

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 85 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

As a result, the OECD established the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The

Inclusive Framework, which already has more than 136 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 11 December 2019 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

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

Executive summary

Sweden has an extensive tax treaty network with over 75 tax treaties and has signed and ratified the EU Arbitration Convention. Sweden has an established MAP programme and has large experience in resolving MAP cases. It has a relatively large MAP inventory, with a considerable number of new cases submitted each year and more than 200 cases pending on 31 December 2017. Of these cases, 56% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Sweden met most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Sweden worked to address them, which has been monitored in stage 2 of the process. In this respect, Sweden solved almost all of the identified deficiencies.

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

- Approximately 20% of its tax treaties does not include a provision requiring competent authorities to consult together for the elimination of double taxation in cases not provided for in the tax treaty (which is required under Article 25(3), second sentence).
- Approximately 25% of its tax treaties do not include 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), or include the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Sweden signed and ratified, without any reservations on the MAP article, the Multilateral Instrument. Furthermore, Sweden opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Through this instrument a substantial number of its tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties have not or will not be modified, upon entry into force of this Multilateral Instrument, Sweden reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. Sweden, however, has not put a plan in place to bring, where necessary, the relevant treaties in line with the requirements of this standard. Taking this into account, negotiations need to be initiated without further delay for a considerable number of treaties to ensure compliance with this part of the Action 14 Minimum Standard.

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

Furthermore, Sweden meets almost all of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases and has in place a notification and consultation process for those situations in which Sweden's competent authority considers the objection raised by taxpayers in a MAP request as not justified. This process has been documented in the internal instructions for staff in charge of MAP. In addition, the website of Sweden's tax administrative includes basic information on inter alia the availability of MAP and on how the MAP function in Sweden is construed and applied in practice, which was updated in June 2019.

Concerning the average time needed to resolve MAP cases, the MAP statistics for the year 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	109	67	59	117	38.41
Other cases	57	111	77	91	19.37
Total	166	178	136	208	25.57

*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, Sweden used as a start date the date of registration of the MAP request and as the end date the date when Sweden's competent authorities takes the decision to execute the MAP agreement.

The number of cases Sweden closed in 2016 or 2017 is 78% of the number of cases started in those years. During these years, MAP cases were on average not closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time needed was 25.57 months. This mainly concerns attribution/allocation cases, as the average time to resolve these cases is considerably longer (38.41 months) than other cases (19.37 months). For attribution/allocation cases, the average also increased, although for these cases Sweden provided justified explanations that caused delays in resolving these cases. Furthermore, its MAP inventory as per 31 December increased with 25% as compared to the inventory on 1 January 2016. While Sweden added new staff members to its competent authority and introduced several organisational changes to accelerate the resolution of MAP cases, more resources or additional actions may be necessary to cope with this increase and to ensure that Sweden resolves all MAP cases in a timely, effective and efficient manner.

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

Lastly, Sweden also meets the Action 14 Minimum Standard as regards implementation of MAP agreements. It monitors the implementation of these agreements and no issues have surfaced throughout the peer review process.

Introduction

Available mechanisms in Sweden to resolve tax treaty-related disputes

Sweden has entered into 84 tax treaties on income (and/or capital), all of which are in force.¹ These 84 treaties apply to 96 jurisdictions.² All 84 treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, five treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.³

Sweden is also 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.⁴ Furthermore, Sweden adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which it has implemented in its domestic legislation.⁵

Under Sweden’s tax treaties, the competent authority function to conduct MAP is the Ministry of Finance. In 2000, the Ministry of Finance assigned competence to handle MAP cases to the Swedish Tax Agency (“**Sweden’s competent authority**”) by Regulation 2000:1077 (in Swedish: *Förordning (2000:1077) om handläggning av ärenden enligt skatteavtal*). Within the Swedish Tax Agency, a section of the legal department in practice handles both MAP and APA cases, and which is separated from the audit and examination departments. As of June 2019, Sweden’s competent authority employs 11 persons; of whom nine work full time and two part-time.

Sweden has not issued specific guidance in relation to the governance and administration of the mutual agreement procedure, but such information is available on the following webpage of Sweden’s tax administration:

www.skatteverket.se/privat/skatter/arbeteinkomst/internationellainkomster/dubbelbeskattningavrakning/undanrojandeavdubbelbeskattning.4.69ef368911e1304a625800011554.html

Developments in Sweden since 1 April 2017

Developments relating to the tax treaty network

In the stage 1 peer review report of Sweden it is reflected that it has signed a new treaty with Armenia (2016). In 2017 this treaty entered into force and replaced the 1981 treaty.

Furthermore, on 7 June 2017 Sweden 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 in for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. On 22 June 2018, Sweden deposited its instrument of ratification, following which the Multilateral Instrument has for Sweden entered into force on 1 October 2018. With the depositing of its instrument of ratification, Sweden also submitted its list of notifications and reservations to the Multilateral Instrument.⁶ In relation to the Action 14 Minimum Standard, Sweden has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

In addition, Sweden reported that since 1 April 2017 it has signed an amending protocol to the existing treaty with Russia, which includes Article 9(2) of the OECD Model Tax Convention and also amends the MAP provision to allow taxpayers to file a MAP request to the competent authorities of either contracting state. Sweden also signed, together with Denmark, Finland, the Faroe Islands, Iceland and Norway, an amending protocol to the multilateral Nordic Convention, which also amends the MAP provision to allow taxpayers to file a MAP request to the competent authorities of either contracting state. Furthermore, Sweden also signed an amending protocol with Switzerland, which amends the MAP provision to allow taxpayers to file a MAP request in either contracting state as well as an amending protocol with Brazil through which the MAP provision will be amended to correspond to Article 25(1)-(3) of the OECD Model Tax Convention in its 2017 version. Of the above-mentioned protocols, only the one with Russia has so far entered into force.

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 that have not been or will not be modified by the Multilateral Instrument, or through the above-mentioned protocols, Sweden reported that it is currently negotiating with three jurisdictions on either the replacement of an existing tax treaty or amending protocols to existing treaties to be compliant with this standard. Furthermore, Sweden reported it has been approached by one treaty partner to initiate negotiations *inter alia* to bring the treaty in line with the requirements under the Action 14 Minimum Standard and for which negotiations will commence in the near future. For the remaining treaties, Sweden reported that it is committed to renegotiate all treaties that do not meet the Action 14 Minimum Standard and that it will be done successively apart from those treaties that have a limited scope of application, for which Sweden specified that it will not renegotiate these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. Sweden, however, has not put in place a specific plan and no further actions were implemented to bring these treaties in line with this standard.

Other developments

Further to the developments in relation to the treaty network described above, Sweden reported the following developments in relation to the prevention and resolution of tax treaty disputes:

- An update to the internal processes of Sweden's competent authority, which concerns an update to and the documentation of a routine manual to reflect the minimum administrative requirements under the Action 14 Minimum Standard, namely time frames for sending opening letters, notification processes to other competent authorities concerned and closing alternatives
- A further development of the internal database with a view to allow for a better tracking of Sweden's MAP caseload

- Internal trainings to staff in charge of MAP on the requirements under the Action 14 Minimum Standard, and the distribution of the Global Awareness Training Module to the relevant auditors of the attribution/allocation team within Sweden’s Tax Agency.

Sweden also reported that updates to the guidance on MAP and APAs, as reflected on the website of Sweden’s Tax Agency are under development. These updates were made available in June 2019.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Sweden’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 the information on 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 Sweden, 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, Sweden’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 Sweden 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.⁷ 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 Sweden. In this update report, Sweden 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 below, in assessing whether Sweden is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaties/agreement with the former Czechoslovakia that Sweden continues to apply to the Czech Republic, the Slovak Republic, with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia; and with the former Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba). As it concerns three tax treaties that are applicable to multiple jurisdictions, each of these treaties is only counted as one treaty for this purpose. The same applies to the multilateral tax treaty between Denmark, Finland, the Faroe Islands, Iceland, Norway and Sweden (“**Nordic convention**”) and the separate treaties entered into with Guernsey, the Isle of Man and

Jersey that relate to transfer pricing and to certain categories of income of individuals. Reference is made to Annex A for the overview of Sweden’s tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process was for Sweden launched on 7 March 2017, with the sending of questionnaires to Sweden and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Sweden in September 2017, with the subsequent approval by the BEPS Inclusive Framework on 13 October 2017. On 13 October 2018, Sweden 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, Sweden opted to provide information on period starting as from 1 January 2015 (the “**look back period**”) and also requested peer input relating to the look back period. The period for evaluating Sweden’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 addition to its assessment on the compliance with the Action 14 Minimum Standard, Sweden also addressed best practices and asked for peer input on best practices.

In total 21 peers provided input during stage 1: Australia, Belgium, Canada, People’s Republic of China, Denmark, France, Germany, Greece, India, Italy, Japan, the Netherlands, Norway, Portugal, Russia, Singapore, the Slovak Republic, Spain, Switzerland, the United Kingdom and the United States. In stage 1, these peers represent approximately 60% of post-2015 MAP cases in Sweden’s inventory on 31 December 2016. Input was also received from taxpayers. During stage 2, apart from the Slovak Republic, the same peers provided input on the update report of Sweden. Furthermore, also Austria, Chile, Ireland, Korea, Luxembourg, Slovenia and Turkey provided input during stage 2. For this stage, these peers represent approximately 35% of post-2015 MAP cases in Sweden’s inventory that started in 2016 or 2017.⁸ Broadly all peers indicated having good working relationships with Sweden with regard to MAP, some of them emphasising the solution-orientated and flexible approach taken by Sweden’s competent authority. Specifically with respect to stage 2, almost all peers that provided input reported that the update report of Sweden fully reflects the experiences these peers have had with Sweden since 1 April 2017 and/or that there was no addition to previous input given. Fifteen peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance.

Input by Sweden and co-operation throughout the process

During stage 1, Sweden provided general answers in its questionnaire, which was submitted on time. Sweden was responsive in the course of the drafting of the peer review report by responding to requests for additional information and provided clarity where necessary. In addition, Sweden provided the following information:

- MAP profile⁹
- MAP statistics¹⁰ according to the MAP Statistics Reporting Framework (see below).

Concerning stage 2 of the process, Sweden submitted its update report on time and the information included therein was extensive. Sweden was very co-operative during stage 2 and the finalisation of the peer review process.

Finally, Sweden is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Sweden provided detailed peer input and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions. Sweden also provided peer input on the best practices for a number of jurisdictions that asked for it.

Overview of MAP caseload in Sweden

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

2016-17	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2017
Attribution/allocation cases	109	67	59	117
Other cases	57	111	77	91
Total	166	178	136	208

General outline of the peer review report

This report includes an evaluation of Sweden’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**”).¹¹ Apart from analysing Sweden’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Sweden, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Sweden 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 Sweden 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 the 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 Sweden 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 Sweden has entered into are available at: <http://www4.skatteverket.se/rattsligvagledning/15311.html>. Sweden has in 2018 signed an amending protocol to the treaty with Russia (1993) and also signed an amending protocol to the multilateral tax treaty with the Nordic countries, two which also Denmark, Finland, Faroe Islands, Iceland and Norway are signatories (“**Nordic convention**”). In 2019, Sweden signed amending protocols with Brazil and Switzerland. Of these protocols, only that with Russia has so far entered into force.

Annex A includes an overview of Sweden’s tax treaties with respect to the mutual agreement procedure. For purpose of this report and Annex, the newly negotiated treaties that replace an existing treaty, as well as the amending protocols to existing treaties are taken into account. Furthermore, the 84 tax treaties Sweden has entered into include treaties with Guernsey, the Isle of Man and Jersey. With these three jurisdictions, Sweden has entered into separate treaties that have a limited scope of application, one of which relates to transfer pricing and one to certain categories of income of individuals. In this situation, the number of such treaties is regarded as one for the purpose of this peer review report.
2. Sweden continues to apply the 1979 treaty with former Czechoslovakia to the Czech Republic and the Slovak Republic; the 1980 treaty with former Yugoslavia to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia; and the 2009 agreement to promote economic relations with the former Netherlands Antilles Islands to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba). Furthermore, Sweden has entered into the multilateral Nordic convention, which applies to Denmark, Finland, the Faroe Islands, Iceland and Norway.
3. This concerns treaties with Armenia, Germany, Japan, Switzerland and the United Kingdom. See for a discussion element C.6 of this report. Reference is made to Annex A for the overview of Sweden’s tax treaties that include an arbitration clause.
4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.
5. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
6. Available at: www.oecd.org/tax/treaties/beps-mli-position-sweden-instrument-deposit.pdf.
7. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-sweden-stage-1-9789264285736-en.htm.
8. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework. The number of MAP cases falling under *de minimis* rule are not included in this 35%.

9. Available at: www.oecd.org/tax/dispute/Sweden-Dispute-Resolution-Profile.pdf.
10. The 2016 and 2017 MAP statistics of Sweden are included in Annex B and C of this report.
11. 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/REVI).

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 Sweden’s tax treaties

2. Out of Sweden’s 84 tax treaties, 79 contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.¹ Of the remaining five treaties, one does not contain such a provision and four contain a provision that is based on Article 25(3), first sentence, but do not incorporate all the required elements for the following reasons:

- In two treaties the term “interpretation” is not included.
- In one treaty the scope of application is limited to certain articles of the treaty only.
- In one treaty the provision only constitutes an invitation to reach an agreement on any difficulties or doubts arising as to the interpretation or application of the tax treaty (e.g. “may likewise to come to an agreement”), but does not require competent authorities to resolve by mutual agreement such difficulties or doubts.

3. For these reasons all four treaties are considered not to contain the full equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention

4. In view of the above, Sweden reported that it, regardless of whether the treaty contains the full text of Article 25(3), first sentence, of the OECD Model Tax Convention, will be able to endeavour to solve any difficulties or doubts regarding the interpretation or application of its tax treaties. If the case under review concerns material questions, Sweden reported that approval by its parliament is required, which in practice, however, is a pure formality.

5. Most of the peers that provided input mentioned that their treaty with Sweden meets the requirement under element A.1. One of the peers is a party to one of the five treaties mentioned above that does not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, but this peer considered that its treaty with Sweden meets the requirement under element A.1. One peer particularly noted that it recently started renegotiating the existing treaty with Sweden, following which it will meet the requirement under element A.1.

Recent developments

Bilateral modifications

6. Sweden signed an amending protocol to an existing treaty, which has entered into force and which contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Such equivalent was also included in the previous version of the treaty.

Multilateral Instrument

7. Sweden signed the Multilateral Instrument and has deposited its instrument of ratification on 22 June 2017. The Multilateral Instrument has for Sweden entered into force on 1 October 2018.

8. 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.

9. In regard of the five tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Sweden listed four as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), for these four a notification that they do not contain a provision described in Article 16(4)(c)(i). Of the four treaty partners, two are not a signatory to the Multilateral Instrument. The remaining two treaty partners listed their treaty with Sweden as a covered tax agreement and also made a notification on the basis of Article 16(6)(d)(i). Both of the two last treaty partners mentioned above have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Sweden and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Other developments

10. As is described in the Introduction, for the three treaties that are not in line with this element of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Sweden has not put in place a plan for bringing these treaties in line with that

standard. For two of these three treaties, Sweden also neither conducted treaty negotiations nor initiated them for the treaties concerned with a view to bring them in line with the Action 14 Minimum Standard by including a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. For the remaining treaty, Sweden reported that it has approached the treaty partner to initiate negotiations *inter alia* to include such equivalent.

