

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



# **Making Dispute Resolution More Effective - MAP Peer Review Report, Denmark (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 90 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 135 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 12 May 2020 and prepared for publication by the OECD Secretariat.

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*Abbreviations and acronyms*

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



## Executive summary

Denmark has an extensive tax treaty network with over 75 tax treaties and has signed and ratified the EU Arbitration Convention. Denmark has an established MAP programme and has long-standing and large experience with resolving MAP cases. It has a relatively large MAP inventory, with a moderate number of new cases submitted each year and almost 200 cases pending on 31 December 2018. Of these cases, 72% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Denmark met most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Denmark worked to address, which has been monitored in stage 2 of the process. In this respect, Denmark solved almost all of the identified deficiencies.

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

- One-tenth of its tax treaties does not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, whereby the majority of these treaties do not contain the equivalent of Article 25(1), first sentence, as it read prior to the adoption of the Action 14 final report, since they do not allow taxpayers to submit a MAP request to the state of which it is a national, where their cases comes under the non-discrimination provision
- More than one-third of its tax treaties does not contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), or contain the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments
- One-fifth of its tax treaties does not contain 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).

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Denmark signed and ratified, without any reservations on the MAP article, the Multilateral Instrument. Furthermore, Denmark opted in 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 tax treaties have not been or will not be modified, upon entry into force of this Multilateral Instrument, Denmark reported that it does not intend to initiate bilateral treaty negotiations to fulfil those requirements, as it disagrees with having an obligation to initiate such negotiations as it has chosen to meet these requirements by signing the Multilateral Instrument. For that reason,

Denmark has not put a plan in place nor has it taken any specific actions to bring, where necessary, the relevant treaties in line with the requirements of this standard other than negotiations that are already pending or envisaged to be initiated. Taking this into account, Denmark is recommended to initiate negotiations without further delay for a considerable number of treaties to ensure compliance with this part of the Action 14 Minimum Standard.

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

Furthermore, Denmark also meets 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 bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. This process has been documented in the internal guidance for staff in charge of MAP cases. In addition, Denmark has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention. This guidance was updated in January 2019, *inter alia* to address that access to MAP is available in cases where the taxpayer and the tax administration entered into an audit settlement. Denmark also updated its MAP profile to specify its position on including MAP arbitration in its tax treaties.

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

2016-18	Opening inventory	Cases started	Cases closed	End inventory	Average time to close cases (in months)*
Attribution/allocation cases	136	145	143	138	26.10
Other cases	39	50	34	55	21.69
Total	175	195	177	193	25.25

\* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Denmark used as a start date for attribution/allocation cases the receipt of the MAP request (for cases under the EU Arbitration Convention the date of receipt of the request and the minimum information required) and for other cases the date of the first registration in the internal filing system. As the end date for attribution/allocation cases Denmark used the date of the taxpayer's acceptance of the MAP agreement and for other cases the date of closing the case in the internal filing system.

The number of cases Denmark closed in the period 2016-18 is 88% 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 necessary was 25.25 months. This only regards attribution/allocation cases, as the average time to close these cases is above the 24-month targeted timeframe (26.10 months), while for other cases this average is below this target (21.69 months). For attribution/allocation cases the average also increased, while for other cases it decreased. Denmark provided the median timeframe to close cases for both type of MAP cases, which is for the years 2016-18 below the targeted timeframe of 24 months. Nevertheless, its MAP inventory as per 31 December 2018 increased with 10% as compared to the inventory on 1 January 2016. As in Denmark more resources have been assigned to the competent authority for the resolution of MAP cases and since several internal organisational steps have been taken that have led to the acceleration of

the resolution of these cases, no additional resources are currently needed to resolve them in a more timely, effective and efficient manner, albeit that monitoring for this purpose is warranted.

Furthermore, Denmark 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 adopts a pragmatic approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

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



## *Introduction*

### **Available mechanisms in Denmark to resolve tax treaty-related disputes**

Denmark has entered into 80 tax treaties on income (and/or capital), all of which are in force.<sup>1</sup> These 80 tax treaties apply to 86 jurisdictions.<sup>2</sup> All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty.

Denmark 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.<sup>3</sup> Furthermore, Denmark adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which has been implemented in its domestic legislation as per December 2018.<sup>4</sup>

In Denmark, the competent authority function to conduct MAP is delegated to the Danish Customs and Tax Administration (Skatteforvaltningen) and more specifically to the Danish Tax Agency (Skattestyrelsen). Within the Danish Tax Agency, two departments are responsible to handle MAP cases. The Large Companies – Competent Authority is placed within the Large Companies department, which is part of the business area for Corporate Tax and is responsible for handling attribution/allocation MAP cases as well as bilateral APA requests. It currently consists of 13 full time case handlers. Secondly, the Company, Shareholder and TP office is placed within the Law Department within the business area for Legal Affairs and handles other MAP cases. It currently consists of four part time case handlers.

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

<https://skat.dk/skat.aspx?oid=124&chk=216701>  
(Legal guide in Danish)

<https://skat.dk/skat.aspx?oid=16277&vid=216871&lang=us>  
(general guidance on MAP in English)

<https://skat.dk/data.aspx?oid=16278&vid=216872&lang=us>  
(specific guidance on transfer pricing MAP and APA in English)

## Developments in Denmark since 1 August 2017

### *Developments relating to the tax treaty network*

In the stage 1 peer review report of Denmark it is reflected that it had signed new tax treaties with Azerbaijan (2017) and Japan (2017). Since the adoption of this report, the treaty with Azerbaijan entered into force in December 2017 and the treaty with Japan in December 2018, thereby replacing the treaty of 1968.

Furthermore, on 7 June 2017 Denmark 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 to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. On 30 September 2019, Denmark deposited its instrument of ratification, following which the Multilateral Instrument has for Denmark entered into force on 1 January 2020. With the depositing of the instrument of ratification, Denmark also submitted its list of notifications and reservations to the Multilateral Instrument.<sup>5</sup> In relation to the Action 14 Minimum Standard, Denmark has not made any reservation to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure). 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.

In addition, Denmark reported that since 1 August 2017 it has signed an amending protocol to the existing treaty with the Netherlands (2018), which amends the MAP provision to allow taxpayers to file a MAP request to the competent authorities of either contracting state. Denmark also signed, together with the Faroe Islands, Finland, Iceland, Norway and Sweden an amending protocol to the multilateral Nordic Convention (2018), which also amends the MAP provision to allow taxpayers to file a MAP request to the competent authorities of either contracting state. Both protocols have entered into force in 2019. Denmark in 2018 also signed a new treaty with Armenia and that contains Article 25 of the OECD Model Tax Convention as per its 2014 version (OECD, 2015) and which entered into force. Lastly, the stage 1 report did not yet take into account the treaty with the former Netherlands Antilles that Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius). Taking these developments and the correction into consideration, the number of tax treaties Denmark entered into is 80 treaties instead of the 78 treaties that were taken as the basis in the stage 1 peer review report.

For those tax treaties that were in the stage 1 peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Denmark reported that it is currently in negotiations with Greenland to amend the treaty via a protocol with a view to meet the requirements under the Action 14 Minimum Standard. Furthermore, Denmark reported it is planning to enter into negotiations with Switzerland in order to meet also these requirements. Apart from these pending or planned negotiations, Denmark reported that it disagreed with having an obligation to initiate bilateral treaty negotiations, as Denmark has chosen to implement the relevant elements of the Action 14 Minimum Standard via the Multilateral Instrument. For those treaties that do not meet one or more of these elements, Denmark reported it invites the relevant treaty partners to either sign the instrument or initiate bilateral negotiations. In addition, Denmark also reported that it does not intend to renegotiate those treaties that have a limited scope of application. Taking this into account, Denmark has not put in place a specific plan and also no further actions were taken to bring the relevant treaties in line with the requirements under the Action 14 Minimum Standard.



### ***Other developments***

Denmark reported that the Danish Customs and Tax Administration has been reorganised in July 2018 and as a result, split into seven different sub-agencies. The agency in which the competent authority is placed is now called the Danish Tax Agency, which is still placed within the Danish Customs and Tax Administration.

In addition, Denmark reported that in January 2019 it has updated its MAP guidance to state in section C.D.11.15.2.2 that access to MAP is available in cases of audit settlements.

## **Basis for the peer review process**

### ***Outline of the peer review process***

The peer review process entails an evaluation of Denmark's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Denmark and its peers. The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Denmark'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 22 February 2018. This report identifies the strengths and shortcomings of Denmark 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.<sup>6</sup> 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 Denmark. In this update report, Denmark 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 Denmark 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 tax treaties/agreements with:

- Former Czechoslovakia, which Denmark continues to apply to the Slovak Republic
- Former USSR, which Denmark continues to apply to Belarus
- Former Yugoslavia, which Denmark continues to apply to Montenegro
- Former Netherlands Antilles Islands, which Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius).

As it concerns four 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 Denmark’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 for Denmark was launched on 7 July 2017, with the sending of questionnaires to Denmark and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Denmark in December 2017, with the subsequent approval by the BEPS Inclusive Framework on 22 February 2018. On 22 February 2019, Denmark 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, Denmark opted to provide information and requested peer input concerning the 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 Denmark’s implementation of this standard ranges from 1 January 2016 up to 31 July 2017 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 August 2017 and depicts all developments as from that date until 28 February 2019. In addition to its assessment on the compliance with the Action 14 Minimum Standard, Denmark also addressed best practices and asked for peer input on best practices.

In total 21 peers provided input during stage 1: Australia, Belgium, Chile, China (People’s Republic of), France, Germany, Ireland, Italy, Japan, Korea, Lithuania, the Netherlands, Norway, Russia, Singapore, Slovenia, Spain, Sweden, Switzerland, Turkey and the United States. In stage 1, these peers represent approximately 70% of post-2015 MAP cases in Denmark’s inventory on 31 December 2016. During stage 2, the same peers provided input, apart from France, Russia and Singapore. In addition, also Austria, Canada, Egypt, Portugal, the Slovak Republic and the United Kingdom provided input during stage 2. For this stage, these peers represent approximately 74% of post-2015 MAP cases in Denmark’s inventory that started in 2016, 2017 or 2018.<sup>7</sup> Broadly, all peers indicated having a good relationship with Denmark’s competent authority with regard to MAP, some of them emphasising the ease of contact and good co-operation in resolving disputes. Specifically with respect to stage 2, almost all peers that provided input reported that the update report of Denmark fully reflects the experiences these peers have had with Denmark since 1 August 2017 and/or that there was no addition to previous input given. Eight peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance. This in particular concerns an appreciation of the working relationship with Denmark’s competent authority in handling and resolving MAP cases.

### *Input by Denmark and co-operation throughout the process*

During stage 1, Denmark provided informative answers in its questionnaire and detailed answers upon request, which were submitted on time. Denmark was very responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and provided further clarity where necessary. In addition, Denmark provided the following information:

- MAP profile<sup>8</sup>
- MAP statistics<sup>9</sup> according to the MAP Statistics Reporting Framework (see below).

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

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

## Overview of MAP caseload in Denmark

The analysis of Denmark’s MAP caseload 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 2018. Both periods are taken into account in this report for analysing the MAP statistics of Denmark. The analysis of Denmark’s MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2018 (“**Statistics Reporting Period**”).

According to the statistics provided by Denmark, its MAP caseload was as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2018
Attribution/allocation cases	136	145	143	138
Other cases	39	50	34	55
Total	175	195	177	193

## General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).<sup>10</sup> Apart from analysing Denmark’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Denmark, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Denmark to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The 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 has 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 Denmark 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 Denmark 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 Denmark has entered into are available at: [www.skm.dk/love/internationalt/dobbeltbeskatningsoverenskomster](http://www.skm.dk/love/internationalt/dobbeltbeskatningsoverenskomster). Annex A includes an overview of Denmark's tax treaties with respect to the mutual agreement procedure.  
Furthermore, the 80 tax treaties Denmark has entered into include treaties with Bermuda, Guernsey, the Isle of Man and Jersey. With these four jurisdictions, Denmark 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 and Annex A.
2. Denmark is a signatory to the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden. Denmark continues to apply the tax treaty with the former USSR to Belarus, the tax treaty with former Czechoslovakia to the Slovak Republic, the tax treaty with former Yugoslavia to Montenegro and the treaty to promote economic relations with the Netherlands Antilles to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius).
3. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.
4. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
5. Available at: [www.oecd.org/tax/treaties/beps-mli-position-denmark.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-denmark.pdf).
6. Available at: <https://www.oecd-ilibrary.org/docserver/9789264190184-en.pdf?expires=1566308009&id=id&accname=ocid84004878&checksum=70DD4DC5854C5272BC5930D9495E6F19>.
7. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework. All cases falling within the *de minimis* rule do not fall in this percentage.
8. Available at: [www.oecd.org/tax/dispute/country-map-profiles.htm](http://www.oecd.org/tax/dispute/country-map-profiles.htm).
9. The MAP statistics of Denmark are included in Annex B and C of this report.
10. 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).

## *Part A*

### Preventing disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017a) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

#### *Current situation of Denmark’s tax treaties*

2. Out of Denmark’s 80 tax treaties, 74 contain a provision 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.<sup>1</sup> Of the remaining six treaties, three do not contain the term “interpretation” and two do not contain the term “doubts”. The sixth treaty also contains the first sentence, but the provision included stipulates that the competent authorities “may communicate with each other” rather than “shall endeavour”. All six tax treaties are therefore considered not having the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.<sup>2</sup>

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

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

treaty with Denmark. Lastly, two peers indicated that they do not have a tax treaty with Denmark in force but are a signatory to the EU Arbitration Convention.

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

### ***Recent developments***

#### *Bilateral modifications*

6. Denmark signed a new treaty with a treaty partner for which currently no treaty is in existence. This treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

#### *Multilateral Instrument*

7. Denmark signed the Multilateral Instrument and has deposited its instrument of ratification on 30 September 2019. The Multilateral Instrument has for Denmark entered into force on 1 January 2020.

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 (OECD, 2017). 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 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 of the fact that this tax treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

9. In regard of the six tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Denmark listed four as a covered tax agreement under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). Of the relevant four treaty partners, one is not a signatory to the Multilateral Instrument. The remaining three treaty partners listed their treaty with Denmark as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(i).

10. Of the three last treaty partners mentioned above, two have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Denmark and these treaty partners, and therefore has modified them to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. The other treaty will, upon entry into force for the treaty concerned, be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.



