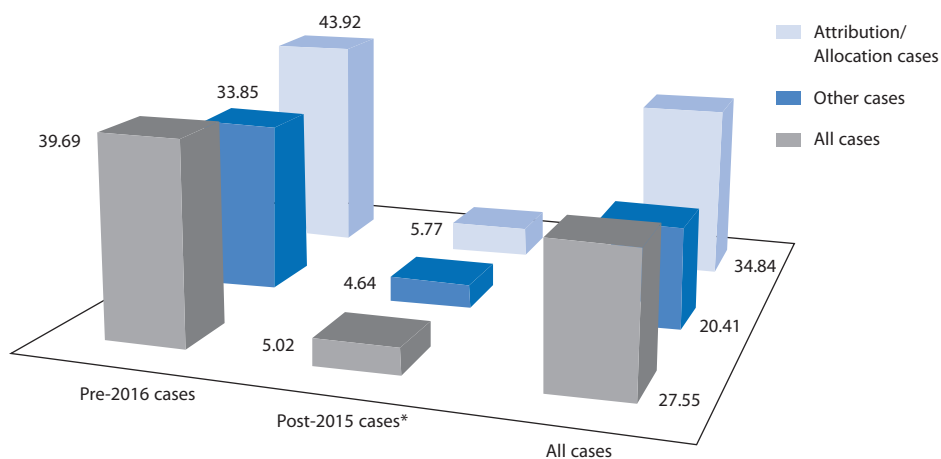
192. France reported that it has added to the training offer to its staff the training courses provided by the OECD as developed in the framework of the works of the FTA MAP Forum.

Practical application

MAP Statistics

193. As discussed under element C.2 France has not resolved its MAP cases within the pursued 24-month average. Moreover, a discrepancy exists between the average time taken to solve attribution/allocation cases and other cases. This can be illustrated by the following graph:

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



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

194. Based on these figures, it follows that on average it took France 27.55 months to close MAP cases. However, it took France on average 34.84 months to resolve attribution/allocation cases, where the average time needed to resolve other cases was 20.41 months. This might indicate that additional resources specifically dedicated to Attribution/allocation cases may be necessary to accelerate the resolution of these cases.

195. The average time to close MAP cases can be broken down as follows for 2016 and 2017:

	2016	2017
Attribution/allocation cases	29.69	40.99
Other cases	21.87	19.09
All cases	25.99	29.17

196. France provided the following explanations for the time taken to close MAP cases as regards the 2016 Reporting Period.

197. In general, since the reorganisation within the competent authority that occurred in 2013, France sought to resolve the oldest cases in its inventory of MAP cases. As a result, the resolution of older cases impacts and increases the average time needed to resolve cases. In this respect, the elements described above indicate the average time required to resolve MAP cases, which can be negatively influenced by cases resolved in a particularly long time. For example, a particularly complex case was resolved after a triangular discussion within a total of 95 months. On the other hand, the median time required to resolve MAP cases is significantly shorter, since it amounts to 16.73 months for all cases.

198. In addition, France reported on particular events during the Statistics Reporting Period, described below:

- Difficulties have been encountered with a specific MAP partner, with whom it has not been possible to deal with MAP cases for 6 years. 18 cases were resolved during the Statistics Reporting Period, which represents more than 10% of the attribution/allocation cases closed during this period and the average time taken for these cases was 60 months.
- Another case was closed following a judgment favourable to the taxpayer, whereas the MAP was suspended at the initiative of the other competent authority during ten years.

199. France reported that in 2016 the elimination of these cases for the computation of the average time needed to close all MAP cases results in an average time of 23.96 months and a median time of 16.43 months.

200. For the 2017 Reporting Period, France provided the median times to resolve MAP cases:

(Number of cases/ Number of months)	Pre-2016 cases		Post-2015 cases		Total	
	Number of cases	Median (months)	Number of cases	Median (months)	Number of cases	Median (months)
Attribution/allocation cases	102	41.3	32	10.53	134	36.87
Other cases	65	31.17	92	5.33	157	12.63
Total	167	36.87	124	6.47	291	23.33

201. France added that two specific cases were closed after a delay of approximately ten years for reasons independent of the action of France's competent authority. These concern:

- one other case that was closed following domestic remedy after the suspension of the file for ten years

- one attribution/allocation case that was suspended further to the liquidation of the group and the implementation of the liquidation process in the other jurisdiction.

Peer input

Period 1 January 2014-31 March 2017 (stage 1)

202. In terms of staff, one peer suggested that more resources should be allocated to the MAP function. Another peer pointed out that the staff of France’s competent authority was well trained for the resolution of MAP cases. However, one peer pointed out that staff in France’s competent authority frequently changes and regretted that this lack of stability had an impact on the effective resolution of MAP cases.

203. Regarding their relation with France’s competent authority, many peers confirmed that their competent authority was in frequent contact with France’s competent authority, whether by exchanging letters, e-mails, telephone conversations or face-to-face meetings. Several peers welcomed the efforts made by France’s competent authority in this area, one of them taking into account the constraints of France’s competent authority in terms of resources. Several peers, however, suggested that even more meetings be organised in view of the particularly large caseloads that these peers have with France. One of them also proposed to organise video conferences. France indicated that on the one hand it organised around 15 face-to-face meetings per year, which makes it one of the most active competent authorities, and on the other hand that, for technical reasons, it also preferred to organise audio-conferences on a regular basis instead of video-conferences, for technical reasons.

204. Another peer also suggested that analysts from the competent authorities exchange their views on outstanding issues by telephone or in writing before they meet for formal discussions. One peer also suggested exploring ways to improve the way information is communicated in order to be more effective in cases involving individuals. In terms of organisation, several peers suggested that their competent authority should be in direct contact with the person in charge of the case within France’s competent authority in order to improve the time needed to treat the case. France responded that exchanges between French teams and their counterparts are generally easy and that these persons are often in direct contact. Only formal exchanges (opening letters, written positions, discussions in face-to-face meeting and closing letters) involve the head of France’s competent authority, as he is the only one to whom head of the DGFIP delegated the authority to enter into MAP agreements.

