

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 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 28 October 2020 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

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

Executive summary

Kazakhstan has a relatively large tax treaty network with over 50 tax treaties. Kazakhstan has an established MAP programme and has limited experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 24 cases pending on 31 December 2019. Of these cases, almost 83% concern other MAP cases. Overall Kazakhstan meets less than half of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Kazakhstan is working to address most of them.

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

- Almost 15% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Almost 18% of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Kazakhstan needs to amend and update a certain number of its tax treaties. In this respect, Kazakhstan signed and ratified the Multilateral Instrument. Through this instrument a number of its relevant tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of the Multilateral Instrument for the treaties concerned, Kazakhstan reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard. However, it has not yet put in place a plan in relation hereto although it is developing such a plan in order to bring all of its treaties in line with this standard.

Kazakhstan does not meet the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme, but this programme does not allow roll-back of bilateral APAs.

Kazakhstan meets some of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in almost all eligible cases, although it has since 1 January 2016 not received any MAP request concerning transfer pricing cases or cases where anti-abuse provisions are applied or cases where there has been an audit settlement. However, for treaties that do not include a filing period for a

MAP request, Kazakhstan’s domestic time-limits may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. Furthermore, Kazakhstan 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, but this process is not documented. Kazakhstan also has no guidance on the availability of MAP and how it applies this procedure in practice, although it indicated that it is planning to publish rules, guidelines and procedures on access to and the use of MAP in Kazakhstan, including the specific information and documentation that should be submitted in a MAP request.

Concerning the average time needed to close MAP cases, the MAP statistics for Kazakhstan for the period 2016-19 are as follows:

2016-19	Opening Inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2019	Average time to close cases (in months)*
Attribution/allocation cases	0	6	2	4	19.84
Other cases	10	12	2	20	24.00
Total	10	18	4	24	21.92

* 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, Kazakhstan used the same rules as the MAP Statistics Reporting Framework.

The number of cases Kazakhstan closed in the period 2016-19 is less than the number of all new cases started in those years. Its MAP inventory as on 31 December 2019 increased as compared to its inventory as on 1 January 2016. During these years, MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 21.92 months. In addition, a number of peers experienced difficulties in effectively scheduling face-to-face meetings, obtaining positions papers in due time, receiving responses to position papers issued by peers and receiving timely responses to communications on pending MAP cases. This indicates that resources are not made available for the competent authority function in a way that allows an adequate use of such resources for the resolution of MAP cases in a timely, efficient and effective manner.

Furthermore, Kazakhstan meets some of the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. However, tax administration personnel directly involved in the adjustment at issue may influence the resolution of MAP cases. Further, peer input suggested that Kazakhstan’s competent authority does not have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty.

Lastly, as there was no MAP agreement reached that required implementation in Kazakhstan in the period 2016-19, it was not yet possible to assess whether Kazakhstan meets the Action 14 Minimum Standard as regards the implementation of MAP agreements.

Introduction

Available mechanisms in Kazakhstan to resolve tax treaty-related disputes

Kazakhstan has entered into 55 tax treaties on income (and/or capital), all of which are in force.¹ These 55 treaties are being applied to an equal number of jurisdictions. All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, eight of the 55 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

Under the tax treaties that Kazakhstan has entered into, the competent authority function is assigned to the Ministry of Finance or its authorised representative. Accordingly, this function is delegated to the non-resident taxation unit within Kazakhstan's State Revenue Committee and which is competent to handle both attribution/allocation cases as well as other cases. The non-resident taxation unit comprises a total of 20 staff members, out of which five staff members deal partly with MAP cases along with other tasks such as exchange of information, elucidation of tax legislation, consideration of objections on the decisions of the local revenue authority on refunds of the tax withheld at source and other administrative matters.

Kazakhstan has not issued any guidance on the governance and administration of the mutual agreement procedure.

Recent developments in Kazakhstan

Kazakhstan recently signed new treaties with Croatia (2017) and Cyprus (2019), both of which have entered into force.

Furthermore, on 25 June 2018, Kazakhstan signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Kazakhstan deposited its instrument of ratification of this instrument on 24 June 2020, following which the Multilateral Instrument for Kazakhstan entered into force on 1 October 2020. With the depositing of the instrument of ratification, Kazakhstan also submitted its list of notifications and reservations to that instrument.³ In relation to the Action 14 Minimum Standard, Kazakhstan has not made any reservations pursuant to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

Where treaties will not be modified by the Multilateral Instrument, Kazakhstan reported that it strives updating them through future bilateral negotiations. Kazakhstan intends to put together a plan to initiate negotiations with treaty partners giving importance to the

investment in Kazakhstan of taxpayers in a treaty partner jurisdiction, the interactions of the treaty partner jurisdiction with taxpayers from Kazakhstan and the number of MAP cases initiated in the past between Kazakhstan and the treaty partner jurisdiction.

Basis for the peer review process

The peer review process entails an evaluation of Kazakhstan’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 (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Kazakhstan, its peers and taxpayers. The questionnaires for the peer review process were sent to Kazakhstan and the peers on 20 December 2019.

The period for evaluating Kazakhstan’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2019 (“**Review Period**”). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Kazakhstan’s implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether Kazakhstan is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of Kazakhstan’s tax treaties regarding the mutual agreement procedure.

In total ten peers provided input: Canada, Germany, Italy, Netherlands, Poland, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Out of these ten peers, seven had MAP cases with Kazakhstan that started on or after 1 January 2016. These seven peers represent approximately 72.2% of post-2015 MAP cases in Kazakhstan’s inventory that started in 2016, 2017, 2018 or 2019. The input given by these peers identify areas of concern regarding the availability and the responsiveness of Kazakhstan’s competent authority.

Kazakhstan provided extensive answers in its questionnaire, which was submitted on time. Kazakhstan was responsive in the course of the drafting of the peer review report and provided further clarity where necessary. In addition, Kazakhstan provided the following information:

- MAP profile⁴
- MAP statistics⁵.

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

Overview of MAP caseload in Kazakhstan

The analysis of Kazakhstan’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2019 (“**Statistics Reporting Period**”). According to the statistics provided by Kazakhstan, its MAP caseload during this period was as follows:

2016-19	Opening Inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2019
Attribution/allocation cases	0	6	2	4
Other cases	10	12	2	20
Total	10	18	4	24

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁶ Apart from analysing Kazakhstan’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Kazakhstan. Furthermore, the report depicts the changes adopted and plans shared by Kazakhstan to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that Kazakhstan continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

Notes

1. The tax treaties Kazakhstan has entered into are available at: <http://kgd.gov.kz/kk/section/nalogoblozhenie-nerezidentov>. Reference is made to Annex A for the overview of Kazakhstan’s tax treaties.
2. This concerns Kazakhstan’s treaties with Canada, France, Italy, Netherlands, Pakistan, Switzerland, Tajikistan and the United States. Reference is made to Annex A for the overview of Kazakhstan’s tax treaties.

3. Available at: www.oecd.org/tax/treaties/beps-mli-position-kazakhstan-instrument-deposit.pdf.
4. Available at <https://www.oecd.org/tax/dispute/Kazakhstan-Dispute-Resolution-Profile.pdf>.
5. The MAP statistics of Kazakhstan are included in Annex B and C of this report.
6. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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, 2017) 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 Kazakhstan’s tax treaties

2. Out of Kazakhstan’s 55 tax treaties, 51 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) 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. Of the four remaining treaties, three do not contain a provisions that is based or equivalent to Article 25(3), first sentence. The remaining treaty does not include the part of the sentence reading “to resolve any difficulties or doubts arising as to the interpretation or application of the Convention”, but instead refers to “any matters”. As this particular treaty provides for a scope of application that is at least as broad as the first sentence of Article 25(3), it is considered to be in line with element A.1. For this reason, three treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).

3. Kazakhstan reported that it is willing to enter into MAP agreements of a general nature even where the applicable treaty does not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).

4. Kazakhstan reported in this regard that where a general MAP agreement is entered into, the regional revenue departments are duly informed of such a MAP agreement and its interpretation. Moreover, Kazakhstan reported that such MAP agreement would be made public on the official website of the State Revenue Committee.

Anticipated modifications

Multilateral Instrument

5. Kazakhstan signed the Multilateral Instrument and has deposited its instrument of ratification on 24 June 2020. The Multilateral Instrument has entered into force for Kazakhstan on 1 October 2020.

6. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) – 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 tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).

7. With regard to the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), Kazakhstan listed all of them as a covered tax agreement under the Multilateral Instrument and made for all, 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 three treaty partners, two did not list their treaty with Kazakhstan as a covered tax agreement. The remaining treaty partner also made such notification.

8. This treaty partner also deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Kazakhstan and this treaty partner, and therefore has modified this treaty to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Bilateral modifications

9. Kazakhstan further reported that when the tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) will not be modified by the Multilateral Instrument, it will strive to update them via bilateral negotiations with a view to be compliant with element A.1. Kazakhstan reported that it is working on a plan giving importance to the investment in Kazakhstan of taxpayers in a treaty partner jurisdiction, the interactions of the treaty partner jurisdiction with taxpayers from Kazakhstan and the number of MAP cases initiated in the past between Kazakhstan and the treaty partner jurisdiction. In addition, Kazakhstan reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Peer input

10. Almost all peers that provided input reported that their treaty with Kazakhstan is in line with the requirements under the Action 14 Minimum Standard, which also regards element A.1.

11. For the three treaties identified that do not contain the equivalent of Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2017), one peer provided input. This peer mentioned that its treaty with Kazakhstan does not meet the requirement under this element and that it will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), owing to a failed notification from its end.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	<p>Three out of 55 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these three treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the required provision. • Two will not be modified by the Multilateral Instrument to include the required provision. 	<p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), Kazakhstan should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Kazakhstan should follow its stated intention to put a plan in place on how it envisages updating these treaties to include the required provision.</p> <p>In addition, Kazakhstan should maintain its stated intention to include the required provision in all future tax treaties.</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.

12. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.¹ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Kazakhstan’s APA programme

13. Kazakhstan is authorised to enter into bilateral APAs and has implemented an APA programme. The legal basis of the bilateral APA programme is Article 4 (1)(6) read with Article 5(1)(7) of Kazakhstan’s transfer pricing law² to be found at (in English):

<http://kgd.gov.kz/en/content/transfer-pricing-1>

14. Although no timelines are specified in the law, the general time limitation in Article 48 of the Code of the Republic of Kazakhstan on Taxes and other Obligatory Payments to the Budget (“**Tax Code**”) would apply. This provision would thus allow an APA to be entered into within five years from the end of the taxable year till 2019 and three years from the end of the taxable year from 2020 onwards. APAs can only run for a period of three years since

the Decree of the Government of the Republic of Kazakhstan of October 24, 2011 No. 1197 “On Approval of the Rules for Concluding an Agreement on the Application of Transfer Pricing” specifies that APAs cannot exceed three years.