*Peer input*

11. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Denmark. 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 Denmark regarding meeting 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*

12. As is described in the Introduction, Denmark reported that for those tax treaties that do not meet one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, it disagrees with having an obligation to initiate bilateral tax treaty negotiations to bring these treaties in line with the requirements under this standard. Denmark stated that it has chosen to implement the elements of the Action 14 Minimum Standard via the Multilateral Instrument and therefore invites jurisdictions, which have not yet joined that instrument, to sign it. Denmark further stated that it invites jurisdictions to initiate bilateral treaty negotiations, if a jurisdiction does not plan to sign the Multilateral Instrument, but wants its treaty with Denmark in line with the Action 14 Minimum Standard.

13. In that regard, and for the remaining three treaties identified above that do not contain Article 25(3), first sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument, Denmark has not put a plan in place for their renegotiation nor has it taken any actions to initiate such negotiations. One of these treaties, however, concerns the treaty with the former Netherlands Antilles that Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius), for which such renegotiation are not necessary.

14. Regardless, Denmark 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>Six out of 80 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these six treaties:</p> <ul style="list-style-type: none"> <li>Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.</li> <li>One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.</li> <li>Three will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties no actions have been taken nor are planned to be taken.</li> </ul>	<p>For two of the remaining three treaties that has not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Denmark should without further delay request via bilateral negotiations the inclusion of the required provision.</p> <p>Specifically with respect to the treaty with the former Netherlands Antilles that Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius, Denmark should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.</p>

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

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

15. 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.<sup>3</sup> The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

### *Denmark’s APA programme*

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

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

### *Roll-back of bilateral APAs*

18. Denmark reported it has no specific timelines for filing an APA request, but that it applies bilateral APAs as from the first fiscal year covered by the request, irrespective of the date when the competent authorities reach an agreement. Generally, an APA is entered into for a period of five years. Fiscal years that have already expired can only be included in an APA via roll-back, such under the condition that the other competent authority agrees therewith. In this respect, Denmark reported its competent authority is allowed to grant roll-backs of bilateral APAs. The number of fiscal years for which the bilateral APA will be applied retroactively depends on the domestic laws of the involved jurisdictions as well as on the agreement reached between their competent authorities.

19. Guidance specifically related to roll-backs of APA is provided in the MAP Guidance in Section C.D.11.15.3.11.

### *Recent developments*

20. There are no recent developments with respect to element A.2.



### ***Practical application of roll-back of bilateral APAs***

21. Denmark publishes statistics on APAs in relation to EU and non-EU Member States on the website of the EU Joint Transfer Pricing Forum.<sup>4</sup> The total number of APAs entered into and the number of APA requests still under consideration as per year end is also included in the annual report of the Danish Customs and Tax Administration to the Danish Parliament.<sup>5</sup>

#### *Period 1 January 2015-31 July 2017 (stage 1)*

22. Denmark reported that in the period 1 January 2015-31 July 2017 its competent authority has received 18 requests for a bilateral APA, of which five concern a request for roll-back. Denmark further reported that four of these 18 APAs requests have been granted and in one case the request was rejected. Concerning the roll-back requests, Denmark reported that in two cases such roll-back was granted.

23. Peers generally reported that they do negotiate and agree bilateral APAs with Denmark, although almost all peers that provided input indicated that they have not received a request for a roll-back of bilateral APAs concerning Denmark in the period 1 January 2015-31 July 2017. Three peers indicated that each of them entered into a bilateral APA with Denmark, which also provided for a roll-back and whereby the APA request was submitted prior to 1 January 2015. The process for granting such roll-back did not raise any particular issues, but one of these peers mentioned that the case was time consuming and challenging for both competent authorities. Another peer noted that, while it had not received such requests in the period 1 January 2015-31 July 2017, its understanding is that a roll-back of bilateral APAs is possible in Denmark.

#### *Period 1 August 2017-28 February 2019 (stage 2)*

24. Denmark reported that since 1 August 2017 it has received 15 APA requests, four of which concern a renewal of an existing APA and another four also concern a request for a roll-back. Of these 15 requests, one is currently under review before accepted into the process, while for another request the process has been finalised. The remaining 13 requests are currently being negotiated with the treaty partners concerned.

25. Further to the above, Denmark also reported that for the three roll-back requests that were still in the negotiation process at the end of stage 1, two have been finalised with the granting of a roll-back, while the third is still in the negotiation process.

26. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Denmark fully reflects their experience with Denmark since 1 August 2017 and/or there are no additions to the previous input given. This concerns a confirmation that they had also during stage 2 no experiences with Denmark as to the roll-back of bilateral APAs. In addition, one peer stated that roll-backs of bilateral APAs with Denmark are quite common and APAs negotiated between the peer and Denmark did include a roll-back.

### ***Anticipated modifications***

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

### ***Conclusion***

	Areas for improvement	Recommendations
[A.2]	-	-

## Notes

1. These 75 treaties include the tax treaty with the former USSR that Denmark continues to apply to Belarus, the tax treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic, the tax treaty with former Yugoslavia that Denmark continues to apply to Montenegro and the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
2. These six treaties include the treaty with the former Netherlands Antilles that Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius).

In the stage 1 peer review report, reference was made to four treaties. Following the peer review process of other assessed jurisdictions, two other treaties were identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). Consequently, the number of treaties not containing this equivalent should be five instead of four.

3. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).
4. Available at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/apa-and-map-2019-3.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/apa-and-map-2019-3.pdf). These statistics are up to 2018.
5. Available at: [www.ft.dk/samling/20161/almDEL/sau/bilag/266/index.htm](http://www.ft.dk/samling/20161/almDEL/sau/bilag/266/index.htm).

## References

- OECD (2017a), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.
- OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, <https://dx.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.

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

#### ***Current situation of Denmark's tax treaties***

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

29. Out of Denmark's 80 tax treaties, three contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as changed by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state 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.<sup>1</sup> Furthermore, 51 treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.<sup>2</sup>

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

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention 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 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 tax treaty with the former USSR that Denmark continues to apply to Belarus and the tax treaty with the former Netherlands Antilles that Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius).

31. The 24 treaties mentioned in the first row of the table are considered not to contain the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 19 of those 24 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision (eight tax treaties)<sup>3</sup>
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (ten tax treaties)
- The relevant tax treaty is only one-sided formulated in that they only apply to companies resident in Denmark and therefore it is logical that the MAP article is also only one-sided formulated (one tax treaty).

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

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

34. With respect to the tax treaty mentioned in the last row of the table above, the provision incorporated in the protocol to this tax treaty reads:

... the expression “irrespective of the remedies provided by domestic law” means that the mutual agreement procedure is not an alternative to the national contentious

proceedings, which shall be, in any case, preventively initiated, when the claim is related with an assessment of taxes not in accordance with the Convention.

35. 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, even though the provision contained in the MAP article is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). This tax treaty is therefore also considered not in line with this part of element B.1.

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

36. Out of Denmark’s 80 tax treaties, 63 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. Furthermore, one treaty contains a three-year period for filing of MAP request, albeit that the reference to the start date of that period is not exactly the same as in the second sentence of Article 25(1) of the OECD Model Tax Convention – (“the date of such action or the latest of such actions as the case may be”). This, however, has no material effect, since this treaty links the start date to the actions that result or may result in taxation not in accordance with the treaty.

37. The remaining 16 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	11
Filing period more than three years for a MAP request (five years)	1 <sup>a</sup>
Filing period less than three years for a MAP request (two years)	3 <sup>b</sup>
A filing period for MAP requests of three years for Denmark and one year for the treaty partner	1

*Notes:* a. This treaty concerns the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.

b. These three treaties include the treaty with the former USSR that Denmark continues to apply to Belarus.

38. The last tax treaty in the table above includes Article 25(1), second sentence, of the OECD Model Tax Convention, but it includes a protocol provision that reads:

It is understood that, in the case of [...], the case must be presented to the competent authority within one year from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement. However, if such period has expired, the taxpayer may, in any case, present the case to the competent authority in [...] within a period of five years beginning on the first day of January of the calendar year next following the related taxable year. The related taxable year is the year in which the income subject to the action resulting in taxation not in accordance with the provisions of the Agreement is derived.

39. As the text of this provision bears the risk that a MAP request cannot in all instances be submitted within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty, this provision is considered not to be the equivalent of Article 25(1), second sentence.

*Peer input*

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

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

*Practical application*

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

42. As noted in paragraphs 34-35 above, in all but one of Denmark's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Denmark 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, but that often taxpayers request either the court or the competent authority not to proceed until the other process has been completed or terminated. Access to MAP is also available in cases where domestic remedies already have been completed. However, where the decision of the court leads to a cancellation of the adjustment made by Denmark, there would no longer be a reason to request MAP.

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

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

***Recent developments****Bilateral modifications*

44. Recently, a new treaty that Denmark signed has entered into force, which replaced the existing treaty to include the equivalent Article 25(1) of the OECD Model Tax Convention,



as amended by the Action 14 final report and allowing taxpayers to file a MAP request to either competent authority and introducing a three-year time limit to file a MAP request. Furthermore, two amending protocols were signed to existing treaties to also include such equivalent regarding the first sentence of Article 25(1). Both treaties previously included the equivalent of the first sentence as it read prior to the adoption of the Action 14 final report. One of these protocols has already entered into force, while the other protocol so far has only been ratified by Denmark. In 2018 Denmark also signed a new treaty with a treaty partner for which currently no treaty is in existence and which contains Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

45. The effect of these new treaties and 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 three and the number of treaties containing a filing period of three years from 61 to 63.

### *Multilateral Instrument*

46. Denmark signed the Multilateral Instrument and has deposited its instrument of ratification on 30 September 2019. The Multilateral Instrument has for Denmark entered into force on 1 January 2020.

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

47. 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 both notified the depositary, pursuant to Article 16(6)(a), that this tax 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 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 its covered tax agreements.

48. With the signing of the Multilateral Instrument, Denmark 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 Denmark's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state in which they are a resident, Denmark opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Denmark listed 64 of its 80 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a) of the Multilateral Instrument, for all 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. None of these 64 treaties concern the three treaties mentioned in paragraph 29 above that already allows the submission of a MAP request to either competent authority.

49. In total, 16 of the relevant 64 treaty partners are not a signatory to the Multilateral Instrument, whereas five did not list their treaty with Denmark under that instrument and 17 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties. All remaining 26 treaty partners listed their treaty with Denmark as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

50. Of these 26 treaty partners, ten already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Denmark 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.

51. In view of the above and in relation to the seven treaties identified in paragraphs 31-35 that are 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, two are part of the ten treaties that have been modified by the Multilateral Instrument and two are part of the remaining 16 treaties that will be modified by that instrument.

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

52. 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 tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary that this tax treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

53. In regard of the three tax treaties identified in paragraph 37 above that contain a filing period for MAP requests of less than three years, Denmark listed two as a covered tax agreement under the Multilateral Instrument, and made, pursuant to Article 16(6)(b)(i), for both treaties a notification that they do not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partners are signatories to the Multilateral Instrument, listed their treaty with Denmark as a covered tax agreement under that instrument and also made such a notification.

54. Of the two treaty partners mentioned above, one has already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Denmark and this treaty partner, and therefore has modified them to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention. The other treaty will, upon entry into force for the treaty concerned, be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention.

55. With regard to the tax treaty identified in paragraph 37 above that includes a provision that is considered not the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, Denmark listed this treaty 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), nor did it make such a notification on the basis of Article 16(6)(b)(ii) that this treaty contains such a provision. The relevant treaty partner listed its treaty with Denmark as a covered tax agreement under the Multilateral Instrument, but also not made a notification on the basis of either Article 16(6)(b)(i) or Article 16(6)(b)(ii). In this situation, Article 16(6)(b)(i) of the Multilateral Instrument stipulates that the second sentence of Article 16(1) – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – will supersede the provision of the covered tax agreement to the extent it is incompatible with that second sentence. Since due to a protocol provision a MAP request cannot be submitted to the competent authority of the treaty partner within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty, the provision of the covered tax agreement is considered to be incompatible with the second sentence of Article 16(1). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for this treaty, supersede the treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

### *Peer input*

56. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Denmark. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(1), first and second sentence, of the OECD Model Tax Convention and which will only be modified by the Multilateral Instrument regarding the second sentence. With respect to the first sentence, the peer mentioned that it has contacted Denmark to address the specific issue of a protocol provision requiring taxpayers to initiate domestic remedies when submitting a MAP request, such by entering into a memorandum of understanding. Furthermore, two other peers confirmed that their treaty with Denmark has recently been amended to allow taxpayers to file a MAP request to the competent authorities of either contracting state. Lastly, one peer mentioned its treaty currently is in line with the requirements under element B.1, but that for this element its treaty will be modified by the Multilateral Instrument to allow taxpayers to file a MAP request to the competent authorities of either contracting state. This conforms with the analysis under this element.

### *Anticipated modifications*

57. As is described in the Introduction, Denmark reported that for those tax treaties that do not meet one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, it disagrees with having an obligation to initiate bilateral tax treaty negotiations to bring these treaties in line with the requirements under this standard. Denmark stated that it has chosen to implement the elements of the Action 14 Minimum Standard via the Multilateral Instrument and therefore invites jurisdictions, which have not yet joined that instrument, to sign it. Denmark further stated that it invites jurisdictions to initiate bilateral treaty negotiations, if a jurisdiction does not plan to sign the Multilateral Instrument, but wants its treaty with Denmark in line with the Action 14 Minimum Standard.

58. In that regard, and for the treaties identified above that do not contain Article 25(1), first and/or sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, Denmark has not put a plan in place for their renegotiation nor has it taken any actions to initiate such negotiations.

59. Regardless, Denmark reported it will seek to include Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report in all of its future tax treaties.

### Conclusion

	Areas for improvement	Recommendations
	<p>Five out of 80 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, either as it read prior to the adoption of the Action 14 final report or as amended by that report. Of these five treaties:</p> <ul style="list-style-type: none"> <li>• One has been modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.</li> <li>• Two are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.</li> <li>• Two will not be modified by the Multilateral Instrument to include such equivalent. For these treaties no actions have been taken nor are planned to be taken.</li> </ul>	<p>For one of the two remaining treaties that will not be modified by the Multilateral Instrument to include equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Denmark should without further delay initiate negotiations to include the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> <li>a. as amended by the Action 14 final report; or</li> <li>b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.</li> </ol> <p>Specifically with respect to the treaty with the former USSR that Denmark continues to apply to Belarus, Denmark should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision.</p>
[B.1]	<p>Two out of 80 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, due to a protocol provision can be shorter than three years. Of these two treaties:</p> <ul style="list-style-type: none"> <li>• One is expected to be superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).</li> <li>• 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 planned to be taken.</li> </ul>	<p>Specifically with respect to the treaty with the former USSR that Denmark continues to apply to Belarus, Denmark should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision.</p>
	<p>Two out of 80 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties:</p> <ul style="list-style-type: none"> <li>• One has been modified by the Multilateral Instrument to include both the first and second sentence of Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.</li> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, no actions have been taken nor are planned to be taken.</li> </ul>	<p>For the treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Denmark should without further delay request the inclusion of the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> <li>a. as amended in the Action 14 final report; or</li> <li>b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.</li> </ol>

## **[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).

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

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

### ***Domestic bilateral consultation or notification process in place***

61. As discussed under element B.1, out of Denmark's 80 treaties, three currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, 26 of the remaining 77 treaties have been or will, upon entry into force for the treaties concerned, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

62. For the remaining 51 treaties that currently do or will not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, Denmark reported that up to 31 July 2017 it has not introduced a documented bilateral consultation or notification process, which allows the other competent authority concerned to provide its views on the case when Denmark's competent authority considers the objection raised in the MAP request not to be justified.