Period 1 April 2017-31 August 2018 (stage 2)

205. One peer observed that France’s competent authority’s resources seem to be adequate. One peer noted that the personnel of France’s competent authority is well trained to handle MAP cases. One peer reported that it has had regular contacts by e-mail, letters and telephone as well as regular meetings with France’s competent authority. This peer further reported that the relationship is cordial and based on mutual understanding, which makes it possible to reach solutions in a constructive manner. One peer with a limited number of cases with France noted its co-operative relationship with France’s competent authority, but reported that it would appreciate further improvement in communications, possibly by quicker responses by France’s competent authority (e.g. to a position paper, where they are experiencing a delay) and by being duly informed of MAP requests submitted to France’s competent authority.

206. One peer reported that while France's competent authority staff has appropriate knowledge and expertise in transfer pricing cases which makes it possible to reach solutions, it has also a very high caseload which results in occasional delays in reaching the point where resolution negotiations begin. This peer further reported that while France's competent authority is pro-active in seeking to address these delays and ensuring continued engagement, the volume of MAP cases can impact the ability to reach timely resolutions. Another peer reported that it had one MAP case resolved with France since 1 April 2017. This peer reported that it has corresponded with France regarding the status of remaining open cases, and that negotiations have been scheduled for May 2019 where further progress is expected to be made on open MAP cases. One peer reported that an upcoming bilateral meeting is scheduled with France for the first semester of 2019. One last peer reported that it had one competent authority meeting in 2017 and 2018 respectively, and that in between exchange via email and telephone took place. This peer further reported that it experienced that resolution of smaller cases is relatively straightforward, large and sensitive cases are more complicated to resolve.

207. However, several peers noted having experienced delays in resolving MAP cases, which is discussed under element C.2. One peer specifically reported that resource constraints and a high volume of MAP cases appear to have prevented France's competent authority from timely responses to position papers of this peer and timely resolution of MAP cases, and noted internal steps to hire new staff taken by France's competent authority.

208. In addition, several peers noted that more resources would enable France's competent authority to resolve MAP cases in an efficient, timely and effective manner. Two peers that had made such a suggestion in stage 1 reported that they do not have any additions to the input given in that stage. One peer reported that while meetings took place more frequently (twice a year) as suggested by this peer, France's competent authority's efforts on increasing the number of staff could be a viable contribution to improve the timely resolution of MAP cases. In response to what will be discussed in recent developments below, another peer considered that France's competent authority should have participated in more joint commissions in 2018 than in 2017, since France has a high number of inventory of pending MAP cases.

209. One last peer reported that the last competent authority meeting was held in October 2016 and a new meeting was scheduled for January 2019, but noted that there has been little resolution of cases in between. This peer reported that it had the impression that France's competent authority needs more resources and welcomed the information in the update report that more resources are envisaged. The peer recognised that France's competent authority has a very busy schedule, of which they have also informed this peer's competent authority. However this peer noted that it sometimes leads to delays in the resolution process (acknowledging that this peer is also responsible for some delays in some cases). This peer noted that it believes that more resources would accelerate the resolution of MAP cases and a smaller number of cases per case handler would most likely lead to a shorter handling time. France acknowledged that this peer's comment was adequate.

Recent developments

210. France reported that its competent authority has kept participating in a high number of face to face joint commissions, i.e. 16 in 2017 and 15 in 2018, respectively, which places it clearly among the most active competent authorities.

211. France reported that its competent authority has taken internal steps to hire new staff and the application is currently underway in the human resources department of France’s tax administration.

Anticipated modifications

212. France did not indicate that it anticipates any modifications in relation to element C.3 other than the application currently underway to hire new staff in its competent authority. In this respect, France reported that one additional case worker position has been created as of 1 September 2019.

Conclusion

	Areas for improvement	Recommendations
[C.3]	<p>While the median time taken to close MAP cases is below 24 months, which is the pursued timeframe to close post-2015 MAP cases, some peers have experienced difficulties in resolving MAP cases with France in a timely, efficient and effective manner, which in particular concerns:</p> <ul style="list-style-type: none"> • the timely submission of position papers • quicker responses to position papers • more availability to discuss MAP cases. <p>This indicates that the competent authority may not be adequately resourced to cope with this increase, although several actions have been taken to address this in the meantime.</p>	<p>While France has recently taken steps to hire new staff to work with its competent authority, it should closely monitor whether this will contribute to the resolution of MAP cases in a timely, effective and efficient manner. This monitoring in particular concerns, as suggested by peers, whether it will lead to :</p> <ul style="list-style-type: none"> • the timely submission of position papers • quicker responses to position papers • more availability to discuss MAP cases.

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

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

213. 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 at issue and absent any policy considerations, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

214. A reorganisation in 2013 has made it possible to isolate the competent authority within the Legal Department of Taxation of the central administration, independent of the staff in charge of the tax audit within the DGFIP. France indicated that the factors taken into consideration for the resolution of MAP cases are mainly the provisions of the tax treaties, the commentary on the *OECD Model Tax Convention* and the OECD transfer pricing guidelines²⁰. In practice, France’s MAP guidance also mentions the “opinion” of the local tax office²¹. In this respect, France confirms that certain information is obtained from the

service responsible for the adjustment made in France through a specific report, but that the competent authority remains independent of the offices in charge of tax audit.

215. Finally, the opinion of the Tax Legislation Directorate within the DGFIP can also be sought for questions relating to the interpretation of tax treaties, which can be explained by the fact that the Tax Legislation Directorate is responsible for the negotiation and the general interpretation of tax treaties.

Recent developments

216. There are no recent developments in relation to element C.4.

Practical application

Period 1 January 2014-31 March 2017 (stage 1)

217. Several peers indicated that France's competent authority was professional, and respected internationally recognised standards for transfer pricing, tax treaties and exchange of information. In particular, one peer mentioned that individual cases were often resolved unilaterally by France's competent authority without recourse to the bilateral phase. Another peer pointed out that the position of France's competent authority sought to reconcile the interests of both parties.

218. As noted in Element C.2, several peers have reported that France's Competent Authority communicated its position late after an adjustment in France. One peer has assumed that this is due to the fact that the competent authority is awaiting information from the audit team in charge of the audit, since once the first position has been communicated, the communication is fluid.

219. As mentioned previously, for the MAPs requested following a French adjustment, a report is requested from the audit service. The position of France's competent authority is sent to the foreign competent authority after reviewing and approving this report in full independence.