Roll-back of bilateral APAs

15. Kazakhstan reported that it is not possible to obtain a roll-back of bilateral APAs.

Practical application of roll-back of bilateral APAs

16. Kazakhstan reported that it had received one request for a bilateral APA during the Review Period, which was granted.

17. All peers that provided input reported not having any experience with Kazakhstan concerning the roll-back of bilateral APAs, which can be clarified by the fact that Kazakhstan does not allow such roll-backs.

Anticipated modifications

18. Kazakhstan reported that it intends to amend its domestic legislation in the near future to allow roll-back of APAs so as to be in line with element A.2.

Conclusion

	Areas for Improvement	Recommendations
[A.2]	Roll-back of bilateral APAs is not provided for in appropriate cases.	Kazakhstan should maintain its stated intention to introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.

Notes

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
2. The Law of the Republic of Kazakhstan dated July 5, 2008 N 67-IV “On Transfer Pricing” read with sub-clause 7) of clause 1 of Article 5 of the Law of the Republic of Kazakhstan of July 5, 2008 N 67-IV “On Transfer Pricing”.

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.

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

Current situation of Kazakhstan's tax treaties

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

20. Out of Kazakhstan's 55 tax treaties, none contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended 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. In addition, 49 of Kazakhstan's tax 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 (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

21. The remaining six treaties can be categorised as follows:

Provision	Number of tax treaties
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident and/or citizen.	1
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	4
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby 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

22. With respect to the one treaty in the first row of the table that only allow taxpayers to submit a MAP request to their state of residence or citizenship, the non-discrimination clause does not cover nationals but “citizens”, which is extended specifically as against a resident of the other contracting state. Thus, this provision is considered to be in line with this part of element B.1.

23. The four treaties in the second row of the table mentioned above are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons three of those four treaties are considered to be in line with this part of element B.1:

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

24. For the remaining one treaty from this row, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2017) and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b) is therefore not clarified by the absence of or a limited scope of the non-discrimination provision, following which this one treaty is not in line with this part of element B.1.

25. The remaining treaty mentioned in the third row of the table above allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this treaty limits such submission, as it requires that a domestic remedy should first be initiated before a case can be dealt with in MAP. Furthermore, with respect to the one treaty included in the second row of the table above, the provision incorporated in the protocol to this treaty reads:

With respect to Article 26, paragraph 1, the expression “irrespective of the remedies provided by the national laws” means that the mutual agreement procedure is not alternative to the national ordinary proceedings which shall be, in any case, preventively initiated, when the claim is related with an assessment of the taxes not in accordance with this Convention.

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

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

27. Out of Kazakhstan’s 55 tax treaties, 49 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

28. The remaining six 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	3
Filing period less than 3 years for a MAP request (2 years)	3

Practical application

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

29. As indicated in paragraphs 20 to 26 above, all but one of Kazakhstan’s tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. Kazakhstan reported that submitting a MAP request does not deprive taxpayers of other remedies available under their respective domestic tax law. Kazakhstan further clarified that access to MAP would not be denied on the grounds that the taxpayer has pursued domestic remedies. However, if domestic remedies are pursued, MAP proceedings would be suspended till such remedies are exhausted. In this respect, Kazakhstan also reported that its competent authority cannot deviate from court decisions rendered in Kazakhstan. This position is confirmed in Kazakhstan’s non-member position to Article 25(1) of the OECD Model Tax Convention (2017).

30. One peer provided input and indicated that Kazakhstan’s competent authority proposed not to engage in MAP discussions in a particular case since domestic procedures were considered to be still available to the taxpayer. This input concerns a MAP request filed by a taxpayer in December 2017 with the peer’s competent authority relating to a withholding tax imposed by Kazakhstan. The competent authority of Kazakhstan, in turn, was informed of such request in January 2018. After reviewing the request, the peer’s competent authority was of the view that objection raised by the taxpayer was justified and thus, sent an extensive position paper to the competent authority of Kazakhstan in October 2018. However, the peer reported that in November 2018, Kazakhstan’s competent authority responded to the peer stating that discussions in the MAP case were premature since the taxpayer has not applied for a refund of taxes paid in Kazakhstan under its domestic law as yet.

31. Since Kazakhstan provided access to MAP in the case described above but only decided to not discuss the case till the procedural requirement of application of refund in Kazakhstan is completed, this action is not found to be in contravention of this element of the Action 14 minimum standard.

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

32. Kazakhstan has reported that for treaties that do not include a filing period for a MAP request, the general provision on statute of limitation under Article 48 of the Tax Code would apply. Per this provision, the limitation period would be five years from the end of the concerned taxable period for cases until 2020 and three years from the end of the concerned taxable period for cases after 2020. In both situations, since the starting point is the end of the concerned taxable period and not the date of first notification of the action resulting in taxation not in accordance with the provisions of the treaty, it is possible that this time-period is shorter than the time-period prescribed under Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2017).

33. Therefore, Kazakhstan's approach leads to the situation that where a tax treaty does not contain the equivalent of Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2017) and a MAP request has been filed within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty, but after the expiration of Kazakhstan's domestic time limit, Kazakhstan would deny access to MAP for such a MAP case without any investigation on the merits of the case.

*Anticipated modifications**Multilateral Instrument*

34. Kazakhstan signed the Multilateral Instrument and has deposited its instrument of ratification on 24 June 2020. The Multilateral Instrument has entered into force for Kazakhstan on 1 October 2020.

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

35. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

36. With the depositing of its instrument of ratification, Kazakhstan opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Kazakhstan's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which they are resident, Kazakhstan

opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Kazakhstan listed 54 of its 55 treaties as a covered tax agreement under the Multilateral Instrument, but did not for any of these treaties, on the basis of Article 16(6)(a), make a notification on the basis of Article 16(6)(a) that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). If no such notification has been made by either treaty partner, Article 16(6)(a) stipulates that Article 16(1), first sentence of the Multilateral Instrument shall supersede such a treaty to the extent that the provisions contained therein are incompatible with the first sentence of Article 16(1).

37. In total, 11 of the 54 relevant treaty partners are not a signatory to the Multilateral Instrument and eight did not list their treaty with Kazakhstan as a covered tax agreement, whereas 15 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

38. For the remaining 20 treaties, since Kazakhstan did not make notifications on the basis of Article 16(6)(a), the effect is that the Multilateral Instrument will only supersede these treaties to the extent that the provisions contained therein are incompatible with the first sentence of Article 16(1). Since these treaties do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), they are considered to be incompatible with the first sentence of Article 16(1).

39. Of these 20 treaty partners, 15 already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Kazakhstan and these treaty partners, and therefore has superseded these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). For the remaining five treaties, the instrument will, upon entry into force for these treaties, supersede these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).

40. In view of the above and in relation to the two treaties identified in paragraphs 20 to 26 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), one is part of the 20 treaties that will be modified or superseded by the Multilateral Instrument.

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

41. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

42. With regard to the three tax treaties identified in paragraph 28 above that contain a filing period for MAP requests of less than three years, Kazakhstan listed all three treaties as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the three relevant treaty partners, one is not a signatory to the Multilateral Instrument. The remaining two tax treaties partners also made such notification.

43. Of these two treaty partners, one already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Kazakhstan and this treaty partner, and therefore has modified this treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include the equivalent of this provision.

Bilateral modifications

44. Kazakhstan further reported that when the tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b) will not be modified by the Multilateral Instrument, it will strive to update them via bilateral negotiations with a view to be compliant with element B.1. Kazakhstan reported that it is working on a plan giving importance to the investment in Kazakhstan of taxpayers in a treaty partner jurisdiction, the interactions of the treaty partner jurisdiction with taxpayers from Kazakhstan and the number of MAP cases initiated in the past between Kazakhstan and the treaty partner jurisdiction.

45. In addition, Kazakhstan reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), in all of its future tax treaties.

Peer input

46. Almost all peers that provided input confirmed that their treaty with Kazakhstan meets the requirements under this element of the Action 14 Minimum Standard.

47. For the four treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b), two peers provided input. One peer noted that the peer does not intend to initiate bilateral negotiations with Kazakhstan. However, the treaty with this peer will be modified by the Multilateral Instrument, upon entry into force to include the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b). The other peer reported that it has proposed to Kazakhstan to enter into a memorandum of understanding to address the issue that taxpayers have to initiate domestic remedies when submitting a MAP request.

Conclusion

	Areas for Improvement	Recommendations
	One out of 55 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b) and the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty is expected to be modified by the Multilateral Instrument to include a filing period of three years upon entry into force for the treaties concerned, but not as regards Article 25(1), first sentence.	As this treaty will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), Kazakhstan should request the inclusion of the required provision via bilateral negotiations, either <ol style="list-style-type: none"> as amended by the Action 14 final report (OECD, 2015b), or as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision. To this end, Kazakhstan should follow its stated intention to put a plan in place on how it envisages updating this treaty to include the required provision.
[B.1]	Two out of 55 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Out of these two treaties: <ul style="list-style-type: none"> One has been modified by the Multilateral Instrument to include the required provision. The remaining treaty will not be modified by the Multilateral Instrument to include the required provision. 	As the remaining treaty will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent, Kazakhstan should request the inclusion of the required provision via bilateral negotiations. To this end, Kazakhstan should follow its stated intention to put a plan in place on how it envisages updating this treaty to include the required provision.
	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Kazakhstan should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.
		In addition, Kazakhstan should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) in all future tax treaties.

[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).

48. 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

49. As discussed under element B.1, none of Kazakhstan’s 55 treaties, currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. However, as was also discussed under element B.1, 20 of these 55 treaties have been or will be superseded by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

50. Kazakhstan reported that it has introduced a bilateral notification process that allows the other competent authority concerned to provide its views on the case when Kazakhstan’s competent authority considers the objection raised in the MAP request not to be justified. Where access to MAP is denied on the grounds that the objection raised by the taxpayer is not justified, the Kazakhstan competent authority typically informs treaty partners the identification of the taxpayer, general information on the issues raised in the request and the grounds for denying access. This process, however, is not documented.

Practical application

51. Kazakhstan reported that since 1 January 2016 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016, 2017, 2018 and 2019 MAP statistics submitted by Kazakhstan also show that none of its MAP cases was closed with the outcome “objection not justified”.

52. All peers that provided input indicated not being aware of any cases for which Kazakhstan’s competent authority considered the objection raised in a MAP request as not justified. They also reported not having been consulted/notified in such cases, which can be explained by the fact that no such cases occurred since this date.