### ***Recent developments***

63. Denmark reported that since 1 August 2017 it has introduced and formalised a bilateral consultation and notification process to be applied when its competent authority arrives at the preliminary conclusion that the objection raised in a MAP request is not justified. This process has been documented in a separate chapter within the internal MAP guidance of Denmark's competent authority, which each case handler is obliged to follow. Where such a case handler arrives at the conclusion that the objection raised in a MAP request is not justified, the head of the competent authority has to co-sign or approve the application of the consultation and notification process and the related correspondence with the other competent authority concerned.

### ***Practical application***

#### *Period 1 January 2015-31 July 2017 (stage 1)*

64. From the 2016 MAP Statistics provided by Denmark it follows that there were no cases with the outcome “objection not justified”. Denmark, however, reported that in the period 1 January 2015-31 July 2017 its competent authority denied access to MAP in one case under a bilateral tax treaty and in three cases under the EU Arbitration Convention due to incomplete information provided by the taxpayer. Denmark further reported that all four treaty partners were notified about the MAP requests and of Denmark’s position concerning the lack of information. Three of the four decisions were appealed in court and all were made prior to 2016. The court case is discussed in more detail under element B.6. Denmark further reported that it notified the relevant treaty partners after the final judgement of the court to grant access, which Denmark did. These cases were closed in 2018, when the court in Denmark ruled that the adjustments underlying the corrections that were made in Denmark had to be revoked. For the fourth case, this case was reported as “access denied” under the MAP Statistics Reporting Framework.

65. All peers that provided input indicated not being aware of or that it had been consulted/notified of a case where Denmark’s competent authority considered the objection raised in a MAP request as not being justified in the period 1 January 2015-31 July 2017.

#### *Period 1 August 2017-28 February 2019 (stage 2)*

66. The 2017 and 2018 MAP statistics submitted by Denmark show that three of its MAP cases were closed with the outcome “objection not justified” (all in 2018). In all three cases, the treaty partner made the relevant decision.

67. Denmark reported that in the period 1 August 2017-28 February 2019 its competent authority has for two of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. For both cases, the decision made thereto was in 2019 and the relevant treaty partners were notified of the decision.

68. Almost all of the peers that provided input during stage 1 also indicated that since 1 August 2017 they are not being aware of any cases for which Denmark’s competent authority considered the objection raised in a MAP request as not justified. Concerning the two cases for which Denmark’s competent authority in 2019 considered the objection raised by the taxpayer in its MAP request as not being justified, one of the relevant peers confirmed it has been notified. The other peer did not provide any input on this issue.

### ***Anticipated modifications***

69. Denmark 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.

70. 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*

71. Out of Denmark's 80 tax treaties, 54 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their competent authorities to make a corresponding adjustment in case a transfer pricing adjustment is made by the treaty partner.<sup>4</sup> Furthermore, 17 treaties do not contain a provision equivalent to or based on Article 9(2) of the OECD Model Tax Convention, one of which does not contain a provision on associated enterprises at all.<sup>5</sup> For the remaining nine treaties the following specifications can be made:<sup>6</sup>

- One tax 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 for that reason is considered not being equivalent thereof.
- Four tax treaties contain 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 for that reason is considered not being equivalent thereof.
- Two tax treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but whereby a corresponding adjustment is optional as the word "shall" is replaced by "may" and for that reason is considered not being equivalent thereof.
- Two tax treaties contain a provision that has similarities with Article 9(2) of the OECD Model Tax Convention, but is not the equivalent thereof as they include deviating language and for that reason is considered not being equivalent thereof.

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

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

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

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

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

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

### ***Recent developments***

#### *Bilateral modifications*

77. Denmark signed a new treaty with a treaty partner for which currently no treaty is in existence and which includes the equivalent to Article 9(2) of the OECD Model Tax Convention. This treaty so far has not yet entered into force. Denmark also signed a new treaty with a treaty partner to replace the 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 these treaties have been reflected in the analysis above where they have relevance.

#### *Multilateral Instrument*

78. Denmark signed the Multilateral Instrument and has deposited its instrument of ratification on 30 September 2019. The Multilateral Instrument has for Denmark entered into force on 1 January 2020.



79. 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 treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect, if one or both of the signatory states to the tax treaty reserved, pursuant to Article 17(3), the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, or not to apply Article 17(2) in the absence of such equivalent, on the basis that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification of whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. 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).

80. Denmark has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 26 treaties identified in paragraph 71 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Denmark listed 19 of them as a covered tax agreement under the Multilateral Instrument and included seven of them in the list of treaties for which Denmark has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Furthermore, Denmark did not make a notification on the basis of Article 17(4) for the remaining 12 treaties. Of the relevant 12 treaty partners, five are not a signatory to the Multilateral Instrument. The remaining seven treaty partners have listed their treaty with Denmark as a covered tax agreement under that instrument and did not include this treaty in the list of treaties for which they made a reservation on the basis of Article 17(3).

81. Of the last seven treaties referred to above, two 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 Denmark 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 five 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).

### *Application of legal and administrative framework in practice*

#### *Period 1 January 2015-31 July 2017 (stage 1)*

82. Denmark reported that it has in the period 1 January 2015-31 July 2017 not denied access to MAP on the basis that the case concerned was a transfer pricing case.

83. All peers that provided input indicated not being aware of a denial of access to MAP by Denmark in the period 1 January 2015-31 July 2017 on the grounds that the case concerned was a transfer pricing case.

#### *Period 1 August 2017-28 February 2019 (stage 2)*

84. Denmark reported that since 1 August 2017 it has received numerous MAP request relating to transfer pricing. For none of these cases it denied access to MAP on the basis that the case concerned was a transfer pricing case. In one case, such access was denied, on the ground that the MAP request did not contain the required information and not because it was a transfer pricing case.

85. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Denmark fully reflects their experience with Denmark since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer mentioned it had received a MAP request concerning transfer pricing with Denmark and that access was given in this case, as well as that it did not experience any issues with Denmark regarding access to MAP.

### *Anticipated modifications*

86. Denmark 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, Denmark 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.

87. 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***

88. None of Denmark’s 80 tax treaties allow competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Denmark do not contain a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

89. Denmark reported that it considers that 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. Denmark’s MAP guidance, however, does not specifically address whether taxpayers have access to MAP in cases concerning the application of anti-abuse provisions.

### ***Recent developments***

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

### ***Practical application***

#### *Period 1 January 2015-31 July 2017 (stage 1)*

91. Denmark reported that in the period 1 January 2015-31 July 2017 it has not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received in that period.

92. All peers that provided input indicated not being aware of a denial of access to MAP by Denmark in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2015-31 July 2017.

#### *Period 1 August 2017-28 February 2019 (stage 2)*

93. Denmark reported that since 1 August 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 since that date.

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

### ***Anticipated modifications***

95. Denmark 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.

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

#### *Legal and administrative framework*

##### *Audit settlements*

97. Denmark reported that under its domestic legislation the Tax Administration and taxpayers can enter into a settlement agreement during the course of or after ending of an audit. In this respect, Denmark clarified that during a tax audit the taxpayer can admit that there were mistakes in the tax return and therefore agree with the outcome of the tax audit. The tax auditor will then ask the taxpayer to submit a request for a reassessment of the taxable income in accordance with the outcome of the tax audit. The legal basis for such a reassessment request or audit settlements can be found in Article 26(2) of the Tax Administration Act, which stipulates that the taxpayer can ask for a reassessment of its taxable income according to its discussions/agreement with the tax auditor (“ordinary assessment”). Such request has, pursuant to Article 26(2), to be submitted no later than 1 May of the fourth year after the end of the relevant fiscal year or, pursuant to Article 26(5), of the sixth year after the end of the relevant fiscal year for controlled transactions with related parties or income attribution to permanent establishments.

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

##### *Administrative or statutory dispute settlement/resolution process*

99. Denmark reported that it has no administrative or statutory dispute settlement or resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

#### *Recent developments*

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

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

101. Denmark reported that in the period 1 January 2015-31 July 2017 it received in approximately six cases a MAP request for cases where the Danish Tax Administration and taxpayers have entered into an audit settlement, all of which have been granted access to MAP.

102. All peers that provided input have indicated not being aware of a denial of access to MAP by Denmark in cases of audit settlements in the period 1 January 2015-31 July 2017. One peer explicitly confirmed that Denmark granted access to MAP after an audit settlement.

*Period 1 August 2017-28 February 2019 (stage 2)*

103. Denmark reported that since 1 August 2017 it has also not 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.

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

***Anticipated modifications***

105. Denmark 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.

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

***Legal framework on access to MAP and information to be submitted***

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

108. Denmark reported that within two months from the receipt of a MAP request from the taxpayer, or a notification of a submitted MAP request by the other competent authority concerned, the case handler of Denmark's competent authority will review the MAP request and analyses whether it includes the required minimum information as specified in Denmark's MAP guidance (which for the EU Arbitration Convention concerns the list information as included in section 5(a) of the Code of Conduct to that convention). If the case handler concludes that any information is missing, he will reach out to the taxpayer and asks for the missing information. Such request has to be made within two months from receipt of the MAP request, or within two months from the notification of such request by the competent authority of its treaty partner. In this respect, Denmark mentioned that since 2016 its competent authority started to set a time limit for taxpayers to reply to a request for information. Such time limit is generally 1-3 months and is dependent on the complexity of the requested information. If the taxpayer does not provide the requested information within this timeframe, the case handler reminds the taxpayer to provide the outstanding information within 14 days.

109. Further to the above, Denmark reported that if that information is then still not submitted, its competent authority then will pursue as follows:

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

### ***Recent developments***

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

### ***Practical application***

#### *Period 1 January 2015-31 July 2017 (stage 1)*

111. Denmark reported it provides access to MAP in all cases where taxpayers have complied with the information and documentation required by its competent authority and as set out in its MAP guidance. It further reported that in the period 1 January 2015-31 July 2017 it has denied access to MAP in four cases where taxpayers have not complied with the information and documentation requirements. This concerned three cases under the EU Arbitration Convention and one case under a tax treaty (see also element B.2).

112. With respect to the three cases for which access was denied under the EU Arbitration Convention, Denmark reported that its competent authority is very strict on the information and documentation requirements, as set out in section 5(a) of the Code of Conduct to that convention and as adopted in Denmark's MAP guidance. Denmark noted that access was denied for a request concerning three tax jurisdictions with regard to the EU Arbitration Convention since the taxpayer had not specified the disputed amounts per jurisdiction and therefore not provided the minimum information according to section 5(a)(ii) of the Code of Conduct. The MAP request was based on a Danish transfer pricing adjustment

concerning compensation to a Danish entity for closing down their business. Because of lack of information from the taxpayer during the audit process, the adjustment entailed a lump-sum transfer pricing adjustment without specifying any specific related party to the transaction. The taxpayer appealed the denial of access to MAP in front of the Western High Court. The taxpayer argued that the case has been presented correctly within the 3-year deadline of Article 6(1) of the EU Arbitration Convention, all the more since that provision does not contain any special requirements on which information should be presented in a MAP request. Section 5(a) of the Code of Conduct contains a list of minimum information to be provided by the taxpayer of which paragraph (ii) states: “details of the relevant facts and circumstances of the case (including details of the relations between the enterprise and the other parties to the relevant transactions)”, but no express requirements for the amounts to be apportioned out. The Western High Court agreed with the taxpayer that Denmark’s competent authority could not deny access to MAP under the convention. The court thereby pointed out that neither Article 6(1) of the EU Arbitration Convention nor Section 5(a) of the Code of Conduct or Denmark’s MAP guidance contain any specific requirements for the adjustment amount to be apportioned to certain related parties. Against the information presented in the court case, the court ruled that there was not sufficient basis for rejecting the request on the basis of lack of information and decided that Denmark’s competent authority should initiate the proceedings under the EU Arbitration Convention.

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

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

*Period 1 August 2017-28 February 2019 (stage 2)*

115. Denmark reported that since 1 August 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. In one case, however, access to MAP under the

EU Arbitration Convention was denied, due to the taxpayer not providing the required information in its MAP request under section 5(a) of the Code of Conduct. Since the taxpayer also submitted for this case a MAP request under the applicable tax treaty, access to MAP was granted under this treaty and the case is under consideration.

116. Almost all peers that provided input during stage 1 stated in stage 2 that the update report provided by Denmark fully reflects their experience with Denmark since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer specified that in all transfer pricing cases it has with Denmark, access to MAP was granted where taxpayers have complied with the information and documentation requirements.

117. Specifically with respect to the peer input reflected in paragraph 114 above, both peers further shared their experience with Denmark since 1 August 2017. The first peer noted that in addition to its peer input in stage 1, in the fourth quarter of 2017 Denmark's competent authority denied access to the MAP process under the EU Arbitration Convention due to taxpayers not complying with documentation requirements. The peer's competent authority considered that all documentation requirements were complied with, as the taxpayer provided all available information and for that reason the case should be referred to the arbitration procedure. The peer further reported that the case is currently pending before courts in Denmark in order to enforce access to the arbitration procedure. The second peer mentioned that the case it referred to in stage 1 was finally accepted by Denmark's competent authority and has in the meantime been resolved with an outcome that fully eliminated double taxation.

118. With respect to the input provided by the first peer, Denmark provided for a response. It confirmed that for the case being referred to by the peer access to the MAP process was denied due to the taxpayers not providing the required information or other facts to understand the arm's length character of the intercompany transactions between the associated enterprises concerned. Denmark clarified that for the denial of access a court case is pending in Denmark.

