

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



Making Dispute Resolution More Effective – MAP Peer Review Report, Viet Nam (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

Viet Nam has an extensive tax treaty network with over 75 tax treaties. Viet Nam 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 11 cases pending on 31 December 2019, all of which concern allocation/attribution cases. Overall Viet Nam meets less than half of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Viet Nam is working to address most of them.

All of Viet Nam'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:

- Approximately 25% of its tax treaties do not contain the equivalent of Article 25(3), first sentence of the OECD Model Tax Convention, requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.
- Approximately 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.
- Approximately 10% of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Viet Nam needs to amend and update a certain number of its tax treaties. In this respect, Viet Nam intends to sign and ratify the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Viet Nam 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, but it has not yet put in place a plan in relation hereto.

Viet Nam 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.

Viet Nam meets some requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2017 not received any MAP request concerning transfer pricing cases, cases where anti-abuse provisions are applied or cases where there has been

an audit settlement. Furthermore, Viet Nam does not have in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. In addition, Viet Nam has not yet issued MAP guidance but it submitted its MAP profile.

Concerning the average time needed to close MAP cases, the MAP statistics for Viet Nam for the period 2017-19 are as follows:

2017-19	Opening inventory 1/1/2017	Cases started	Cases closed	End inventory 31/12/2019	Average time to close cases (in months)*
Attribution/allocation cases	6	6	1	11	23.15
Other cases	0	2	2	0	15.08
Total	6	8	3	11	17.77

* The average time taken for resolving MAP cases for post-2016 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2017 MAP cases, Viet Nam used as a start date when two tax authorities have received sufficient relevant information and documentation and agreed to start the bilateral MAP process and as the end date when two tax authorities agree to “close” (MAP is withdrawn by taxpayer) or “conclude” (MAP is solved/settled by the competent authorities) the MAP cases.

The number of cases Viet Nam closed in the period 2017-19 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 2017. 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 17.77 months. In this respect, peers experienced some difficulties in resolving MAP cases, in particular in obtaining position papers from Viet Nam’s competent authority, as well as responses to position papers issued by peers. In addition, Viet Nam’s competent authority, for some cases, needs to ask approval from the Ministry of Finance to resolve MAP cases, which bears a risk that MAP cases cannot be resolved in a timely manner. Viet Nam was therefore recommended to ensure that adequate resources are made available for the competent authority function in order to resolve MAP cases in a timely, efficient and effective manner as well as the more timely issuing of position papers and responses thereto and sufficient authority for staff being present at the face-to-face meeting.

Furthermore, Viet Nam 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, personnel of tax administrations directly involved in the adjustment at issue can fully participate in competent authority meetings, which bears the risk that the competent authority function is not performed entirely independent from the approval or direction of such personnel concerning the resolution of MAP cases during such meetings.

Lastly, as there was no MAP agreement reached that required implementation in Viet Nam in the period 2017-19, it was not yet possible to assess whether Viet Nam meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Viet Nam does not monitor the implementation of MAP agreements. In addition, Viet Nam has a domestic statute of limitation for implementation of MAP agreements, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Nevertheless, no problems have surfaced throughout the peer review process, which can be clarified by the fact that there was no MAP agreement reached by Viet Nam.

Introduction

Available mechanisms in Viet Nam to resolve tax treaty-related disputes

Viet Nam has entered into 78 tax treaties on income (and/or capital), 76 of which are in force.¹ These 78 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 Viet Nam, the competent authority function to conduct MAP is delegated to the General Department of Taxation (“GDT”). The competent authority of Viet Nam currently employs approximately ten employees who specialise in MAP cases and are divided into two groups with attribution/allocation cases and other cases.

Viet Nam intends to issue guidance on the governance and administration of the mutual agreement procedure (“MAP”) in 2020, which will be available at:

www.gdt.gov.vn/wps/portal/english

Recent developments in Viet Nam

Viet Nam reported that it is currently conducting tax treaty negotiations with some jurisdictions.

Furthermore, Viet Nam reported that it intends to sign 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.