Anticipated modifications

53. Kazakhstan indicated that it will introduce a documented bilateral consultation or notification process for those situations where its competent authority considers an objection raised in a MAP request as being not justified.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	None of the 55 treaties contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Kazakhstan should follow its stated intention to document its notification and/or consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Kazakhstan should apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b).

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

55. Out of Kazakhstan's 55 tax treaties, 31 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, ten do not contain such equivalent. The remaining 14 treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviate from this provision for the following reasons:

- 10 treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but the granting of a corresponding adjustment could be read as only optional as the word "shall" is replaced by "may".
- Three treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but is considered not being equivalent thereof as it stipulates that a corresponding adjustment can only be made through an agreement or consultation between the competent authorities.
- One treaty contains a provision that significantly deviates from Article 9(2) in that it includes income earned by persons other than enterprises and does not endorse the "arm's length" approach for corresponding adjustments.

56. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Kazakhstan'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, Kazakhstan indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties.

57. Since Kazakhstan has no published MAP guidance to date, there is no publicly available information on access to MAP in transfer pricing cases.

Application of legal and administrative framework in practice

58. Kazakhstan reported that since 1 January 2016, it has not denied access to MAP on the basis that the case concerned a transfer pricing case. However, no such cases in relation hereto were received in this period.

59. All peers that provided input indicated not being aware of a denial of access to MAP by Kazakhstan since 1 January 2016 on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

60. Kazakhstan reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, Kazakhstan signed the Multilateral Instrument and has deposited its instrument of ratification on 24 June 2020. The Multilateral Instrument has entered into force for Kazakhstan on 1 October 2020. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention [OECD, 2017]).

61. Kazakhstan has, pursuant to Article 17(3), not reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). With regard to the 24 tax treaties identified in paragraph 53 above that are considered not to contain this equivalent, Kazakhstan listed all of them as a covered tax agreement under the Multilateral Instrument, but only for ten did it make a notification on the basis of Article 17(4). Six of the ten relevant treaty partners are not a signatory to the Multilateral Instrument, one did not list its treaty with Kazakhstan as a covered tax agreement and one made a reservation pursuant to Article 17(3) to not apply Article 17(2). The remaining two treaty partners have also made a notification on the basis of Article 17(4) that their

treaty with Kazakhstan contains a provision described in Article 17(2). Both of these treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Kazakhstan and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in place of existing provisions in these treaties.

62. With regard to the remaining 14 treaties, two treaty partners are not a signatory to the Multilateral Instrument, whereas four have not listed its treaty with Kazakhstan under that instrument and four have, on the basis of Article 17(3), reserved the right not to apply Article 17(2).

63. Of the remaining four treaty partners, one has already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Kazakhstan and this treaty partner, and therefore has been superseded by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provision contained in this treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1). The remaining three treaties will be superseded by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), 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).

64. Kazakhstan reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

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

[B.4] Provide access to MAP in relation to the application of anti-abuse provisions

Jurisdictions should provide access to MAP in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty.

65. 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

66. None of Kazakhstan’s 55 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Kazakhstan do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

67. Since Kazakhstan has no published MAP guidance to date, there is no publicly available information on access to MAP in relation to the application of anti-abuse provisions.

Practical application

68. Kazakhstan reported that since 1 January 2016 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 this period.

69. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Kazakhstan since 1 January 2016 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

70. Kazakhstan indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for Improvement	Recommendations
[B.4]	Kazakhstan reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Kazakhstan is therefore recommended to follow its policy and grant access to MAP in such cases.	

[B.5] Provide access to MAP in cases of audit settlements

Jurisdictions should not deny access to MAP in cases where there is an audit settlement between tax authorities and taxpayers. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, jurisdictions may limit access to the MAP with respect to the matters resolved through that process.

71. 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

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

Administrative or statutory dispute settlement/resolution process

73. Kazakhstan reported that it does not have an administrative or statutory dispute settlement/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.

Practical application

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

Anticipated modifications

75. Kazakhstan indicated that it does not anticipate 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.

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

Legal framework on access to MAP and information to be submitted

77. As will be discussed under element B.8, Kazakhstan has not yet issued any MAP guidance. Nevertheless, it reported that Article 221 of the Tax Code, which regulates the procedure for applying for the MAP, provides the list of information that is required from the taxpayer while filing a MAP request.

78. Where a taxpayer has not included all required information in its MAP request, Article 221 states that the MAP request may be denied and the taxpayer is invited to resubmit the application including the missing information or documentation. Kazakhstan clarified that its competent authority is generally flexible on timeframes as long as the information is provided within the time limitation provided under domestic law as discussed under element B.1.

79. Kazakhstan's competent authority is allowed under Article 221 to request for additional information or documents from the taxpayer and there are no prescribed timeframes to be followed. Where the taxpayer does not provide such additional information, Article 221 states that the MAP request may be denied and the taxpayer is invited to resubmit the application including such requested information or documentation. In other words, the requesting and submission of such additional information may affect the (timely) resolution of the MAP case, but would not lead to a limitation of taxpayers' access to MAP.

Practical application

80. Kazakhstan reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its domestic law. It further reported that since 1 January 2016 it has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

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

Anticipated modifications

82. Kazakhstan did not indicate that it anticipates any modifications in relation to element B.6, other than – as will be further discussed under element B.8 that it will introduce MAP guidance in which it will also be clarified what information should be included in a MAP request.

Conclusion

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

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

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

83. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties

include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Kazakhstan’s tax treaties

84. Out of Kazakhstan’s 55 tax treaties, 45 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining 10 treaties do not contain a provision that is based on or equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017).

Anticipated modifications

Multilateral Instrument

85. Kazakhstan signed the Multilateral Instrument and has deposited its instrument of ratification on 24 June 2020. The Multilateral Instrument has entered into force for Kazakhstan on 1 October 2020.

86. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

87. With regard to the ten tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Kazakhstan listed all of them as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant ten treaty partners, two are not a signatory to the Multilateral Instrument. All the remaining eight treaty partners made such notification.

88. Of these eight treaty partners, five already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Kazakhstan and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining three treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of this provision.

Bilateral modifications

89. Kazakhstan reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) will not be modified by the Multilateral Instrument, it will strive to update them via bilateral negotiations to be compliant with element B.7. Kazakhstan reported that it is working on a plan giving importance to the investment in Kazakhstan of taxpayers in a treaty partner jurisdiction, the interactions of the treaty partner jurisdiction with taxpayers from Kazakhstan and the number of MAP cases initiated in the past between Kazakhstan and the treaty partner jurisdiction. In addition, Kazakhstan reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Peer input

90. Almost all peers that provided input confirmed that their treaty with Kazakhstan meets the requirements under this element of the Action 14 Minimum Standard.

91. For the ten treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), only two relevant peers provided input in respect of this element. Both these peers noted that their treaties with Kazakhstan will, upon entry into force, be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Conclusion

	Areas for Improvement	Recommendations
[B.7]	Ten out of 55 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Of these ten treaties:	For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Kazakhstan should request the inclusion of the required provision via bilateral negotiations.
	<ul style="list-style-type: none"> • Five have been modified by the Multilateral Instrument to include the required provision. • Three are expected to be modified by the Multilateral Instrument to include the required provision. • The remaining two treaties will not be modified by the Multilateral Instrument to include the required provision. 	To this end, Kazakhstan should follow its stated intention to put a plan in place on how it envisages updating these treaties to include the required provision.
		In addition, Kazakhstan should maintain its stated intention to include the required provision in all future tax treaties.

[B.8] Publish clear and comprehensive MAP guidance

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

92. 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.

Kazakhstan's MAP guidance

93. Kazakhstan has not issued guidance on the MAP process and how it applies that process in practice. In this respect, Kazakhstan clarified that due to the few MAP cases it had to date, it did not publish rules, guidelines and procedures on access to and use of MAP, including the specific information and documentation that should be submitted in a MAP request.

94. However, general information on the MAP process in Kazakhstan is included in Article 221 of the Tax Code. Article 221 grants a resident or citizen of Kazakhstan the right to apply to the competent authority for an application for mutual agreement with the competent authority of a treaty partner of Kazakhstan if it considers that the actions of one or both Contracting States result or will result in taxation inconsistent with the provisions of the tax treaty or for determining residence of the taxpayer. Further, the manner and form in which the taxpayers should submit its MAP request is provided. However, no further guidance regarding the conduct of the MAP process is available in Article 221.

95. Since Kazakhstan does not have published MAP guidance, the information that the FTA MAP Forum agreed should be included in such guidance is not available. This 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 taxpayers should submit its MAP request.¹ Furthermore, due to the absence of any MAP guidance, information on various subjects is not specifically addressed. This concerns information on:

- whether MAP is available in cases of: (i) transfer pricing cases, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the possibility of suspension of tax collection during the course of a MAP
- the consideration of interest and penalties in the MAP
- the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

Information and documentation to be included in a MAP request

96. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.² This agreed guidance is shown below.

97. With respect to Article 221, the information to be included in a MAP request is Kazakhstan is 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.
98. Further to the above, Article 221 states that the application for MAP must include the following documents:
- copies of accounting documents confirming the amounts of income received (or to be received) and/or withheld taxes (if withheld) in the treaty partner jurisdiction
 - notarised copies of contracts (agreements, contracts) for performance of work, rendering of services or for other purposes
 - constituent documents or extracts from the trade register with details of founders and majority shareholders of the resident legal entity (in case of legal entities)
 - where the taxpayer is a foreign legal entity having its place of effective management in Kazakhstan, a notarised copy of documents confirming the place of effective management (location of the actual management body) of the legal entity in Kazakhstan (minutes of the general meeting of the board of directors or similar body with details of the place of its holding or other documents confirming the place of the main management and/or control, as well as the acceptance of the strategies, or other documents confirming the place of effective management and/or control)
 - where the taxpayer is a citizen of Kazakhstan, being a resident, a copy of an identity card or passport
 - where the taxpayer is a foreigner or a stateless person who is a resident, a notarised copy of the person's passport or identity card, residence permit in Kazakhstan (if any) and a document confirming the period of stay in Kazakhstan (visas or other documents).

Anticipated modifications

99. Kazakhstan indicated that it is planning to publish rules, guidelines and procedures on access to and the use of MAP in Kazakhstan, including the specific information and documentation that should be submitted in a MAP request. Furthermore, Kazakhstan indicated that it is planning to publish such materials on the website of the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan in Kazakh, Russian and English. However, there is no scheduled date by when such MAP guidance is expected to be published, as Kazakhstan only noted that it will be able to set a definitive timeframe later in 2020.