Peer input

11. Of the peers that provided input during stage 2, nine provided input in relation to their tax treaty with Sweden. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(3), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. This peer mentioned that there has not been any contact or actions with Sweden regarding meeting the requirements under the Action 14 Minimum Standard. The other two peers for which the treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, did not provide input.

Anticipated modifications

12. Sweden reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	<p>Five out of 84 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these five treaties:</p> <ul style="list-style-type: none"> • Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. • Three will not be modified by the Multilateral Instrument to include the required provision. With respect to these three treaties: <ul style="list-style-type: none"> - For one Sweden has reached out to the relevant treaty partner to initiate negotiations. - For two no actions have been taken nor are any actions planned to be taken. 	<p>For two of the three treaties that have not been or will not be amended by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Sweden should:</p> <ul style="list-style-type: none"> • For one treaty without further delay request via bilateral negotiations the inclusion of the required provision. • For one treaty initiate such negotiations upon response from the treaty partner.

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

Sweden’s APA programme

14. In 2009, Sweden introduced a special law regarding APAs. This law came into force on 1 January 2010 and allows Sweden’s Tax Agency to enter into bilateral and multilateral APAs.³ Section 8 of this law stipulates that taxpayers, which are or may become taxable under the Swedish income tax act (1999:1229) and insofar a tax treaty applies, may submit a request for an APA.⁴ Pursuant to section 13, a decision containing an APA can only be issued to taxpayers if: (i) prior thereto an agreement has been reached with the other jurisdiction concerned, as specified in the request for an APA, insofar as there is a tax treaty with that particular jurisdiction and (ii) the APA is in accordance with the request for such APA, or has been accepted by the requesting taxpayer.⁵ The law further describes how the process of obtaining an APA is conducted, the content of an APA and the binding effect of such agreement.

15. Section 15 of the law on APAs notes that the validity of an APA in Sweden shall be between three and five years if there are no special reasons for determining the validity for a longer or shorter period. Sweden will accept the fiscal year in which the application for an APA is submitted as the first year to be covered in an APA.

16. The website of Sweden’s Tax Agency also includes information on APAs.⁶ This concerns information on APAs on which government authority is competent for handling APA requests, what an APA is, what the requirements for obtaining an APA are, by whom they can be requested, a detailed list of information to be included in a APA request, costs for obtaining an APA and the binding effect of APAs once entered into. Furthermore, this website mentions that APAs are not issued for minor transactions or simple/straightforward issues, as also follows from section 12 of the law on APAs mentioned above. Sweden thereby charges fees to taxpayers when submitting an APA request. These fees amount to SEK 150 000 for a new request, SEK 125 000 for a renewal of an existing APA with changes and SEK 100 000 for a renewal of an existing APA with no changes.⁷ All fees are due per application and jurisdiction the APA relates to.

Roll-back of bilateral APAs

17. Sweden reported that it is under its APA programme allowed to grant roll-back of bilateral APAs. Its law on APAs or the website containing information on APAs does not list any special conditions/requirements to be fulfilled when requesting such roll-back. In a general sense there has to be some kind of effect on the APA-period in order to grant a roll-back. In more detail, a roll-back can be granted if there has been a transaction in a previous tax year that significantly impacts the transactions covered in the APA. The APA entered into with the other jurisdiction will then contain the full period for which the APA was requested, including the roll-back period. Sweden reported that domestically it will implement the APA by taking separate decisions for previous and future fiscal years to give effect to the APA entered into. This approach is chosen in order to ensure that the APA will be implemented correctly for previous fiscal years.

Recent developments

18. Sweden reported that in June 2019 it has updated the guidance on APAs that is currently reflected on the website of Sweden’s Tax Agency. These updates have been reflected above.

Practical application of roll-back of bilateral APAs

Period 1 January 2015-31 March 2017 (stage 1)

19. Sweden publishes statistics on APAs in relation to EU and non-EU Member States on the website of the EU Joint Transfer Pricing Forum⁸ (in English) and on the website of the Swedish tax administration (in Swedish).⁹ For the years 2013-15 the number of requests for bilateral APAs in Sweden amounted to ten, five and ten respectively. In relation to granting roll-backs of existing bilateral APAs, Sweden reported that in the period 1 January 2015-31 March 2017 it has received eight requests for such roll-back (that is five in 2015 and three in 2016). From that date, Sweden reported that it has concluded seven APAs including a roll-back, of which two in 2015 and five in 2016.

20. Peers that provided input generally reported that they do negotiate and agree bilateral APAs with Sweden. Not all peers, however, have experience with granting roll-back of such bilateral APAs for the years under review or in general. In total five peers reported they have experiences with Sweden regarding the granting of roll-back of bilateral APAs. The experience reported is positive and notes that Sweden is open to grant roll-back in appropriate cases, thereby also noting the constructive work experience with Sweden’s Tax Agency in relation hereto. One peer, however, noted that it has two APA cases with Sweden that relate to two pending MAP cases, for which Sweden is not willing to or has difficulties in discussing the economic circumstances for the whole period (previous and current fiscal years) as one single case.

21. Peers further reported that in the period 1 January 2015-31 March 2017 taxpayers have in approximately five cases requested for roll-back of their bilateral APAs to which Sweden is a signatory party. In most cases such roll-back was agreed on by the competent authorities and in some cases the request is still pending.

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

22. Sweden reported that since 1 April 2017 it has received six requests for a roll-back of a bilateral APA, all of which are currently being processed. Furthermore, since 1 April 2017, in three cases, for which a roll-back request was submitted prior to 2017, Sweden reported that the roll-back was granted.

23. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Sweden fully reflects their experience with Sweden since 1 April 2017 and/or there are no additions to the previous input given. Furthermore, four peers mentioned not having experiences with Sweden concerning bilateral APAs or roll-back of such APAs since 1 April 2017 as they did not receive any application for a bilateral APA or a roll-back thereof concerning Sweden.

Anticipated modifications

24. Sweden did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. These 79 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic, the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia, the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway, and the agreement with the former Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
3. Available at: <http://www4.skatteverket.se/rattsligvagledning/321837.html>.
4. The website of Sweden's Tax Agency that contains information on APAs also mentions this requirement and further specifies which taxpayers can request APAs. Available at: <http://www4.skatteverket.se/rattsligvagledning/edition/2016.5/339233.html?q=priss%C3%A4ttningsbesked%20>.
5. The website of Sweden's Tax Agency that contains information on APAs further mentions that it is required that the applicable tax treaty includes a provision on the exchange of information. Available at: <http://www4.skatteverket.se/rattsligvagledning/edition/2016.5/339233.html?q=priss%C3%A4ttningsbesked%20>.
6. Available at: <http://www4.skatteverket.se/rattsligvagledning/edition/2016.5/339233.html?q=priss%C3%A4ttningsbesked%20>.
7. Section 24 of the law on APAs, however, grants Sweden's Tax Agency the right to, in individual cases, to decide on an exemption from all or part of the fee, provided that there is a special reason for it.
8. Available at: https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to 2017.
9. Available at: www.skatteverket.se/download/18.3810a01c150939e893f2ae97/1455890256090/arsredovisning-skatteverket-2015-skv165-utgava24.pdf, <https://www.skatteverket.se/download/18.51fbd538168bf5dc48642db/1550737492951/arsredovisning-skatteverket-2018-skv165-utgava27.pdf>. See page 109 of the document the link refers to. These statistics are up to fiscal years 2017.

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 Sweden's tax treaties

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

25. Out of Sweden's 84 tax treaties, four contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as changed by the Action 14 final report and allowing taxpayers to submit a MAP request to either competent authority.¹ Furthermore, 52 treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.

26. The 28 remaining tax treaties can be categorised as follows:²

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 taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.*	24
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 taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident and only when there is double taxation contrary to the principles of the agreement	1
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 taxpayers have to show proof that actions of the tax authorities of either contracting state has resulted, or will result, in taxation not in accordance to the provisions of the tax treaty and whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state and not file such request irrespective of domestic remedies	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 can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

*These 24 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic, the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia and the agreement with the former Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).

27. The 24 treaties mentioned in the first row of the table are considered not to have 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 19 of those 24 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 (ten treaties).³
- 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 (nine treaties).

28. The remaining five treaties include a non-discrimination provision that applies both to nationals that are resident of one of the contracting states as to nationals that are not.⁴ These five treaties are therefore considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as the limitation of the scope of the MAP provision is not clarified by the absence of or a limited scope of the non-discrimination provision.

29. Further to the above, the three treaties separately mentioned in the second and third row of the table are also not considered to have the full equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as they either require taxpayers to show proof of taxation not in accordance with the provisions of the treaty, do not allow the submission of a MAP request irrespective of domestic available remedies, or limit access to MAP to cases of “double taxation contrary to the provisions of the convention,” instead of “taxation not in accordance with the provisions of the convention”.

30. The treaty mentioned in the last row of the table incorporates a provision in the protocol to this tax treaty, which reads:

With reference to paragraph 1 of Article 25, the term “irrespective of the remedies provided by the domestic laws” means that the introduction of a mutual agreement procedure is not an alternative to the national legal procedures to which, in all cases, recourse must first be had when the conflict relates to an application of ... taxes which is not in accordance with the Convention.

31. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law. This tax treaty is therefore also considered not to be in line with this part of element B.1.

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

32. Out of Sweden’s 84 tax treaties, 65 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.⁵ The remaining 19 treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
Filing period more than three years for a MAP request (4.5, 5 and 6 years)*	3
Filing period less than three years for a MAP request (two years)	1
No filing period for a MAP request**	14
No filing period for a MAP request at the level of the treaty partner and a reference to domestic time limits in the case of the treaty partner	1

* These three treaties include the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway. For the one treaty where the period to file a MAP request is 4.5 years, also the start date for the filing period deviates from the OECD Model Tax Convention, as it reads: “... four and a half year from the expiry of the year in which the action resulting in taxation not in accordance with the provisions of the convention was taken”. This different start date, however, does not lead to a period for filing of MAP requests of less than three years.

** These 14 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia.

In the stage 1 peer review report, reference was made to 17 treaties. Following the peer review process of another assessed jurisdiction, one treaty was identified that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, but also refers to the domestic law of one of the contracting states for the period for filing of a MAP request. This treaty is therefore separately listed in the last row of the table, whereas due to double counting another treaty was identified that should not be counted in the list of treaties that do not contain a filing period. Furthermore, due to the signing of an amending protocol, one treaty that did not contain a filing period for MAP request now includes the equivalent of the second sentence. Taking this into account, the number of treaties not containing a filing period for MAP requests is 14.

33. The treaty referred to in the last row of the table is considered not to be in line with this part of element B.1, as taxpayers cannot file in all situations a MAP request within a period of three years as from the first notification of the action resulting in taxation not in accordance with the treaty.

Peer input

34. Most peers that provided input reported that their treaty with Sweden meets the requirement under element B.1. For one peer, however, the treaty with Sweden does not include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention. Furthermore, two peers mentioned their treaty with Sweden does not include the second sentence of Article 25(1) of the OECD Model Tax Convention and for which they envisages to incorporate this sentence via signing of the Multilateral Instrument. Another peer mentioned that it recently started renegotiating the existing treaty with Sweden and intends to meet the minimum standard by incorporating the required provisions. Lastly, one peer particularly noted that it recently started renegotiating the existing treaty with Sweden, which meets the requirement under element B.1.

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

35. As noted in paragraphs 30-32 above, in all but three of Sweden's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Sweden reported that access to MAP is available regardless of whether taxpayers also have sought to resolve the dispute via domestically available administrative and judicial remedies. Sweden further reported that its competent authority is under domestic law not legally bound by decisions from its domestic courts and that there are no policy or administrative constraints for the competent authority to deviate from a court decision in a MAP agreement. The website of Sweden's Tax Agency that contains information on MAP clarifies that taxpayers is not deprived of the right to submit a MAP request where for the case domestic judicial procedures in Sweden are pending or have been finalised.

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

36. Sweden reported that for those 14 tax treaties that do not contain a filing period for MAP requests, it does not have a domestic statute of limitation for filing of MAP requests. On the website of Sweden's Tax Agency containing information on MAP it is stipulated that where treaties do not contain a three-year filing period, as provided for in Article 25(1), second sentence, of the OECD Model Tax Convention, taxpayers should be mindful that statutes of limitations may apply under domestic law of the treaty partners.⁶ The website also notes that Sweden considers that the time period for filing of a MAP request usually commences at the moment Sweden's Tax Agency decides to adjust a taxpayer's taxable income. In that regard it is specifically remarked that in certain situations it may be appropriate to submit a MAP request before a formal decision on income in Sweden has been made. This because there may be a risk that, where a decision that is made several years after the fiscal year under review has been closed, the other jurisdiction concerned is no longer in a position to make a correlative adjustment.

Recent developments*Bilateral modifications*

37. Sweden signed amending protocols to existing tax treaties with four treaty partners, one of which has entered into force. These protocols contain 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 file a MAP request to either competent authority. While two of the existing treaties for which an amending protocol has been signed were already in line with element B.1 regarding the first sentence of Article 25(1), they only allowed the filing of a MAP request to the competent authority of the state where the taxpayer is a resident. Two of the treaties concerned did not contain the full equivalent of Article 25(1), first sentence, since taxpayers were not allowed to submit a MAP request in the state of which they are a national where the cases concerned the application of the non-discrimination provision, but were considered to be in line with element B.1 due to the fact that the non-discrimination provision of these treaties only covered nationals that were resident of one of the contracting states. The effect of these amending protocols have been reflected in the analysis above where they have relevance. This concerns a change of the number of tax treaties that now allow the filing of a MAP request to either contracting state from zero to four.

Multilateral Instrument

38. Sweden signed the Multilateral Instrument and has deposited its instrument of ratification on 22 June 2018. The Multilateral Instrument has for Sweden entered into force on 1 October 2018.

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

39. 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.

40. With the signing of the Multilateral Instrument, Sweden 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 Sweden'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, Sweden opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Sweden listed 63 of its 84 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for 60 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.⁷ None of these 60 treaties concern the four treaties mentioned in paragraph 26 above that already allows the submission of a MAP request to either competent authority.

41. In total, 18 of the 60 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Sweden under that instrument and 14 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties.⁸ All remaining 27 treaty partners listed their treaty with Sweden 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.

42. Of these 27 treaty partners, 11 already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Sweden and these treaty partners, and therefore has modified these 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 16 treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

43. Furthermore, for the three treaties mentioned above where Sweden did not make a notification on the basis of Article 16(6)(a), the Multilateral Instrument will only supersede these treaties to the extent that the provision contained therein are incompatible with the first sentence of Article 16(1). One of the relevant treaty partners is not a signatory to the Multilateral Instrument, whereas a second treaty partner reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaty with Sweden, following which the Multilateral Instrument will have no effect for these two treaties. For the remaining treaty, since it is 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, it is considered incompatible with the first sentence of Article 16(1). As this treaty partner has not yet deposited its instrument of ratification of the Multilateral Instrument, it will be superseded upon entry into force of the Multilateral Instrument for this treaty to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention.