Period 1 April 2017-30 September 2018 (stage 2)

220. Nine peers stated in stage 2 that the update report provided by France fully reflects their experiences with France since 1 April 2017 and/or there are no additions to the previous input given in stage 1. The other peers that provided input did not comment on this specific element.

Anticipated modifications

221. France did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

[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.

222. 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 France

223. France specified that the number of cases resolved, the time taken to resolve cases, the priority given to old cases of the inventory in the resolution of MAP cases or the number of organised face-to-face meetings are some of the indicators reviewed annually to assess the performance of the staff in charge of MAP. France also reported that the impact of external factors that cannot be controlled by the competent authority does not impact the evaluation of staff. In any event, France has indicated that it does not use performance indicators linked to the amount of sustained audit adjustments or maintaining tax revenue.

224. The list of performance indicators deemed appropriate in the Final Report on Action 14 is reproduced below. The elements taken into account by the staff when resolving cases are checked:

- 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).

Recent developments

225. There are no recent developments in relation to element C.5.

Practical application

Period 1 January 2014-31 March 2017 (stage 1)

226. Several peers noted that the staff hired by France had a pragmatic approach to the resolution of MAPs. One peer also indicated that its experience with France did not lead it to conclude that France uses inappropriate performance indicators.

Period 1 April 2017-30 September 2018 (stage 2)

227. Nine peers stated in stage 2 that the update report provided by France fully reflects their experiences with France since 1 April 2017 and/or there are no additions to the previous input given in stage 1. The other peers that provided input did not comment on this specific element.

Anticipated modifications

228. France did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

229. 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

230. France reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. France further reported that it is committed to include a mandatory and binding arbitration provision in its tax treaties, as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe.

231. Furthermore, France is a signatory to the EU Arbitration Convention and has adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive has been implemented in France's domestic legislation since 1 January 2019.

232. As discussed under element B.8, specific guidelines concerning the functioning of MAPs in cases subject to the EU Arbitration Convention are also included in France's MAP guidance.²² Further guidance on the functioning of the arbitration procedure in tax treaties is also available in France's MAP guidance.²³

Recent developments

233. Since 1 April 2017, France signed a new treaty with one treaty partner, which concerns the replacement of an existing tax treaty and which has recently entered into force. This new treaty contains a mandatory and binding provision that is equivalent to Article 25(5) of the OECD Model Tax Convention, which was not the case for the that has been replaced. The effect of this new treaty has been reflected in the analysis below.

234. Furthermore, France signed the Multilateral Instrument and has deposited its instrument of ratification on 26 September 2018. The Multilateral Instrument has for France entered into force on 1 January 2019. With the signing of that instrument, France also opted for part VI, which includes a mandatory and binding arbitration provision. The effects of this opting in is also further described below.

Practical application

235. France has incorporated an arbitration clause in nine tax treaties as a final stage to the MAP. These clauses are as follows:

- Four treaties contain an arbitration clause that is based on Article 25(5) of the OECD Model Tax Convention. In one of these treaties it is in the protocol stipulated that at the request of one of the competent authorities, the two-year period for the mutual agreement procedure may be extended to three years.
- Four treaties provide for a voluntary and binding arbitration procedure.
- One treaty provides for a mandatory and binding arbitration procedure.

236. With respect to the one treaty mentioned in the third bullet above, France entered into a memorandum of understanding with this treaty partner to detail the rules to be applied during the arbitration procedure.

237. Furthermore, with respect to the effect of part VI of the Multilateral Instrument on France's tax treaties, there are next to France in total 28 signatories to this instrument that also opted for part VI. Concerning these 28 signatories, France listed 22 as a covered tax agreement under the Multilateral Instrument, but only 20 also listed their treaty with France under that instrument. Of these 20 treaties, France already included an arbitration provision in three tax treaties. With respect to these treaties, France has not opted, pursuant to Article 26(4) of the Multilateral Instrument, not to apply part VI to these treaties. In this respect, two of the relevant treaty partners, however, have opted, pursuant to Article 26(4), not to apply part VI to their treaty with France. For the remaining treaty, the relevant treaty partner has already deposited its instrument of ratification, for which part VI will apply and the arbitration provision of the Multilateral Instrument will supersede this treaty to the extent that the current arbitration provision is incompatible with the provisions of part VI.²⁴

238. For the remaining 17 treaties that do not contain an arbitration provision, 11 treaty partners already deposited their instrument of ratification. In this respect, part VI will apply to these 11 treaties and introduce the arbitration provision of the Multilateral Instrument in these treaties.²⁵ For the other six treaties, France reported it expects that part VI will introduce a mandatory and binding arbitration procedure in these treaties.

Anticipated modifications

239. France did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 110 treaties include the treaty with former Czechoslovakia that France continues to apply to the Slovak Republic and the treaty with former Yugoslavia that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia.
2. These 15 treaties include the treaty with the former USSR that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan.
3. These two treaties includes the former treaty with the United Kingdom that France continues to apply to Malawi and Zambia.
4. See BOI-INT-DG-20-30-10 no. 230.
5. France also listed the treaty with the former United Kingdom as covered tax agreements, but only as regards Zambia. As Zambia is not a signatories to the Multilateral Instrument, it not further taken into account in the counting.
6. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2017.
7. Available at: http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en These statistics are up to and include fiscal year 2017.
8. France’s 2016 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016. See further explanations in Annex B and Annex C.
9. For post-2015 cases, if the MAP inventory was more than five at the beginning of the reporting period, France reported its MAP caseload on a jurisdiction-by-jurisdiction basis.
10. BOI-INT-DG-20-30-10-20170201 no. 20.
11. BOI-INT-DG-20-30-10-20170201 no. 400.
12. BOI-INT-DG-20-30-10-20170201 no. 200.
13. BOI-INT-DG-20-30-10-20170201 no. 500.
14. BOI-INT-DG-20-30-10-20170201 no. 480 and 490.
15. BOI-INT-DG-20-30-10-20170201 no. 510.
16. For pre-2016 cases, France reported that the category “attribution/allocation cases” covered cases relating to transfer pricing issues as defined in the European Arbitration Convention and cases relating to the qualification of a permanent establishment. The “other cases” concern cases involving individuals and issues of withholding tax. For post-2015 cases, France follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation case.
17. www.oecd.org/tax/dispute/France-Dispute-Resolution-Profile.pdf.
18. http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/tpprofile-fr.pdf.
19. BOI-INT-DG-20-30-10-20170201 no. 550.
20. OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
21. BOI-INT-DG-20-30-10-20170201 no. 430.
22. Available at <http://bofip.impots.gouv.fr/bofip/5353-PGP.html>.
23. Available at <http://bofip.impots.gouv.fr/bofip/5347-PGP.html>.
24. Annex A reflects the effect of part VI of the Multilateral Instrument for these treaties.
25. Ibid.