Conclusion

	Areas for Improvement	Recommendations
[B.8]	There is no published MAP guidance. Domestic legislative rules on MAP only provide minimal information as regards the MAP process.	<p>Kazakhstan should without further delay introduce clear and comprehensive MAP guidance. This guidance should in any case include (i) contact details of the competent authority or office in charge of MAP cases and (ii) manner and form in which the taxpayer should submit its MAP request.</p> <p>Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, Kazakhstan could consider including information on:</p> <ul style="list-style-type: none"> • how the MAP operates in Kazakhstan, the rules for accessing MAP, how its competent authority applies the process in practice and the rights and role of taxpayers • whether MAP is available in cases of: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the possibility of suspension of tax collection during the course of a MAP • the consideration of interest and penalties in the MAP • the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).The process for implementing MAP agreements. <p>In addition, as discussed under element B.6, Kazakhstan's MAP guidance could also provide further details regarding in what timeframe taxpayers are expected to comply with requests for additional information and documentation for a consideration of their MAP request.</p>
	No guidance is available on what information taxpayers should include in their MAP request.	<p>Kazakhstan should include in its to be published MAP guidance information on the manner and form in which taxpayers should submit their MAP request. In particular, the following items could be included:</p> <ul style="list-style-type: none"> • 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.

[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.

100. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.³

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

101. As noted under element B.8, Kazakhstan has not issued MAP guidance. Limited information on Kazakhstan's MAP process is included in its domestic legislation, but there is no central information available on this process and on which rules apply during this process.

MAP profile

102. The MAP profile of Kazakhstan is published on the website of the OECD since March 2018 and has recently been updated. This MAP profile is complete, but only contains basic information on the MAP process in Kazakhstan and additional information is not always provided for. However, this profile includes external links that provide additional information and guidance where appropriate.

Anticipated modifications

103. Kazakhstan indicated that it is in the process of preparing MAP guidance, which will be made public once it becomes available.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	MAP guidance has not been issued and is therefore not publically available.	Kazakhstan should, once it has issued MAP guidance, make this guidance publicly available and easily accessible and should update its MAP profile once it has issued MAP guidance in order to have more detailed information on Kazakhstan's MAP programme.

[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.

104. 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

105. As previously discussed under B.5, audit settlements are not possible in Kazakhstan.

106. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Kazakhstan's MAP guidance, which can be clarified by the fact that Kazakhstan has no such published guidance and such settlements are not possible in Kazakhstan.

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

107. As previously mentioned under element B.5, Kazakhstan reported that it does not have an administrative or statutory dispute settlement/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.

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

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

109. As Kazakhstan does not have an internal administrative or statutory dispute settlement/resolution process in place, there is no need for notifying treaty partners of such process.

Anticipated modifications

110. Kazakhstan indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	-	-

Notes

1. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
2. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
3. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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 (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), “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 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.

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

112. All of Kazakhstan’s 55 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

Anticipated modifications

Bilateral modifications

113. Kazakhstan reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Peer input

114. All peers that provided input confirmed that their treaty with Kazakhstan meets the Action 14 Minimum Standard for this element.

Conclusion

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

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

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

115. 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

116. 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. Kazakhstan provided its MAP statistics for 2018 and 2019 pursuant to the MAP Statistics Reporting Framework within the given deadline, but did not provide MAP Statistics for 2016 and 2017 within the given deadline. Further, Kazakhstan was not able to match its statistics with its treaty partners for 2018 and 2019. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and Annex C respectively¹ and should be considered jointly to understand the MAP caseload of Kazakhstan.²

Monitoring of MAP statistics

117. Kazakhstan reported that it monitors its MAP inventory, new requests and the timeframe involved by establishing deadlines for every incoming request. In addition, Kazakhstan reported that quarterly reports are provided to the head of the tax administration on the results of MAP requests for monitoring purposes.

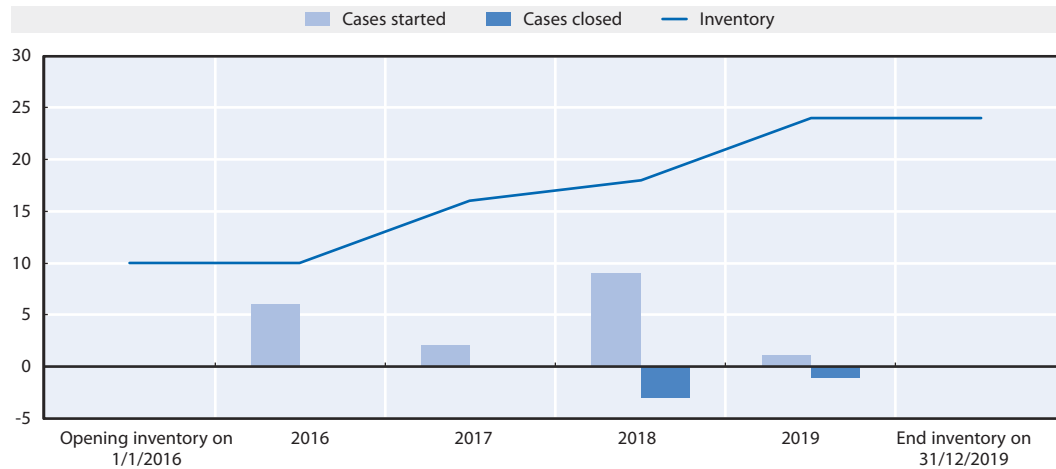
Analysis of Kazakhstan’s MAP caseload

Global overview

118. The analysis of Kazakhstan’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2019.

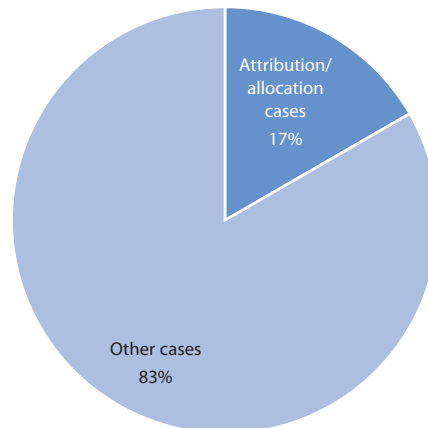
119. Figure C.1 shows the evolution of Kazakhstan’s MAP caseload over the Statistics Reporting Period.

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



120. At the beginning of the Statistics Reporting Period Kazakhstan had ten pending MAP cases, all of which were other MAP cases.³ At the end of the Statistics Reporting Period, Kazakhstan had 24 MAP cases in its inventory, of which four are attribution/allocation cases and 20 are other MAP cases. Kazakhstan's MAP caseload has increased by 140% during the Statistics Reporting Period. The breakdown of the end inventory can be shown as follows:

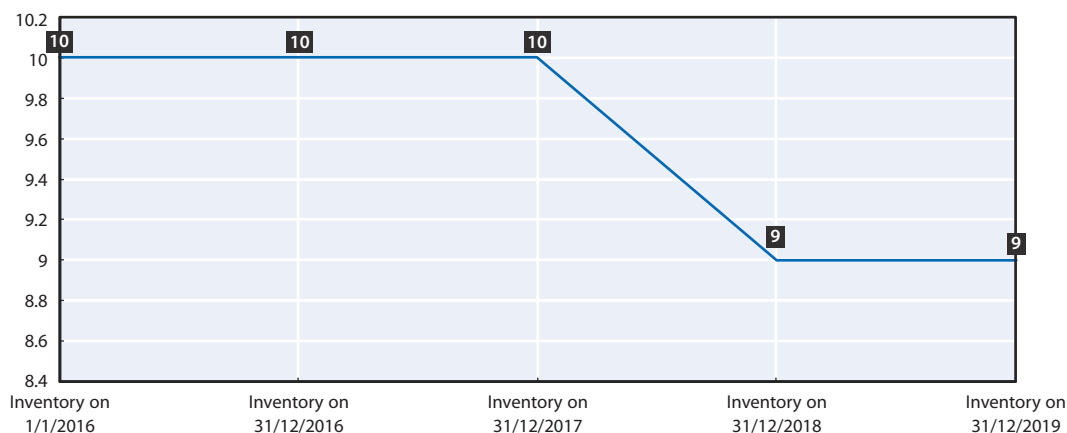
Figure C.2. End inventory on 31 December 2019 (24 cases)



Pre-2016 cases

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

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

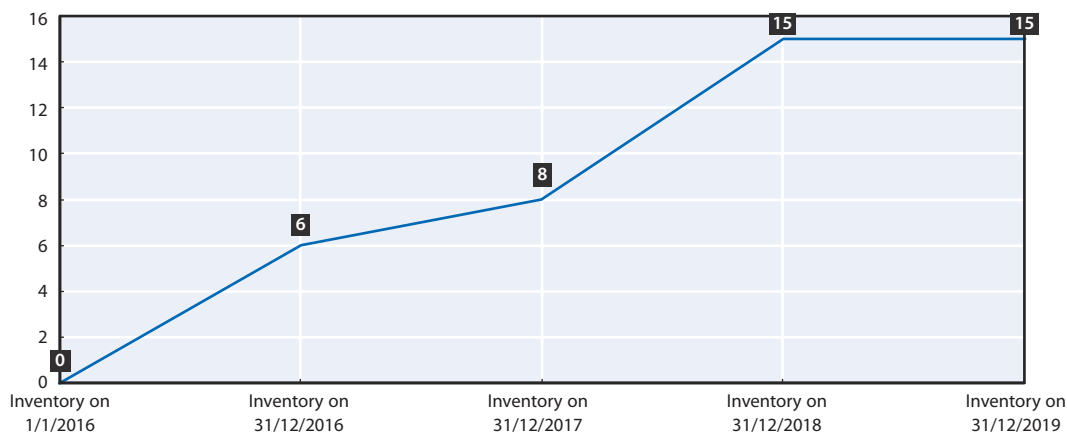


122. At the beginning of the Statistics Reporting Period, Kazakhstan's MAP inventory of pre-2016 MAP cases consisted of ten cases, all of which were other MAP cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to nine cases. The decrease in the number of pre-2016 MAP cases is only of one case that was resolved in 2018.

Post-2015 cases

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

Figure C.4. Evolution of Kazakhstan's MAP inventory – Post-2015 cases



124. In total, 18 MAP cases started during the Statistics Reporting Period, six of which concerned attribution/allocation cases and 12 concerned other MAP cases. At the end of this period the total number of post-2015 cases in the inventory was 15 cases, consisting of four attribution/allocation cases and 11 other MAP cases. Conclusively, Kazakhstan closed only three post-2015 cases during the Statistics Reporting Period, which represents approximately 17% of the total number of post-2015 cases that started during the Statistics Reporting Period and which concern two attribution/allocation cases and one other MAP case.

125. 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.