44. In view of the above, for those nine treaties identified in paragraphs 28-32 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, one regards the treaty that will be superseded by that instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

45. 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.

46. In regard of the tax treaty identified in paragraph 33 above that contains a filing period for MAP requests of less than three years, Sweden listed this treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner, however, is not a signatory to the Multilateral Instrument. Therefore, at this

stage, the Multilateral Instrument will not modify this treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

47. Further to the above, with regard to the remaining treaty identified in the table of paragraph 33 above that contains a provision that is considered not the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as it refers to domestic laws of the contracting state for the filing period of MAP requests or contain different rules for treaty partners, Sweden listed it as a covered tax agreement under the Multilateral Instrument, but did not make, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner is a signatory to the Multilateral Instrument, but also did not make a notification on the basis of Article 16(6)(b)(ii) that its treaty with Sweden contains a provision described in Article 16(4)(a)(ii). In this situation, Article 16(6)(b)(i) of the Multilateral Instrument stipulates that the second sentence of Article 16(1) – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – will supersede the provision of the covered tax agreement to the extent it is incompatible with that second sentence. Since the treaty refers to the domestic law of one of the contracting states to determine the filing period of a MAP request, and given the fact that in the case of the treaty partner such filing period may in some cases be less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, the provision of the covered tax agreement is considered to be incompatible with the second sentence of Article 16(1). Therefore, at this stage, this treaty will be superseded by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Other developments

48. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Sweden has not put in place a plan for bringing these treaties in line with that standard. For three of these treaties, Sweden reported it has been approached by a treaty partner to initiate negotiations *inter alia* to bring the treaty in line with the requirements under the Action 14 Minimum Standard and for which negotiations will commence in the near future. For the remaining treaties, Sweden neither conducted treaty negotiations nor initiated them for the treaties concerned with a view to bring them in line with the Action 14 Minimum Standard by including a provision equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention.

Peer input

49. Of the peers that provided input during stage 2, nine provided input in relation to their tax treaty with Sweden. Two of these peers concern a treaty partner to one of the treaties identified above that does not contain Article 25(1), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. Both peers stated that due to the fact that the Multilateral Instrument will not take effect for this treaty, they either have contacted Sweden to initiate negotiations, or are already in such negotiations, to bilaterally amend the treaty to bring it in line with the requirements under the Action 14 Minimum Standard. Two other peers noted that their treaty with Sweden will be modified or superseded by the Multilateral Instrument to allow taxpayers to file a MAP request to either competent authority, which conforms with the above analysis. Lastly, one peer mentioned it is currently in negotiations with Sweden for a bilateral tax treaty, which

would be in conformity with the Action 14 Minimum Standard. This peer is a party to Sweden's treaty with former Yugoslavia that Sweden continues to apply to this peer.

50. Those peers for which the treaty does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, did not provide input.

Anticipated modifications

51. Sweden did not indicate that it anticipates any modifications in relation to element B.1.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Nine out of 84 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. Of these nine treaties:</p> <ul style="list-style-type: none"> • One is expected to be superseded 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. • Eight will not be modified or superseded by that instrument to include the required provision. With respect to these eight treaties: <ul style="list-style-type: none"> - For three negotiations are envisaged, scheduled or pending. - For five no actions have been taken nor are any actions planned to be taken. 	<p>For five of the eight 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 it read as amended in the Action 14 final report, Sweden should without further delay request via bilateral negotiations the inclusion of the required provision.</p> <p>Furthermore, for three treaties that also 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 it read as amended in the Action 14 final report, Sweden should continue its pending negotiations.</p> <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 Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia, Sweden should ensure that, once it enters into negotiations with these jurisdictions, it includes the required provision.</p>
	<p>Two out of 84 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties either shorter than three years, from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty, or refers to domestic law of one of the treaty partners, which bears the risk that such three year period is not available. Of these two treaties:</p> <ul style="list-style-type: none"> • One is expected to be superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • One will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. For this treaty no actions have been taken nor are any actions planned to be taken. 	<p>For the treaty that will not be amended by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, Sweden should without further delay request via bilateral negotiations the inclusion of the required provision this treaty.</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).

52. 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

53. As discussed under element B.1, out of Sweden's 84 tax treaties, four currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, ten of the remaining 80 treaties have 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, and another 18 will, upon entry into force, be modified or superseded by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

54. For the remaining 52 tax treaties that currently do or will not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, Sweden reported it has no formal notification/consultation process in place to notify treaty partners where its competent authority considers the objection raised in the MAP request not to be justified. In this respect, Sweden explained that since the number of cases where access is denied or where the objection raised is considered not to be justified are exceptional, Sweden will always discuss a decision relating hereto with the other competent authority concerned.

55. Sweden further reported that since 1 January 2016 it has included instructions in its internal circular, which is linked to the statistics database, what steps staff in charge of MAP cases have to follow when the objection raised a MAP request is considered as not being justified, when access to MAP is denied or when unilateral relief is granted. In that situation, the other competent authority will be notified of such outcome.

Recent developments

56. There are no recent developments with respect to element B.2.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

57. Sweden reported that in the period 1 January 2015-31 March 2017 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016 MAP statistics submitted by Sweden show that none of its MAP cases with closed with the outcome “objection not justified”.

58. Sweden further reported that in 2016, a total of four cases were denied access to MAP, one by Sweden (due to a late filing of the MAP request) and three by the competent authorities of the treaty partners (in two cases due to a late filing of the MAP request and in one case due to the fact that the case did not concern a transfer pricing case). Furthermore, Sweden reported that until April 2017 for one case access to MAP was denied due to the fact that the taxpayer concerned provided conflicting information to the competent authorities. This case was first discussed with between the competent authorities and based on that discussion the case was closed with the outcome “access denied”.

59. All but two peers that provided input indicated not being aware of any cases for which Sweden’s competent authority considered the objection raised in a MAP request as not justified. One peer mentioned being notified by Sweden that access to MAP was denied in 2016. This case concerned a MAP request submitted in November 2016, whereby the notification included a short summary of facts and circumstances and the reason why access to MAP was denied. Another peer mentioned being aware of a case where access was denied by Sweden, which concerns the same case as Sweden referred to in paragraph 59 above.

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

60. Sweden reported that in the period 1 April 2017-30 September 2018 its competent authority has for seven MAP requests it received decided that the objection raised by taxpayers in such request was not justified, because there was no taxation that was not in accordance with the provisions of the treaty. Sweden further noted that in all seven cases the other competent authority concerned was notified, whereby in three of these seven cases also consultations were conducted with the competent authorities concerned.

61. The 2017 MAP statistics submitted by Sweden show that ten of its MAP cases were closed with the outcome “objection not justified”. Of these ten cases, Sweden’s competent authority made the relevant decision in seven of these cases as discussed above, and the competent authorities of the treaty partner made such decision in the other three cases.

62. Nearly all the peers that provided input during stage 1 also indicated that since 1 April 2017 they are not being aware of any cases for which Sweden’s competent authority considered the objection raised in a MAP request as not justified. Concerning the seven cases for which Sweden’s competent authority considered the objection raised by the taxpayer in its MAP request as not being justified, six of the relevant peers provided input and confirmed that they were notified and consulted.

Anticipated modifications

63. Sweden did not indicate that it anticipates 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 Sweden 84 tax treaties, 58 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their competent authorities to make a correlative adjustment in case a transfer pricing adjustment is made by the treaty partner.⁹ Furthermore, 23 treaties do not include a provision equivalent to or based on Article 9(2) of the OECD Model Tax Convention.¹⁰ For the remaining three treaties the following specification can be made:

- One treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but which does not allow competent authorities to consult each other where necessary and is therefore not considered to be equivalent thereto.
- One treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but whereby a corresponding adjustment is only possible through consultations between the competent authorities and is therefore not considered to be equivalent thereto.
- One treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but which from a material perspective do not incorporate several elements of Article 9(2), such as the possibility to unilaterally grant a corresponding adjustment and is therefore not considered to be equivalent thereto.

66. Sweden 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.

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

corresponding adjustments, such regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in its tax treaties.

68. The website of Sweden's Tax Agency containing information on MAP mentions in a general sense that situations of taxation not in accordance with a tax treaty may concern transfer pricing cases, whereby two of the examples of cases that can be dealt with in MAP concern transfer pricing cases. Furthermore, in the overview of information that could be included in a MAP request, it is also stated that transfer pricing documentation should be enclosed in a MAP request concerning a transfer pricing case. In addition, it is specifically stated that access to MAP will be given regardless of whether the tax treaty concerned contains Article 9(2) of the OECD Model Tax Convention.

Recent developments

Bilateral modifications

69. Sweden signed an amending protocol to an existing treaty, which has entered into force and contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, which was not the case for the previous wording of the treaty. The effect of this protocol has been reflected in the analysis above where it has relevance.

Multilateral Instrument

70. Sweden signed the Multilateral Instrument and has deposited its instrument of ratification on 22 June 2018. The Multilateral Instrument has for Sweden entered into force on 1 October 2018.

71. 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).

72. In regard of the 26 tax treaties identified in paragraph 66 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Sweden listed 17 as a covered tax agreement under the Multilateral Instrument.¹¹ For two of these 17 treaties Sweden has 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. For none of the remaining 15 treaties did Sweden make a notification on the basis of Article 17(4).

73. With regard to these 15 treaties, four treaty partners are not a signatory to the Multilateral Instrument and 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 Sweden already contains the equivalent of Article 9(2).¹²

74. For the remaining ten treaties, three treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Sweden and these treaty partners, and therefore have superseded the relevant treaty provisions 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). The other seven treaties will, upon its entry into force of the Multilateral Instrument 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).

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

75. Sweden reported that it has in the period 1 January 2015-31 March 2017 not denied access to MAP on the basis that the case concerned a transfer pricing case.

76. All peers that provided input indicated not being aware of a denial of access to MAP by Sweden in the period 1 January 2015-31 March 2017 on the basis that the case concerned was a transfer pricing case. Also taxpayers reported not being aware of such denial.

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

77. Sweden reported that since 1 April 2017 it has also not denied access to MAP on the basis that the case concerned a transfer pricing case.

78. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Sweden fully reflects their experience with Sweden since 1 April 2017 and/or there are no additions to the previous input given.

Anticipated modifications

79. Sweden reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention in all of its future tax treaties. Other than this, Sweden did not indicate that it anticipates any modifications in relation to element B.3.

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.

80. 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

81. None of Sweden's 84 tax treaties allow competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Sweden do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

82. Sweden reported 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 are within the scope of MAP. The website of the Swedish tax administration containing information on MAP, however, does not specify whether taxpayers have access to MAP in such case or in cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met.

Recent developments

83. There are no recent developments with respect to element B.4.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

84. Sweden reported that it has in the period 1 January 2015-31 March 2017 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. However, no such cases in relation hereto were received in that period.

85. All peers that provided input indicated not being aware of a denial of access to MAP by Sweden in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2015-31 March 2017. Also taxpayers reported not being aware of such denial.

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

86. Sweden reported that since 1 April 2017 it has also 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. However, no such cases in relation hereto were received in that period.

87. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Sweden fully reflects their experience with Sweden since 1 April 2017 and/or there are no additions to the previous input given. One peer added that it currently has one MAP case with Sweden concerning the application of anti-abuse provisions and for which access to MAP is currently being discussed. With respect to this case, Sweden responded that in its view the case does concern the question of access to MAP due to the application of an anti-abuse provision, but the question on whether there is or is not taxation not in accordance with the provisions of the treaty.

Anticipated modifications

88. Sweden 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.

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

Legal and administrative framework

Audit settlements

90. Sweden reported that under its domestic legislation no process is available allowing the tax administration and taxpayers to enter into a settlement agreement during the course of or after ending of an audit.

Administrative or statutory dispute settlement/resolution process

91. Sweden reported that it has no administrative or statutory dispute settlement/resolution process in place that allows Sweden to deny access to MAP for issues resolved through that process.

Recent developments

92. There are no recent developments with respect to element B.5.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

93. Sweden has no audit settlement process available, it reported that it has in the period 1 January 2015-31 March 2017 neither dealt with nor denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax administration

94. All peers that provided input indicated not being aware of a denial of access to MAP by Sweden in the period 1 January 2015-31 March 2017 in case of audit settlements, which can be explained by the fact that in Sweden audit settlements are not possible. Also taxpayers reported not being aware of such denial.

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

95. Sweden reported that since 1 April 2017 it has also neither dealt with nor denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and tax administration.

96. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Sweden fully reflects their experience with Sweden since 1 April 2017 and/or there are no additions to the previous input given.

Anticipated modifications

97. Sweden 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.

98. 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 and administrative framework

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

100. Sweden reported that if taxpayers do not include in their MAP request all required information and documentation, its competent authority will request them to supplement this missing information and documentation. When making such request, Sweden's competent authority will indicate to taxpayers the date when the response should be submitted, whereby the timeframe varies and is dependent on the complexity of the additional information requested. Generally, such timeframe ranges between one and two months, whereby taxpayers are allowed to ask for additional time to comply with the request, which is generally granted. Sweden further reported that if taxpayers do not submit the requested additional information within the given timeframe, its competent authority will either contact them and set a new timeframe, or inform them in writing that the case is at risk to be closed and stating the reasons for this (this is a general requirement under Sweden's domestic law, whereby taxpayers should be notified prior to making a decision that is not in their favour), thereby giving them the opportunity to respond and provide the information within a certain timeframe. Only after this timeframe has elapsed, the case will be closed on the grounds that insufficient information was provided.

Recent developments

101. There are no recent developments with respect to element B.6.

Practical application***Period 1 January 2015-31 March 2017 (stage 1)***

102. Sweden reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation required by its competent authority and as set out in its MAP guidance. It further reported that it has in the period 1 January 2015-31 March 2017 not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

103. All peers that provided input have indicated not being aware of a limitation of access to MAP by Sweden in the period 1 January 2015-31 March 2017 in situations where taxpayers complied with information and documentation requirements set out in its MAP guidance.

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

104. Sweden reported that since 1 April 2017 it has also not limited access to MAP on the grounds that information in the MAP request was not the information or documentation required by its competent authority.

105. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Sweden fully reflects their experience with Sweden since 1 April 2017 and/or there are no additions to the previous input given.

Anticipated modifications

106. Sweden 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.

107. 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 includes 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 Sweden's tax treaties

108. Out of Sweden's 84 tax treaties, 67 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.¹³

109. The remaining 17 treaties do not contain a provision that is based on, or equivalent to, Article 25(3), second sentence, of the OECD Model Tax Convention.¹⁴ Eight of these 17 treaties have a limited scope of application.¹⁵ This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention are not followed. As these treaties were intentionally negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, therefore, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention for those eight treaties with a limited scope of application.

110. Most of the peers that provided input mentioned that their treaty with Sweden meets the requirement under element B.7. One peer, however, noted that its treaty with Sweden does not include the second sentence of Article 25(3) of the OECD Model Tax Convention, which is one of the 17 treaty partners mentioned above. This peer also mentioned that it intended to include this sentence in its treaty with Sweden via the signing of the Multilateral Instrument, but that in its understanding Sweden had chosen to exclude this treaty from being covered by the Multilateral Instrument. Further, another peer particularly noted that it recently started renegotiating the existing treaty with Sweden, which meets the requirement under element B.7.