### *Anticipated modifications*

119. Denmark 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.

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



### ***Current situation of Denmark's tax treaties***

121. Out of Denmark's 80 tax treaties, 63 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.<sup>7</sup> Furthermore, one tax treaty contains a provision similar to Article 25(3), second sentence, of the OECD Model Tax Convention, but this provision refers to the *consultation regarding cases not provided for in the convention*, whereas the second sentence of Article 25(3) refers to the *consultation for the elimination of double taxation in cases not provided for in the convention*. As the particular tax treaty provides for a scope of application, that is at least as broad as the second sentence of Article 25(3), it is considered to be in line with element B.7.

122. The remaining 16 treaties do not contain a provision that is based on or is the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.<sup>8</sup> Eight of these 16 treaties have a limited scope of application.<sup>9</sup> 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.

### ***Peer input***

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

124. For the 16 tax treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, three peers provided input and mentioned that their treaties with Denmark do not meet the requirements under element B.7. Two of these peers mentioned not having commenced discussions with Denmark to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, although one peer mentioned that the treaty will be modified via the Multilateral Instrument. This is indeed the case for this peer's treaty with Denmark (see below). Another peer indicated that it had not any contacts so far with Denmark or has any specific plan in place to update its treaty with Denmark.

### ***Recent developments***

#### ***Bilateral modifications***

125. Denmark signed a new treaty with a treaty partner for which currently no treaty is in existence. This treaty contains a provision that is equivalent to Article 25(3), second



sentence, of the OECD Model Tax Convention. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

### *Multilateral Instrument*

126. Denmark recently signed the Multilateral Instrument and has deposited its instrument of ratification on 30 September 2019. The Multilateral Instrument has for Denmark entered into force on 1 January 2020.

127. 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 both notified, pursuant to Article 16(6)(d)(ii), the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

128. In regard of the eight 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, Denmark listed all of them as a covered tax agreement under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). All relevant eight treaty partners are a signatory to the Multilateral Instrument, one of which did not list its agreement with Denmark as a covered tax agreement under that instrument. All remaining seven treaty partners did also make a notification and also made a notification on the basis of Article 16(6)(d)(ii).

129. Of the seven treaty partners mentioned above, four have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Denmark and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified four 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.

### *Peer input*

130. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Denmark. One of these peers concerns 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. This peer mentioned that its treaty with Denmark will be modified by the Multilateral Instrument to include the required provision, which conforms with the above analysis. The other peers for which the treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, did not provide input.

### *Anticipated modifications*

131. As described in the Introduction, Denmark reported that for those tax treaties that do meet one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, it disagrees with having an obligation to initiate bilateral tax treaty negotiations to bring these treaties in line with the requirements under this standard. Denmark stated that it has chosen to implement the elements of the Action 14 Minimum Standard via the Multilateral Instrument and therefore invites jurisdictions, which have not yet joined that instrument, to sign it. Denmark further stated that it invites jurisdictions to initiate bilateral treaty negotiations, if a jurisdiction does not plan to sign the Multilateral Instrument, but wants its treaty with Denmark in line with the Action 14 Minimum Standard.

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

133. In that regard, and for the remaining comprehensive treaty identified above that does not contain Article 25(3), second sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument, Denmark reported that it has been informed by the relevant treaty partner that it will update its notifications under the Multilateral Instrument, following which the treaty with Denmark will be modified to include the second sentence. Consequently, there will not be any comprehensive treaties left for which bilateral negotiations are necessary.

134. In addition, Denmark reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future comprehensive tax treaties.

### *Conclusion*

	Areas for improvement	Recommendations
[B.7]	-	-

## **[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.

135. Information on a jurisdiction’s MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction’s MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction’s MAP Guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

### *Denmark's MAP guidance*

136. Denmark has issued rules, guidelines and procedures on the MAP process and how it conducts that process in practice in the public legal guidance of the Danish Customs and Tax Administration. This guidance is available at:

<https://skat.dk/skat.aspx?oid=124&chk=216701>  
(Legal guide in Danish)

137. This public legal guidance includes two sections in relation to MAP (hereinafter referred to as “**MAP guidance**”). The first section provides general MAP guidance (Section C.F.8.2.2.25) related to the MAP articles of Denmark’s tax treaties and the second section provides additional guidance with regard to transfer pricing issues within MAP (Section C.D.11.15). Both sections can in English be found at:

<https://skat.dk/skat.aspx?oid=16277&vid=216871&lang=us>  
(C.F.8.2.2.25)

<https://skat.dk/data.aspx?oid=16278&vid=216872&lang=us>  
(C.D.11.15)

138. Furthermore, Denmark also includes on the website of the Danish Tax Administration information on transfer pricing, with a specific section on MAP.

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

<b>01. Mutual Agreement Procedure (MAP) Cases</b>	<ul style="list-style-type: none"> <li>• Principal rule</li> <li>• International juridical double taxation</li> <li>• International economic double taxation</li> <li>• MAP at the request of a taxpayer</li> <li>• MAP on the interpretation of issues of a general nature</li> <li>• MAP on the elimination of double taxation in any other case</li> <li>• Complaints-handling under national law</li> </ul>
<b>02. The Taxpayer's Request for MAP</b>	<ul style="list-style-type: none"> <li>• Basis for the taxpayer's request</li> <li>• Submission of the request including the contact information of the competent authority</li> <li>• Time limit for the submission of a request</li> <li>• Procedural requirements including the specific documentation and information that should be included in the Map request</li> <li>• Fees</li> </ul>
<b>0.3 Function of the Competent Authority</b>	<ul style="list-style-type: none"> <li>• Approval of the taxpayer's request</li> <li>• Termination of the case without initiating the MAP</li> <li>• Initiation of the MAP</li> <li>• Deferred payment of tax and interest</li> <li>• Discussions with the competent authority of the other country</li> <li>• Consent of the taxpayer to the agreement</li> <li>• Arbitration provision</li> </ul>

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

<b>01. How to Avoid Transfer Pricing Double Taxation</b>	<b>a. What is Transfer Pricing Double Taxation?</b> <ul style="list-style-type: none"> <li>i. Economic double taxation</li> <li>ii. How double taxation arises</li> <li>iii. Where adjustments are made to the taxable income</li> </ul>
<b>02. How to Cancel Transfer Pricing Double Taxation</b>	<b>b. Reopening of the tax assessment</b> <ul style="list-style-type: none"> <li>i. Reopening</li> <li>ii. Where the authorities agree</li> <li>iii. Where the authorities disagree</li> </ul> <hr/> <b>c. Double taxation conventions</b> <ul style="list-style-type: none"> <li>i. Presenting the case</li> <li>ii. Negotiations commitments</li> <li>iii. Result of the negotiations</li> </ul> <hr/> <b>c. EU Arbitration Convention</b> <ul style="list-style-type: none"> <li>i. Scope of the convention</li> <li>ii. Submitting a case including required minimum information</li> <li>iii. Advisory commission</li> <li>iv. Result of the discussions</li> </ul> <hr/> <b>d. Advance Pricing Agreements</b>

141. The above-described MAP guidance includes detailed information on the availability and the use of MAP in Denmark and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction’s MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.<sup>10</sup> Although Denmark’s MAP Guidance is considered comprehensive, some subjects are not specifically discussed. This concerns whether MAP is available in cases of audit settlements, the application of anti-abuse provisions or multilateral MAPs. In addition, Denmark’s MAP guidance also not specifies: (a) whether taxpayers can request for the multi-year resolution of recurring issues through MAP, (b) the consideration of penalties in MAP and (c) the process how MAP agreements are implemented in terms of steps to be taken and timing of these steps, including any actions to be taken by taxpayers (if any).

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

### ***Information and documentation to be included in a MAP request***

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

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

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

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

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

145. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed

on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance. This agreed guidance is shown below. Denmark’s MAP Guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

### *Recent developments*

146. Denmark reported that in January 2019 it has updated its MAP guidance to state in section C.D.11.15.2.2 that access to MAP is available in cases of audit settlements (see element B.10 for a further discussion). Furthermore, an English translation of both sections on MAP as referred to in paragraph 137 has been made available. These can be found at:

<https://skat.dk/skat.aspx?oid=16277&vid=216871&lang=us>  
(section C.F.8.2.2.25)

<https://skat.dk/data.aspx?oid=16278&vid=216872&lang=us>  
(section C.D.11.15)

### *Anticipated modifications*

147. Denmark 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.

148. 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.<sup>11</sup>

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

149. Denmark’s MAP guidance is included in the public legal guidance of the Danish Customs and Tax Administration, which can be found at:

<https://skat.dk/skat.aspx?oid=124&chk=216359>

150. Furthermore, an English translation of both sections on MAP as referred to in paragraph 137 has been made available. These can be found at:

<https://skat.dk/skat.aspx?oid=16277&vid=216871&lang=us>  
(section C.F.8.2.2.25)

<https://skat.dk/data.aspx?oid=16278&vid=216872&lang=us>  
(section C.D.11.15)

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

***MAP profile***

152. The MAP profile of Denmark is published on the website of the OECD, which was last updated in February 2020.<sup>12</sup> This MAP profile is complete and often with detailed information. This profile also includes external links which provide extra information and guidance where appropriate.

***Recent developments***

153. As will be further discussed in element C.6, Denmark updated its MAP profile to reflect its position on using MAP arbitration in its tax treaties.

***Anticipated modifications***

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

***Conclusion***

	Areas for improvement	Recommendations
[B.9]	-	-



## [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.

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

### *MAP and audit settlements in the MAP guidance*

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

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

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

158. As previously mentioned under element B.5, Denmark 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 address this issue.

159. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement or resolution processes in Denmark, which can be clarified by the fact that such process is not in place. However, one peer assumed that Denmark has such a process based on the information included in Denmark's MAP profile, but mentioned not being notified hereof by Denmark.

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

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

### ***Recent developments***

161. Denmark reported that in January 2019 it updated its MAP guidance to clarify that taxpayers have access to MAP in cases where the Danish Tax Authorities and the taxpayer entered into an audit settlement.

### ***Anticipated modifications***

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

### ***Conclusion***

	Areas for improvement	Recommendations
[B.10]	-	-

## **Notes**

1. These three treaties include the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
2. These 51 treaties include the tax treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic and the tax treaty with former Yugoslavia that Denmark continues to apply to Montenegro.
3. These eight treaties include the tax treaty with the former Netherlands Antilles that Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius).
4. These 54 treaties include the tax treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic and the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
5. These 17 treaties include the tax treaty with the former USSR that Denmark continues to apply to Belarus, the tax treaty with former Yugoslavia that Denmark continues to apply to Montenegro and the tax treaty with the former Netherlands Antilles that Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius).
6. In the stage 1 peer review report, reference was made to seven treaties. Following the peer review process of other assessed jurisdictions, two other treaties were identified that does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017). However, a new treaty that entered into force now contains such equivalent, which was not the case for the treaty that has been replaced. Furthermore, for the treaties with Guernsey, Isle of Man and Jersey a separate treaty was identified that is considered to contain such equivalent also. Consequently, the number of treaties not containing Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is 17, while the number of treaties not containing the full equivalent is nine.

7. These 63 treaties include the tax treaty with the former USSR that Denmark continues to apply to Belarus, the tax treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic, the tax treaty with former Yugoslavia that Denmark continues to apply to Montenegro and the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
8. These 16 treaties include the tax treaty with the former Netherlands Antilles that Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius).  
  
In the stage 1 peer review report, reference was made to 15 treaties. Following the peer review process of other assessed jurisdictions, another treaty was identified that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Consequently, the number of treaties not containing this equivalent should be 16.
9. These eight treaties concern treaties with Aruba, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey and the agreement with the former Netherlands Antilles Islands that Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba).
10. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
11. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).
12. Available at: [www.oecd.org/tax/dispute/country-map-profiles.htm](http://www.oecd.org/tax/dispute/country-map-profiles.htm).

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## *Part C*

### **Resolution of MAP cases**

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

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

163. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also contain the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

#### ***Current situation of Denmark’s tax treaties***

164. Out of Denmark’s 80 tax treaties, 77 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.<sup>1</sup>

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

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

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

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

167. For the three treaties identified above that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, only one of the relevant peers provided input. This peer indicated that it had not any contacts so far with Denmark or has any specific plan in place to update its treaty with Denmark.

### *Recent developments*

#### *Bilateral modifications*

168. Denmark signed a new treaty with a treaty partner for which currently no treaty is in existence. This treaty contains a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

#### *Multilateral Instrument*

169. Denmark signed the Multilateral Instrument and has deposited its instrument of ratification on 30 September 2019. The Multilateral Instrument has for Denmark entered into force on 1 January 2020.

170. 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 tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

171. In regard of the three tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Denmark listed all as a covered tax agreement under the Multilateral Instrument, but only for one of them did it make, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its tax treaty with Denmark under that

instrument and also made a notification on the basis of Article 16(6)(c)(i). Therefore, at this stage, the Multilateral 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.

### *Peer input*

172. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Denmark. None of this input, however, relates to element C.1, which can be clarified by the fact that for these peers the treaty is already in line with the requirements under this element. The other peers for which the treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, did not provide input.

### *Anticipated modifications*

173. As described in the Introduction, Denmark reported that for the tax treaties that do not meet one or more elements of the Action 14 Minimum Standard, it disagrees with having an obligation to initiate bilateral tax treaty negotiations to bring these treaties in line with the requirements under this standard. Denmark stated that it has chosen to implement the elements of the Action 14 Minimum Standard via the Multilateral Instrument and therefore invites jurisdictions, which have not yet joined that instrument, to sign it. Denmark further stated that it invites jurisdictions to initiate bilateral treaty negotiations, if a jurisdiction does not plan to sign the Multilateral Instrument, but wants its treaty with Denmark in line with the Action 14 Minimum Standard.

174. In that regard, and for the remaining two treaties identified above that do not contain Article 25(2), first sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument, Denmark has not put a plan in place for their renegotiation nor has it taken any actions to initiate such negotiations.

175. Regardless, Denmark 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>Three out of 80 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these three treaties:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Two will not be modified by the Multilateral Instrument to include the required provision. For these treaties no actions have been taken nor are planned to be taken.</li> </ul>	<p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Denmark should without further delay request the inclusion of the required provision via bilateral negotiations.</p>



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

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

176. 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*

177. Statistics regarding all tax treaty related disputes concerning Denmark are published on the website of the OECD as of 2007.<sup>2</sup> Denmark also publishes MAP statistics regarding transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.<sup>3</sup>

178. 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. Denmark provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Denmark and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively and should be considered jointly for an understanding of the MAP caseload of Denmark.<sup>4</sup>

179. With respect to post-2015 cases, Denmark reported that for the years 2016-18 it matched its MAP statistics with all of its treaty partners. While for 2016 and 2017 Denmark has not reached out to the treaty partners with a view to have their MAP statistics matching, but mentioned it responded to requests from treaty partners.