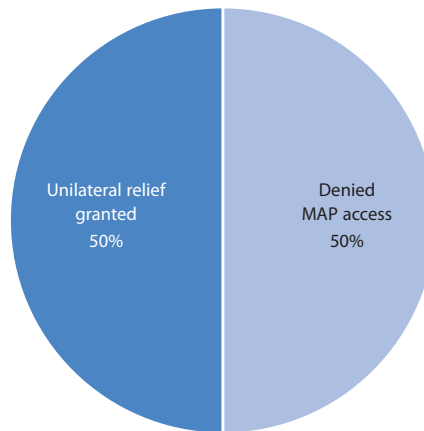
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	% of cases closed in 2019 compared to cases started in 2019	Cumulative evolution of total MAP caseload over the three years (2016-19)
Attribution/allocation cases	0%	(no cases started)	33%	(no cases started)	33%
Other cases	0%	0%	17%	0%	8%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

126. During the Statistics Reporting Period, Kazakhstan closed four MAP cases for which the following outcomes were reported:

Figure C.5. Cases closed in 2016, 2017, 2018 or 2019 (four cases)



127. Figure C.5 shows that in total, four MAP cases were closed during the Statistics Reporting Period. While two cases were resolved with the outcome “unilateral relief granted”, the other two cases were closed with the outcome “denied MAP access”.

Reported outcomes for attribution/allocation cases

128. In total two attribution/allocation cases were closed during the Statistics Reporting Period. The reported outcomes for both these cases was “unilateral relief granted”.

Reported outcomes for other cases

129. In total two other MAP cases were closed during the Statistics Reporting Period. The reported outcomes for both these cases was “denied MAP access”.

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

130. The average time needed to close MAP cases during the Statistics Reporting Period was 21.92 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	2	19.84
Other cases	2	24.00
All cases	4	21.92

Pre-2016 cases

131. For pre-2016 cases Kazakhstan reported that it needed 24.00 months to close one other MAP case.

132. For the purpose of computing the average time needed to resolve pre-2016 cases, Kazakhstan reported it used the same rules as the MAP Statistics Reporting Framework.

Post-2015 cases

133. For post-2015 cases Kazakhstan reported that on average it needed 19.84 months to close two attribution/allocation cases and 24 months to close one other MAP case. This resulted in an average time needed of 21.23 months to close three post-2015 cases during the Statistics Reporting Period.

Peer input

134. The peer input in relation to resolving MAP cases will be discussed under element C.3.

Anticipated modifications

135. Kazakhstan indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for Improvement	Recommendations
[C.2]	MAP statistics for 2016 and 2017 were not submitted. In addition, matching of MAP statistics was not sought with all of the treaty partners.	Kazakhstan should report its MAP statistics in accordance with the MAP Statistics Reporting Framework. In addition, Kazakhstan should endeavour to match its MAP statistics with all of its treaty partners.
	Kazakhstan's MAP statistics show that during the Statistics Reporting Period it closed 17% (three out of 18 cases) of its post-2015 cases in 21.23 months on average. In that regard, Kazakhstan is recommended to seek to resolve the remaining 83% of the post-2015 cases pending on 31 December 2019 (15 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

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

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

136. 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 Kazakhstan’s competent authority

137. Under Kazakhstan’s tax treaties, the competent authority function is assigned to Ministry of Finance. This has been delegated to the non-resident taxation unit within Kazakhstan’s State Revenue Committee. The non-resident taxation unit comprises a total of 20 staff members, out of which five staff members deal partly with MAP cases along with other tasks such as exchange of information, elucidation of tax legislation, consideration of objections on the decisions of the local revenue authority on refunds of the tax withheld at source and other administrative matters.

138. Kazakhstan reported that there is no dedicated competent authority as yet due to the rarity of MAP cases in Kazakhstan and that it has to date been able to manage its MAP commitments using these resources.

139. Kazakhstan further reported that the competent authority organises MAP trainings for its personnel within a budget set by the State Revenue Committee. Further, funds are organised for two face-to-face meetings for MAP discussions annually.

Monitoring mechanism

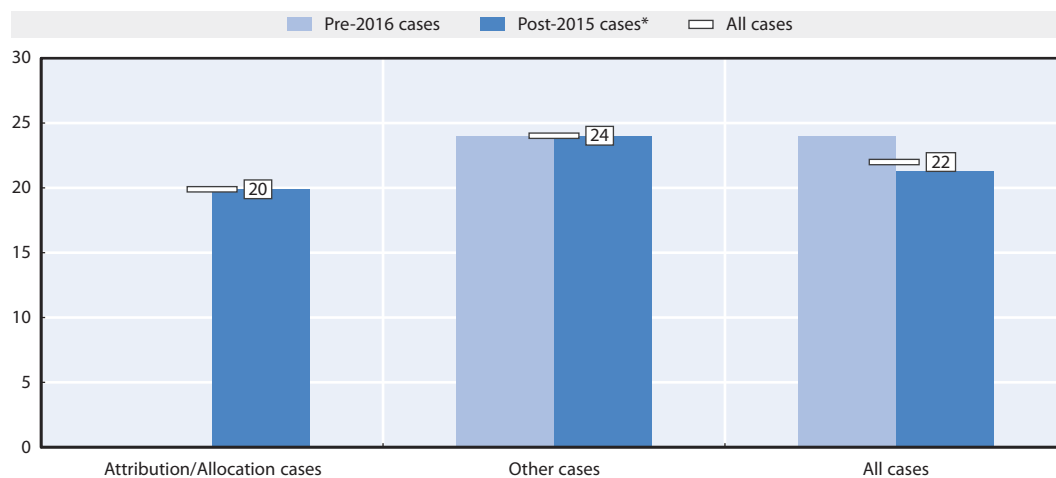
140. The monitoring/assessment of whether resources are adequate is done by the head of the non-resident taxation unit and in this regard, Kazakhstan reported that the allocation of MAP cases would typically depend on workload of each of the 5 employee responsible for MAP cases. Furthermore, the mechanisms/procedure to request more staff to handle the increase of MAP inventory is that in case it is concluded that resources are not sufficient, the administration would take appropriate measures to address the issue, including by increasing the budget for staffing the unit with additional employees.

Practical application

MAP statistics

141. As discussed under element C.2, Kazakhstan closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. This can be illustrated by Figure C.6.

Figure C.6. Average time (in months) to close cases in 2016-19



142. Based on these figures, it follows that on average it took Kazakhstan 21.92 months to close the four MAP cases it reported having closed during the Statistics Reporting Period.

Peer input

Handling and resolving MAP cases

143. Six out of ten peers that provided input reported having experiences with Kazakhstan in handling and resolving MAP cases.

144. One peer reported having a very positive experience in resolving MAP cases with Kazakhstan and noted that engagement on both sides was constructive and led to timely outcomes. Another peer noted that it cannot comment, since it granted unilateral relief in the only case that it had with Kazakhstan. This peer noted that although it was difficult to get in touch with Kazakhstan in order to match MAP statistics for 2017, Kazakhstan responded for the 2018 statistics and it was possible to match. A third peer noted that due to the small number of cases, it cannot assess whether the competent authority of Kazakhstan endeavours to resolve MAP cases in a reasonable timeframe.

145. The remaining three peers noted some concerns based on their experience with the competent authority of Kazakhstan and provided detailed inputs. The first peer raised concerns based on its experience with Kazakhstan in one MAP case. This peer reported that this case started in October 2016 and that although its competent authority had provided a position paper in January 2017, Kazakhstan did not respond till January 2019. This peer further noted that although it provided a response to Kazakhstan in June 2019, the case remains unsolved as yet after more than three years.

146. This peer highlighted that although it reached out to Kazakhstan for a response by letter and email following its position paper and response, it did not receive a response to its follow-up requests. This peer noted that the delay faced may be due to a reliance on letters, citing the example that the letter sent by Kazakhstan in January 2019 was not received by it till March 2019. This peer further mentioned that although it suggested alternative mediums of communication such as video-conference, teleconference or a telephone call to discuss and expedite the resolution of this case, it received no response.

147. This peer also highlighted that although there are numerous contacts provided for the competent authority of Kazakhstan, including in the response provided by them, the appropriate contact for MAP cases is unclear. This peer, therefore, concluded that it is difficult to recognise the responsible person to address in the competent authority of Kazakhstan for correspondences and follow-ups.

148. The second peer provided input based on its experience with the competent authority of Kazakhstan in seven pending MAP cases, some of them dating back to 2012 and involving significant financial interests. This peer reported that none of these cases have been resolved to date. In addition, this peer highlighted that communication with the competent authority of Kazakhstan could be very complex from its experience and attributes this to a lack of clarity as regards the person competent to make decisions on MAP cases in Kazakhstan. Finally, this peer noted that e-mails or letters sent to Kazakhstan remain unanswered or that there is substantial delay before a response is received.

149. Kazakhstan responded to this peer and stated that as a result of the meeting between the two competent authorities in 2017, a preliminary agreement was reached on four MAP cases. However, Kazakhstan reported that the competent authority of the peer informed that no final decision can be made on these cases until an agreement is reached

on the remaining three MAP cases. Kazakhstan's competent authority wanted to consider each case separately and clarified that the employees participating in the MAP cases are empowered to make decisions.

150. The peer responded to Kazakhstan's position and stated that the meeting between the competent authorities in 2017 resulted in no preliminary agreement. The peer stated that this was partly due to the fact that the State Revenue Committee of Kazakhstan seems to not have a mandate to negotiate the cases. The peer clarified that since no agreement could be reached on any of the cases, both competent authorities expressed their intention to come to an agreement during a future meeting. The peer further confirmed that although the peer took the initiative to arrange such a meeting, this has not been confirmed by Kazakhstan yet.

151. The third peer provided input based on past cases with Kazakhstan on residence and matters relating to general and administrative expenses. This peer reported that although it was able to resolve some cases related to residence with Kazakhstan several years ago, its cases related to the allocation of general and administrative expenses with Kazakhstan remain unresolved. This peer elaborated that the impediments to making progress on these cases include frequent personnel changes in the competent authority of Kazakhstan and the lack of continuity of the positions taken by representatives of the competent authority of Kazakhstan after such changes occur. Moreover, this peer noted its understanding that it has had negotiations of MAP cases with personnel in Kazakhstan who are not authorised to make decisions on behalf of the competent authority, leading to finalised agreements requiring further approval by officials with this authorisation. The peer concluded that these issues have led to its limited MAP inventory with Kazakhstan to remain for several years.

152. Kazakhstan responded to the peer input in general by stating that in 2019, structural changes took place in its competent authority staff and that thus, the scheduled meetings for the summer of 2019 were postponed to the beginning of 2020, which were postponed once again owing to the COVID-19 lockdown in 2020.