References

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

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.

240. 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

241. France reported that the MAP agreements, if accepted by the taxpayer, are implemented notwithstanding any time limits in its domestic law. Thus, irrespective of the years or taxation years concerned, refunds are granted in respect of those years. This is further clarified in paragraphs 570 and 600 of France’s MAP guidance.

242. Once a MAP agreement is reached between the competent authorities, France’s competent authority requests the taxpayer concerned to agree to the implementation of the MAP agreement and, where applicable, to withdraw from any administrative or judicial appeal to challenge the substance and/or the form of the taxes concerned and to waive any proceedings to challenge the MAP decision reached. If the taxpayer accepts the proposal, it is then applied by France, whatever the time limits provided for by domestic law. If the taxpayer refuses or does not reply within the time limit set by France’s competent authority (nor after a reminder), the proposal for an agreement lapses and the MAP is then closed. This is also clarified in paragraph 570 of France’s MAP guidance.

243. Subject to the limitations described below, France will implement all the agreements reached in MAP, both with regard to upward and downward adjustments of taxes. The agreements are implemented by the local offices of the DGFIP notwithstanding any time limits in its domestic law.¹ However, France clarified that tax refunds are made after verification by the tax collector in charge of the file that the tax was originally paid. In this regard, France has indicated that the implementation of a MAP agreement may have become impossible because of the retention period of the archives, which is maximum six years.

Recent developments

244. There are no recent developments in relation to element D.1.

Practical application

Period 1 January 2014-31 March 2017 (stage 1)

245. France has indicated that all MAP agreements reached since 1 January 2014 and accepted by taxpayers have been (or will be) implemented. In practice, the monitoring of the implementation of MAP agreements is done by the local offices of the DGFIP. If the implementation has become difficult or impossible because of the retention period of the documents, France's competent authority makes every reasonable effort to assist the taxpayers and ensure the implementation of the MAP agreement.

246. Peers generally indicated that they were not aware of any MAP agreements that had not been implemented by France since 1 January 2014.

Period 1 April 2017-30 September 2018 (stage 2)

247. France reported that all MAP agreements reached between 1 April 2017 and 30 September 2018 were or will be implemented.

248. Nine peers stated in stage 2 that the update report provided by France fully reflects their experiences with France since 1 April 2017 and/or there are no additions to the previous input given in stage 1. The other peers that provided input did not provide specific comments on this element, either referring to the fact that no MAP agreements had been reached or that they were not aware of any issues regarding the implementation of MAP agreements.

Anticipated modifications

249. France did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	The system used to keep accounting documents bears the risk that certain MAP agreements will not be implemented.	As it has done thus far, France should continue to implement all MAP agreements reached.

[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.

250. Delay of implementation of MAP agreements may lead to adverse financial consequences for both taxpayers and competent authorities. To avoid this and to increase certainty for all parties involved, it is important that the implementation of any MAP agreement is not obstructed by procedural and/or statutory delays in the jurisdictions concerned.

Theoretical timeframe for implementing mutual agreements

251. France has not adopted an indicative timetable for the implementation of MAP agreements reached. In practice, France's competent authority is not itself responsible for the implementation of MAP agreements. In addition, it does not monitor and verify the implementation of the agreements by the DGFIP.

Recent developments

252. There are no recent developments in relation to element D.2.

Practical application***Period 1 January 2014-31 March 2017 (stage 1)***

253. France indicated that all MAP agreements reached between 1 January 2014 and 31 March 2017 were implemented.

254. One taxpayer pointed out that if a solution had been found quickly by France's competent authority, it was only verbally notified to the taxpayer, which made implementation of this decision difficult and time-consuming in practice (1 and a half years). In reply, France clarified that this delay was unusual and that France's competent authority had reminded the local office so that the solution could be implemented. In addition, France recalls that, in view of the independence of the audit functions (in charge of the implementation of MAP agreements) and the competent authority, the two services do not necessarily function in a co-ordinated manner. In any event, France took note of the fact that written notification of solutions to the taxpayer are more effective and will endeavour to do so in the future.

255. Peers indicated that they were not aware of any MAP agreements that had not been implemented timely by France since 1 January 2014.

Period 1 April 2017-30 September 2018 (stage 2)

256. France reported that all MAP agreements reached between 1 April 2017 and 30 September 2018 were or will be implemented. It further noted that some may take time for various reasons, but that they generally are implemented on a timely basis.

257. Nine peers stated in stage 2 that the update report provided by France fully reflects their experiences with France since 1 April 2017 and/or there are no additions to the previous input given in stage 1. One peer specified that there have not been notable delays in the implementation of MAP cases that were reached in 2017 or 2018 with France. The other peers that provided input did not provide specific comments on this element, either referring to the fact that no MAP agreements had been reached or that they were not aware of any issues regarding the implementation of MAP agreements.

Anticipated modifications

258. France did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

[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.

259. 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 France's tax treaties

260. As discussed under element D.1, in France MAP agreements are always implemented notwithstanding France's domestic time limits.

261. Out of France's 120 tax treaties, 80 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. All remaining 40 treaties do neither contain the second sentence of Article 25(2) nor the alternative provisions for Article 9(1) or Article 7(2), setting a time limit for making adjustments.²

Recent developments

Bilateral modifications

262. France signed a new treaty with one treaty partner, which concerns the replacement of an existing tax treaty and which recently entered into force. This new treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, which was not the case for the treaty that has been replaced. The effect of this new treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

263. France signed the Multilateral Instrument and has deposited its instrument of ratification on 26 September 2018. The Multilateral Instrument has entered into force for France on 1 January 2019.

264. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. 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, pursuant to

Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Article 16(4)(b)(ii) of the Multilateral Instrument does will for a tax treaty not take effect if one or both of the treaty partners has, pursuant Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

265. In regard of the 40 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), France listed 27 as a covered tax agreements under the Multilateral Instrument and for 26 of them did it make a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii).³ Of the relevant 26 treaty partners, six are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with France under that instrument and four made a reservation on the basis of Article 16(5)(a). The remaining 14 treaty partners all made a notification pursuant to Article 16(6)(c)(ii).⁴

266. Of the last 14 treaty partners mentioned above, four have deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between France and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified four treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.⁵ For the remaining ten treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Other developments

267. France reported that it finalised negotiations with two treaty partners on a new treaty, for which it currently continues to apply the former treaty with the United Kingdom, and with a third treaty partner on the amendment of the existing treaty in force. In all these treaties the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention is included, which was not the case for the former treaty with the United Kingdom.

Peer input

268. With respect to the 26 treaties that are not in line with element D.3. and that will not be modified by the Multilateral Instrument, two peers provided input. One of them specified that it made a reservation not to include the equivalent of Article 25(2) second sentence of the OECD Model Tax Convention via the Multilateral Instrument but is willing to accept the inclusion of both alternative provisions. In addition, this peer noted that all MAP agreements that were reached with France and that this peer needed to implement have always been implemented. The other did not comment on this element.

Anticipated modifications

269. As mentioned in the Introduction, for those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, and for which

no negotiations are pending or about to be initiated, France has put a plan in place to bring, where necessary, the relevant treaties in line with this standard. This plan consists of updating the notifications under the Multilateral Instrument, to approach treaty partners to either sign that instrument or to also update the notifications in relation to the Action 14 Minimum Standard. France further reported that in line with that plan it has already contacted some jurisdictions in relation to the Multilateral Instrument and furthermore has requested one treaty partner to initiate bilateral negotiations to bring the relevant treaty in line with the requirements under this standard. Finally, France indicated that it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention in all its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>40 out of 120 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention nor include the alternative provisions in both Article 9(1) and Article 7(2). Of these 40 treaties:</p> <ul style="list-style-type: none"> • Four have been modified by the Multilateral Instrument to contain the required provision. • Ten are expected to be modified by that instrument to contain the required provision. • 26 treaties will not be modified by that instrument. With respect to these 26 treaties: <ul style="list-style-type: none"> - For one treaty negotiations have been completed on the replacement of the existing treaty in force. - One is included in the list of treaties for which negotiations are envisaged, scheduled or pending. - For the remaining 24, the relevant treaty partners have been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact them with a view to initiate bilateral negotiations. 	<p>France should as quickly as possible sign and ratify the new treaties or amendments to existing treaties to have in place the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention in one of the relevant 26 treaties.</p> <p>For 23 of the remaining 25 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, France should:</p> <ul style="list-style-type: none"> • continue negotiations with one treaty partner to include the required provision or both alternative provisions • continue to work in accordance with its plan to strive to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention via the Multilateral Instrument in 22 tax treaties, and where such turns out not to be possible, initiate bilateral negotiations <p>Furthermore, specifically with respect to the treaty with the former USSR that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan, and with former Yugoslavia that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, France should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision or or be willing to accept the inclusion of both alternative provisions.</p>

Notes

1. BOI-INT-DG-20-30-10-20170201 no. 600.
2. These 39 treaties include the treaty with former Czechoslovakia that France continues to apply to the Slovak Republic; the treaty with the former USSR that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan; the treaty with former Yugoslavia that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia; and the former treaty with the United Kingdom that France continues to apply to Malawi and Zambia.
3. These 26 and 25 treaties include the treaty with former Czechoslovakia that France continues to apply to the Slovak Republic. France also listed the treaty with former Yugoslavia and the former treaty with the United Kingdom as covered tax agreements, but only as regards Bosnia and Herzegovina and Serbia, and Zambia. As Bosnia and Herzegovina and Zambia are not signatories to the Multilateral Instrument, these are not further taken into account in the counting. For Serbia, the Multilateral Instrument will modify the treaty with former Yugoslavia to include Article 9(2), but only but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).
4. Ibid.
5. Ibid.

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]	<p>55 out of 120 tax treaties do not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these 55 treaties:</p> <ul style="list-style-type: none"> • Ten have been modified by the Multilateral Instrument to contain the required provision. • 16 are expected to be modified by that instrument to contain the required provision. • 29 treaties will not be modified by that instrument. With respect to these 29 treaties: <ul style="list-style-type: none"> - For two treaties negotiations have been completed on the amendment or replacement of the existing treaty in force. - Two are included in the list of treaties for which negotiations are envisaged, scheduled or pending. - For the remaining 25, the relevant treaty partners have been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact them with a view to initiate bilateral negotiations. 	<p>France should as quickly as possible sign and ratify the new treaties or amendments to existing treaties to have in place the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention in two of the relevant 29 treaties.</p> <p>For 25 of the remaining 27 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, France should:</p> <ul style="list-style-type: none"> • continue negotiations with two treaty partners to include the required provision • continue to work in accordance with its plan to strive to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax via the Multilateral Instrument, in 23 tax treaties and where such turns out not to be possible, initiate bilateral negotiations. <p>Furthermore, specifically with respect to the treaty with the former USSR that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan and with former Yugoslavia that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, France should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p>
[A.2]	<p>No roll-back of APAs will be granted, except in cases where an adjustment is made and for which the opening of a mutual agreement procedure can be requested.</p>	<p>France should provide for roll-back of bilateral APAs (subject to the applicable time limits) in appropriate cases.</p>
Part B: Availability and access to MAP		
[B.1] ↓	<p>21 out of 120 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. Of these 21 treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. • Five are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. • 15 will not be modified by that instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - For one treaty negotiations have been completed on the replacement of the existing treaty in force. - One is included in the list of treaties for which negotiations are envisaged, scheduled or pending. <p>For the remaining 13, the relevant treaty partners have been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact them with a view to initiate bilateral negotiations.</p>	<p>France should as quickly as possible sign and ratify the new treaty to have in place the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention in one of the relevant 15 treaties.</p> <p>For 13 of the remaining 14 treaties that will not be modified or superseded by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as it read as amended in the Action 14 final report, France should:</p> <ul style="list-style-type: none"> • continue negotiations with one relevant treaty partner to include the required provision • continue to work in accordance with its plan to strive to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax via the Multilateral Instrument in 12 tax treaties, and where such turns out not to be possible, initiate bilateral negotiations. <p>In both instances this concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either:</p> <ul style="list-style-type: none"> • as amended in the Action 14 final report; or • as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision. <p>Specifically with respect to the treaty with former Yugoslavia that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, France should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p>