180. Eight peers provided input on the matching of MAP statistics with Denmark. Of these eight, seven confirmed that they were able to match their statistics with Denmark for the years 2016-18 or for any individual year. One of these seven peers mentioned that there were no significant issues with matching, while another peer specified that it had a very efficient communication with quick responses in matching the MAP statistics. The eighth peer mentioned it did not match its 2016 and 2017 MAP statistics with Denmark, but that they did so for the year 2018.

181. Based on the information provided by Denmark’s MAP partners, its post-2015 MAP statistics for the years 2016-18 actually match those of its treaty partners as reported by the latter.

### *Monitoring of MAP statistics*

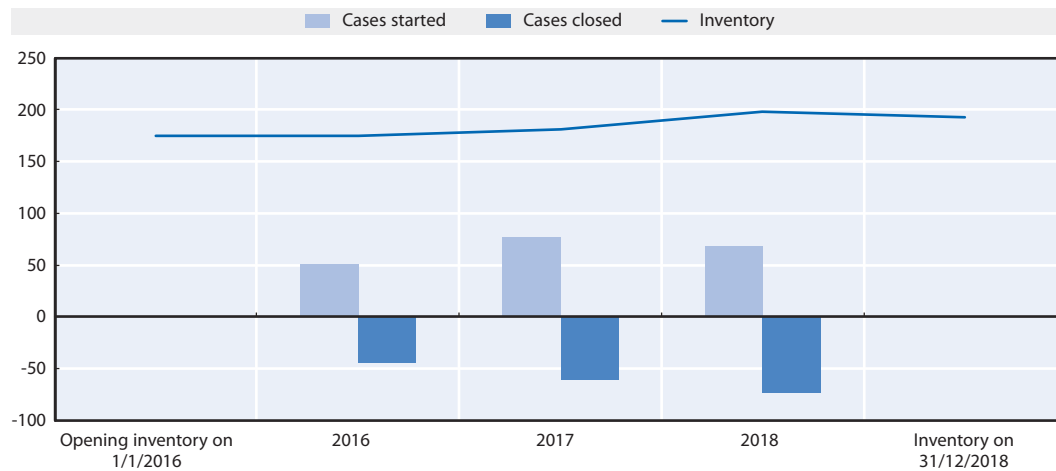
182. Denmark reported that it has an internal monitoring system in place, which keeps track of new MAP requests and the time to resolve MAP cases. In this respect, Denmark mentioned that it in general uses the timeframes for MAP cases as described in OECD’s Manual on Effective Mutual Agreement Procedures (MEMAP) and the Code of Conduct to the EU Arbitration Convention.

### *Analysis of Denmark's MAP caseload*

183. The analysis of Denmark's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018.

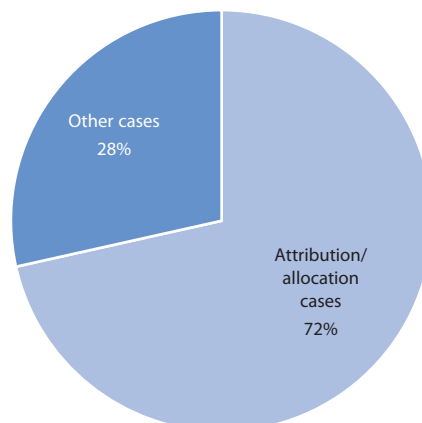
184. Figure C.1 shows the evolution of Denmark's MAP caseload over the Statistics Reporting Period.<sup>5</sup>

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



185. At the beginning of the Statistics Reporting Period, Denmark had 175 pending MAP cases, of which 136 were attribution/allocation cases and 39 other MAP cases.<sup>6</sup> At the end of the Statistics Reporting Period, Denmark had 193 MAP cases in inventory, of which 138 were attribution/allocation cases and 55 other MAP cases. Consequently, Denmark's pending MAP cases have increased by 10% during the Statistics Reporting Period. This increase can be broken down into an increase of 1% for attribution/allocation cases and an increase by 41% for other cases. The breakdown of the end inventory can be shown as in Figure C.2.

Figure C.2. End inventory on 31 December 2018 (193 cases)

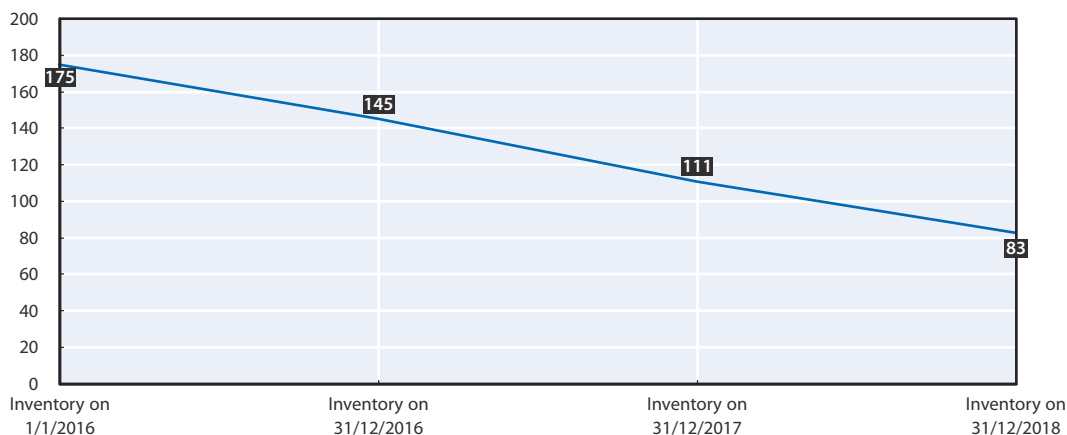


### *Pre-2016 cases*

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

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

Pre-2016 cases



187. At the beginning of the Statistics Reporting Period, Denmark's MAP inventory of pre-2016 MAP cases consisted of 175 cases, 136 of which were attribution/allocation cases and 39 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 83 cases, consisting of 57 attribution/allocation cases and 26 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

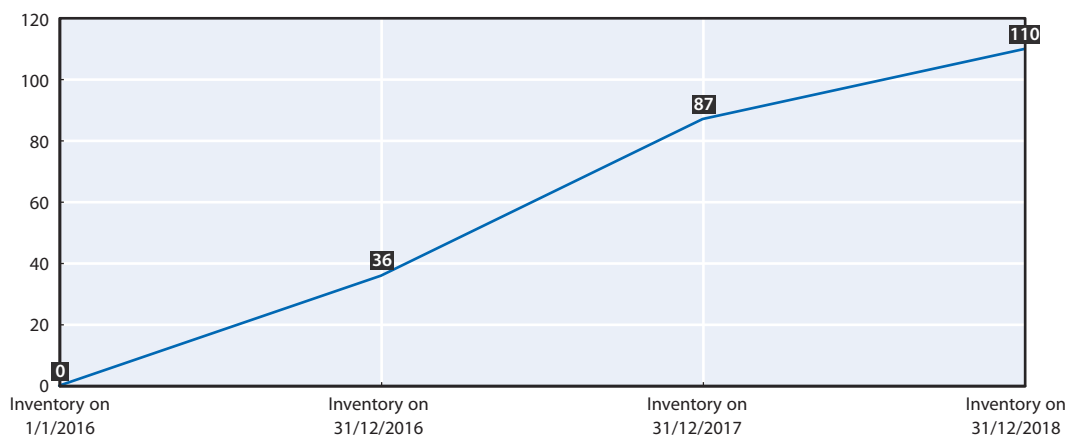
	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	-15%	-27%	-32%	-58%
Other cases	-23%	-10%	-4%	-33%

### Post-2015 cases

188. Figure C.4 shows the evolution of Denmark's post-2015 MAP cases over the Statistics Reporting Period.

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

Post-2015 cases



189. In total, 195 MAP cases started during the Statistics Reporting Period, 145 of which concerned attribution/allocation cases and 50 other cases. At the end of this period the total number of post-2015 cases in the inventory was 110 cases, consisting of 81 attribution/allocation cases and 29 other cases. Conclusively, Denmark closed 85 post-2015 cases during the Statistics Reporting Period, 64 of them being attribution/allocation cases and 21 other cases. The total number of closed cases represents 44% of the total number of post-2015 cases that started during the Statistics Reporting Period.

190. 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.

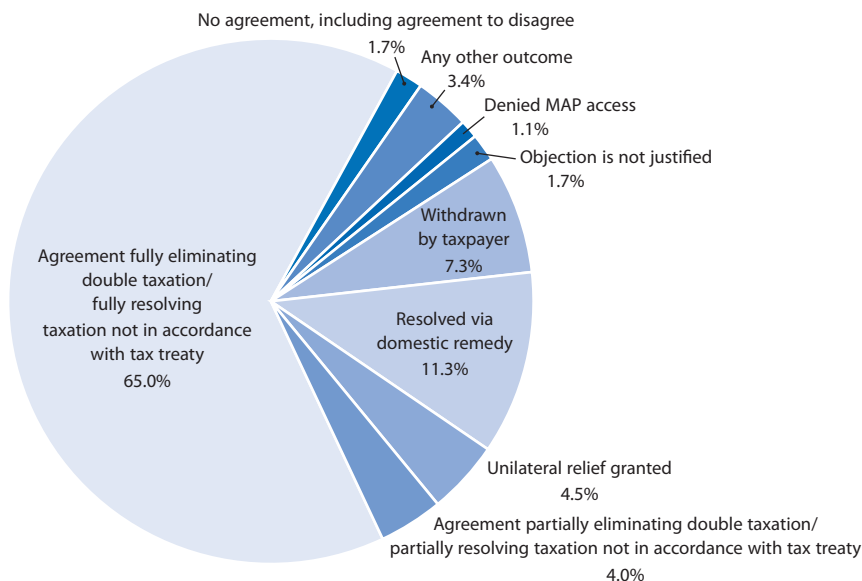
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	Cumulative % of cases closed compared to cases started over the three years (2016-18)
Attribution/allocation cases	19%	32%	75%	44%
Other cases	42%	43%	41%	42%

### *Overview of cases closed during the Statistics Reporting Period*

#### *Reported outcomes*

191. During the Statistics Reporting Period Denmark closed 177 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed during 2016, 2017 and 2018 (177 cases)



192. Figure C.5 shows that during the Statistics Reporting Period, 115 out of the 177 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*

193. In total, 143 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 (71%)
- resolved via domestic remedy (8%)
- unilateral relief granted (6%).

#### *Reported outcomes for other cases*

194. In total, 34 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 (41%)
- resolved via domestic remedy (26%)
- withdrawn by taxpayers (18%)
- objection not justified (6%).

#### *Average timeframe needed to resolve MAP cases*

##### *All cases closed during the Statistics Reporting Period*

195. The average time needed to close MAP cases during the Statistics Reporting Period was 25.25 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	143	26.10
Other cases	34	21.69
All cases	177	25.25

##### *Pre-2016 cases*

196. For pre-2016 cases, Denmark reported that on average it needed 39.39 months to close 79 attribution/allocation cases and 47.23 months to close 13 other cases. This resulted in an average time needed of 40.50 months to close 92 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Denmark used as:

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

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

### *Post-2015 cases*

197. For post-2015 cases, Denmark reported it needed 9.69 months to close 64 attribution/allocation cases and 5.88 months to close 21 other cases. This resulted in an average time needed of 8.75 months to close 85 post-2015 cases.

### *Peer input*

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

### *Recent developments*

199. In the stage 1 peer review report Denmark was under element C.2 recommended to seek to resolve the remaining 72% of its post-2015 MAP cases that were pending on 31 December 2016 (36 cases), such within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

200. With respect to this recommendation, Denmark reported it has increased staff in charge of handling attribution/allocation cases from 11 to 13 full-time equivalents. Denmark also reported that in 2018 it has held more face-to-face meetings with its treaty partners as compared to 2017: 21 v 17 meetings. Furthermore, Denmark specified that for the team that handles other MAP cases it has introduced a specific spreadsheet to monitor its MAP cases as to their progress, thereby using a traffic-light system.

201. In view of the addition of resources in 2016 for the team that handles other cases and in 2018 for the team that handles attribution/allocation cases, Denmark reported that it has led to an increase in the number of MAP cases closed in the years 2017 and 2018. This conforms with the MAP statistics discussed above, which show that each year the number of cases closed increased with 25% and 20% respectively. However, as also follows from these statistics, Denmark has in the period 2016-18 not closed its MAP cases within the pursued average of 24 months. For these years, the number of post-2015 cases closed as compared to the cases that started in these years was 44%. Furthermore, its MAP inventory has increased by 10% since 1 January 2016. Element C.3 will further consider these numbers in light of the adequacy of resources.

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

*Anticipated modifications*

203. Denmark 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.

204. Adequate resources, including personnel, funding and training, are necessary to properly perform the competent authority function and to ensure that MAP cases are resolved in a timely, efficient and effective manner.

*Description of Denmark's competent authority**Organisation of the competent authority*

205. Under the treaties Denmark entered into, the competent authority function is assigned to the Minister of Taxation. By Order No. 1029 of 24 October 2005, this function was delegated to the Danish Customs and Tax Administration, which is an organisational unit within the Danish Ministry of Taxation.<sup>7</sup> Since July 2018 the Danish Customs and Tax Administration has been split into seven different agencies, where it is the Danish Tax Agency (Skattestyrelsen), which is responsible for the competent authority function. Within the Danish Tax Agency, two teams are responsible for handling MAP cases:

- Large Companies Department
- Law Department.

206. Within the Large Companies Department, which is part of the business area for Corporate Tax, one team is responsible for handling attribution/allocation MAP cases as well as requests for bilateral APAs. It currently consists of 13 full time employees (FTE), which is an increase of six FTE since 1 January 2016. In this respect, Denmark reported that a number of case handlers have substantial experience with transfer pricing audits, a number have several years of MAP experience and some have started gaining experience on MAP.

207. Within the Law Department, the Company, Shareholder and TP office – which is part of the business area for Legal Affairs – is responsible for handling other MAP cases. It currently consists of four part time case handlers, which is an increase since 1 January 2016. In this respect, Denmark reported that a number of the case handlers have several years' experience in handling MAP cases.

208. Concerning the training of staff in charge of MAP, specifically those handling attribution/allocation cases, Denmark reported they attend bi-annual seminars organised by the Danish Tax Agency. Topics of these seminars are: (i) updates from delegates of OECD Working Party No. 6 regarding development on the OECD Transfer Pricing Guidelines and BEPS and (ii) presentation of current tax audit issues.