Suggestions for improvement

153. Out of the six peers that provided input in relation to this element, three provided suggestions for improvement.

154. The first peer suggested that acknowledgement of receipt of correspondence could be done by email using only file reference, and not taxpayer information since this would be a simple way to communicate to the sender that the correspondence was received, while providing the contact details of the person who will be responding.

155. The second peer suggested that it would be helpful for it to have meetings with the Kazakhstan competent authority on a regular basis where all the pending MAP cases could be discussed. In addition, this peer also suggested that it would be helpful to include a binding arbitration provision in the tax treaty between Kazakhstan and the peer, in order to ensure that MAP cases are resolved on time.

156. The third peer suggested that the competent authorities should endeavour to work co-operatively and have regular dialogues that aim to advance and resolve pending cases in a principled manner.

Anticipated modifications

157. Kazakhstan indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for Improvement	Recommendations
[C.3]	<p>While Kazakhstan closed MAP cases on an average of 21.92 months (which is within the pursued average for resolving MAP cases received on or after 1 January 2016), its MAP inventory increased significantly since 1 January 2016 and very few cases have been resolved during this period, with none of them being resolved owing to actions taken by Kazakhstan's competent authority.</p> <p>Furthermore, most of the peers that provided input indicated that they experienced several difficulties and delays in resolving MAP cases, which concerns:</p> <ul style="list-style-type: none"> • scheduling of face-to-face meetings • obtaining positions papers in due time • receiving responses to position papers issued by peers and receiving timely responses to communications on pending MAP cases. <p>Further, peers observed a lack of clarity as to the personnel competent to make decisions within Kazakhstan's competent authority (including a frequent change in personnel) and suggested that the staff in its competent authority function are not provided the mandate to negotiate MAP agreements.</p> <p>Therefore, there is a risk that pending post-2015 cases will in the future not be resolved within the pursued average of 24 months and this might indicate that resources are not adequately made available for Kazakhstan's competent authority.</p>	<p>Kazakhstan should ensure that resources are made available for the competent authority function in a way that allows an adequate use of such resources for the resolution of MAP cases in a timely, efficient and effective manner. Such adequate resources would enable Kazakhstan's competent authority to:</p> <ul style="list-style-type: none"> • more frequently hold face-to-face meetings • issue position papers in due time • respond to position papers issued by competent authorities of the treaty partners and timely respond to communications on pending MAP cases with these partners. <p>This, as suggested by some peers, also concerns adding the possibility to discuss and progress cases outside of face-to-face meetings, such as, for example, via e-mail correspondence, faxes or conference calls.</p> <p>Since peers reported that the staff in its competent authority function are not provided the mandate to negotiate MAP agreements, Kazakhstan should ensure that adequate resources – including personnel, funding, training and other programme needs – are provided to the MAP function, in order to enable competent authorities to carry out their mandate to resolve cases of taxation not in accordance with the provisions of the Convention in a timely and effective manner.</p>

[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.

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

Functioning of staff in charge of MAP

159. Kazakhstan reported that MAP reviews are conducted by personnel within the non-resident taxation unit of the Kazakhstan State Revenue Committee, who are completely separate from the regional units that are responsible for audit and who report to the Chairman of the State Revenue Committee.

160. Kazakhstan further reported that the personnel in charge of MAP cases may, if it deems appropriate, consult, but not involve, any tax administration personnel outside of those responsible for MAP in the determination of MAP cases. However, Kazakhstan clarified that any consultation with personnel from the audit function may extend only to determination of the factual background and context behind the adjustments made and that such personnel would, in no case, be allowed to be present during MAP discussions.

161. Kazakhstan further reported that all MAP cases are handled independently by the responsible personnel. Accordingly, Kazakhstan reported that staff in charge of MAP in practices operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment.

162. However, Kazakhstan noted that the personnel in charge of MAP cases must inform the head of the State Revenue Committee and receive his approval on cases where the issue raised is complex or involves a considerable amount of potential revenue gains or losses. Although such cases are uncommon, Kazakhstan reported that the head of the State Revenue Committee could be actively involved in the decision making to resolve such MAP cases having previously been actively involved in the decision making in the same cases during audit. In this case, there is a risk that the authority to resolve MAP cases may be influenced by personnel who made the adjustment at issue.

163. Further, Kazakhstan affirmed that staff in charge of MAP cases will take into consideration the actual terms of a tax treaty as applicable for the relevant year and that it is committed not to be influenced by policy considerations that Kazakhstan would like to see reflected in future amendments to the treaty.

Practical application

164. Peers that provided input generally reported no impediments in Kazakhstan to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. One peer specifically noted that it is not aware of a formal dependency of the staff of the competent authority of Kazakhstan upon the approval of the tax administration personnel who made the adjustments at issue.

165. However, as was already discussed under element C.3, one peer questioned the authority of the staff in charge of MAP in Kazakhstan to resolve MAP cases. This peer highlighted that frequent personnel changes in the competent authority of Kazakhstan and the lack of continuity of the positions taken by representatives of the competent authority of Kazakhstan after such changes occur has created impediments in its MAP cases with Kazakhstan. This peer further noted its understanding that it had concluded negotiations and agreed solutions on MAP cases with personnel in Kazakhstan who it later transpired were not authorised to make decisions on behalf of the competent authority, leading to finalised agreements not being respected.

Anticipated modifications

166. Kazakhstan indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

	Areas for Improvement	Recommendations
[C.4]	The head of the State Revenue Committee may be actively involved in exceptional cases, in a way exceeding the usual involvement of a high level superior, both at the audit level and during MAP, where the issue raised is complex or involves a considerable amount of potential revenue gains or losses, which system bears the risk that staff in charge of MAP cannot handle and resolve MAP cases absent direction by the tax administration personnel directly involved in the adjustment at issue in such cases.	Kazakhstan should ensure that tax administration personnel directly involved in the adjustment at issue do not have any influence in the decision making process of MAP cases, particularly in complex cases or cases having large revenue impact and ensure that staff in charge of MAP can enter into MAP agreements and authorise such agreements without being dependent on such personnel.
	One peer expressed the concern that agreements arrived at and finalised during MAP discussions, and where Kazakhstan's delegation in the discussions had not indicated that further approval from persons not present in the discussions would be needed, are not respected by Kazakhstan's competent authority. This indicates that the staff in charge of MAP do not have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty.	Kazakhstan should ensure that staff in charge of MAP have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty.
		In addition, Kazakhstan should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases absent any policy considerations that Kazakhstan would like to see reflected in future amendments to the treaty.

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

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

167. 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 Kazakhstan

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

- number of MAP cases resolved
- consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers)

- time taken to resolve a MAP case (recognising that the time taken to resolve a MAP case may vary according to its complexity and that matters not under the control of a competent authority may have a significant impact on the time needed to resolve a case).

169. In view of these indicators Kazakhstan reported that currently it does not have any metrics designed to evaluate staff specifically for their work on MAP cases. Kazakhstan noted, however, that there are broader metrics in place designed to evaluate staff of different administrations within the State Revenue Committee based on their performance in relation to all tasks undertaken.

170. Further to the above, Kazakhstan also reported that it does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue. In other words, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions

Practical application

171. Peers that provided input reported not being aware of the use of performance indicators by Kazakhstan that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue. One peer particularly noted that they are not aware of the use of performance indicators by Kazakhstan that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Anticipated modifications

172. Kazakhstan indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

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

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

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

173. 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

174. Kazakhstan reported that it has no domestic law limitations for including MAP arbitration in its tax treaties.

Practical application

175. Up to date, Kazakhstan has incorporated an arbitration clause in eight of its 55 treaties as a final stage to the MAP. These clauses can be specified as follows:

- equivalent of Article 25(5) of the OECD Model Tax Convention (OECD, 2017): one treaty
- voluntary and binding arbitration: seven treaties

176. One peer providing input specifically noted that it could be helpful to include a mandatory and binding arbitration provision in the tax treaty between Kazakhstan and this peer, which presently contains a voluntary and binding arbitration provision, in order to ensure that MAP cases are solved on time.

Anticipated modifications

177. Kazakhstan indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for Improvement	Recommendations
[C.6]	-	-

Notes

1. For post-2015 cases, if the number of MAP cases in Kazakhstan’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Kazakhstan reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
2. Kazakhstan’s 2018 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2018. See for a further explanation Annex B and C.
3. For pre-2016 and post-2015 Kazakhstan 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); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.

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>.

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.

178. 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

179. Kazakhstan reported that where the underlying tax treaty does contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), it will implement all MAP agreements irrespective of its domestic time limits. Kazakhstan further reported that where a tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), its domestic law specifically extends domestic time limits to ensure that MAP agreements may be implemented irrespective of domestic time limits. In other words, regardless of whether a tax treaty contains the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), Kazakhstan reported it will always implement MAP agreements.

180. Kazakhstan further reported that Article 221 (12) of the Tax Code provides that the decision reached in MAP is communicated to the taxpayer within seven business days and a copy of the agreement is officially sent by mail to the relevant regional tax office for implementation. Depending on the specificities of each case, Kazakhstan reported that the cover letter sent to the regional tax office specifies the deadline within which it should report back on the implementation of the MAP agreement.

181. Kazakhstan reported that once the implementation report is received from the regional tax office, the other competent authority is duly informed of the implementation. Kazakhstan further reported that there are no time-limits specified in the domestic law of Kazakhstan for this process.

Practical application

182. Kazakhstan reported that there were no MAP agreements reached with another competent authority on or after 1 January 2016. Kazakhstan further indicated that it would monitor the implementation of MAP agreements, although so far it has no experience in this regard due to fact that no MAP agreements have yet been entered into.

183. Peers reported not being aware of MAP agreements that were reached on or after 1 January 2016 that were not implemented in Kazakhstan, which can be explained as no MAP agreement has been reached as of that date. One peer stated that Kazakhstan did not provide refund to a taxpayer for a particular year that was subject to a Court decision, but in that specific case the refund was based on a general MAP agreement under the Article 25(3) equivalent provision of its tax treaty with Kazakhstan and not a MAP agreement under Article 25(2).

Anticipated modifications

184. Kazakhstan indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for Improvement	Recommendations
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Kazakhstan would have implemented all MAP agreements thus far.	

[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.

185. 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

186. As discussed under element D.1., Kazakhstan reported that there are no specific time limits set for the implementation of MAP agreements. However, Kazakhstan reported that their general policy would be to complete implementation of a MAP agreement within 30 calendar days. Kazakhstan further reported that in most cases, ten working days are sufficient for the concerned local office to implement a MAP agreement and report back to the competent authority. However, this policy is not documented.

187. As noted under element B.8, Kazakhstan has not issued MAP guidance and thus, there is no documented guidance as regards the timeframe for implementing mutual agreements.