	Areas for improvement	Recommendations
	<p>13 of 120 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention. Of these 13 treaties:</p> <ul style="list-style-type: none"> • Five are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention. • Eight will not be modified by that instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - For one negotiations have been completed on the replacement of the existing treaty in force. - One is included in the list of treaties for which negotiations are envisaged, scheduled or pending. • For the remaining six, the relevant treaty partners have been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact them with a view to initiate bilateral negotiations. 	<p>France should as quickly as possible sign and ratify the replacement of the existing treaty to have in place the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention in the relevant treaty.</p> <p>For seven of the remaining eight treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, France should:</p> <ul style="list-style-type: none"> • continue negotiations with one treaty partner to include the required provision • continue to work in accordance with its plan to strive to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax via the Multilateral Instrument in six tax treaties, and where such turns out not to be possible, initiate bilateral negotiations.
↓ [B.1]	<p>Four out of 120 tax treaties do not 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 or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these four treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include both the first and second sentence of Article 25(1) as amended by the Action 14 final report. • One is expected to be modified by the Multilateral Instrument to include both the first and second sentence of Article 25(1) as amended by the Action 14 final report. • One has been modified by the Multilateral Instrument to include the second sentence of Article 25(1), but not as regards the first sentence. • One is expected to be modified by the Multilateral Instrument to include the second sentence of Article 25(1), but not as regards the first sentence. • With respect to these last two treaties, the relevant treaty partners have been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact them with a view to initiate bilateral negotiations. 	<p>For the two treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, France should continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument, and where such turns out not to be possible, initiate bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ul style="list-style-type: none"> • as amended in the Action 14 final report; or • as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.
	<p>Access to MAP can be denied in cases where severe penalties are imposed and have become final.</p>	<p>France should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP.</p>
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-

	Areas for improvement	Recommendations
[B.7]	<p>Ten out of 120 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these ten treaties, one treaty concerns a tax treaty with a limited scope of application. With respect to the nine remaining comprehensive treaties:</p> <ul style="list-style-type: none"> • Two have been modified by the Multilateral Instrument to include the required provision. • Four are expected to be modified by that instrument to contain the required provision. • Three treaties will not be modified by that instrument. With respect to these three treaties: <ul style="list-style-type: none"> - For one treaty negotiations have been completed on the amendment or replacement of the existing treaty in force. - One is included in the list of treaties for which negotiations are envisaged, scheduled or pending. - For the remaining one, the relevant treaty partner has been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact this treaty partner with a view to initiate bilateral negotiations. 	<p>France should as quickly as possible sign and ratify the new treaty or amendments to existing treaty to have in place the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention in one of the relevant three comprehensive tax treaties</p> <p>For the two remaining comprehensive treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, France should continue to work in accordance with its plan to strive to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax in these tax treaties via the Multilateral Instrument, and where such turns out not to be possible, initiate bilateral negotiations.</p>
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	<p>18 out of 120 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these 18 treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the required provision. • Five are expected to be modified by that instrument to include the required provision. • 12 treaties will not be modified by that instrument. With respect to these 12 treaties: <ul style="list-style-type: none"> - For one treaty negotiations have been completed on the amendment or replacement of the existing treaty in force. - For the remaining 11, the relevant treaty partners have been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact them with a view to initiate bilateral negotiations. 	<p>France should as quickly as possible sign and ratify the new treaties or amendments to existing treaties to have in place the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention in one of the relevant 12 treaties.</p> <p>For 10 of the remaining 11 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, France should continue to work in accordance with its plan to strive to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax via the Multilateral Instrument in these tax treaties, and where such turns out not to be possible, initiate bilateral negotiations. Specifically with respect to the treaty with the former USSR that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan, France should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p>
[C.2]	-	-

	Areas for improvement	Recommendations
[C.3]	<p>While the median time taken to close MAP cases is below 24 months, which is the pursued timeframe to close post-2015 MAP cases, some peers have experienced difficulties in resolving MAP cases with France in a timely, efficient and effective manner, which in particular concerns:</p> <ul style="list-style-type: none"> • the timely submission of position papers • quicker responses to position papers • more availability to discuss MAP cases. <p>.This indicates that the competent authority may not be adequately resourced, although several actions have been taken to address this in the meantime.</p>	<p>While France has recently taken steps to hire new staff to work with its competent authority, it should closely monitor whether this will contribute to the resolution of MAP cases in a timely, effective and efficient manner. This monitoring in particular concerns, as suggested by peers, whether it will lead to :</p> <ul style="list-style-type: none"> • the timely submission of position papers • quicker responses to position papers • more availability to discuss MAP cases.
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	The system used to keep accounting documents bears the risk that certain MAP agreements will not be implemented.	As it has done thus far, France should continue to implement all MAP agreements reached.
[D.2]	-	-
[D.3]	<p>40 out of 120 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention nor include the alternative provisions in both Article 9(1) and Article 7(2). Of these 40 treaties:</p> <ul style="list-style-type: none"> • Four have been modified by the Multilateral Instrument to contain the required provision. • Ten are expected to be modified by that instrument to contain the required provision. • 26 treaties will not be modified by that instrument. With respect to these 26 treaties: <ul style="list-style-type: none"> - For one treaty negotiations have been completed on the replacement of the existing treaty in force. - One is included in the list of treaties for which negotiations are envisaged, scheduled or pending. - For the remaining 24, the relevant treaty partners have been or will be contacted or will be notified by France with a view to have the treaty modified by the Multilateral Instrument, and where such turns out not to be possible, France will contact them with a view to initiate bilateral negotiations. 	<p>France should as quickly as possible sign and ratify the new treaties or amendments to existing treaties to have in place the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention in one of the relevant 26 treaties.</p> <p>For 23 of the remaining 25 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, France should:</p> <ul style="list-style-type: none"> • continue negotiations with one treaty partner to include the required provision or both alternative provisions • continue to work in accordance with its plan to strive to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention via the Multilateral Instrument in 22 tax treaties, and where such turns out not to be possible, initiate bilateral negotiations. <p>Furthermore, specifically with respect to the treaty with the former USSR that France continues to apply to Belarus, Kyrgyzstan and Turkmenistan, and with former Yugoslavia that France continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, France should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision or or be willing to accept the inclusion of both alternative provisions.</p>