### *Handling and resolving MAP cases*

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

210. Concerning attribution/allocation cases, Denmark reported that when a MAP request is submitted in Denmark, it will be assigned to a case handler within one or two days.<sup>8</sup> This case handler is then the main responsible person and has to inform the other competent authority concerned of the request submitted as soon as possible. Depending on the complexity of the case, one or two additional case handlers can be added, for example for complex cases or valuation issues. Within two months upon receipt of the request, the case handler will analyse whether all required information and documentation was submitted and, where necessary, ask for additional information. The moment all this information and documentation is submitted, the case handler will as soon as possible, within 4-6 months, issue a position paper for the other competent authority concerned, if the case under review concerns a Danish-initiated adjustment. Afterwards, the case will be further discussed via various means of communication, such as telephone calls or face-to-face meetings. For the further process, there are no specific timing steps, other than to respond as quickly as possible and to speed up processes in the preparation for a face-to-face meeting with the other competent authority concerned.

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

### *Monitoring mechanism*

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

### *Recent developments*

213. As noted in paragraphs 200-201 above, Denmark introduced several changes within its competent authority, which both concern organisational changes as well as the addition of personnel. In more detail this concerns:

- *General:* as per 1 July 2018, the Danish Customs and Tax Administration has been reorganised and split into seven different sub-agencies, one of which is the Danish Tax Agency. The departments under which the competent authority function is placed, have not changed, neither the teams that in practice handle MAP and APA cases.

- *Addition of personnel*: two full time equivalents were added to the team that handles attribution/allocation cases, bringing the total number to 13.
- *Organisational*:
  - *Attribution/allocation cases*: update to the internal MAP guidance, as well as sharing and discussion of the peers input with the team, with a view to avoid similar issues arising in the future.
  - *Other cases*: the team meets monthly to discuss all new and pending MAP cases as well as to measure progress of the cases. To this end, a specific spreadsheet has been created. Similar as for attribution/allocation cases, internal MAP guidance has been updated for those areas where peers raised issues.
- *Training*: two staff members have participated in MAP trainings hosted by the FTA MAP Forum.

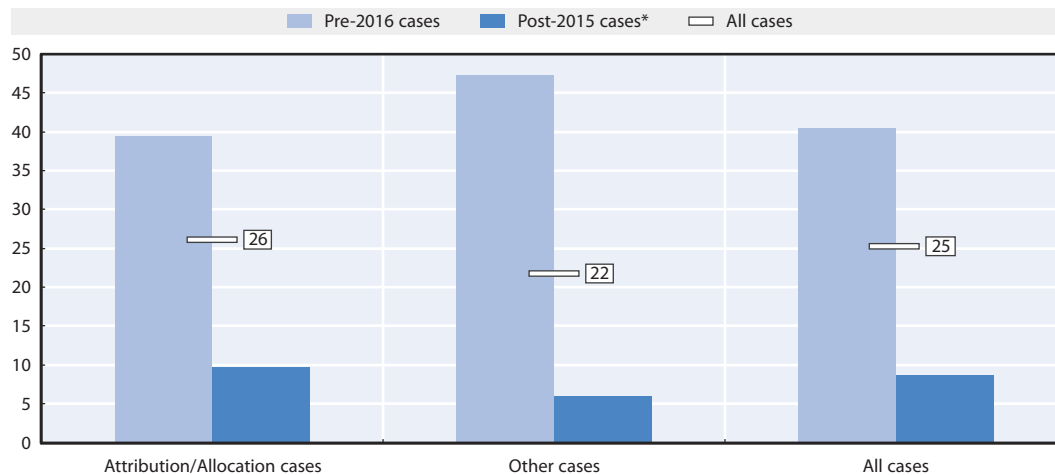
214. The changes and recent developments relating to the addition of personnel and the reorganisation have been reflected above in the description of Denmark’s competent authority.

### ***Practical application***

#### *MAP statistics*

215. As discussed under element C.2, Denmark did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average. There, however, is a difference between attribution/allocation cases and other cases, as other cases are closed within this average. This can be shown by Figure C.6.

Figure C.6. Average time (in months) to close cases in 2016-18



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

216. Based on these figures, it follows that on average it took Denmark 25.25 months to close MAP cases. The average time needed to resolve attribution/allocation cases is 26.10 months, while the average time required to resolve other cases is 21.69 months. While for other cases the average is below 24 months, for attribution/allocation cases the average is slightly above the pursued 24-month average.

217. The stage 1 peer review report of Denmark analysed the 2016 statistics and showed an average of 26.55 months, which concerns an average of 31.16 months for attribution/allocation cases and 22.93 months for other cases. It was on that basis concluded that the overall average was above the pursued average of 24 months. As Denmark then recently added personnel to the MAP function, it was recommended to closely monitor whether this addition will contribute to the resolution of MAP cases in a timely, efficient and effective manner.

218. For stage 2, the 2017 and 2018 MAP statistics are also taken into account. The average time to close MAP cases can for these years be split as follows:

	2017	2018
Attribution/Allocation cases	42.72	27.70
Other cases	17.38	13.99
All cases	28.15	26.19

219. The 2017 statistics of Denmark show that the average completion time of MAP cases increased from 26.55 to 28.15 months, whereby the average for attribution/allocation cases increased significantly, while the average for other MAP cases was reduced to be further below the 24-pursued average. However, the average for 2018 significantly lead to an actual reduction of the average, in particular for attribution/allocation cases, while for other cases the number was further reduced.

220. Furthermore – as analysed in element C.2 – the MAP inventory of Denmark significantly increased since 1 January 2016. This can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 01/01/2018	Increase in %
Attribution/allocation cases	136	145	143	138	1%
Other cases	39	50	34	55	41%
<b>Total</b>	<b>175</b>	<b>195</b>	<b>177</b>	<b>193</b>	<b>10%</b>

221. The figures in the above table show that the inventory for both type of MAP cases increased, but that the number of closed cases is around 91% of all cases started in the period 2016-18.

### *Clarifications by Denmark*

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

	Year	Number of cases resolved	Average time (in months)	Cases > 24 months
Attribution/Allocation cases	2015	25	19.00	10
	2016	27	22.20	13
	2017	51	25.21	21
	2018	65	28.53	27
Other cases	2015	19	24.50	6
	2016	17	28.42	7
	2017	9	15.83	2
	2018	8	13.99	1

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

2016

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

2017

Cases resolved	Pre-2016 cases		Post-2015 cases		All	
	Number of cases	Median time	Number of cases	Median time	Number of cases	Median time
Attribution/Allocation cases	31	36.00	20	4.64	51	23.00
Other cases	3	38.00	6	3.62	9	6.05
All cases	34	36.00	26	4.64	60	18.51

2018

Cases resolved	Pre-2016 cases		Post-2015 cases		All	
	Number of cases	Median time	Number of cases	Median time	Number of cases	Median time
Attribution/Allocation cases	27	49.00	38	12.39	65	21.96
Other cases	1	39.00	7	9.63	8	11.42
All cases	28	49.00	45	12.10	73	20.07

## ***Peer input***

### *Period 1 January 2015-31 July 2017 (stage 1)*

224. In total 20 of the 21 peers that provided input, shared their experiences in relation to their contacts with Denmark’s competent authority and in resolving MAP cases.

225. In general, most peers reported having good contacts with Denmark’s competent authority. One peer in particular reported that it has a well-established relationship with Denmark’s competent authority concerning the resolution of MAP cases, whereby contacts are generally easy and frequent via letters, e-mail, conference calls and face-to-face meetings. Another peer reported having a productive relationship with Denmark and considers its competent authority professional and willing to co-operate. The ease of liaising has been echoed by almost all other peers, thereby pointing out that there were no difficulties encountered. In addition, one peer that only has recent and very limited MAP experience with Denmark reported responsive correspondence by the Danish competent authority and also appreciated the easiness of contact. Lastly, one peer who is one of Denmark’s main MAP partners, reported having an excellent working relationship and considers the dialog between the competent authorities as collaborative and solution-oriented.

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

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

228. In addition, another peer mentioned that it has some concerns with respect to some MAP cases that were already initiated in 2012 under the EU Arbitration Convention and are still pending. The peer also pointed out that progress is being made on the cases, and that a face-to-face meeting was held in 2015 with a subsequent meeting being scheduled in 2018, while in between regular contacts take place.

229. Further to the above, two peers pointed out that for their cases with the Denmark’s competent authority it is sometimes challenging to comply with the timelines specified within the EU Code of Conduct for the effective implementation of the Arbitration Convention.

230. Lastly, one peer provided a suggestion for improvements, which is to hold face-to-face meetings as a way to enhance the co-operation in their MAP relationship and to enable timely resolution of pending MAP cases.

*Period 1 August 2017-28 February 2019 (stage 2)*

231. Most peers that provided input during stage 1 stated in stage 2 that the update report provided by Denmark fully reflects their experience with Denmark since 1 August 2017 and/or there are no additions to the previous input given. Eight peers provided specific input on their experiences with Denmark concerning the resolution of MAP cases since that date.

232. All of these eight peers voiced a positive input regarding their experience in handling and resolving MAP cases in the period 1 August 2017-28 February 2019. One of these peers mentioned that Denmark's competent authority handles MAP cases in a prompt and efficient manner, as well as that it found the competent authority to be professional and efficient. It on that basis concluded that Denmark appears to have sufficient resources for its competent authority function. A second peer arrived at a similar conclusion. Furthermore, a third peer mentioned it has a good working relationship with Denmark's competent authority and particularly pointed to the fact that Denmark's pragmatism and experiences show that cases are handled efficiently with minimal delays. It further highlighted that it was also possible to settle subsequent fiscal years to those years that have previously been agreed in a MAP cases, thereby using the same basis and because of that there was no need to getting involved in extensive correspondence for resolving the case.

233. Further to the above, two peers especially brought forward their good working relationship with Denmark's competent authority. The first peer stressed that Denmark's competent authority is responsive in their communications and is also cooperative to deal with. The peer further noted that since 1 August 2017 it held one face-to-face meeting with Denmark's competent authority in addition to general correspondence which contributed to solving a number of cases. This input was echoed by the second peer, who referred that during face-to-face meetings the majority of cases can be resolved. To this the peer further added that it considers staff in charge of MAP cases to be well-trained.

234. Lastly, two peers provided input in addition to their input in stage 1. For one of these peers, the input is being reflected in paragraph 228 above. This peer noted that the cases being referred to are still pending, despite significant efforts being made by the competent authorities to reach agreement and a third face-to-face meeting being held in March 2019. The peer added that the meetings were held in a highly collaborative environment. The second peer, whose input is reflected in paragraph 229 above, first stated that it confirms their good cooperation with Denmark's competent authority in general. In relation to the input in stage 1, the peer mentioned that it is still in the process of resolving an attribution/allocation case with Denmark. While the peer in stage 1 suggested to have a face-to-face meeting, it now considered a conference call to be more efficient given the fact that only one case is pending. For this case, the peer explained that it took Denmark's competent authority a bit longer to provide a position paper and for that reason a conference call was not yet scheduled. The peer nevertheless expected that such call will be held shortly and that the case can be resolved efficiently.

***Anticipated modifications***

235. Denmark reported that it is its intention to recruit a full take case-handler for the department handling other MAP cases.

## Conclusion

	Areas for improvement	Recommendations
[C.3]	MAP cases were closed in 25.25 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This particularly regards attribution/allocation cases, as the average is 26.10 months, as for other cases the average is below the pursued 24-month average. While the median time to close MAP cases is for both type of MAP cases below 24 months, the MAP caseload has increased, which concerns other MAP cases and which may indicated that the competent authority may not be adequately resources to cope with this increase, although additional personnel has been assigned in recent years and successful steps have been taken to be able to increase the number of cases closed.	Denmark 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 will further 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.

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

#### *Functioning of staff in charge of MAP*

237. Denmark reported that when a MAP request is received by its competent authority, the head of the competent authority attributes the case to a specific case-handler. This case-handler then is in charge of all steps of the MAP process, such under the supervision of the head of the competent authority. Denmark further reported that for more complex cases, a second case-handler will generally be co-responsible. If the case concerns an adjustment imposed by Denmark, the case-handler has to liaise with the tax auditor within the Danish Tax Agency to receive the reasons for the adjustment and copies of all relevant underlying documents. Where position papers are issued, the head of the competent authority has to approve them before they can be shared with the other competent authority concerned. The same applies when entering into MAP agreements.

238. In regard of the above, Denmark reported that its competent authority operates independently and has full authority to resolve MAP cases. It does not depend on the tax audit function or any other unit within the Danish Tax Agency for the approval of tentative MAP agreements, nor is the process for resolving MAP cases influenced by policy considerations that Denmark would like to see reflected in future amendments to the treaty. In other words, Denmark mentioned that the decision-making process for MAP cases is solely performed within its competent authority.



***Recent developments***

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

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

240. All peers that provided input did not report any impediment by Denmark to perform its MAP function absent from the approval or the direction of the tax administration personnel directly involved in the adjustments at issue or Denmark being influenced by considerations of the policy that it would like to see reflected in future amendments to the tax treaty. Two peers specifically mentioned that they are not aware that Denmark's competent authority would be formally dependent on the approval or direct of the tax administration personnel that made the adjustment at issue.

*Period 1 August 2017-28 February 2019 (stage 2)*

241. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Denmark fully reflects their experience with Denmark since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer highlighted that it has resolved four cases with Denmark since that date and has not experienced any issues regarding the authority of Denmark's competent authority to resolve MAP cases. Another peer mentioned that Denmark's competent authority seems to operate independently from the tax administration. Furthermore, a third peer specified that it had no indication that Denmark's competent authority is dependent on the approval or direction of the tax administration personnel who made the adjustment or are influenced by policy considerations that it would like to see reflected in future amendments to the treaty.

***Anticipated modifications***

242. Denmark did not indicate that it anticipates any modifications in relation to element C.4.

***Conclusion***

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

243. For ensuring that each case is considered on its individual merits and will be resolved in a principled and consistent manner, it is essential that any performance indicators for the competent authority function and for the staff in charge of MAP processes are appropriate and not based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue.

### ***Performance indicators used by Denmark***

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

- workload of the employee
- requirement for additional education of the employee
- desire of the employee for new working opportunities
- salary questions
- work results
- co-operation between case handlers.

245. In regard of the above, Denmark mentioned that the focus while evaluating the case handlers lies on consistency in the resolution and the co-operation between the case handlers, thereby taking into account each case handler’s working capacity, education and experience.