Recent developments

Bilateral modifications

111. There are no bilateral modifications to Sweden’s tax treaty network in relation to element B.7.

Multilateral Instrument

112. Sweden signed the Multilateral Instrument and has deposited its instrument of ratification on 22 June 2018. The Multilateral Instrument has for Sweden entered into force on 1 October 2018.

113. 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.

114. 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, Sweden listed seven 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). Of the relevant seven treaty partners, one is not a signatory to the Multilateral Instrument. The other six treaty partners listed their treaty with Sweden as a covered tax agreement and also made a notification pursuant to Article 16(6)(d)(ii).

115. Of the six treaty partners mentioned above, three have deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Sweden and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified three treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. For the remaining three 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

116. As is described in the Introduction, for the three comprehensive treaties that are not in line with this element of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Sweden has not put in place a plan for bringing these treaties in line with that standard. For one of these treaties, Sweden reported it has been approached by a treaty partner to initiate negotiations *inter alia* to bring the treaty in line with the requirements under the Action 14 Minimum Standard and which negotiations will commence in the near future. For the remaining two treaties, Sweden neither conducted treaty negotiations nor initiated these for the treaties concerned with a view to bring them in line with the Action 14 Minimum Standard by including a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.

Peer input

117. Of the peers that provided input during stage 2, nine provided input in relation to their tax treaty with Sweden. Two of these peers concern a treaty partner to one of the treaties identified above that does not contain Article 25(3), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. The first peer stated that due to the fact that the Multilateral Instrument will not take effect for this treaty, it has contacted Sweden to initiate negotiations to bilaterally amend the treaty to bring it in line with the requirements under the Action 14 Minimum Standard. The second peer noted that as Sweden has not listed its treaty with this peer as a covered tax agreement under the Multilateral Instrument and that it will therefore not be modified as regards element B.7 and further that there has not been any contact or actions with Sweden regarding meeting the requirements under the Action 14 Minimum Standard.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>17 out of 84 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 17 treaties, eight treaties concern tax treaties with a limited scope of application. With respect to the nine remaining comprehensive treaties:</p> <ul style="list-style-type: none"> • Three have been modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. • Three are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. • Three treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these three treaties: <ul style="list-style-type: none"> • For one negotiations are envisaged, scheduled or pending. • For the other two no actions have been taken nor are any actions planned to be taken. 	<p>For the three comprehensive treaties that have not been or will not be amended by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Sweden should:</p> <ul style="list-style-type: none"> • continue such negotiations to include the required provision for the one treaty for which such negotiations are envisaged, scheduled or pending • without further delay request via bilateral negotiations the inclusion of the required provision for the remaining two treaties.

[B.8] Publish clear and comprehensive MAP guidance

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

119. 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.

Sweden's MAP guidance

120. Sweden has not issued separate MAP guidance. Information relating to MAP is provided for on the website of the Swedish tax administration, which is available at:

www.skatteverket.se/privat/skatter/arbeteinkomst/internationellainkomster/dubbelbeskattningavrakning/undanrojandeavdubbelbeskattning.4.69ef368911e1304a625800011554.html

121. The information included on the website of the Swedish tax administration includes very basic information on tax treaties and their function, as also information on the availability of MAP. There is in Sweden no specific guidance available that sets out Sweden's rules, guidelines and procedures relating to the MAP function. The information that is included concerns:

- a. the role of Sweden's tax administration in relation to negotiating treaties, handling requests for APAs and MAPs

- b. the function and aim of tax treaties
- c. examples of cases for which MAP is available (transfer pricing cases, bona fide foreign-initiated self-adjustments and whether taxpayers can request for the multi-year resolution of recurring issues through MAP)
- d. information on availability of arbitration
- e. basic information on the MAP process, for what situations it can be requested and the rights and role of the taxpayer in the process
- f. availability of suspension of tax collection for the period a MAP case is pending
- g. interest charges, refunds and penalties
- h. contact details of Sweden's competent authority
- i. the information and documentation taxpayers should include in a MAP request
- j. the filing period for MAP requests
- k. implementation of MAP agreements.

122. The above-described MAP guidance of Sweden includes only basic information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.¹⁶ Although this information is available, numerous subjects are not specifically discussed in Sweden's MAP guidance. This concerns whether MAP is available in cases of: (i) transfer pricing adjustments, (ii) the application of anti-abuse provisions, (iii) multilateral MAPs and (iv) bona fide foreign-initiated self-adjustments. In addition, this information also not specifies: (a) whether taxpayers can request for the multi-year resolution of recurring issues through MAP, (b) the consideration of interest and penalties in MAP, (c) the availability of arbitration under tax treaties, (d) the relationship between MAP and domestic available remedies and (e) the process how MAP agreements are implemented in terms of steps to be taken and timing of these steps, including any actions to be taken by taxpayers (if any).

Information and documentation to be included in a MAP request

123. The website of the Swedish tax administration containing information on MAP includes guidance on what taxpayers should submit in a MAP request. Furthermore, the website notes that taxpayers are allowed (as an option) to submit the MAP request in the English language, which can be of advantage if the treaty partner is not a Nordic country.

124. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.¹⁷ In light of this list, the requirements in Sweden on what information and documentation should be included in a MAP request are checked below:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request (the nature of the action giving rise to, or expected to give rise to, taxation not in accordance with the convention)

- facts of the case
- analysis of the issue(s) requested to be resolved via MAP
- 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 MAP request was also submitted to the competent authority of the other treaty partner
- 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.

125. In addition to the above list, the website of the Swedish tax administration further mentions that a MAP request should preferably include:

- the name of the other jurisdiction involved
- a reference to the article in the tax treaty concerned that has been applied incorrectly and an explanation substantiating the position of the taxpayer
- identity of the associated enterprises and a statement of the relationship with the taxpayer
- the fiscal year(s) covered by the request
- the name of the tax office that made the adjustment in the other jurisdiction involved
- copies of relevant documents sent to or received from the tax authority in the other jurisdiction involved
- information on any APA or other agreement relevant to the request
- any proposed settlement of the matter by the taxpayer
- other relevant information and documents
- for transfer pricing cases: the transfer pricing documentation of the group to which the taxpayer belongs.

126. Furthermore, Sweden requires that the request is signed by either the taxpayer or an authorised agent. Furthermore, if it is not the taxpayer itself that submits the request, the MAP request also needs to include a power of attorney for representing the taxpayer.

Recent developments

127. Sweden reported has in June 2019 updated its MAP guidance to make it more comprehensive. This concerns a reflection of (i) the fact that the MAP process is available in transfer pricing cases, cases concerning bona fide foreign-initiated self-adjustments and whether taxpayers can request for the multi-year resolution of recurring issues through MAP), (ii) an outline of the MAP process, (iii) the relationship between domestic judicial remedies and the MAP process and (iv) relationship between interest and penalties and the MAP process.

Anticipated modifications

128. Sweden did not indicate that it anticipates any modifications in relation to element B.8.

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.

129. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.¹⁸

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

130. As discussed in the Introduction, Sweden included information on MAP on the website of the Swedish tax administration, which can be found at:

www.skatteverket.se/privat/skatter/arbeteinkomst/internationellainkomster/dubbelbeskattningavrakning/undanrojandeavdubbelbeskattning.4.69ef368911e1304a625800011554.html

131. As regards its accessibility, the information on MAPs is logically grouped on the website of the Swedish tax administration and as such easily accessible.

MAP profile

132. The MAP profile of Sweden is published on the website of the OECD, which was last updated in September 2017.¹⁹ This MAP profile is complete and includes external links which provide extra information and guidance.

Recent developments

133. There are no recent developments with respect to element B.9.

Anticipated modifications

134. Sweden 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.

135. 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

136. As previously discussed under B.5, Sweden does not allow audit settlements and for that reason its MAP guidance does not further touches upon this issue.

137. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Sweden's MAP guidance.

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

138. As previously mentioned under element B.5, Sweden does not have an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, and for that reason its MAP guidance does not further touches upon this issue.

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

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

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

Recent developments

141. There are no recent developments with respect to element B.10.

Anticipated modifications

142. Sweden did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These four treaties include the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway.
2. In the stage 1 peer review report of Sweden, reference was made to 29 treaties. Following the peer review process of other assessed jurisdictions, two treaties were identified that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention. Due to the signing of two amending protocols and a correction to a mismatch in the number of treaties, the number of treaties not containing this equivalent is 28 instead of 29.
3. These ten treaties include the agreement with the former Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
4. These five treaties include the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia.
5. These 64 treaties include the agreement with the former Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
6. Available at: www.skatteverket.se/privat/skatter/arbeteinkomst/internationellainkomster/dubbelbeskattningavrakning/undanrojandeavdubbelbeskattning.4.69ef368911e1304a625800011554.html.
7. These 60 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic.
8. With respect to the treaty with former Czechoslovakia, which Sweden continues to apply to the Czech Republic and the Slovak Republic, the Slovak Republic is one of the treaty partners that made a reservation on the basis of Article 16(5)(a) of the Multilateral Instrument. The treaty is therefore included in the list of 14 treaties. The treaty with former Czechoslovakia will therefore not be modified concerning the Slovak Republic, but only as regards the Czech Republic.
9. These 58 treaties include the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway.
10. These 23 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic, the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia and the agreement with the former Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).

In the stage 1 peer review report, reference was made to 22 treaties. Following the peer review process of other assessed jurisdictions, one treaty was identified that does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention. Taking into account a newly signed protocol that contains Article 9(2), the total number of treaties not having this provision is 23.

11. These 17 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic.
12. This latter treaty concerns the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic, but only as regards the Czech Republic, since the Czech Republic made the reservation under Article 17(3). This treaty is therefore listed here and will not be modified by the Multilateral Instrument concerning the Czech Republic. The Slovak Republic has, like Sweden, already deposited its instrument of ratification of the Multilateral Instrument, which therefore has entered into force for the treaty relationship between these two states. The instrument thereby has superseded the relevant treaty provision to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1).
13. These 67 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia.
14. These 17 treaties include the agreement with the former Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
15. These eight treaties concern treaties with Aruba, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey and agreement with the former Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
16. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
17. Ibid.
18. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
19. Available at: www.oecd.org/tax/dispute/Sweden-Dispute-Resolution-Profile.pdf.

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 Sweden’s tax treaties

144. Out of Sweden’s 84 tax treaties, 79 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.¹ The remaining five treaties include a provision that is based on or has similarities with Article 25(2), first sentence, but are for the following reasons not considered equivalents of such provision:

- In one treaty the objective of the MAP process is to come to an agreement to avoid “double taxation” instead of “taxation that is not in accordance with the provisions of the treaty”.
- In four treaties the part of the sentence reading: “if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution” is absent.

145. Most of the peers that provided input mentioned that their treaty with Sweden meets the requirement under element C.1. Further, another peer particularly noted that it recently started renegotiating the existing treaty with Sweden, which meets the requirement under element C.1. None of the treaty partners of the five treaties discussed above provided peer input on Sweden’s implementation of the Action 14 Minimum Standard.

Recent developments

Bilateral modifications

146. There are no bilateral modifications to Sweden’s tax treaty network in relation to element C.1.

Multilateral Instrument

147. Sweden signed the Multilateral Instrument and has deposited its instrument of ratification on 22 June 2018. The Multilateral Instrument has for Sweden entered into force on 1 October 2018.

148. 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.

149. In regard of the five tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Sweden listed four 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). Of the relevant four treaty partners, one is not a signatory to the Multilateral Instrument. The remaining three treaty partners listed their treaty with Sweden as a covered tax agreement and also made a notification on the basis of Article 16(6)(c)(i).

150. Of the three treaty partners mentioned above, two have deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Sweden and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified two treaties to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention. For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Other developments

151. As is described in the Introduction, for the two treaties that are not in line with this element of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Sweden has not put in place a plan for bringing these treaties in line with that standard. For one of these treaties, Sweden reported it has been approached by a treaty partner to initiate negotiations *inter alia* to bring the treaty in line with the requirements under the Action 14 Minimum Standard and which negotiations will commence in the near future. For the remaining treaty, Sweden neither conducted treaty negotiations nor initiated these with a view to bring them in line with the Action 14 Minimum Standard by including a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.

Peer input

152. Of the peers that provided input during stage 2, nine provided input in relation to their tax treaty with Sweden. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. This peer stated that due to the fact that the Multilateral Instrument will not take effect for this treaty, it has contacted Sweden to initiate negotiations to bilaterally amend the treaty to bring it in line with the requirements under the Action 14 Minimum Standard. The other peer for which the treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, did not provide input.

Anticipated modifications

153. Sweden reported 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>Five out of 84 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. With respect to these treaties:</p> <ul style="list-style-type: none"> • Two have been modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention • Two treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these two treaties: <ul style="list-style-type: none"> - For one negotiations are envisaged, scheduled or pending. - For the other no actions have been taken nor are any actions planned to be taken. 	<p>For the two treaties that have not been or will not be amended by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Sweden should:</p> <ul style="list-style-type: none"> • continue or initiate such negotiations to include the required provision for the one treaty for which such negotiations are envisaged, scheduled or pending • without further delay request via bilateral negotiations the inclusion of the required provision for the remaining treaty.

[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).

154. 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

155. Statistics regarding all tax treaty related disputes concerning Sweden are published on the website of the OECD as of 2007.² Sweden also publishes MAP statistics regarding

transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.³

156. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Sweden provided their MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Sweden and of which its competent authority was aware. The statistics discussed below include both post-2015 and pre-2016 cases and the full statistics are attached to this report as Annex B and C respectively and should be considered jointly for an understanding of the MAP caseload of Sweden.⁴

157. With respect to post-2015 cases, Sweden reported for the year 2016 it has reached out to all its MAP partners with a view to have their MAP statistics matching. Sweden indicated it could match its statistics with these partners. For the year 2017, Sweden reported that it also reached out to all of its MAP partners to match their MAP statistics. It was able to match all these statistics with all but one of its MAP partners.

158. Five peers provided input on the matching of MAP statistics with Sweden, three of which confirmed that they were able to match their statistics with Sweden. A fourth peer mentioned that its competent authority has exchanged with Sweden information to eliminate the non-matching statistics. Lastly, one peer noted that in June 2017 its competent authority received an email correspondence from Sweden that it in June 2016 received a MAP request involving a transfer pricing case under the treaty with the peer. In this email, Sweden indicated that this case had not yet been communicated to the peer’s competent authority and the relevant dates should only be noted for statistical purposes. The peer further noted that in February 2018 its competent authority was by email informed that a notification letter regarding the case had been sent by regular post in December 2017. In a response, the peer’s competent authority stated that such a letter was not received, thereby suggesting to use safely email correspondence for the future. In this respect, the peer clarified that in February 2018 it received a notification for the referred case by email. This peer further noted that as part of the matching exercise of MAP statistics, its competent authority communicated with Sweden in January 2018 to confirm that there was only one MAP case pending. Sweden, however, reported that in December 2017 also for another MAP cases (not being a transfer pricing case) a notification letter was sent in December 2017 via regular mail. The peer clarified that such a letter was never received and also for this situation it suggested to use safely email correspondence for the future. For this case, the peer’s competent authority received a notification by email from Sweden in February 2018 that the MAP request was received by Sweden’s competent authority in March 2017.