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11			
	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		Article 25(3) of the OECD MTC		Arbitration							
Treaty partner	DTC in force?	Inclusion Art. 25(1)?	Inclusion Art. 25(1) second sentence?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	
Austria	Y	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y*	Y	Y*	Y	Y***	Y	Y	Y	Y***	Y	
Azerbaijan	Y	O	ii	2-years	Y	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Bahrain	Y	O	ii	2-years	i	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Bangladesh	Y	O	Y	N/A	i	Y	i	i	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	N	
Belarus	Y	E	i	N/A	i	N	i	i	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	N	
Belgium	Y	E**	ii*	6 months	Y*	Y*	Y*	i	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y***	
Benin	Y	N	i	N/A	i	N	i	i	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	N	
Bolivia	Y	O	Y	N/A	i	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Bosnia and Herzegovina	Y	N	i	N/A	i	Y	i	i	Y	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	N	
Botswana	Y	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Brazil	Y	O	i	N/A	i	Y	i	i	Y	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	N	
Bulgaria	Y	O*	Y	N/A	i**	Y	Y	i	Y	Y	Y	N*	Y	N*	Y	Y	Y	Y	Y	Y	N	
Burkina Faso	Y	N*	i	N/A	i	Y	Y	i	N*	N*	N	N*	N	N*	Y	Y	Y	Y	Y	Y	N	
Cameroon	Y	N*	Y	N/A	i**	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Canada	Y	N	Y*	N/A	i	Y	Y	i	Y	Y	N	Y*	N	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y**	
Central African Republic	Y	N	i	N/A	i	N	N/A	i	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	N	
Chile	Y	O	Y	N/A	Y	Y	Y	i	Y	Y	N*	Y	N*	Y	N*	Y	N*	Y	N*	Y	N	
China (People's Republic of)	Y	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Colombia	N	O*	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Congo	Y	O	Y	N/A	i	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Côte d'Ivoire	Y	N*	i	N/A	i**	N*	N/A	i	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10	Column 11
	DTC in force?	Inclusion Art. 25(1)? if yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? if no, please state reasons	Inclusion Art. 9(2) of the OECD MTC If no, will your CA provide access to MAP in TP cases?	Anti-abuse B.4	Article 25(2) of the OECD MTC C.1	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Article 25(3) of the OECD MTC A.1	Article 25(3) of the OECD MTC B.7	Arbitration C.6					
Croatia	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Cyprus ^a	Y	O*	Y	N/A	i**	Y	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	N
Czech Republic	Y	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ecuador	Y	N	i	N/A	i	N	N	N	N	Y	Y	Y	Y	Y	N	Y	Y	N
Egypt	Y	O*	Y	N/A	i	Y	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	N
Estonia	Y	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ethiopia	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Finland	Y	E*	i	N/A	i***	Y	Y	Y	Y*	Y*	Y	Y	Y*	Y	Y	Y	Y	Y***
French Polynesia	Y	N	i	N/A	i	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Gabon	Y	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Georgia	Y	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Germany	Y	O	Y	N/A	i**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Ghana	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Greece	Y	O*	i	N/A	i**	Y	Y	Y	Y	Y	Y	Y	N*	Y	Y	Y	Y	N
Guinea	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hong Kong (China)	Y	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hungary	Y	O	Y	N/A	i**	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N
Iceland	Y	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
India	Y	N	Y	N/A	i***	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Indonesia	Y	O	Y	N/A	i	Y	Y	Y	N*	N	Y	Y	N	Y	Y	Y	Y	N
Iran	Y	O	i	N/A	i	Y	Y	Y	N	N	Y	Y	N	Y	Y	Y	Y	N
Ireland	Y	E*	i	N/A	i***	Y	Y	Y	Y*	Y*	Y	Y	Y*	Y	Y	Y	Y	Y***

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	DTC in force?	Inclusion Art. 25(1)? if yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? if no, please state reasons	Inclusion Art. 9(2) of the OECD MTC If no, will your CA provide access to MAP in TP cases?	Anti-abuse B.4	Article 25(2) of the OECD MTC C.1	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Article 25(3) of the OECD MTC A.1	Article 25(3) of the OECD MTC B.7	Arbitration C.6								
Israel	Y	O	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Italy	Y	N	ii*	6 months	N/A	i*	N	N	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N
Jamaica	Y	O*	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Japan	Y	E*	Y	N/A	N/A	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***
Jersey	Y	N	iv	No MAP provision	N/A	N/A	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Jordan	Y	O	Y	N/A	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kazakhstan	Y	O	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Kenya	Y	O	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea	Y	O*	Y	N/A	N/A	i*	Y	Y	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N
Kosovo	Y	N	i	N/A	N/A	i	Y	Y	N	N	N	N	N	N	N	N	N	N	N	N	N
Kuwait	Y	O*	ii*	2-years	N/A	i*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kyrgyzstan	Y	E	i	N/A	N/A	i	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Latvia	Y	O	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Lebanon	Y	O	i	N/A	N/A	i	Y	Y	N	N	N	N	N	N	N	N	N	N	N	N	N
Libya	Y	O	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Lithuania	Y	E*	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Luxembourg	N	E	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y**
Madagascar	Y	O	Y	N/A	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Malawi	Y	N	iv	No MAP provision	N/A	i	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Malaysia	Y	O*	i	N/A	N/A	i**	Y	Y	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N*	N
Mali	Y	N	i	N/A	N/A	i	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Malta	Y	E*	Y	N/A	N/A	i***	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***