Practical application

188. Kazakhstan reported that there were no MAP agreements reached with another competent authority on or after 1 January 2016.

189. All peers that provided input have not indicated experiencing any problems with Kazakhstan regarding the implementation of MAP agreements reached on a timely basis, which can be explained as no MAP agreement was reached as of 1 January 2016. One peer specifically mentioned that it has not reached a MAP agreement with Kazakhstan

since January 1, 2016 and therefore, there was no MAP agreement that could have been implemented. Another peer further mentioned in this regard that no MAP cases have been resolved with Kazakhstan to date.

Anticipated modifications

190. Kazakhstan indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for Improvement	Recommendations
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented in Kazakhstan, it was not yet possible to assess whether Kazakhstan would have implemented all MAP agreements on a timely basis thus far.	

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

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

191. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) 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 Kazakhstan's tax treaties

192. As discussed under element D.1, Kazakhstan's domestic legislation contains a statute of limitations of 3/5 years for implementing MAP agreements. However, Kazakhstan's domestic legislation specifically extends this time-limit to allow implementation of MAP agreements irrespective of domestic time-limits.

193. Out of Kazakhstan's 55 tax treaties, 47 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Out of the remaining eight treaties, one treaty includes the alternative provided for in Article 9(1) setting a time limit for making primary adjustments, but not the alternative provided for in Article 7(2). The remaining seven treaties do not contain such equivalent nor the alternative provisions for Article 9(1) and Article 7(2) setting a time limit for making transfer pricing adjustments.

Anticipated modifications

Multilateral Instrument

194. Kazakhstan signed the Multilateral Instrument and has deposited its instrument of ratification on 24 June 2020. The Multilateral Instrument has entered into force for Kazakhstan on 1 October 2020.

195. 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 (OECD, 2017) – 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, 2017). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

196. With regard to the eight tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternative provisions for Articles 9(1) and 7(2), Kazakhstan listed all of them as covered tax agreements under the Multilateral Instrument and made for all, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant eight treaty partners, one is not a signatory to the Multilateral Instrument and one did not list their treaty with Kazakhstan as a covered tax agreement. Of the remaining six treaty partners, five made such notification. The other treaty partner has, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, of the Multilateral Instrument.

197. Of the remaining five treaty partners, two have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Kazakhstan and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining three treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of this provision.

Bilateral modifications

198. Kazakhstan further reported that when tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives provided for in Articles 9(1) and 7(2) will not be modified by the Multilateral Instrument, it will strive to update them via bilateral negotiations to be compliant with element D.3. Kazakhstan reported that it is working on a plan giving importance to the

investment in Kazakhstan of taxpayers in a treaty partner jurisdiction, the interactions of the treaty partner jurisdiction with taxpayers from Kazakhstan and the number of MAP cases initiated in the past between Kazakhstan and the treaty partner jurisdiction. In addition, Kazakhstan reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives in all of its future tax treaties.

Peer input

199. Almost all peers that provided input confirmed that their treaty with Kazakhstan meets the requirements under this element of the Action 14 Minimum Standard.

200. For the eight treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or both alternatives, five of the relevant peers provided input. One peer, whose treaty will not be modified by the Multilateral Instrument, provided input that it does not intend to initiate bilateral negotiations with Kazakhstan. Two peers reported that their treaties with Kazakhstan do not meet the minimum standard, but that they have made all notifications required under the Multilateral Instrument to ensure that their treaties with Kazakhstan will be modified by that instrument. A fourth peer stated that although its treaty with Kazakhstan does not meet the minimum standard under Element D.3, it is willing to accept the alternative provisions. This peer prioritised other treaty partners with whom it has MAP cases for bilateral renegotiations to date, but reported its intention to enter into contact with Kazakhstan for bilateral renegotiations in due course. The fifth peer did not provide any input in respect of this element.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	<p>Eight out of 55 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Of these eight treaties:</p> <ul style="list-style-type: none"> • Two have been modified by the Multilateral Instrument to include the required provision. • Three are expected to be modified by the Multilateral Instrument to include the required provision. • The remaining three treaties will not be modified by the Multilateral Instrument to include the required provision. 	<p>For the remaining three 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 (OECD, 2017), Kazakhstan should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p>
		<p>To this end, Kazakhstan should follow its stated intention to put a plan in place on how it envisages updating these three treaties to include the required provision or the alternative provisions.</p>
		<p>In addition, Kazakhstan should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p>

Reference

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
Part A: Preventing disputes		
[A.1]	<p>Three out of 55 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these three treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the required provision. • Two will not be modified by the Multilateral Instrument to include the required provision. 	<p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), Kazakhstan should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Kazakhstan should follow its stated intention to put a plan in place on how it envisages updating these treaties to include the required provision.</p> <p>In addition, Kazakhstan should maintain its stated intention to include the required provision in all future tax treaties.</p>
[A.2]	<p>Roll-back of bilateral APAs is not provided for in appropriate cases.</p>	<p>Kazakhstan should maintain its stated intention to introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.</p>
Part B: Availability and access to MAP		
[B.1]	<p>One out of 55 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b) and the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty is expected to be modified by the Multilateral Instrument to include a filing period of three years upon entry into force for the treaties concerned, but not as regards Article 25(1), first sentence.</p>	<p>As this treaty will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), Kazakhstan should request the inclusion of the required provision via bilateral negotiations, either</p> <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b), or b. As it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision. <p>To this end, Kazakhstan should follow its stated intention to put a plan in place on how it envisages updating this treaty to include the required provision.</p>
	<p>Two out of 55 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Out of these two treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the required provision. • The remaining treaty will not be modified by the Multilateral Instrument to include the required provision. 	<p>As the remaining treaty will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent, Kazakhstan should request the inclusion of the required provision via bilateral negotiations. To this end, Kazakhstan should follow its stated intention to put a plan in place on how it envisages updating this treaty to include the required provision.</p>

	Areas for Improvement	Recommendations
[B.1]	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Kazakhstan should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.
		In addition, Kazakhstan should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) in all future tax treaties.
[B.2]	None of the 55 treaties contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Kazakhstan should follow its stated intention to document its notification and/or consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Kazakhstan should apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b).
[B.3]	Kazakhstan reported that it will provide access to MAP in transfer pricing cases. Its competent authority, however did not receive any MAP request for such cases during the Review Period. Kazakhstan is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.4]	Kazakhstan reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Kazakhstan is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	-	-
[B.6]	-	As Kazakhstan has thus far not limited access to MAP in eligible cases when taxpayers have complied with Kazakhstan's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	<p>Ten out of 55 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Of these ten treaties:</p> <ul style="list-style-type: none"> • Five have been modified by the Multilateral Instrument to include the required provision. • Three are expected to be modified by the Multilateral Instrument to include the required provision. • The remaining two treaties will not be modified by the Multilateral Instrument to include the required provision. 	For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Kazakhstan should request the inclusion of the required provision via bilateral negotiations.
		To this end, Kazakhstan should follow its stated intention to put a plan in place on how it envisages updating these treaties to include the required provision.
		In addition, Kazakhstan should maintain its stated intention to include the required provision in all future tax treaties.

	Areas for Improvement	Recommendations
[B.8]	There is no published MAP guidance. Domestic legislative rules on MAP only provide minimal information as regards the MAP process.	<p>Kazakhstan should without further delay introduce clear and comprehensive MAP guidance. This guidance should in any case include (i) contact details of the competent authority or office in charge of MAP cases and (ii) manner and form in which the taxpayer should submit its MAP request.</p> <p>Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, Kazakhstan could consider including information on:</p> <ul style="list-style-type: none"> • how the MAP operates in Kazakhstan, the rules for accessing MAP, how its competent authority applies the process in practice and the rights and role of taxpayers • whether MAP is available in cases of: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the possibility of suspension of tax collection during the course of a MAP • the consideration of interest and penalties in the MAP • the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).The process for implementing MAP agreements. <p>In addition, as discussed under element B.6, Kazakhstan's MAP guidance could also provide further details regarding in what timeframe taxpayers are expected to comply with requests for additional information and documentation for a consideration of their MAP request.</p>
	No guidance is available on what information taxpayers should include in their MAP request.	<p>Kazakhstan should include in its to be published MAP guidance information on the manner and form in which taxpayers should submit their MAP request. In particular, the following items could be included:</p> <ul style="list-style-type: none"> • 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.

	Areas for Improvement	Recommendations
[B.9]	MAP guidance has not been issued and is therefore not publicly available.	Kazakhstan should, once it has issued MAP guidance, make this guidance publicly available and easily accessible and should update its MAP profile once it has issued MAP guidance in order to have more detailed information on Kazakhstan's MAP programme.
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	-	Kazakhstan should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	<p>MAP statistics for 2016 and 2017 were not submitted. In addition, matching of MAP statistics was not sought with all of the treaty partners.</p> <p>Kazakhstan's MAP statistics show that during the Statistics Reporting Period it closed 17% (three out of 18 cases) of its post-2015 cases in 21.23 months on average. In that regard, Kazakhstan is recommended to seek to resolve the remaining 83% of the post-2015 cases pending on 31 December 2019 (15 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.</p>	<p>Kazakhstan should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.</p> <p>In addition, Kazakhstan should endeavour to match its MAP statistics with all of its treaty partners.</p>
[C.3]	<p>While Kazakhstan closed MAP cases on an average of 21.92 months (which is within the pursued average for resolving MAP cases received on or after 1 January 2016), its MAP inventory increased significantly since 1 January 2016 and very few cases have been resolved during this period, with none of them being resolved owing to actions taken by Kazakhstan's competent authority.</p> <p>Furthermore, most of the peers that provided input indicated that they experienced several difficulties and delays in resolving MAP cases, which concerns:</p> <ul style="list-style-type: none"> • scheduling of face-to-face meetings • obtaining positions papers in due time • receiving responses to position papers issued by peers and receiving timely responses to communications on pending MAP cases. <p>Further, peers observed a lack of clarity as to the personnel competent to make decisions within Kazakhstan's competent authority (Including a frequent change in personnel) and suggested that the staff in its competent authority function are not provided the mandate to negotiate MAP cases.</p> <p>Therefore, there is a risk that pending post-2015 cases will in the future not be resolved within the pursued average of 24 months and this might indicate that resources are not adequately made available for Kazakhstan's competent authority.</p>	<p>Kazakhstan should ensure that resources are made available for the competent authority function in a way that allows an adequate use of such resources for the resolution of MAP cases in a timely, efficient and effective manner. Such adequate resources would enable Kazakhstan's competent authority to:</p> <ul style="list-style-type: none"> • more frequently hold face-to-face meetings • issue position papers in due time • respond to position papers issued by competent authorities of the treaty partners and timely respond to communications on pending MAP cases with these partners. <p>This, as suggested by some peers, also concerns adding the possibility to discuss and progress cases outside of face-to-face meetings, such as, for example, via e-mail correspondence, faxes or conference calls.</p> <p>Since peers reported that the staff in its competent authority function are not provided the mandate to negotiate MAP cases, Kazakhstan should ensure that adequate resources – including personnel, funding, training and other programme needs – are provided to the MAP function, in order to enable competent authorities to carry out their mandate to resolve cases of taxation not in accordance with the provisions of the Convention in a timely and effective manner.</p>