Where treaties will not be modified by the Multilateral Instrument, Viet Nam reported that it strives updating them through future bilateral negotiations, and that it will contact its treaty partners that do not sign the Multilateral Instrument or have signed the Multilateral Instrument but made a reservation for the relevant articles to update the existing treaties to be compliant with the Action 14 Minimum Standard.

Basis for the peer review process

The peer review process entails an evaluation of Viet Nam’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 Viet Nam, its peers and taxpayers. The questionnaires for the peer review process were sent to Viet Nam and the peers on 20 December 2019.

The period for evaluating Viet Nam’s implementation of the Action 14 Minimum Standard ranges from 1 January 2017 to 31 December 2019 (“**Review Period**”). In general, developments following the Review Period, including the subsequent introduction of MAP Guidance, have not been taken into account for the analysis in this report. However, the report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Viet Nam’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 Viet Nam 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 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 Viet Nam’s tax treaties regarding the mutual agreement procedure.

In total 11 peers provided input: Austria, China, Denmark, Germany, Hungary, Japan, Korea, Poland, Singapore, Switzerland and Turkey. Out of these 11 peers, eight have experiences with Viet Nam in handling MAP cases. Generally, all peers that have MAP experiences with Viet Nam indicated having a good relationship with Viet Nam’s competent authority, some of them, however, experienced some procedural impediments to a timely and effective resolution of MAP cases.

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

- MAP profile²
- MAP statistics³ for 2017 and 2019 statistics according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Viet Nam

The analysis of Viet Nam’s MAP caseload relates to the period starting on 1 January 2017 and ending on 31 December 2019 (“**Statistics Reporting Period**”). According to the statistics provided by Viet Nam, its MAP caseload during this period was as follows:

2017-19	Opening inventory 1/1/2017	Cases started	Cases closed	End inventory 31/12/2019
Attribution/allocation cases	6	6	1	11
Other cases	0	2	2	0
Total	6	8	3	11

General outline of the peer review report

This report includes an evaluation of Viet Nam’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**”).⁴ Apart from analysing Viet Nam’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Viet Nam. Furthermore, the report depicts the changes adopted and plans shared by Viet Nam 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 Viet Nam 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 Viet Nam has entered into are available at: www.gdt.gov.vn/wps/portal/english. The treaties that are signed but have not yet entered into force are with Former Yugoslav Republic of Macedonia and the United States. For that reason the newly negotiated treaty is taken into account in the treaty analysis. Reference is made to Annex A for the overview of Viet Nam’s tax treaties.
2. Available at <https://www.oecd.org/tax/dispute/VietNam-Dispute-Resolution-Profile.pdf>.
3. The MAP statistics of Viet Nam are included in Annex B and C of this report.
4. 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, 2017a) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of Viet Nam’s tax treaties

2. Out of Viet Nam’s 78 tax treaties, 60 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. The remaining 19 treaties do not contain the word “interpretation” or “doubts” and are therefore considered not to have the equivalent of Article 25(3), first sentence of the OECD Model Tax Convention.

3. In this respect, Viet Nam reported that in the absence of a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention in the treaty, it is able to enter into general MAP agreements.

Anticipated modifications

Bilateral modifications

4. As mentioned in the introduction, Viet Nam reported its intention to sign the Multilateral Instrument, and some of the tax treaties would be modified by the Multilateral Instrument upon its entry into force. It 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 will not be modified by the Multilateral Instrument, it intends to contact the relevant treaty partners to update them via bilateral negotiations with a view to be compliant with element A.1. Viet Nam, however, reported not having in place a specific plan for such negotiations.

5. In addition, Viet Nam reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

6. For the 19 treaties identified above that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, the relevant peers provided the following input. One peer reported the provision of the relevant treaty lacks the word “interpretation.” In that regard, the peer reported it has not made a relevant notification under Article 16(6)(d)(ii) of the Multilateral Instrument with regard to the treaty and therefore the treaty will not be modified in this regard by the Multilateral Instrument. The peer noted it is due to an error in its language version of the treaty, however the interpretation of the treaty will generally allow to meet the Minimum Standard, even though the wording of the treaty does not completely reflect the wording provided in OECD Model Tax Convention – i.e. in case of difficulties or doubts regarding the interpretation of the treaty, the competent authorities would be open to endeavour to resolve the issue by mutual agreement.