159. Based on the information provided by Sweden’s MAP partners, its post-2015 MAP statistics for 2016 and 2017 actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

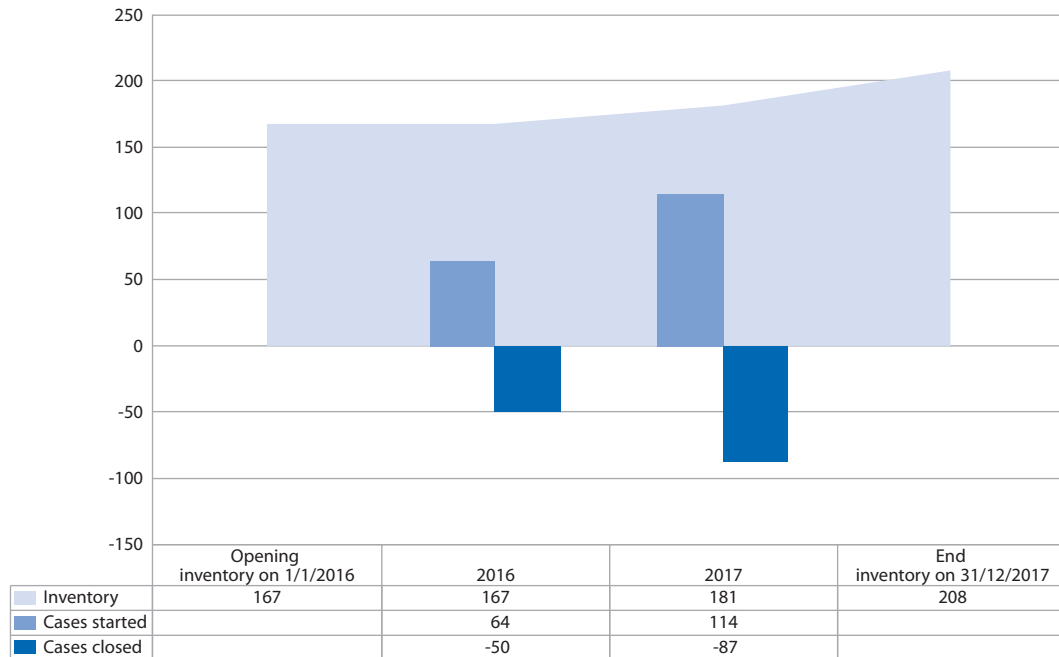
160. Sweden reported that it is constantly monitoring progress of its MAP cases and where in the process bottlenecks arise.

Analysis of Sweden’s MAP caseload

161. The analysis of Sweden’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017.

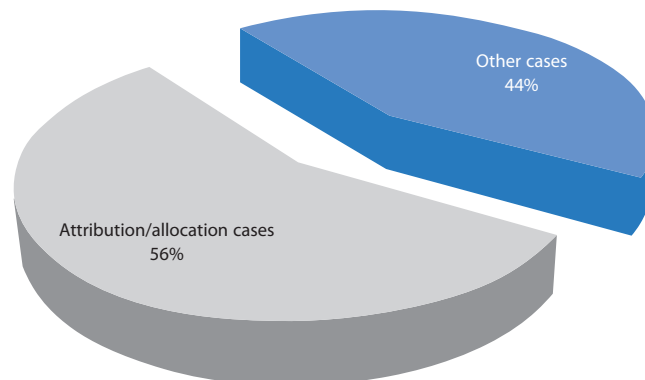
162. The following graph shows the evolution of Sweden’s MAP caseload over the Statistics Reporting Period.

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



163. At the beginning of the Statistics Reporting Period, Sweden had 167 pending MAP cases, of which 109 are attribution/allocation cases and 58 other MAP cases.⁵ At the end of the Statistics Reporting Period, Sweden had 208 MAP cases in its inventory, of which 117 are attribution/allocation cases and 91 other MAP cases. Consequently, Sweden’s pending MAP cases have increased by 25% during the Statistics Reporting Period. This increase can be broken down into an increase by 7% for attribution/allocation cases and an increase by 57% for other cases. The breakdown of the end inventory can be shown as follows:

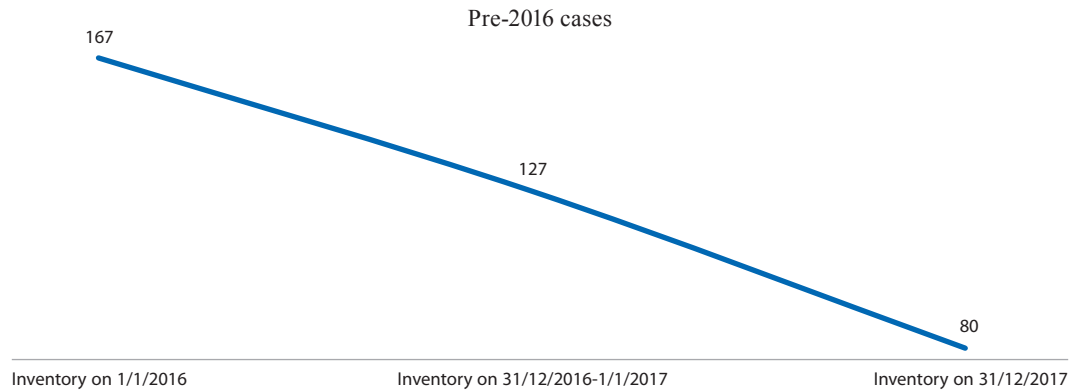
Figure C.2. End inventory on 31 December 2017 (208 cases)



Pre-2016 cases

164. The following graph shows the evolution of Sweden’s pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. **Evolution of Sweden’s MAP inventory**



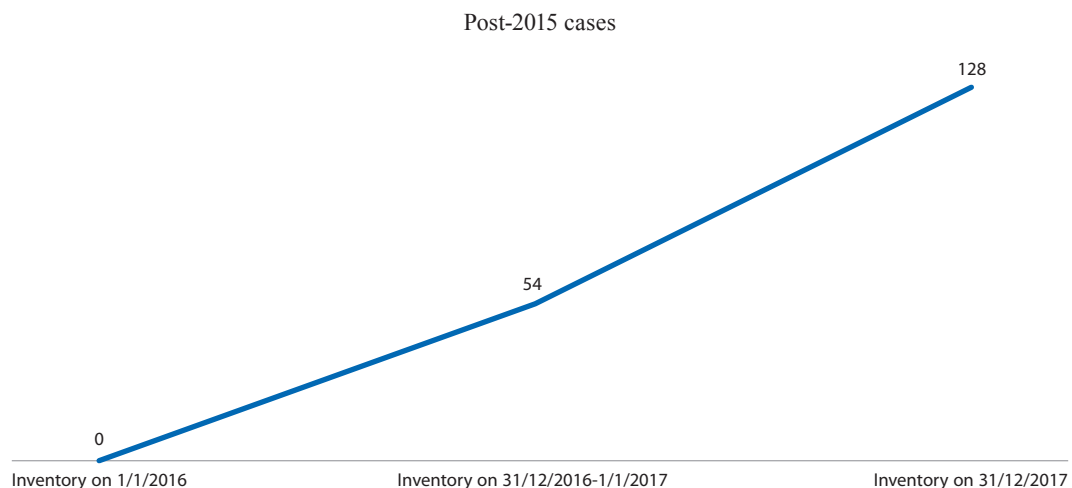
165. At the beginning of the Statistics Reporting Period, Sweden’s MAP inventory of pre-2016 MAP cases consisted of 167 cases, 109 of which were attribution/allocation cases and 58 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 80 cases, consisting of 60 attribution/allocation cases and 20 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	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	-18%	-33%	-45%
Other cases	-36%	-47%	-66%

Post-2015 cases

166. The following graph shows the evolution of Sweden’s post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. **Evolution of Sweden’s MAP inventory**



167. In total, 178 MAP cases started during the Statistics Reporting Period, 67 of which concerned attribution/allocation cases and 111 other cases. At the end of this period the total number of post-2015 cases in the inventory was 128 cases, consisting of 57 attribution/allocation cases and 71 other cases. Conclusively, Sweden closed 50 post-2015 cases during the Statistics Reporting Period, ten of them being attribution/allocation cases and 40 other cases. The total number of closed cases represent 28% of the total number of post-2015 cases that started during the Statistics Reporting Period.

168. 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.

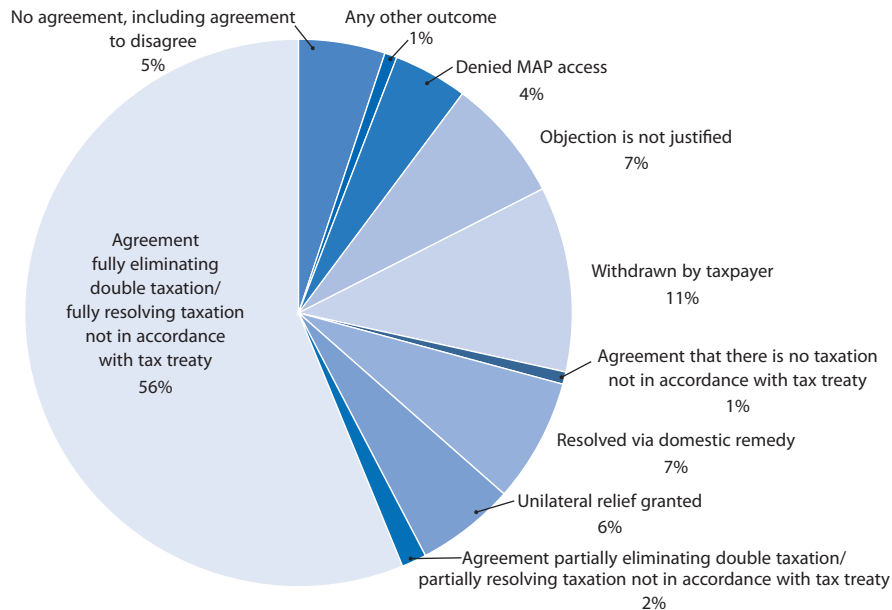
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016 + 2017)
Attribution/allocation cases	6%	24%	-15%
Other cases	27%	40%	-36%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

169. During the Statistics Reporting Period Sweden in total closed 137 MAP cases for which the following outcomes were reported:

Figure C.5. Cases closed during 2016 and 2017 (137 cases)



170. Figure C.5 shows that during the Statistics Reporting Period, 77 out of the 137 cases were resolved 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

171. In total, 59 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 the tax treaty (59%)
- withdrawn by taxpayers (12%)
- resolved via domestic remedy (10%)
- unilateral relief granted (8%)

Reported outcomes for other cases

172. In total, 78 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 the tax treaty (54%)
- objection not justified (12%)
- withdrawn by taxpayers (10%)
- no agreement, including agreement to disagree (8%)

*Average timeframe needed to resolve MAP cases**All cases closed during the Statistics Reporting Period*

173. The average time needed to close MAP cases during the Statistics Reporting Period was 27.57 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/allocation cases	59	38.41
Other cases	78	19.37
All cases	137	27.57

Pre-2016 cases

174. For pre-2016 cases, Sweden reported that on average it needed 44.72 months to close 49 attribution/allocation cases and 33.89 months to close 38 other cases. This resulted in an average time needed of 39.99 months to close 87 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Sweden used:

- *Start date*: the date of registration of the MAP request.
- *End date*: the date when Sweden's competent authority takes the decision to execute the MAP agreement.

Post-2015 cases

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

176. For post-2015 cases, Sweden reported that on average it needed 7.49 months to close 10 attribution/allocation cases and 5.59 months to close 40 other cases. This resulted in an average time needed of 5.97 months to close 50 post-2015 cases.

Peer input

177. All peers that provided input to Sweden’s implementation of the Action 14 Minimum Standard report a good working relationship with Sweden’s competent authority, which is further discussed under element C.3 below. This concerns both jurisdictions that have a substantial MAP inventory with Sweden as also (which are the most frequent) jurisdictions with a relatively modest MAP caseload with Sweden. Peers reported that contacts with the Sweden’s competent authority are very easy and that it is solution-oriented. Peers further indicated that cases are generally resolved within a reasonable period.

Recent developments

178. In the stage 1 peer review report Sweden was under element C.2 recommended to seek to resolve the remaining 84% of its post-2015 MAP cases that were pending on 31 December 2016 (53 cases), such within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

179. With respect to the recommendation, Sweden reported that it employed two more staff in charge of handling MAP cases. Furthermore, Sweden mentioned it has reviewed its organisation, the outcome of which is that it will start working with case-handler subgroups that consist of two or three people and that will have separate responsibilities for certain areas (e.g. country responsibility, responsibility according to groups or individuals) with a view to make the case handling more efficient. In this respect, Sweden noted that the new structure will be evaluated after six months.

180. Further to the above, Sweden also reported that the internal database/case-handling system has been further developed in order to allow a better tracking and overview of the MAP caseload.

181. As follows from the MAP statistics discussed above, Sweden has during 2016 and 2017 not closed its MAP cases within the pursued average of 24 months. In 2016 it closed 16% of the post-2015 cases started in that year. By the end of 2017, Sweden closed in total 28% of the post-2015 cases that started in 2016 and 2017. Furthermore, its MAP inventory has increased by 25% since 1 January 2016. While no specific recommendation was made in its stage 1 peer review report, it may be that additional actions or resources are necessary to manage the increase in its MAP caseload in such a manner that Sweden will become able to close current pending and future MAP cases within the pursued average of 24 months. This will be further discussed under element C.3.

182. All peers that provided input during stage 1 confirmed that this input holds equal relevance for the period starting on 1 January 2017. Specific input on the resolution of MAP cases will be further discussed under element C.3.

Anticipated modifications

183. As will be further discussed under element C.6, Sweden is open to include a mandatory and binding arbitration provision in its tax treaties to provide that treaty-related disputes will be resolved within a specified timeframe and which should globally improve the time needed to settle MAP cases. Sweden also reported that it has employed one more

person for handling other cases in June 2019. Apart from that Sweden did not indicate that it anticipates any modifications in relation to element C.2.

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.

184. 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 Sweden’s competent authority

Organisation of the competent authority function

185. Under Sweden’s tax treaties, the competent authority function to conduct MAP is the Ministry of Finance. In 2000, the, by Regulation 2000:1077 (in Swedish: *Förordning (2000:1077) om handläggning av ärenden enligt skatteavtal*), the Swedish Ministry of Finance delegated the competent authority function to the Swedish tax administration, apart from MAP cases of a general nature that arise under Article 25(3), first sentence, which are still being handled by the Swedish Ministry of Finance.

186. The competent authority is placed within a section of the legal department of the Swedish tax administration. Such placement was particularly chosen to ensure that the competent authority function is separated from those departments within the Swedish tax administration that are involved in conducting tax audits and imposing tax assessments. For the same reason, the competent authority function is within the legal department placed in a section that is separated from inter alia the international/corporate tax departments.

187. Currently, Sweden’s competent authority employs 11 persons, of whom nine work full time and two work part time. Of these 11 persons, ten handle MAP cases and one person performs an oversight role, but does not himself handles MAP cases. Furthermore, of these eleven persons, five are economists who work mainly with APAs, but are also involved in handling MAP cases. The other six persons mainly handle MAP cases, but are also involved in handling APA cases.