	Areas for Improvement	Recommendations
	The head of the State Revenue Committee may be actively involved in cases, in a way exceeding the usual involvement of a high level superior, both at the audit level and during MAP, where the issue raised is complex or involves a considerable amount of potential revenue gains or losses, which system bears the risk that staff in charge of MAP cannot handle and resolve MAP cases absent direction by the tax administration personnel directly involved in the adjustment at issue in such cases.	Kazakhstan should ensure that tax administration personnel directly involved in the adjustment at issue do not have any influence in the decision making process of MAP cases, particularly in complex cases or cases having large revenue impact and ensure that staff in charge of MAP can enter into MAP agreements and authorise such agreements without being dependent on such personnel.
[C.4]	One peer expressed the concern that agreements arrived at and finalised during MAP discussions, and where Kazakhstan's delegation in the discussions had not indicated that further approval from persons not present in the discussions would be needed, are not respected by Kazakhstan's competent authority. This indicates that the staff in charge of MAP do not have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty.	Kazakhstan should ensure that staff in charge of MAP have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty.
		In addition, Kazakhstan should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases absent any policy considerations that Kazakhstan would like to see reflected in future amendments to the treaty.
[C.5]	-	Kazakhstan could consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Kazakhstan would have implemented all MAP agreements thus far.	
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented in Kazakhstan, it was not yet possible to assess whether Kazakhstan would have implemented all MAP agreements on a timely basis thus far.	
[D.3]	<p>Eight out of 55 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Of these eight treaties:</p> <ul style="list-style-type: none"> • Two have been modified by the Multilateral Instrument to include the required provision. • Three are expected to be modified by the Multilateral Instrument to include the required provision. • The remaining three treaties will not be modified by the Multilateral Instrument to include the required provision. 	<p>For the remaining three 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 (OECD, 2017), Kazakhstan should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, Kazakhstan should follow its stated intention to put a plan in place on how it envisages updating these three treaties to include the required provision or the alternative provisions.</p> <p>In addition, Kazakhstan should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p>

Annex A

Tax treaty network of Kazakhstan

Treaty partner	Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 25(2) of the OECD MTC				Article 25(3) of the OECD MTC		Arbitration	
	B.1		B.3	B.4	C.1	D.3	A.1	B.7		C.6
	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10		Column 11
	Inclusion Art. 25(1)?	Inclusion Art. 25(1) second sentence?	Inclusion Art. 9(2)?	Existence of a 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?	Inclusion Art. 25(2) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
	If yes, submission to either competent authority	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	If no, alternative provision in Art. 7 & 9 OECD MTC?	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 = signed pending ratification	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no	
Armenia	O	N/A	I	i	Y	Y	Y	Y	N	
Austria	O	N/A	Y	i	Y	Y	Y	Y	N	
Azerbaijan	O	N/A	I	i	Y	Y	Y	Y	N	
Belarus	O	N/A	I	i	Y	Y	Y	Y	N	
Belgium	E****	N/A	I****	i	Y	Y	Y	Y	Y*	
Bulgaria	O**	N/A	Y	i	Y	Y	Y	Y	Y	

Column 1	Column 2		Column 3		Column 4		Column 5			Column 6			Column 7		Column 8		Column 9		Column 10	Column 11
	Treaty partner	DTC in force?	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Arbitration	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC				
														B.1	B.1	B.3	B.4	C.1	D.3	A.1
Canada	Y	N/A	O	Y*	N/A	I	Y	N	Y	Y	Y	Y	Y							
China (People's Republic of)	Y	N/A	O	Y	N/A	Y	Y	Y												
Croatia	Y	N/A	O	Y	N/A	Y	Y	Y												
Cyprus	Y	N/A	O	Y	N/A	Y	Y	Y												
Czech Republic	Y	N/A	O	Y	N/A	I	Y	Y												
Estonia	Y	N/A	O**	Y	N/A	Y	Y	Y												
Finland	Y	N/A	E***	Y	N/A	Y	Y	Y												
France	Y	N/A	E***	Y	N/A	Y	Y	Y												
Georgia	Y	N/A	O	Y	N/A	I	Y	Y												
Germany	Y	N/A	O	Y	N/A	I	Y	Y												
Hungary	Y	N/A	O	Y	N/A	I	Y	Y												
India	Y	N/A	O	Y	N/A	Y	Y	Y												
Iran	Y	N/A	O	ii	2-years	Y	Y	N												
Ireland	Y	N/A	E***	Y	N/A	Y	Y	Y												
Italy	Y	N/A	N	if*	2-years	**	Y	N*												
Japan	Y	N/A	E***	Y	N/A	Y*	Y	Y												
Korea	Y	N/A	E***	Y	N/A	Y	Y	Y*												
Kyrgyzstan	Y	N/A	O	Y	N/A	I	Y	Y												
Latvia	Y	N/A	O	Y	N/A	Y	Y	Y												
Lithuania	Y	N/A	E***	Y	N/A	Y	Y	Y												
Luxembourg	Y	N/A	E***	Y	N/A	Y	Y	Y												
Malaysia	Y	N/A	O**	Y	N/A	**	Y	N*												
Moldova	Y	N/A	O	Y	N/A	Y	Y	Y												

Column 1	Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 25(2) of the OECD MTC				Article 25(3) of the OECD MTC		Arbitration								
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7									
	Column 3		Column 4		Column 5		Column 6			Column 7		Column 8		Column 9		Column 10	
Treaty partner	DTC in force?	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?					
Mongolia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	Y	N					
Netherlands	Y	E***	Y	Y	i	Y	Y	Y	Y	Y	Y	Y					
North Macedonia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	N	N					
Norway	Y	O	Y	I	i	Y	Y	Y	Y	Y	Y	N					
Pakistan	Y	O**	Y	I**	i	Y	Y	N	N*	N	N*	Y					
Poland	Y	O	Y	Y	i	Y	Y	N	Y*	N	Y*	N					
Qatar	Y	O	Y	Y	i	Y	Y	Y	Y	Y	Y	N					
Romania	Y	O	Y	I	i	Y	Y	Y	Y	Y	Y	N					
Russia	Y	E***	Y	I	i	Y	Y	Y	Y*	Y	Y*	N					
Saudi Arabia	Y	E***	Y	Y	i	Y	Y	Y	Y	Y	Y	N					
Serbia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	Y	N					
Singapore	Y	O	Y	Y*	i	Y	Y	Y	Y	Y	Y	N					
Slovak Republic	Y	O	Y	Y	i	Y	Y	Y	Y	Y	Y	N					
Slovenia	Y	O	Y	Y	i	Y	Y	Y	Y	Y	Y	N					
Spain	Y	O	Y	Y	i	Y	Y	Y	Y	Y	Y	N					
Sweden	Y	E***	Y	Y	i	Y	Y	Y	Y	Y	Y	N					
Switzerland	Y	O	Y	I	i	Y	ii	Y	Y	Y	Y	Y					
Tajikistan	Y	O	Y	I	i	Y	Y	Y	Y	Y	N	Y					
Turkey	Y	O**	i	Y	i	Y	N*	Y	Y	Y	Y	N					
Turkmenistan	Y	O	Y	I	i	Y	Y	Y	Y	Y	Y	N					
Ukraine	Y	E***	Y	I	i	Y	Y	Y	Y	Y	Y*	N					
United Arab Emirates	Y	E****	Y	Y	i	Y	Y	Y	Y	Y	Y	N					

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*/i1*/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***/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 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, 2018 and 2019 Reporting Periods (1 January 2016 to 31 December 2019) 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	0	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	10	0	0	0	0	0	0	0	0	0	0	0	0	10	n.a.
Total	10	0	0	0	0	0	0	0	0	0	0	0	0	10	n.a.

2017 MAP Statistics															
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in 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	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	10	0	0	0	0	0	0	0	0	0	0	0	0	10	n.a.
Total	10	0	0	0	0	0	0	0	0	0	0	0	0	10	n.a.

2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in 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 tax not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	10	1	0	0	0	0	0	0	0	0	0	9	24
Total	10	1	0	0	0	0	0	0	0	0	0	9	24

Notes: Kazakhstan's 2018 pre-2016 MAP Statistics showed three attribution/allocation cases and six other MAP cases pending on 1 January 2018 with one case resolved by the outcome "unilateral relief granted" and one case resolved by the outcome "denied MAP access".

Based on a clarification provided by Kazakhstan during the peer review, the number of pending pre-2016 cases in Kazakhstan's MAP inventory was corrected as above, as well as in the 2016 and 2017 MAP Statistics.

2019 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2019	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2019	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 tax not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	9	0	0	0	0	0	0	0	0	0	0	9	n.a.
Total	9	0	0	0	0	0	0	0	0	0	0	9	n.a.

Annex C

MAP Statistics Reporting for the 2016, 2017, 2018 and 2019 Reporting Periods (1 January 2016 to 31 December 2019) 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				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	0	3	0	0	0	0	0	0	0	0	0	0	0	3	n.a.
Others	0	3	0	0	0	0	0	0	0	0	0	0	0	3	n.a.
Total	0	6	0	0	0	0	0	0	0	0	0	0	0	6	n.a.

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

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	3	3	0	0	0	1	0	0	0	0	0	0	0	5	19
Others	5	6	1	0	0	0	0	0	0	0	0	0	0	10	24
Total	8	9	1	0	0	1	0	0	0	0	0	0	0	15	21.5

Notes: Kazakhstan's 2018 post-2015 MAP Statistics showed three existing and two new attribution/allocation cases with one case resolved by the outcome "unilateral relief granted" and six existing and six new other MAP cases with one case resolved by the outcome "denied MAP access".

Based on a clarification provided by Kazakhstan during the peer review, the number of pending 2016 cases in Kazakhstan's MAP inventory was corrected as above, as well as in the 2016 and 2017 MAP Statistics.

2019 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2019	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 2019	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	5	0	0	0	0	1	0	0	0	0	0	0	0	4	20.68
Others	10	1	0	0	0	0	0	0	0	0	0	0	0	11	n.a.
Total	15	1	0	0	0	1	0	0	0	0	0	0	0	15	20.68

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2016 and ended on 31 December 2019
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2019
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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



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