7. Another peer reported that it has listed the treaty with Viet Nam as a covered tax agreement under the Multilateral Instrument and therefore the treaty will be modified if Viet Nam were to sign and ratify the Multilateral Instrument. The peer has approached Viet Nam to amend the treaty in this regard via bilateral negotiation, but it has not received a response from Viet Nam yet. Other peers provided no specific input in relation to element A.1.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	19 out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention in the treaties that currently do not contain such equivalent.</p> <p>Where treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention upon its entry into force, Viet Nam should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Viet Nam should put a plan in place on how it envisages updating these 19 treaties to include the required provision.</p> <p>In addition, Viet Nam 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.

8. 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.

Viet Nam’s APA programme

9. Viet Nam is authorised to enter into bilateral APAs and has implemented an APA programme. The rules relating to APAs are set forth in Circular no. 201/2013/TT-BTC dated 20th December 2013 to be found at www.gdt.gov.vn/.

10. The Circular clarifies that the consultation before official submission of the application shall be held at the request of the taxpayer to determine the suitability of the APA application. Viet Nam reported that within 120 days from the date of receiving GDT’s written letter approving for a formal APA application, the taxpayer must submit a formal APA application. It further reported that in case that the taxpayer is not able to submit the application in due date because of objective reasons, the taxpayer must submit a written request to and approved by GDT to extend the deadline. The extended deadline is no more than 30 days from the original expiry date. Typically, bilateral APAs run for a period of five years.

Roll-back of bilateral APAs

11. Viet Nam reported that it is not possible to obtain a roll-back of bilateral APAs as its internal laws have no provisions to grants roll-back of bilateral APAs and it stipulates that the time of commencement of validity is not before the date the taxpayer submits an official application for APA.

Practical application of roll-back of bilateral APAs

12. Viet Nam reported having received 12 requests for bilateral APAs during the Review Period. Viet Nam reported that since 1 January 2017 it received six requests for roll-back of bilateral APAs, and that it only denied those roll back requests but did not deny for the years covered in the APA requests. Out of 12 requests, two has been granted and the others are under consideration.

13. Peers that have experience of bilateral APAs with Viet Nam provided the following input. One peer reported it has received one request for roll-back of bilateral APAs from taxpayers in 2018 and the number of such inventories on 31 December 2019 is two. The peer noted it has not reached an agreement with Viet Nam on bilateral APAs. Another peer reported that in its understanding there is no rule on APA roll-back in Viet Nam and therefore the competent authorities could not provide the roll-back for a roll-back request to the taxpayer. The third peer reported that it has received two APA requests but in both cases no roll-back requests were made in the APA applications. Other peers provided no specific input in relation to element A.2.

Anticipated modifications

14. Viet Nam reported that it is currently in the process of reviewing and amending Circular no. 201/2013/TT-BTC in order to further improve solutions to prevent disputes while it has not got any decision to allow for roll-back of bilateral APAs.

Conclusion

	Areas for Improvement	Recommendations
[A.2]	Roll-back of bilateral APAs is not available.	Viet Nam should without further delay introduce of the possibility of, and in practice provide for, roll-back of bilateral APAs in appropriate cases.

Note

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 (OECD, 2017b).

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.

15. 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 Viet Nam’s tax treaties

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

16. Out of Viet Nam’s 78 tax treaties, 18 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 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, none of Viet Nam’s tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as changed by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either state.

17. The remaining 60 treaties can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	50
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby a MAP request is limited to actions taken only by a competent authority	9
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby 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

18. The 50 treaties¹ mentioned in the first row of the table are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 49 of the 50 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 (seven treaties).
- 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 (42 treaties).

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

20. The nine treaties in the second row of the table are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since the treaties contain a provision that reads:

Where a person who is a resident of a Contracting State considers that the actions of the competent authority of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which that person is a resident.