Authority to handle and resolve MAP cases

188. Sweden reported that its competent authority is authorised to handle requests for both MAPs and bilateral/multilateral APAs. Next to this work, staff in charge of MAP also participates in meetings of the working parties of the OECD, the FTA MAP Forum and at a European level participates in the work of the EU Joint Transfer Pricing Forum. There is no involvement of staff in treaty negotiations, which is conducted at the level of the Swedish Ministry of Finance.

189. When in Sweden a taxpayer intends to submit a MAP request, it can file such request directly with the competent authority. The situation may occur that taxpayers submit a MAP

request to the local tax office. If such situation occurs, such request will be forwarded to the competent authority. After receipt of the MAP request, Sweden's competent authority – when deemed necessary – sends the request to the local tax office concerned (or its audit department) and requests for comments on the case and, additionally, whether there is any further information on the taxpayer or other relevant information for the case under review. Sweden reported that its competent authority is neither bound by the opinion of the local tax administration nor are employees of the (audit department) of the local tax administration office involved in MAP negotiations. These employees may be asked for an opinion when preparing the Swedish position, but they are not involved in the actual preparation of such position or negotiating MAP agreements.

190. At the level of Sweden's competent authority only a few employees are assigned competence to enter into MAP agreements with the competent authorities of treaty partners. These employees are always part of the team that conducts MAP negotiations. If there is a doubt on the scope of a tentative MAP agreement, the head of the section will make the final decision on the case. Furthermore, all Swedish positions in individual MAP cases are always reviewed by at least one other person within the competent authority.

Monitoring mechanism

191. Sweden reported that in order to resolve MAP cases in a timely and principled manner, Sweden is constantly reviewing how it handles MAP cases and where in the process bottlenecks arise. More specifically, the head of section within the competent authority monitors cases, especially long pending ones, on a regular basis in terms of actions that have been taken and how to proceed with the case. In that regard, Sweden addressed that the increase in number of MAP and APA requests during the last years and the anticipated further increase in the years to come has resulted, and will continue to do so, in a strained situation for the competent authority.

192. Furthermore, Sweden also reported that its competent authority monitors the MAP caseload, which is an element in requesting for additional resources. To be more specific, in Sweden the need for additional resources at the level of the competent authority is monitored/or assessed by two criteria, namely: (i) the number of overall MAP cases in the inventory of Sweden and (ii) the workload of each employee (e.g. number of open cases and upcoming negotiations). With respect to criterion (i) this monitoring/assessing is conducted three times a year and with respect to criterion (ii) such is done at regular intervals. When additional resources are necessary at the level of the competent authority, Sweden reported that a request hereto is made to the head of the legal department of the Swedish tax administration, which in turn makes requests for additional resources for prioritised areas to the Ministry of Finance. The decision relating hereto is made through the annual budget process.

193. In terms of resources available to perform its MAP function, apart from staffing, Sweden reported that it has sufficient resources available for travelling, translation of documents and conducting face-to-face meetings with other competent authorities.

Recent developments

194. As noted in paragraphs 179-180 above, Sweden reported that it employed two more staff in charge of handling MAP cases, which are included in the reflections above. Furthermore, Sweden mentioned it has reviewed its organisation, the outcome of which is that it will start working with case-handler subgroups that consist of two or three people

and that will have separate responsibilities for certain areas (e.g. country responsibility, responsibility according to groups or individuals) with a view to make the case handling more efficient.

195. Further to the above, Sweden also reported that the internal database/case-handling system has been further developed in order to allow a better tracking and overview of the MAP caseload. Another development is that staff within the competent authority has received training on the Action 14 Minimum Standard.

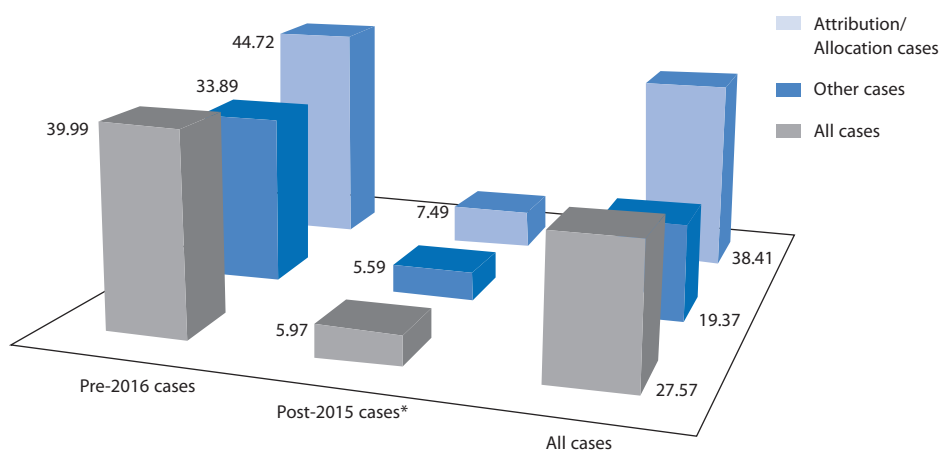
196. In view of the suggestions made by peers during stage 1 to improve the timeliness of resolving MAP cases, Sweden reported that during 2017 in total 14 face-to-face meetings were held. In that regard, it stressed that it does not envisage scheduling more of such meetings, since there needs to be a good balance between the preparation of the case and the actual discussion thereof in a face-to-face meeting. For 2018 the number of face-to-face meetings will be around ten, which Sweden considered to be sufficient. Sweden also mentioned it is positive towards using videoconferencing, for which it is currently analysing whether secure conferencing is possible. To date, however, no request from treaty partners were received to schedule video conferences with a view to discuss pending MAP cases. As to the suggestion of more frequent communications, Sweden reported that there has been more frequent communications with the particular peer on non-attribution/allocation cases and that several cases have been closed.

Practical application

MAP statistics

197. As discussed under element C.2, Sweden has not resolved its MAP cases during the Statistics Reporting Period with the pursued 24-month average. A discrepancy can be noted in the time needed for the resolution of attribution/allocation cases and other cases, which 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 opened and closed during 2016 or 2017.

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

	2016	2017
Attribution/allocation cases	31.16	42.72
Other cases	22.93	17.38
All cases	26.55	28.15

199. Based on these figures, it follows that on average it took Sweden 27.57 months to close MAP cases for 2016 and 2017. There, however, is a discrepancy between attribution/allocation cases and other cases. While for other cases the average is below 24 months, for attribution/allocation cases the average is significantly above the 24 months. In this respect, Sweden also provided the median timeframe for closing MAP cases. This is:

	2016	2017
Attribution/allocation cases	24.53	35.51
Other cases	15.53	10.19
Total	18.21	20.28

200. Further to the above, Sweden also provided a number of reasons why in some cases it took more than 24 months to close them. This concerns:

Attribution/allocation cases		
Number of cases	Time needed to close the case	Reasons
1	122	The other competent authority refused to answer for six years, due to the fact that Swedish case handler apparently had an arrogant tone in its letter in 2010
1	115	The case was also pending before domestic courts at the level of the treaty partner. There were three years in between communications from the other competent authority. After receiving a communication, it turned out the taxpayer won its case in court, following which the case was closed
1	93	The other competent authority notified Sweden of a pending MAP case for which at the level of the treaty partner also a domestic court case was pending. Sweden's competent authority did not receive more information until the court procedure was finished in the other jurisdiction
1	92	The competent authorities could not find a solution on the case in a shorter timeframe
2	73	The MAP case was handled together with a request for a bilateral APA, which was submitted at a later stage and therefore took longer to complete.
Other cases		
Number of cases	Time needed to close the case	Reasons
1	86	There were two years between a registration of the case and a final decision that led to the double taxation. Furthermore the other competent authority did not answer for three years
1	68	Taxpayers did not respond to requests from the competent authorities and finally withdrew its MAP request
1	66	The other competent authority did not answer to communications by Sweden's competent authority for five years

201. If these explanations are considered and if these cases listed in these tables are not taking into account for computing the average timeframe, the average timeframe for the years 2016 and 2017 would be as follows:

	Average
Attribution/allocation cases	33.42
Other cases	17.21
Total	23.92

202. The stage 1 peer review report Sweden analysed the 2016 statistics and showed an average of 26.55 months. It was on that basis concluded that it did not close MAP cases within the pursued average of 24 months and for that reason it was recommended to closely monitor whether the recently addition of resources to the competent authority function, and the envisaged addition, will contribute to the resolution of MAP cases in a timely, efficient and effective manner.

203. The 2017 statistics show that for Sweden the average completion time of MAP cases has increased to 28.15 months, resulting in an average for both years of 27.57 months. However, the MAP inventory of Sweden increased significantly since 1 January 2016. This can be shown as follows:

2016 + 2017	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2016 Start inventory on 01/01/2017	Cases started	Cases closed	End inventory on 31/12/2017	Evolution of total MAP caseload over the two years (2016 + 2017)
Attribution/allocation cases	109	33	22	120	34	37	117	7%
Other cases	58	31	28	61	80	50	91	57%
Total	167	64	50	181	114	87	208	25%

204. The above overview shows that if the median and the corrected averages are taken into account, the completion time is below the pursued average of 24-months. Nevertheless, for attribution/allocation cases the average is still above 24-months. Furthermore, Sweden's MAP caseload significantly increased, which in particular concerns other cases. This state of play indicates that more resources may be necessary to reduce the average time needed to close attribution/allocation cases, but also to be able to cope with the increase in the number of other cases, such to ensure that Sweden is able to resolve current pending and future MAP cases within the pursued average of 24 months.

Peer and taxpayer input

Period 1 1 January 2015-31 March 2017 (stage 1)

205. All peers that provided input reported a good working relation with Sweden's competent authority, both those having a large as well as those having a moderate MAP inventory with Sweden. Although Sweden does not notify its treaty partners of which department acts as the competent authority, peers have raised no issues regarding contacting Sweden's competent authority. In fact, they noted that it is easy to come in contact with them. Some peers thereby noted that they have frequent contacts with Sweden's competent authority, by means of written, telephone and e-mail communication and sometimes via

(annual) competent authority meetings. Two peers specifically mentioned that they schedule once a year a competent authority meeting to discuss all pending cases. In addition, one peer in particular noted that it recently had its first MAP case resolved with Sweden, which was conducted in a co-operative atmosphere. Discussions were done via conference calls and in English, which were easy to organise even if there was a substantial time difference. Another peer praised its excellent relationship with Sweden's competent authority, thereby noting that the latter works diligently to ensure that timelines are respected and no unnecessary delays occur to resolve cases. Also this peer noted that competent authority meetings are frequently scheduled based on the pending MAP cases. Furthermore, a peer also mentioned that Sweden's competent authority provides prompt responses to queries raised. Lastly, one peer mentioned that the relevant documents of a MAP case sent also contain the references of the staff in charge of the case within the Swedish tax administration.

206. With respect to the resolution of MAP cases all peers noted the commitment by Sweden's competent authority to resolve cases in a timely manner, whereby some of them especially appreciated the prompt response and providing of all information relating to the case under review. Most of these peers reported no issues in resolving their MAP cases with Sweden. One peer in particular noted that staff in charge of MAP in Sweden is well trained to handle MAP cases. Another peer noted that it was together with Sweden able to resolve cases in a timely, effective and efficient manner, whereby responses to the peer's positions by Sweden's competent authority was quick and whereby both competent authorities also adopted reasonable negotiation positions. Furthermore, one peer noted that Sweden's competent authority timely provides written position papers and in some cases, conference calls are scheduled between their competent authorities to prepare discussions for planned competent authority meetings.

207. Peers also reported that MAP cases are generally resolved timely, although one peer provided specific and deviating input. This peer noted that Sweden's competent authority is not willing to discuss a MAP case if for this case also a court procedure is pending in Sweden, as such case will be set on hold in Sweden until the court procedure has been finalised. This peer also mentioned that it is difficult to obtain an agreement with Sweden's competent authorities on the facts and circumstances of some cases, to agree on whether taxpayers have complied with the minimum required information and, if this latter is not the case, how to continue negotiations on the resolution of the case. Specifically with respect to attribution/allocation cases, this peer noted that the timeframes for resolving cases vary, as some cases tend to take long before being resolved and others only take a relatively short time. Furthermore, this peer also reported that it is difficult to obtain substantiated position papers from Sweden, as they are short and in this peer's view not always refer to the facts of the case or the previous position papers issued. Despite this criticism, the peer reported that a good negotiating climate exists between the competent authorities, even if in certain cases they do not agree.

208. In relation to suggestions for improvement, a number of peers provided input. One peer considers that regular competent authority meetings to discuss pending MAP cases and possible bilateral APAs are an efficient manner to make progress on cases and suggested that use could be made of physical meetings in conjunction with follow-up (video) conference calls and e-mails. Other peers also suggested organising competent authority meetings at more frequent occasions (i.e. once per year) to improve the timelines for resolving MAP cases. In addition, one peer specifically mentioned that for improving the efficiency of the MAP process both competent authorities could continue and foster direct communications at the level of case handlers and management level. Lastly, another

peer suggested that for attribution/allocation cases more specialised personnel could be provided for, which suggestion was also made for other MAP cases as additionally more frequent communication between the competent authorities.

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

209. Most of the peers that provided input during stage 1 stated in stage 2 that the update report provided by Sweden fully reflects their experience with Sweden since 1 April 2017 and/or there are no additions to the previous input given. Seven peers gave additional input for stage 2.

210. Of these seven peers, one peer noted it has good experience in handling MAP cases with Sweden and that its competent authority promptly follows-up on issues. In that regard, the peer concluded that in its view Sweden has sufficient resources to manage the competent authority function. Similar input was given by another peer, who echoed that its experiences in resolving MAP cases with Sweden are positive, in particular that responses to the peer's positions are quick and that it was able to resolve cases with Sweden in a timely, effective and efficient manner. To this the peer added that while no pre-scheduled face-to-face meetings are set, such meetings are held if needed and that communications are done via telephone and email. As to the timely resolution of pending cases, this peer noted that one case took more than 24 months to resolve, but this was due to the fact that for this case also an APA was being discussed (see also the explanation in paragraph 201).

211. A third peer reported that it has closed four MAP cases with Sweden since 1 April 2017. The resolution of attribution/allocation cases were conducted in a timely and efficient manner, which was facilitated by the use of several means of communication and conscientious case preparation of Sweden's competent authority. The peer further noted that it schedules several conference calls with Sweden's competent authority, which in practice has led to a swifter resolution of pending cases. The peer ended by stating that it applauds the in-depth knowledge and strong expertise of Sweden's competent authority in mutual MAP cases.

212. Further to the above, one peer mentioned that since 1 April 2017 one pre-2016 attribution/allocation case was resolved and that the remaining pending cases with Sweden are progressing in due form. In this respect, this peer noted that a face-to-face meeting is scheduled for the second half of 2018. Another peer noted that in the period 2015-17 it had not any MAP cases with Sweden, but that in 2018 two MAP requests were initiated. This peer reported a positive and good working relationship with Sweden's competent authority.

Anticipated modifications

213. Sweden reported that its competent authority will employ one more person to deal with other MAP cases in order to be appropriately staffed. The person is employed since 1 June 2019

Conclusion

	Areas for improvement	Recommendations
[C.3]	While the median time taken to close MAP cases is below 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016, the MAP caseload relating to both attribution/ allocation cases and other cases has increased substantially since 1 January 2016. 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.	Sweden should continue to closely monitor whether the addition of new staff to the competent authority and the steps taken to improve the functioning of its competent authority (such as the establishment of case-handler subgroups and an internal tracking system) will contribute to the resolution of MAP cases in a timely, efficient and effective manner. This in particular concerns the acceleration of the resolution of attribution/ allocation cases and being able to cope with the significant increase in the number of other 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.