246. Specifically concerning the use of performance indicators, Denmark reported that there are no individual performance indicators set, but that case handlers are expected to resolve MAP cases as correctly and timely as possible. Important factors thereby are whether the case has been handled correctly. For attribution/allocation cases, this, for example, concerns whether the Transfer Pricing Guidelines have been correctly applied and whether Denmark’s position is understandable for both the taxpayer and the other competent authority concerned. To this end, Denmark in particular noted that it does not use performance indicators that are based on the number of cases handled per employee, the number of cases resolved, the number of “won” or “lost” cases, or the amounts of tax withheld.

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

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

### ***Recent developments***

248. As noted in paragraph 200, the team that handles other MAP cases has introduced a specific spreadsheet to monitor its MAP cases as to their progress, thereby using a traffic-light system. In this respect, Denmark reported that this spreadsheet is used by the team leader to evaluate the progress of each case and to allocate more resources to cases, if needed.

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

249. All peers that provided input indicated not being aware that Denmark uses performance indicators based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue for its competent authority functions and staff in charge of MAP processes.

*Period 1 August 2017-28 February 2019 (stage 2)*

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

***Anticipated modifications***

251. Denmark 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

252. 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***

253. Denmark reported that it has no domestic legal basis for introducing an arbitration procedure as final stage of a MAP and is therefore not in favour of including arbitration in tax treaties. While Denmark was a participant in the sub-group on arbitration as part of the Multilateral Instrument of Action 15 of the BEPS project, it initially reserved the right not to opt in for arbitration in the Multilateral Instrument. In addition, Denmark reserved the right in the commentary to the 2017 OECD Model Tax Convention not to include paragraph 5 of Article 25 in its tax treaties. Nevertheless, Denmark 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 Denmark's domestic legislation as per 1 July 2019.

254. As Denmark’s position on arbitration could be misunderstood based on the MAP profile, Denmark reported to update and clarify the MAP profile in this regard. As will be discussed below, this has been done recently.

### ***Recent developments***

255. Denmark reported that since 1 August 2017 it has changed its position on using MAP arbitration in its tax treaties. In this respect, Denmark intends to withdraw the reservation in the Commentary to Article 25 of the OECD Model Tax Convention and has with the depositing of its instrument of ratification of the Multilateral Instrument opted in for part VI (see below).

256. Further to the above, Denmark updated its MAP profile to reflect that there are no limitations in its domestic law to include arbitration in its tax treaties.

### ***Practical application***

257. Up to date, Denmark has incorporated an arbitration clause in three of its 80 tax treaties as a final stage to the MAP, which is the equivalent of Article 25(5) of the OECD Model Tax Convention. Two of these three tax treaties include a clause that stipulate that when Denmark includes an arbitration provision in a tax treaty with a third state, the arbitration provision under the treaty will apply. According to the third treaty, the parties shall agree on the date of effect of the arbitration provisions when an agreement or convention for the avoidance of double taxation between Denmark and a third jurisdiction which includes arbitration provisions enters into force. For the first two mentioned treaties, Denmark reported that the arbitration provisions became effective once part VI of the Multilateral Instrument becomes effective for any of Denmark’s tax treaties (see below). For the third treaty, the parties will agree on a date of effect of the arbitration provisions.

258. With respect to the effect of part VI of the Multilateral Instrument on Denmark’s tax treaties, there are next to Denmark in total 29 signatories to this instrument that also opted for part VI. Concerning these 29 signatories, Denmark listed 14 as a covered tax agreement under the Multilateral Instrument and 13 of these 14 treaty partners also listed their treaty with Denmark under that instrument. In none of these treaties, Denmark has already included an arbitration provision. Of these 13 treaties, ten treaty partners have already deposited their instrument of ratification. In this respect, part VI will apply to these ten treaties and introduce the arbitration provision of the Multilateral Instrument in these treaties.<sup>9</sup> For the other three treaties for which the treaty partner has not yet ratified the Multilateral Instrument, Denmark reported it expects that part VI will introduce a mandatory and binding arbitration procedure in all three treaties.

### ***Anticipated modifications***

259. Denmark did not indicate that it anticipates any modifications in relation to element C.6.

### ***Conclusion***

	Areas for improvement	Recommendations
[C.6]	-	-

## Notes

1. These 77 treaties include the treaty with the former USSR that Denmark continues to apply to Belarus, the tax treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic, the tax treaty with former Yugoslavia that Denmark continues to apply to Montenegro, the tax treaty with the former Netherlands Antilles that Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius) and the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
2. Available at: [www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm](http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm). These statistics are up to 2018.
3. Available at: [https://ec.europa.eu/taxation\\_customs/news/statistics-apas-and-maps-eu\\_en](https://ec.europa.eu/taxation_customs/news/statistics-apas-and-maps-eu_en). These statistics are up to 2018.
4. For post-2015 cases, if the number of MAP cases in Denmark’s inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five for any treaty partner, Denmark reports its MAP caseload for such treaty partner on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. Denmark’s 2016 and 2017 MAP statistics were corrected in the course of the peer review process and deviate from the 2016 and 2017 published MAP statistics. See for a further explanation Annex B and Annex C.
6. For both pre-2016 and post-2015 Denmark follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention [OECD, 2015]); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention [OECD, 2015]), which is also known as a transfer pricing MAP case”.
7. For the EU Arbitration Convention this is Order No. 260 of 21 March 2006.
8. In practice, it is possible that a MAP request is not submitted to Denmark’s competent authority, but, for example, to another department within the Danish Tax Agency. Denmark reported that in such situation, the request will be sent to its competent authority as soon as possible.
9. Annex A reflects the effect of part VI of the Multilateral Instrument for these ten treaties.

## References

- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.
- OECD (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14-2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.

## *Part D*

### **Implementation of MAP agreements**

#### **[D.1] Implement all MAP agreements**

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

260. 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***

261. Denmark reported it has a domestic statute of limitation for a reassessment of a tax assessment notice. Pursuant to Article 26(2) of Denmark’s Tax Administration Act, this time limit is four years after the end of the relevant fiscal year, or, pursuant to Article 26(5), six years for attribution/allocation cases (including cases concerning the attribution of profits to permanent establishments). In this respect and in relation to the tax system in place, Denmark clarified that if a request by the taxpayer is received within the applicable time limits, all of the decisions of the Danish Tax Agency that lead to a need for an upward or downward adjustment of the taxpayer’s taxable income will be implemented, regardless of the time taken to reach the decision. Denmark further clarified that with respect to the MAP process, the same rule applies, regardless of whether the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) is included in the applicable tax treaty. The sole requirement for this purpose is that the MAP request is filed within the time limits specified in the applicable tax treaty, or when such time limits is not contained, within three years as from the first notification of the action resulting in taxation not in accordance with the treaty.<sup>1</sup> Concerning the process for implementing MAP agreements, Denmark reported that when its competent authorities reaches a MAP agreement, it will inform the taxpayer hereof and requests its approval in written form within 14 days from the date the agreement was reached. The taxpayer has to give its consent to the agreement within one month of being notified thereof and, where appropriate, to withdraw any pending administrative or legal procedures in relation to the case for which a MAP agreement is included.

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

***Recent developments***

263. There are no recent developments with respect to element D.1.

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

264. Denmark reported that all MAP agreements reached in the period 1 January 2015-31 July 2017, once accepted by taxpayers, have been (or will be) implemented. Denmark also reported that it monitors the implementation of MAP agreements, as the local tax office will provide the competent authority with the tax assessment notice that implemented the MAP agreement.

265. Almost all peers that provided input reported not being aware of any MAP agreement reached that was not implemented by Denmark in the period 1 January 2015-31 July 2017. Two peers, however, noted that during this period they have not reached a MAP agreement with Denmark. Furthermore, one peer specified that in one attribution/allocation case the agreement reached with Denmark was not implemented by both states, as the taxpayer did not reply to the competent authorities' notification of the MAP agreement reached, even after being specifically reminded. For that reason the peer's competent authority closed the case in 2016. This peer reported that Denmark, so far, has not closed the case due to a different practice on obtaining taxpayer approval for implementing MAP agreements.

*Period 1 August 2017-28 February 2019 (stage 2)*

266. Denmark reported that all MAP agreements that were reached on or after 1 August 2017, once accepted by taxpayers, have been (or will be) implemented.

267. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Denmark fully reflects their experience with Denmark since 1 August 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 has not been implemented by Denmark. Another peer mentioned that the cooperation with Denmark's competent authority as to the implementation of MAP agreements was swift and effective.

***Anticipated modifications***

268. Denmark 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.

269. 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***

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

271. In view of the above, Denmark reported that in practice, upon receipt of the approval by the taxpayer of the MAP agreement, the case handler will typically within two weeks liaise with the local tax administration, which is responsible for implementing MAP agreements via issuing a reassessment. The local tax administration typically issues such reassessment within one month, which is then being reported to Denmark's competent authority. In complex cases (e.g. cases affecting more than five tax years, group taxation with a significant number of entities, or cases where losses are to be carried forward) implementation can take longer.

***Recent developments***

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

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

273. Denmark reported that all MAP agreements that were reached in the period 1 January 2015-31 July 2017, once accepted by taxpayers, have been (or will be) implemented on a timely basis.

274. All peers that provided input reported not being aware of any MAP agreement reached in the period 1 January 2015-31 July 2017 that was not implemented by Denmark in general or not on a timely basis.

***Period 1 August 2017-28 February 2019 (stage 2)***

275. Denmark reported that generally all MAP agreements reached in the period 1 August 2017-28 February 2019 were also implemented on a timely basis.

276. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Denmark fully reflects their experience with Denmark since 1 August 2017 and/or there are no additions to the previous input given. One peer specifically mentioned it is not aware of any delays in relation to the implementation of MAP agreements reached.

*Anticipated modifications*

277. Denmark 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.

278. 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 Denmark's tax treaties*

279. Out of Denmark's 80 tax treaties, 53 contain a provision 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.<sup>2</sup> In addition, two tax treaties contain a provision in the MAP article setting a time limit for making primary adjustments. Both provisions are considered to be equivalent to such a provision in Article 9(1) and Article 7(2) of the OECD Model Tax Convention. Furthermore, 23 tax treaties do not contain such equivalent or the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making primary adjustments.<sup>3</sup>

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

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

treaty partners, this treaty therefore, is also considered not being equivalent to Article 25(2), second sentence.

### *Peer input*

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

282. For the 25 tax treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions for Article 9(1) and Article 7(2), four relevant peers confirmed this non-inclusion. One of those peers indicated that the Multilateral Instrument will modify its tax treaty with Denmark. The second of these peers specified that it is currently in the process of finalising negotiations of a new treaty with Denmark, which then will be in line with the Action 14 Minimum Standard. The third peer indicated that although the current tax treaty does not meet the Action 14 Minimum Standard, it is willing to accept alternative provisions for element D.3. The fourth peer indicated that it had not any contacts so far with Denmark or has any specific plan in place to update its treaty with Denmark.

### ***Recent developments***

#### *Bilateral modifications*

283. Recently, a new treaty that Denmark signed has entered into force, which replaced the existing treaty to include the equivalent Article 25(2), second sentence, of the OECD Model Tax Convention and which was not included in the previous treaty. Denmark also signed a new treaty with a treaty partner for which currently no treaty is in existence. This treaty also contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. The effect of these newly signed treaties has been reflected in the analysis above where they have relevance.

#### *Multilateral Instrument*

284. Denmark recently signed the Multilateral Instrument and has deposited its instrument of ratification on 30 September 2019. The Multilateral Instrument has for Denmark entered into force on 1 January 2020.

285. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2016). 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 tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the

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

286. In regard of the 25 tax treaties 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), Denmark listed 21 tax treaties as a covered tax agreement under the Multilateral Instrument, but only for 20 of them did it make, pursuant to Article 16(6)(c)(ii), a notification that it does not contain a provision described in Article 16(4)(b)(ii) of the Multilateral Instrument. Of the relevant 20 treaty partners, six are not a signatory to the Multilateral Instrument, whereas one made a reservation on the basis of Article 16(5)(c). All 13 remaining treaty partners also made a notification on the basis of Article 16(6)(c)(ii).

287. Of the 13 treaty partners mentioned above, four have deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Denmark 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 nine treaties, the instrument will, upon entry into force for the treaties concerned, modify them to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.<sup>4</sup>

### *Other developments*

288. Further to the above, Denmark reported that for one of the remaining 13 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, the relevant treaty partner has informed Denmark that it will withdraw its reservation under the Multilateral Instrument, following which it is expected that the treaty with that treaty partner will be modified by the instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention.

### *Peer input*

289. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Denmark. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), second sentence, of the OECD Model Tax Convention. This peer mentioned that its treaty with Denmark will be modified by the Multilateral Instrument to include the required provision, which conforms with the above analysis. Another peer mentioned that its treaty with Denmark does not meet the requirements under element D.3, but that it is willing to accept the alternative provisions for Article 9(1) and Article 7(2). This peer, however, also mentioned that no measures have yet been taken to amend the relevant treaty provision. The other peers for which the treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, did not provide input.

### *Anticipated modifications*

290. As described in the Introduction, Denmark reported that for the tax treaties that do not meet one or more elements of the Action 14 Minimum Standard, it disagrees with having an obligation to initiate bilateral tax treaty negotiations to bring these treaties in line with the requirements under this standard. Denmark stated that it has chosen to implement the elements of the Action 14 Minimum Standard via the Multilateral Instrument and therefore invites jurisdictions, which have not yet joined that instrument, to sign it. Denmark further stated that it invites jurisdictions to initiate bilateral treaty negotiations, if a jurisdiction does not plan to sign the Multilateral Instrument but wants its treaty with Denmark in line with the Action 14 Minimum Standard.

291. Regardless, Denmark 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>25 out of 80 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor the alternative provisions in Article 9(1) and Article 7(2). Of these 25 treaties:</p> <ul style="list-style-type: none"> <li>• Four have been modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention</li> <li>• Nine are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention</li> <li>• One is expected to be modified by the Multilateral Instrument to include the required provision once the treaty partner has amended its notifications</li> <li>• 11 will not be modified by the Multilateral Instrument to include the required provision. For these treaties no actions have been taken nor are planned to be taken.</li> </ul>	<p>For nine of the remaining 11 treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Denmark should without further delay request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>Specifically with respect to the treaty with the former USSR and former Yugoslavia that Denmark continues to apply to Belarus and Montenegro respectively, Denmark should, once it enters into negotiations with the jurisdiction to which it applies that treaty, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p>

## Notes

1. This practice of Denmark was already in place in the review period for stage 1 of the peer review process, but was as such not reflected under element D.1. As this practice is in line with the requirements of element D.1, there is no longer an area for improvement and therefore no need to maintain a recommendation.
2. These 53 treaties include the Nordic Convention that for Denmark applies to the Faroe Islands, Finland, Iceland, Norway and Sweden.
3. These 23 treaties include the treaty with the former USSR that Denmark continues to apply to Belarus, the tax treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic, the tax treaty with former Yugoslavia that Denmark continues to apply to Montenegro and the treaty to promote economic relations with the Netherlands Antilles to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius).