Treaty partner	DTC in force?	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
		Inclusion Art. 25(1)?	Inclusion Art. 25(1) second sentence? If no, please state reasons			Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Mauritania	Y	N	i	N/A	i	N	N	N	Y	N
Mauritius	Y	O*	Y	N/A	i**	Y	Y	N*	Y	N
Mexico	Y	O*	ii*	2-years	i**	Y	N	N*	N*	N
Monaco	Y	N	iv	No MAP provision	i	Y*	N	Y	Y	N
Mongolia	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Montenegro	Y	N	i	N/A	i	Y	N	N	Y	N
Morocco	Y	N*	i	N/A	i	N*	N*	N*	Y	N
Namibia	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Netherlands	Y	E**	Y	N/A	i***	Y	Y	Y*	Y	Y***
New Caledonia	Y	O	ii	2-years	i	Y	Y	N	Y	N
New Zealand	Y	E*	Y	N/A	i***	Y	Y	Y*	Y	Y***
Niger	Y	N	i	N/A	i	N	N	N	Y	N
Nigeria	Y	O*	Y	N/A	i	Y	Y	N	N*	N
North Macedonia	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Norway	Y	N	Y	N/A	i	Y	Y	N	Y	N
Oman	Y	O	ii	2-years	i	Y	Y	Y	Y	N
Pakistan	Y	O*	ii*	2-years	i**	Y	Y	Y	Y	N
Panama	Y	O*	Y	N/A	Y	Y	Y	Y	Y	N
Philippines	Y	O	ii	2-years	i	Y	N	N	Y	N
Poland	Y	O	Y	N/A	i***	Y	Y	Y*	Y	N
Portugal	Y	O	ii*	2-years	i**	Y	N*	N*	Y	N
Qatar	Y	O*	Y	N/A	i	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	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.3	B.4	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1
	Inclusion Art. 25(1)?		Inclusion Art. 25(2)?		Inclusion Art. 25(3)?		Inclusion Art. 25(4)?		Inclusion Art. 25(5)?		Inclusion Art. 25(6)?		Inclusion Art. 25(7)?		Inclusion Art. 25(8)?		Inclusion Art. 25(9)?		Inclusion Art. 25(10)?	
	If yes, submission to either competent authority		If no, please state reasons		If no, will your CA provide access to MAP in TP cases?		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?		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?		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	
	Inclusion Art. 25(1) second sentence?		Inclusion Art. 25(2) second sentence?		Inclusion Art. 25(3) second sentence?		Inclusion Art. 25(4) second sentence?		Inclusion Art. 25(5) second sentence?		Inclusion Art. 25(6) second sentence?		Inclusion Art. 25(7) second sentence?		Inclusion Art. 25(8) second sentence?		Inclusion Art. 25(9) second sentence?		Inclusion Art. 25(10) second sentence?	
	If no, please state reasons		If no, please state reasons		If no, please state reasons		If no, please state reasons		If no, please state reasons		If no, please state reasons		If no, please state reasons		If no, please state reasons		If no, please state reasons		If no, please state reasons	
Treaty partner	DTC in force?	O	Y	N	E*	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Quebec	Y	O	Y	N	E*	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Romania	Y	N	Y	N	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Russia	Y	E*	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Saint Martin	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Saint Pierre and Miquelon	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Saudi Arabia	Y	O*	Y	2-years	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Senegal	Y	N*	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Serbia	Y	N	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Singapore	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Slovak Republic	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Slovenia	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
South Africa	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Spain	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Sri Lanka	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Sweden	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Switzerland	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Syrian Arab Republic	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Chinese Taipei	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Thailand	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Togo	Y	N	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Trinidad and Tobago	Y	O	Y	N/A	Y	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	Article 9(2) of the OECD MTC	B.3	Anti-abuse	Article 25(2) of the OECD MTC	D.3	Article 25(3) of the OECD MTC	A.1	B.7	Arbitration	C.6								
Treaty partner	DTC in force?	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?										
Tunisia	Y	O*	i	N/A	i**	Y	N*	N	Y	N	N									
Turkey	Y	O*	i	N/A	Y	Y	Y	Y	Y	Y	N									
Turkmenistan	Y	E	i	N/A	i	N	N	N	Y	N	N									
Ukraine	Y	E*	Y	N/A	Y	Y	Y	Y	Y	Y	N									
United Arab emirates	Y	E**	Y*	N/A	Y	Y	Y	Y	Y	Y	N									
United Kingdom	Y	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y									
United States	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y									
Uzbekistan	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	N									
Venezuela	Y	O	ii	2-years	i	Y	Y	Y	Y	Y	N									
Viet Nam	Y	O	Y	N/A	Y	Y	Y	N	Y	Y	N									
Zambia	Y	N	iv	No MAP provision	i	N	N	N	N	N	N									
Zimbabwe	Y	O	Y	N/A	i	Y	Y	N	Y	Y	N									

Note: a. Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

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 MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
		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	519	3	1	11	22	1	81	1	0	2	0	397	38.52
Others	325	1	9	2	8	6	58	0	0	3	10	228	30.92
Total	844	4	10	13	30	7	139	1	0	5	10	625	35.15

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 MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13
		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	399	1	3	5	6	2	81	3	0	1	0	297	50.38	
Others	226	3	8	4	7	0	39	1	1	0	2	161	38.21	
Total	625	4	11	9	13	2	120	4	1	1	2	458	45.64	

Note: The number of cases in inventory on 1 January 2016 has been corrected due to the MAP requests and closures made before 2017 of which France's competent authority has been informed by the other competent authority in 2017.

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	130	5	0	0	1	0	32	0	0	0	0	0	92	1.32
Others	0	166	13	11	2	7	4	9	0	0	0	0	0	120	2.77
Total	0	296	18	11	2	8	4	41	0	0	0	0	0	212	2.12

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	92	117	6	0	3	9	1	12	0	0	1	0	0	177	11.06
Others	120	219	27	11	3	13	2	36	0	0	0	0	0	247	5.58
Total	212	336	33	11	6	22	3	48	0	0	1	0	0	424	6.99

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
Administrative guidelines	Administrative guidelines BOI-INT-DG-20-30-20 on the mutual agreement procedures to eliminate double taxation
FTA MAP Forum	Forum on Mutual Agreement Procedure in the Forum on Tax Administration
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 were pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, France (Stage 2)

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 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 2 peer monitoring of the implementation of the Action 14 Minimum Standard by France.

Consult this publication on line at <https://doi.org/10.1787/a5d1cab8-en>.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases. Visit www.oecd-ilibrary.org for more information.