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

Functioning of staff in charge of MAP

215. Paragraphs 186-194 above discussed how the competent authority function is organised in Sweden. All personnel working within Sweden’s competent authority are involved in handling MAP cases and related work at the level of the OECD and the EU.

216. As noted in paragraphs 189-191, in practice Sweden’s competent authority operates independently and has full authority to resolve MAP cases. There is neither a (formal) system in place requiring the competent authority to ask other government institutions (i.e. the audit department of the Swedish tax administration) for approval of any MAP agreements nor is the process for negotiating MAP agreements influenced by policy considerations. Within the competent authority there are specific persons assigned competence to negotiate MAP agreements, whereby these persons are always present during competent authority meetings. Furthermore, all Swedish positions in MAP cases are always reviewed by at least one other person within Sweden’s competent authority. For more delicate issues the head of department will take the final decision on the case.

Recent developments

217. There are no recent developments with respect to element C.4.

Practical application***Period 1 1 January 2015-31 March 2017 (stage 1)***

218. All peers that provided input did not report any impediments in Sweden to perform its MAP function absent from approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. Two peers specifically mentioned that they are not being aware that staff in charge of the MAP in Sweden is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

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

219. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Sweden fully reflects their experience with Sweden since 1 April 2017 and/or there are no additions to the previous input given. Three peers provided additional input, one of which stated that it has no evidence of the competent authority in Sweden being influenced by the tax administration personnel. The second peer mentioned that in its experience during every negotiation, Sweden's competent authority is able to resolve the case independently and has the autonomy to resolve the pending MAP case with the peer. It further noted that no impediments occurred in relation to MAP cases. The third peer noted it is of the view that Sweden's competent authority acts fairly independent.

Anticipated modifications

220. Sweden 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

221. 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 Sweden

223. Sweden reported that the primary goal for staff in charge of MAP processes is to have an average for resolving MAP cases of less than 24 months as well as to shorten the timeframe needed for handling APA requests. In this respect, Sweden reported that it monitors/assesses its MAP caseload at least three times per year and the workload of each employee at regular intervals. For its competent authority as a whole, Sweden evaluates its MAP process and the work performed by the staff on a regular basis.

224. With respect to the evaluation of work performance of staff in charge of MAP, Sweden reported that such evaluation is regulated in the general employee policy of the Swedish tax administration. Performance indicators used are: (i) working efficiently towards the set goals, (ii) fulfilling the tasks and (iii) using time efficiently and meeting the timeframes. For the head of section, the performance indicators include inter alia result and goal orientation, complying with goals set, long term resourcing of staff and the proper functioning of the section.

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

- 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).

226. In view of these examples, Sweden reported that it does not particularly use these performance indicators. It further reported that neither the number of MAP cases concluded nor the amounts concerned of these cases are part of the evaluation process. The performance indicators used are considered in line with what is required under element C.5.

Recent developments

227. There are no recent developments with respect to element C.5

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

228. Peers generally provided no specific input relating to this element. Two peers particularly noted that they are not aware of the use of performance indicators by Sweden that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue. As discussed under element C.3, all peers reported that Sweden's competent authority is co-operative, constructive and solution-oriented and also has the intent to resolve cases in a timely, effective and principled manner.

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

229. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Sweden fully reflects their experience with Sweden since 1 April 2017 and/or there are no additions to the previous input given. One peer added that it is not aware of any performance indicators used to evaluate staff in charge of the MAP process.

Anticipated modifications

230. Sweden 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.

231. 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

232. Sweden reported that has no domestic law limitations for including MAP arbitration in its tax treaties and is open to include a mandatory and binding arbitration clause in the course of treaty negotiations. The website of the Swedish tax administration containing information on MAP specifies the availability of arbitration under some of Sweden's tax treaties.

233. In addition, Sweden 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 Sweden's domestic legislation.

Recent developments

234. Sweden signed the Multilateral Instrument and has deposited its instrument of ratification on 22 June 2018. The Multilateral Instrument has for Sweden entered into force on 1 October 2018. With the signing of that instrument, Sweden also opted in 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. Sweden has incorporated an arbitration clause in five of its tax treaties as a final stage to the MAP. These clauses are as follows:

- Four treaties contain the equivalent of Article 25(5) of the OECD Model Tax Convention, whereby in some treaties deviations from this provision were agreed (i.e. a three or four-year period for the MAP instead of a two-year period or a limitation of the scope of the arbitration procedure). One of these four treaties also includes in the protocol additional rules for conducting the arbitration procedure.
- One treaty provides for a voluntary and binding arbitration procedure with an arbitration court, which shall be composed of judges of the contract states, third states or international organisations.

236. In addition, with respect to the effect of part VI of the Multilateral Instrument on Sweden’s tax treaties, there are next to Sweden in total 28 signatories to this instrument that also opted for part VI. Concerning these 28 signatories, Sweden listed 13 as a covered tax agreement under the Multilateral Instrument and all of these 13 treaty partners also listed their treaty with Sweden under that instrument. In two of these treaties, Sweden has already included an arbitration provision. Sweden opted, pursuant to Article 26(4) of the Multilateral Instrument, not to apply part VI for one of these treaties. It listed the other treaty under Article 26(1) with a view to replace the arbitration provision contained in that treaty by part VI. With respect to this treaty, the relevant treaty partner also made a notification under Article 26(1). As both Sweden and this treaty partner have already deposited their instrument of ratification of the Multilateral Instrument, part VI has replaced the arbitration provision contained in this treaty.⁶

237. For the remaining 11 treaties that do not contain an arbitration provision, six treaty partners have already deposited their instrument of ratification. In this respect, part VI will apply to these six treaties and introduce the arbitration provision of the Multilateral Instrument in these treaties.⁷ For the other five treaties for which the treaty partner has not yet ratified the Multilateral Instrument, Sweden reported it expects that part VI will introduce a mandatory and binding arbitration procedure in three of the five treaties.

Anticipated modifications

238. Sweden did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 79 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic, the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia, the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway, and the agreement with the former Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2015.
3. Available at: http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to and include fiscal year 2017.
4. For post-2015 cases, if the number of MAP cases in Sweden’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Sweden reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).

5. Sweden that for pre-2016 and post-2015 cases it follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation case. Annex D of the MAP Statistics Reporting Framework defines such case as: “a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.
6. Annex A reflects the effect of part VI of the Multilateral Instrument for this treaty.
7. Annex A reflects the effect of part VI of the Multilateral Instrument for these five treaties.

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. Chapter 67, section 38, of the Swedish Tax Procedure Act stipulates that if on the basis of a MAP agreement Sweden has to amend its taxation, Sweden's competent authority is allowed to do so. Sweden reported that it will on that basis implement all MAP agreements reached notwithstanding domestic time limits. In other words, there is in Sweden no statute of limitations for implementing MAP agreements.

242. Concerning the process for implementing MAP agreements, Sweden reported that when its competent authority enters into a MAP agreement, it will take a decision in accordance with that agreement. Sweden explained that this decision will be executed immediately, regardless of whether or not the concerned tax year is statute barred under domestic law. Taxpayer's consent to the decision following the MAP agreement is not a prerequisite for implementation.

243. The website of the Swedish tax administration containing information on MAP includes information in relation to the process of implementation of MAP agreements. It is there stated that where a MAP agreements entails a decrease of income in Sweden, there is no need for the taxpayer to submit a new tax declaration, but that the agreement will be implemented by the Swedish tax administration.

Recent developments

244. Sweden reported that due to changes in the General Administrative Act, its competent authority will now communicate draft decisions for the implementation of MAP agreements in all its MAP cases to the taxpayer, allowing him to state additional information that could have an impact on the decision. Furthermore, Sweden reported that has updated its MAP guidance in June 2019, the reflection of which was discussed in the previous paragraph.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

245. Sweden reported that all MAP agreements reached in the period 1 January 2015-31 March 2017 have or will be implemented. In that regard it noted that its competent authority follows up with the local tax administration whether the decision executing the MAP agreement has been implemented. Each case handler in Sweden's competent authority is thereby responsible for checking with the local tax administration that the MAP agreement is actually implemented.

246. All peers and taxpayers that provided input indicated not having experienced any issues with Sweden regarding the implementation of MAP agreements reached in the period 1 January 2015-31 March 2017. One peer specifically mentioned that all MAP agreements with Sweden concerning allocation/attribution cases and other cases have correctly been implemented.

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

247. Sweden reported that all MAP agreements that were reached on or after 1 April 2017 have been (or will be) implemented. Sweden added that, however, there is one pre-2016 MAP case under a tax treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention and for which domestic time limits of the treaty partner prevented the implementation of the MAP agreement.

248. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Sweden fully reflects their experience with Sweden since 1 April 2017 and/or there are no additions to the previous input given. Two peers thereby added that they are not aware of any MAP agreement that have not been implemented. A third peer noted that according to its knowledge all MAP agreements with Sweden were duly implemented. Furthermore, one peer confirmed Sweden's reflection above on the one MAP case that could not be implemented. This peer specified that during the MAP process, it informed Sweden of the expiration of its domestic time limits, but commenced discussions with a view to a potential resolution of the case. In this respect, the peer proposed the conclusion of an agreement with the treaty partner on the interpretation of Article 25(2), which should stipulate that both treaty partners understand their obligations under the treaty to extend an implementation of any MAP agreement notwithstanding domestic time limits, following which it would allow the peer to override its domestic time limits to give effect to such MAP agreement. The peer further reported that it is hopeful that an agreement can be reached in the end. To this it added that it has with the relevant treaty partner applied a co-operative approach in finding a solution for the taxpayer for the case at hand and that both states have the intention to enter into a consultation agreement to prevent future MAP cases from not being implemented.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

[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. Sweden has in its domestic legislation and/or administrative framework no timeframe for implementation of MAP agreements reached. This regards both the situation in which the MAP agreement leads to additional tax to be paid or to a refund of tax in Sweden. Furthermore, the website of the Swedish tax administration containing information on MAP does not include information on the timeframe for implementing MAP agreements. In this respect, Sweden reported that its competent authority strives at writing the implementation decision as soon as possible after the MAP agreement is entered into and subsequently reviews whether the local tax administration has implemented that decision.

Recent developments

252. There are no recent developments with respect to element D.2

Practical application***Period 1 January 2015-31 March 2017 (stage 1)***

253. Sweden reported that that all MAP agreements reached in the period 1 January 2015-31 March 2017 were implemented on a timely basis.

254. All peers and taxpayers that provided input indicated not having experienced any issues with Sweden regarding the implementation of MAP agreements reached in the period 1 January 2015-31 March 2017 in general or not on a timely basis. One peer specifically mentioned that all MAP agreements with Sweden concerning allocation/attribution cases and other cases have correctly and timely been implemented.

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

255. Sweden reported that all MAP agreements reached in the period 1 April 2017-30 September 2018 were implemented on a timely basis. It further stated that it has experienced delays in the implementation of a MAP agreement reached with a treaty partner, but this delay was caused at the level of the treaty partner, as such implementation is at the level of the local tax office and therefore time-consuming.

256. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Sweden fully reflects their experience with Sweden since 1 April 2017 and/or there are no additions to the previous input given. Three peers provided specific input, two of which stated that the MAP agreements with Sweden were timely implemented by the latter. One of these peers, as also the third peer, noted that no delays occurred in the implementation of MAP agreements.

Anticipated modifications

257. Sweden 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.

258. 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 Sweden's tax treaties

259. As discussed under element D.1, Sweden's domestic legislation does not include a statute of limitations for implementing MAP agreements.

260. Out of Sweden's 84 tax treaties, 63 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.¹ The remaining 21 treaties can be categorised as follows:

- 20 treaties do not contain such provision nor include the alternative provisions in Article 9(1) and 7(2) setting a time limit for making adjustments.²
- One treaty contains a provision that is based on Article 25(2), second sentence, of the *OECD Model Tax Convention*, but is supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states. This concerns the requirement for the competent authority of Sweden to give notice to the competent authority of the treaty partner within the time limits in the domestic law of one of the treaty partners that there may be a claim for tax adjustment. This treaty is therefore considered not having the full equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention*. This requirement, however, is only one-sided and only applies to the treaty partner and not to Sweden. In this regard, Sweden indicated that it will always implement MAP agreements notwithstanding any domestic statute of limitations.

261. Most peers that provided input reported that their treaty with Sweden meets the requirement under element D.3. For one peer, however, the treaty with Sweden does

not include the second sentence of Article 25(2) of the OECD Model Tax Convention. Furthermore, three peers, which are signatory parties to the 21 treaties mentioned above, noted that their treaty with Sweden does not include the second sentence. Two of these peers mentioned they envisage incorporating this sentence in their treaty with Sweden via signing the Multilateral Instrument or via bilateral negotiations. The third peer noted that it is willing to accept the alternative provisions in Article 9(1) and 7(2) in its treaty with Sweden. In addition, another peer particularly noted that it recently started renegotiating the existing treaty with Sweden, which outcome would also meet the requirement under element D.3.

Recent developments

Bilateral modifications

262. Sweden signed an amending protocol with one treaty partner that amends the MAP provision of the treaty to include the second sentence of Article 25(2) of the OECD Model Tax Convention. The effect of this amending protocol has been reflected in the analysis above where it has relevance.

Multilateral Instrument

263. Sweden signed the Multilateral Instrument and has deposited its instrument of ratification on 22 June 2018. The Multilateral Instrument has for Sweden entered into force on 1 October 2018.

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), first 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 20 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), Sweden listed 17 as a covered tax agreements under the Multilateral Instrument and for 16 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 16 treaty partners, four are not a signatory to the Multilateral Instrument. Of the remaining 12 treaty partners, all listed their tax treaty with Sweden under that instrument, but two made a reservation on the basis of Article 16(5)(a), whereas the remaining ten made a notification pursuant to Article 16(6)(c)(ii).⁴

266. Of these ten treaty partners mentioned above, four have deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Sweden and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these four treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. For the remaining six 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. As is described in the Introduction, for the ten treaties that are not in line with this element of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Sweden is currently in negotiations with two treaty partners. It further reported that it has conducted negotiations with one treaty partner with a view to include the second sentence of Article 25(2), where the treaty partner wanted to include the alternative provisions for Articles 9(1) and 7(2) in the treaty, and that no agreement was reached. In addition, Sweden reported it has been approached by a treaty partner to initiate negotiations *inter alia* to bring the treaty in line with the requirements under the Action 14 Minimum Standard and which negotiations will commence in the near future. For the remaining six treaties it has not put in place a plan for bringing these treaties in line with that standard. It also neither conducted treaty negotiations nor initiated these with a view to bring them in line with the Action 14 Minimum Standard by including a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.