4. These nine treaties include the treaty with former Czechoslovakia that Denmark continues to apply to the Slovak Republic.

## *References*

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

## Summary

	Areas for improvement	Recommendations
<b>Part A: Preventing disputes</b>		
[A.1]	<p>Six out of 80 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these six treaties:</p> <ul style="list-style-type: none"> <li>• Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention</li> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.</li> <li>• Three will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties no actions have been taken nor are planned to be taken.</li> </ul>	<p>For two of the remaining three treaties that has not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Denmark should without further delay request via bilateral negotiations the inclusion of the required provision.</p> <p>Specifically with respect to the treaty with the former Netherlands Antilles that Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius, Denmark should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.</p>
[A.2]	-	-
<b>Part B: Availability and access to MAP</b>		
[B.1]	<p>Five out of 80 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, either as it read prior to the adoption of the Action 14 final report or as amended by that report. Of these five treaties:</p> <ul style="list-style-type: none"> <li>• One has been modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.</li> <li>• Two are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.</li> <li>• Two will not be modified by the Multilateral Instrument to include such equivalent. For these treaties no actions have been taken nor are planned to be taken.</li> </ul>	<p>For one of the two remaining treaties that will not be modified by the Multilateral Instrument to include equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Denmark should without further delay initiate negotiations to include the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> <li>a. as amended by the Action 14 final report; or</li> <li>b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.</li> </ol> <p>Specifically with respect to the treaty with the former USSR that Denmark continues to apply to Belarus, Denmark should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision.</p>



	Areas for improvement	Recommendations
	<p>Two out of 80 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, due to a protocol provision can be shorter than three years. Of these two treaties:</p> <ul style="list-style-type: none"> <li>• One is expected to be superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention.</li> <li>• 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 planned to be taken.</li> </ul>	<p>Specifically with respect to the treaty with the former USSR that Denmark continues to apply to Belarus, Denmark should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision.</p>
[B.1]	<p>Two out of 80 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties:</p> <ul style="list-style-type: none"> <li>• One has been modified by the Multilateral Instrument to include both the first and second sentence of Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.</li> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, no actions have been taken nor are planned to be taken.</li> </ul>	<p>For the treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Denmark should without further delay request the inclusion of the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> <li>a. as amended in the Action 14 final report; or</li> <li>b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.</li> </ol>
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	-	-
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
<b>Part C: Resolution of MAP cases</b>		
[C.1]	<p>Three out of 80 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these three treaties:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Two will not be modified by the Multilateral Instrument to include the required provision. For these treaties no actions have been taken nor are planned to be taken.</li> </ul>	<p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Denmark should without further delay request the inclusion of the required provision via bilateral negotiations.</p>
[C.2]	-	-

	Areas for improvement	Recommendations
[C.3]	MAP cases were closed in 25.25 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This particularly regards attribution/allocation cases, as the average is 26.10 months, as for other cases the average is below the pursued 24-month average. While the median time to close MAP cases is for both type of MAP cases below 24 months, the MAP caseload has increased, which concerns other MAP cases and which may indicate that the competent authority may not be adequately resourced to cope with this increase, although additional personnel has been assigned in recent years and successful steps have been taken to be able to increase the number of cases closed.	Denmark 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 will further 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]	-	-
[C.5]	-	-
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	-	-
[D.2]	-	-
[D.3]	<p>25 out of 80 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor the alternative provisions in Article 9(1) and Article 7(2). Of these 25 treaties:</p> <ul style="list-style-type: none"> <li>• Four have been modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention</li> <li>• Nine are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention</li> <li>• One is expected to be modified by the Multilateral Instrument to include the required provision once the treaty partner has amended its notifications</li> <li>• 11 will not be modified by the Multilateral Instrument to include the required provision. For these treaties no actions have been taken nor are planned to be taken.</li> </ul>	<p>For nine of the remaining 11 treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Denmark should without further delay request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>Specifically with respect to the treaty with the former USSR and former Yugoslavia that Denmark continues to apply to Belarus and Montenegro respectively, Denmark should, once it enters into negotiations with the jurisdiction to which it applies that 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 Denmark

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
	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	
	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	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(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Argentina	Y	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 i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no
Armenia	N	O	Y	Y	Y	i	Y	Y	Y	Y	N
Aruba	Y	O	Y	Y	i	i	Y	Y	N	N	N
Australia	Y	E*	Y	Y	Y	i	Y	Y	Y*	Y*	Y***
Austria	Y	O	Y	Y	Y	i	Y	Y	Y	Y	N
Azerbaijan	Y	O	Y	Y	Y	i	Y	Y	Y	Y	N
Bangladesh	Y	O	Y	Y	Y	i	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		D.3		A.1 B.7		
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?	
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)				
Belarus	Y	O	ii	2 years	i	Y	N	Y	Y		
Belgium	Y	E**	iv*	2 years	i***	N	Y*	Y*	Y*	Y***	
Bermuda	Y	O	Y	N/A	i	Y	Y	Y	N	N	
Brazil	Y	O	i	N/A	i	Y	N	Y	Y	N	
British Virgin Islands	Y	O	Y	N/A	i	Y	Y	Y	N	N	
Bulgaria	Y	O*	Y	N/A	i**	Y	N*	Y	Y	N	
Canada	Y	O	i	N/A	i	Y	iii	Y	Y	Y***	
Caribbean part of the Netherlands	Y	O	Y	N/A	N/A	Y	N	N	N	N	
Cayman Islands	Y	O	Y	N/A	i	Y	Y	Y	N	N	
Chile	Y	O	Y	N/A	Y	Y	N*	Y	N*	N	
China (People's Republic of)	Y	O	Y	N/A	Y	Y	Y	Y	Y	N	
Croatia	Y	O	Y	N/A	i	Y	Y	Y	Y	N	
Curacao	Y	O	Y	N/A	N/A	Y	N	N	N	N	
Cyprus (1)	Y	O*	Y	N/A	Y	Y	Y	Y	Y	N	
Czech Republic	Y	O*	Y	N/A	i	Y	Y	Y	Y	N	
Egypt	Y	O*	Y	N/A	i	Y	Y	Y	Y	N	
Estonia	Y	O*	Y	N/A	Y	Y	Y	Y	Y	N	
Faroe Islands	Y	E	ii	5-years	Y	Y	Y	Y	Y	N	
Finland	Y	E	ii	5-years	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		C.6		
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?	
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)				
Georgia	Y	O	Y	N/A	i	Y	Y	Y	Y		
Germany	Y	O	Y	N/A	i	Y	Y	Y	Y	N	
Ghana	Y	O	Y	N/A	i	Y	Y	Y	Y	N	
Greece	Y	O*	Y	N/A	i	Y	N	Y	Y	N	
Greenland	Y	O	i	N/A	i	Y	N	Y	Y	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	N	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	Y	N	
Israel	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	
Italy	Y	N	ii*	2 years	i	Y	Y	Y	N*	N	
Jamaica	Y	O*	Y	N/A	i	Y	Y	Y	Y	N	
Japan	Y	E	Y	N/A	i	Y	Y	Y	Y	Y	
Jersey	Y	O	Y	N/A	i	Y	Y	Y	N	N	
Kenya	Y	O	iii	N/A	i	Y	N*	Y	Y	N	
Korea	Y	N*	i	N/A	i	Y	N*	Y	Y	N	
Kuwait	Y	O*	Y	N/A	i	Y	Y	Y	Y	N	
Latvia	Y	O	Y	N/A	i	Y	Y	Y	Y	N	
Lithuania	Y	E*	Y	N/A	i	Y	Y	Y	Y	N	

Column 1	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			
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7		Column 8		Column 9		Column 10	Column 11	
						B.1	B.3	B.4	C.1	D.3				A.1
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?				
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)							
Luxembourg	Y	E*	Y	Y	i	Y	Y	Y	Y	Y***				
Malaysia	Y	N*	i	i**	i	N	N*	N*	N*	N				
Malta	Y	E*	Y	Y	i	Y	Y	Y	Y	Y***				
Mexico	Y	O*	i	i	i	N*	N	Y	Y	N				
Montenegro	Y	O	Y	i	i	Y	N	Y	Y	N				
Morocco	Y	O*	Y	Y	i	Y	N*	Y	Y	N				
Netherlands	Y	E	Y	Y	i	Y	Y	Y	Y	N				
New Zealand	Y	E*	Y	Y	i	Y	Y*	Y	Y	Y***				
North Macedonia	Y	O	Y	Y	i	Y	Y	Y	Y	N				
Norway	Y	E	ii	Y	i	Y	Y	Y	Y	N				
Pakistan	Y	O*	Y	Y	i	Y	N*	Y	Y	N				
Philippines	Y	O	Y	Y	i	Y	Y	Y	Y	N				
Poland	Y	O	Y	Y	i	Y	Y	Y	Y	N				
Portugal	Y	O	Y	Y	i	Y	Y	Y	Y	N				
Romania	Y	N	Y	i**	i	Y	N*	Y	Y	N				
Russia	Y	E**	Y	Y	i	Y	Y	Y	Y	N				
Serbia	Y	O	Y	Y	i	Y	Y	Y	Y	N				
Singapore	Y	O	Y	Y	i	Y	Y	Y	Y	Y***				
Slovak Republic	Y	O	Y	Y	i	Y	Y*	Y	Y	N				
Slovenia	Y	O	Y	Y	i	Y	Y	Y	Y	Y***				
South Africa	Y	O	Y	Y	i	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		A.1			B.7	
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11			
	DTC in force?	Inclusion Art. 25(1) first sentence?	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?			
		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)						
Sri Lanka	Y	O	Y	N/A	i	Y	N	Y	Y				
St. Maarten	Y	O	Y	N/A	Y	Y	N	N	N				
Sweden	Y	E	ii	5-years	i	Y	Y	Y	Y				
Switzerland	Y	O	i	N/A	i	Y	N	Y	Y				
Chinese Taipei	Y	O	Y	N/A	i	Y	Y	Y	Y				
Tanzania	Y	N	Y	N/A	i	Y	Y	Y	Y				
Thailand	Y	O	Y	N/A	i	Y	N	Y	Y				
Trinidad and Tobago	Y	O	i	N/A	i	Y	N	Y	Y				
Tunisia	Y	O*	Y	N/A	i	Y	Y	Y	Y				
Turkey	Y	O*	iv**	N/A	i	Y	Y	Y	Y				
Uganda	Y	O	Y	N/A	i	Y	Y	Y	Y				
Ukraine	Y	E*	Y	N/A	i	Y	Y	Y	Y*				
United Kingdom	Y	E*	i	N/A	i	Y	Y*	Y	Y*	Y***			
United States	Y	O	i	N/A	i	Y	Y	Y	Y				
Venezuela	Y	O	Y	N/A	i	Y	N	Y	Y				
Viet Nam	Y	O	Y	N/A	i	Y	Y	N	Y				
Zambia	Y	O	i	N/A	i	Y	N	Y	Y				

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.

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

*Legend*

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

## Annex B

## MAP statistics reporting for the 2016, 2017 and 2018 Reporting Periods (1 January 2016 to 31 December 2018) for pre-2016 cases

2016 MAP Statistics															
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period		
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13	Column 14
Attribution/Allocation	136	0	0	0	1	1	19	0	0	0	0	0	0	115	30.57
Others	39	0	0	0	0	1	5	1	0	1	1	1	30	51.22	
Total	175	0	0	0	1	2	24	1	0	1	1	1	145	36.77	

2017 MAP Statistics														
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13
Attribution/Allocation	115	0	0	2	2	1	23	1	0	0	0	2	84	37.00
Others	30	0	0	0	0	1	2	0	0	0	0	0	27	38.00
Total	145	0	0	2	2	2	25	1	0	0	0	2	111	37.09

Notes: There is a discrepancy between the number of pre-2016 MAP cases in Denmark's inventory as per 31 December 2016 and 1 January 2017.

- The reported number of MAP cases pending on 31 December 2016 was 142, which consists of 114 attribution/allocation cases and 28 other cases.
  - The reported number of MAP cases pending on 1 January 2017 was 145, which consists of 115 attribution/allocation cases and 30 other cases.
- In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of pre-2016 cases pending on per 1 January 2016 was corrected.

2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Attribution/Allocation	84	0	1	1	0	5	15	2	0	2	1	57	49.00
Others	27	0	0	0	0	0	1	0	0	0	0	26	39.00
Total	111	0	1	1	0	5	16	2	0	2	1	83	48.64

## Annex C

## MAP statistics reporting for the 2016, 2017 and 2018 Reporting Periods (1 January 2016 to 31 December 2018) for post-2015 cases

2016 MAP Statistics																
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period		
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13			Column 14	Column 15
Attribution/Allocation	0	31	0	0	0	0	0	6	0	0	0	0	0	0	25	0.69
Others	0	19	0	0	1	0	4	3	0	0	0	0	0	0	11	2.77
Total	0	50	0	0	1	0	4	9	0	0	0	0	0	0	36	1.88

2017 MAP Statistics																
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period		
			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	25	63	1	0	0	4	0	12	1	0	0	2	0	0	68	6.94
Others	11	14	0	0	5	0	1	0	0	0	0	0	0	0	19	4.74
Total	36	77	1	0	5	4	1	12	1	0	0	2	0	0	87	6.43

2018 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	68	51	1	0	4	1	4	26	2	0	0	0	0	81	12.56
Others	19	17	0	2	0	0	2	3	0	0	0	0	0	29	10.42
Total	87	68	1	2	4	1	6	29	2	0	0	0	0	110	12.23

Notes: There is a discrepancy between the number of post-2015 MAP cases in Denmark's inventory as per 31 December 2017 and 1 January 2018.

- The reported number of MAP cases pending on 31 December 2017 was 82, which consists of 63 attribution/allocation cases and 19 other cases.
  - The reported number of MAP cases pending on 1 January 2018 was 87, which consists of 68 attribution/allocation cases and 19 other cases.
- In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of post-2015 cases received in 2017 was corrected.

## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>MAP Guidance</b>	The Danish Customs and Tax Administration’s public legal guidance
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
<b>OECD Transfer Pricing Guidelines</b>	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
<b>Pre-2016 cases</b>	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
<b>Post-2015 cases</b>	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2018
<b>Terms of Reference</b>	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective



## OECD/G20 Base Erosion and Profit Shifting Project

# Making Dispute Resolution More Effective - MAP Peer Review Report, Denmark (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 Denmark.



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