Peer input

268. Of the peers that provided input during stage 2, nine provided input in relation to their tax treaty with Sweden. One of these peers mentioned its treaty with Sweden will be modified by the Multilateral Instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention, which conforms with the above analysis. Four other peers concern treaty partners to one of the treaties identified above that does not contain Article 25(2), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. The first peer stated that due to the fact that the Multilateral Instrument will not take effect for this treaty, it has contacted Sweden to initiate negotiations to bilaterally amend the treaty to bring it in line with the requirements under the Action 14 Minimum Standard. A second peer mentioned that it is currently in bilateral negotiations with Sweden, also in relation to Action 14. The third peer mentioned it is currently in negotiations with Sweden for a bilateral tax treaty, which would be in conformity with the Action 14 Minimum Standard. This peer is a party to Sweden's treaty with former Yugoslavia that Sweden continues to apply to this peer. Lastly, one peer stated that it proposed to Sweden to include the alternative provisions in their treaty, but that Sweden did not agree to include such provisions. Sweden confirmed the input by the latter peer.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>20 out of 84 tax treaties do contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor the alternatives provisions in Article 9(1) and Article 7(2).</p> <p>Of these 20 treaties:</p> <ul style="list-style-type: none"> • Four have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • Six are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • Ten will not be modified by the Multilateral Instrument to include the required provision. With respect to these Ten treaties: <ul style="list-style-type: none"> - For one negotiations have been conducted to include the alternative provisions, but for which no agreement was reached. - For three negotiations are envisaged, scheduled or pending. - For the remaining six treaties no actions have been taken nor are any actions planned to be taken. 	<p>For nine of the ten treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention or the alternative provisions, and for which no negotiations have been conducted in this respect, Sweden should:</p> <ul style="list-style-type: none"> • follow up on its plan to initiate bilateral negotiations or to continue such negotiations if they are pending for three treaty partners to include the required provision or be willing to accept the inclusion of both alternative provisions • without further delay request via bilateral negotiations the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions in the remaining six treaties. <p>Specifically with respect to the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia, Sweden should, once it enters into negotiations with the jurisdictions for which it applies this treaty, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p>

Notes

1. These 63 treaties include the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway and the agreement with the former Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
2. These 20 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia.
3. These 17 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic,.
4. These ten treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic,.

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>Five out of 84 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these five treaties:</p> <ul style="list-style-type: none"> • Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. • Three will not be modified by the Multilateral Instrument to include the required provision. With respect to these three treaties: <ul style="list-style-type: none"> - For one Sweden has reached out to the relevant treaty partner to initiate negotiations. - For two no actions have been taken nor are any actions planned to be taken. 	<p>For two of the three treaties that have not been or will not be amended by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Sweden should:</p> <ul style="list-style-type: none"> • For one treaty without further delay request via bilateral negotiations the inclusion of the required provision. • For one treaty initiate such negotiations upon response from the treaty partner.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1] ⇓	<p>Nine out of 84 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. Of these nine treaties:</p> <ul style="list-style-type: none"> • One is expected to be superseded 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. • Eight will not be modified or superseded by that instrument to include the required provision. With respect to these eight treaties: <ul style="list-style-type: none"> • For three negotiations are envisaged, scheduled or pending <p>For five no actions have been taken nor are any actions planned to be taken.</p>	<p>For five of the eight 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 it read as amended in the Action 14 final report, Sweden should without further delay request via bilateral negotiations the inclusion of the required provision.</p> <p>Furthermore, for three treaties that also 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 it read as amended in the Action 14 final report, Sweden should continue its pending negotiations.</p> <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 Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia, Sweden should ensure that, once it enters into negotiations with these jurisdictions, it includes the required provision.</p>

	Areas for improvement	Recommendations
↓ [B.1]	<p>Two out of 84 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties either shorter than three years, from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty, or refers to domestic law of one of the treaty partners, which bears the risk that such three year period is not available. Of these two treaties:</p> <ul style="list-style-type: none"> • One is expected to be superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • One will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. For this treaty no actions have been taken nor are any actions planned to be taken. 	<p>For the treaty that will not be amended by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, Sweden should without further delay request via bilateral negotiations the inclusion of the required provision this treaty.</p>
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	<p>17 out of 84 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 17 treaties, eight treaties concern tax treaties with a limited scope of application. With respect to the nine remaining comprehensive treaties:</p> <ul style="list-style-type: none"> • Three have been modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. • Three are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. • Three treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these three treaties: <ul style="list-style-type: none"> - For one negotiations are envisaged, scheduled or pending. - For the other two no actions have been taken nor are any actions planned to be taken. 	<p>For the three comprehensive treaties that have not been or will not be amended by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Sweden should:</p> <ul style="list-style-type: none"> • Continue such negotiations to include the required provision for the one treaty for which such negotiations are envisaged, scheduled or pending • Without further delay request via bilateral negotiations the inclusion of the required provision for the remaining two treaties.
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-

	Areas for improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	<p>Five out of 84 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. With respect to these treaties:</p> <ul style="list-style-type: none"> • Two have been modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. • Two treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these two treaties: <ul style="list-style-type: none"> - For one negotiations are envisaged, scheduled or pending. - For the other no actions have been taken nor are any actions planned to be taken. 	<p>For the two treaties that have not been or will not be amended by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Sweden should:</p> <ul style="list-style-type: none"> • continue or initiate such negotiations to include the required provision for the one treaty for which such negotiations are envisaged, scheduled or pending. • Without further delay request via bilateral negotiations the inclusion of the required provision for the remaining treaty.
[C.2]	-	-
[C.3]	<p>While the median time taken to close MAP cases is below 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016, the MAP caseload relating to both attribution/allocation cases and other cases has increased substantially since 1 January 2016. 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>Sweden should continue to closely monitor whether the addition of new staff to the competent authority and the steps taken to improve the functioning of its competent authority (such as the establishment of case-handler subgroups and an internal tracking system) will contribute to the resolution of MAP cases in a timely, efficient and effective manner. This in particular concerns the acceleration of the resolution of attribution/allocation cases and being able to cope with the significant increase in the number of other MAP cases.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-
[D.3]	<p>20 out of 84 tax treaties do contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor the alternative provisions in Article 9(1) and Article 7(2).</p> <p>Of these 20 treaties:</p> <ul style="list-style-type: none"> • Four have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • Six are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • Ten will not be modified by the Multilateral Instrument to include the required provision. With respect to these ten treaties: <ul style="list-style-type: none"> - For one negotiations have been conducted to include the alternative provisions, but for which no agreement was reached. - For three negotiations are envisaged, scheduled or pending. - For the remaining six treaties no actions have been taken nor are any actions planned to be taken. 	<p>For nine of the ten treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention or the alternative provisions, and for which no negotiations have been conducted in this respect, Sweden should:</p> <ul style="list-style-type: none"> • follow up on its plan to initiate bilateral negotiations or to continue such negotiations if they are pending for three treaty partners to include the required provision or be willing to accept the inclusion of both alternative provisions • without further delay request via bilateral negotiations the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions in the remaining six treaties. <p>Specifically with respect to the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia, Sweden should, once it enters into negotiations with the jurisdictions for which it applies this treaty, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p>

Annex A

Tax treaty network of Sweden

Treaty partner	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	C.1	D.3	Article 25(3) of the OECD MTC	A.1	B.7	Arbitration	C.6											
		Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)														
	Y = yes N = signed pending ratification	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no												
Albania	Y	O	Y	Y	i	Y	Y	Y	Y														
Argentina	Y	O*	Y	Y	i	Y	Y	Y	Y														
Armenia	Y	O	Y	Y	i	Y	Y	Y	Y														
Aruba	Y	O	Y	Y	i	Y	Y	Y	Y														
Australia	Y	O	Y	Y	i	Y	Y	Y	Y														
Austria	Y	N	i	Y	i	N	N	N	N														
Azerbaijan	Y	O	Y	Y	i	Y	Y	Y	Y														

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	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?											
Bangladesh	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Barbados	Y	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Belarus	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Belgium	Y	E*	Y	N/A	i***	Y	Y*	Y	Y*	Y	Y*	Y	Y	Y*	Y	Y*	Y	Y*	Y	Y*	Y***
Bermuda	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Bolivia	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Bosnia and Herzegovina	Y	N	i	N/A	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Botswana	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Brazil	Y	E	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
British Virgin Islands	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Bulgaria	Y	O*	Y	N/A	i**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Canada	Y	N	i	N/A	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Caribbean part of the Netherlands	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Cayman Islands	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Chile	Y	O	i	N/A	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
China (People's Republic of)	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Croatia	Y	N	i	N/A	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Curacao	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Treaty partner	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	D.3	A.1		B.7
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
		Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
	DTC in force?	If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)			
Cyprus ^a	Y	O*	Y	Y	i	Y	Y	Y	Y	N
Czech Republic	Y	O*	i	N/A	i	Y	N*	Y	Y	N
Denmark	Y	E	ii	5-years	i	Y	Y	Y	Y	N
Egypt	Y	O*	Y	N/A	i	Y	Y	Y	Y	N
Estonia	Y	O*	Y	N/A	i	Y	Y	Y	Y	N
Faroe Islands	Y	E	ii	5-years	i	Y	Y	Y	Y	N
Finland	Y	E	ii	5-years	i	Y	Y	Y	Y	N
France	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Gambia	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Georgia	Y	E*	Y	N/A	i	Y	Y	Y	Y	N
Germany	Y	O	i	N/A	i	Y	Y	Y	Y	Y
Greece	Y	N**	i	N/A	i	N*	N*	Y	N*	N
Guernsey	Y	O	Y	N/A	i	Y	Y	Y	N	N
Hungary	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Iceland	Y	E	ii	5-years	i	Y	Y	Y	Y	N
India	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Indonesia	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Ireland	Y	E*	Y	N/A	i	Y	Y*	Y	Y	Y***
Isle of Man	Y	O	Y	N/A	i	Y	Y	Y	N	N
Israel	Y	N	i	N/A	i	Y*	Y*	Y*	Y*	N
Italy	Y	N	Y	N/A	i	Y	Y	Y	Y	N
Jamaica	Y	O*	Y	N/A	i	Y	N*	Y	Y	N

Treaty partner	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		A.1			C.6
	Column 4		Column 5		Column 6		Column 7		Column 8			
DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?			
Japan	Y	E*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y
Jersey	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N
Kazakhstan	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N
Kenya	Y	O	i	N/A	i	N	N	N	Y	Y	Y	N
Korea	Y	O*	Y	N/A	i**	Y	Y	Y	Y	Y	Y	N
Kosovo	Y	N	i	N/A	i	Y	Y	N	Y	Y	Y	N
Latvia	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N
Lithuania	Y	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N
Luxembourg	Y	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y***
Malaysia	Y	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N
Malta	Y	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y***
Mauritius	Y	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N
Mexico ^b	Y	O*	iv	4.5 years	Y	Y	Y	N	Y	Y	N*	N
Montenegro	Y	N	i	N/A	i	Y	Y	N	Y	Y	Y	N
Namibia	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N
Netherlands	Y	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y***
New Zealand	Y	E*	i	N/A	i***	Y*	Y*	Y*	Y*	Y*	Y*	Y***
Nigeria	Y	O*	ii	6-years	Y	Y	Y	Y	Y	Y	Y	N
North Macedonia	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N
Norway	Y	E	ii	5-years	Y	Y	Y	Y	Y	Y	Y	N
Pakistan	Y	O*	Y	N/A	Y	Y	Y	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		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration							
	B.1		B.3		B.4		C.1		C.1		C.1		D.3		A.1		B.7		C.6			
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(2) second sentence? (Note 4)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(2) second sentence? (Note 4)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	
Philippines	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Poland	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Portugal	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Romania	Y	N	Y	N/A	i	Y	i**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Russia	Y	E	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Saudi Arabia	Y	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Serbia	Y	N	i	N/A	i	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Singapore	Y	O	i	N/A	i	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovak Republic	Y	O	i	N/A	i	Y	i***	Y	Y	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovenia	Y	N	i	N/A	i	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
South Africa	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Spain	Y	N	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Sri Lanka	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Sint Maarten	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Switzerland	Y	E	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
Chinese Taipei	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Tanzania	Y	N	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Thailand	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Trinidad and Tobago	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Tunisia	Y	O*	i	N/A	i	Y	Y	Y	Y	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	N
Turkey	Y	O*	iv**	Domestic law	i	Y	Y	Y	Y	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	N

Treaty partner	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	B.4	Article 25(2) of the OECD MTC	D.3	Article 25(3) of the OECD MTC	A.1	B.7	C.1	D.3	A.1	B.7	C.6				
Ukraine																				
United Kingdom																				
United States																				
Venezuela																				
Viet Nam																				
Zambia																				
Zimbabwe																				

Notes: 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.

b. Footnote on the treaty with Mexico: The tax treaty between Sweden and Mexico provide for a filing period for MAP requests of 4.5 years, whereby the start date of this period is different from the text used in Article 25(1), second sentence, of the OECD Model Tax Convention and reads: "The case must be presented within four and a half years from the expiry of the year in which the action resulting in taxation not in accordance with the provisions of the Convention was taken."

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.
N***/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

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										Average time taken (in months) for closing pre-2016 cases during the reporting period	
		Column 3	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 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 tax in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	No. of pre-2016 cases remaining in MAP inventory on 31 December 2016	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	109	2	0	3	0	2	13	0	0	0	0	89	33.88
Others	58	0	0	1	0	1	15	0	0	2	1	38	30.74
Total	167	2	0	4	0	3	28	0	0	2	1	127	32.31

Note: The numbers of other cases in the inventory on 1 January 2016 and 31 December 2016 in the table above are different from the numbers of such cases in Sweden's published 2016 MAP statistics. This results from the recognition of one case notified to Sweden's competent authority after 31 December 2016.

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										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 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 tax in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	No. of pre-2016 cases remaining in MAP inventory on 31 December 2017	
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	89	0	0	2	0	4	20	2	0	1	0	60	52.19
Others	38	1	2	1	1	1	10	0	1	1	0	20	37.38
Total	127	1	2	3	1	5	30	2	1	2	0	80	46.52

Annex C

MAP statistics post-2015 cases

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period	
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome			
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	0	33	0	0	0	0	0	2	0	0	0	0	0	31	3.95
Others	0	31	2	0	0	2	2	2	0	0	0	0	0	23	3.42
Total	0	64	2	0	0	2	2	4	0	0	0	0	0	54	3.52

Note: The numbers of other cases in the inventory on 1 January 2016 and 31 December 2016 in the table above are different from the numbers of such cases in Sweden's published 2016 MAP statistics. This results from the addition of one case by Sweden's competent authority.

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	31	34	0	1	2	5	0	0	0	0	0	0	0	57	8.37
Others	23	80	1	7	6	0	0	15	0	0	3	0	0	71	6.13
Total	54	114	1	8	8	5	0	15	0	0	3	0	0	128	6.58

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
Look-back period	Period starting from 1 January 2015 and ending on 31 December 2015 for which Sweden wished to provide information and requested peer input
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
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
Review Period	Period for the peer review process that started on 1 January 2015 (including look-back period) and that ended on 31 March 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
Sweden’s competent authority Swedish tax administration	Swedish Tax Agency
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 (CTPA/CFA/NOE2(2016)45/REV1)

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Sweden (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 minimum standard is complemented by a set of best practices. The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 2 peer monitoring of the implementation of the Action 14 Minimum Standard by Sweden, which is accompanied by a document addressing the implementation of best practices.

Consult this publication on line at <https://doi.org/10.1787/7b3b1492-en>.

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