21. The language above is additional language that limits MAP requests to actions taken only by a “competent authority” as opposed to actions taken by a “contracting state.” Given this additional limiting language, this treaty does not contain the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention. In this respect, under the treaties Viet Nam has entered into, Viet Nam’s competent authority is the Minister of Finance or a representative authorised by the Minister of Finance. Article 51 and 52 of the Circular No. 205/2013/TT-BTC of Viet Nam stipulates that GDT is authorised by the Minister of Finance to act as the competent authority of MAP. Viet Nam reported that the

words “of the competent authority” in those treaties do not mean to limit the access to MAP as the competent authorities are representatives of contracting partners and it does not indicate the action of an individual competent authority, and the reference to a competent authority in the treaties are merely for clarification purposes and not intended to materially deviate from the OECD Model Tax Convention. Given the above reasons, it is considered that Viet Nam will accept MAP requests even if it is not a competent authority that took action. Therefore, the nine treaties are considered to be in line with this part of element B.1.

22. The treaty mentioned in the third row of the table 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. The provision incorporated in the protocol to this treaty reads:

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

23. 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 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

24. Out of Viet Nam’s 78 tax treaties, 73 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of 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.

25. The remaining five 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	1
Filing period less than 3 years for a MAP request (2 years)	4

26. Viet Nam reported that under its internal law there is no regulation on the deadline for submitting a MAP request.

Practical application

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

27. Under Viet Nam’s domestic legislation, when taxpayers intend to object to a tax assessment, they have two options. They can decide to lodge an appeal with the Internal Inspection Unit of the Province Tax Office, after which it can be submitted to the Internal Inspection Department of the GDT. Taxpayers can also present their case directly to the court, or after the administrative remedies have been run through. Viet Nam clarified that it is not possible to run both options concurrently. In this respect, the following four situations are possible in Viet Nam when the case under review follows from an adjustment made by the GDT:

- a. The taxpayer does not lodge an appeal with the Internal Inspection Unit of Province Tax Office/the Internal Inspection Department of the GDT, after which the tax assessment becomes final.
 - b. The taxpayer lodges an appeal with the Internal Inspection Unit of Province Tax Office and subsequently with the Internal Inspection Department of the GDT, but decides not to proceed with the case to the court after the process with these institutions have been finalised.
 - c. The taxpayer lodges an appeal with the Internal Inspection Unit of Province Tax Office/the Internal Inspection Department of the GDT and after the decision by these institutions proceeds with the case to the court.
 - d. The taxpayer directly lodges an appeal to the court.
28. Viet Nam reported that in situation a), access to MAP would be granted and there would not be any restrictions for Viet Nam's competent authority to handle and resolve the case in MAP. For situations b), c) and d), according to Viet Nam's domestic legislation access to MAP would not be allowed. Specifically as to situation c) and d), Viet Nam reported that access to MAP would not be granted once the taxpayer lodges an appeal with the court as well as once the court has decided on the case under review. This policy follows from clause 1.3.b) of Article 7 of the Circular no. 205/2013/TT-BTC, where it is stipulated that the competent authority of Viet Nam shall not handle complaints that have been settled or are being settled by courts, or that have been settled or are being settled in accordance with the order of settlement of complaints.
29. Viet Nam, however, reported that in practice it would accept MAP requests for cases that are being settled or have been settled by the administrative dispute resolution processes. It further reported that it has already accepted MAP cases that have been settled by these processes. In this respect, Viet Nam clarified that the competent authority has the right to deviate in MAP from the decision of the administrative remedies outlined above.
30. While in practice no issues have arisen as to the allowance of access to MAP for cases for which domestic administrative remedies have been applied, Viet Nam's domestic legislation clearly stipulates that in such situation access to MAP will not be given as well as in situation domestic judicial remedies are pending or have been finalised. Therefore, there is a risk that access to MAP will not be given irrespective of domestic remedies, even though Article 25(1) of the OECD Model Tax Convention, as incorporated in Viet Nam's treaties, explicitly allows so.

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

31. Viet Nam reported that in the absence of a filing period in the treaty there will be no applicable filing period, and the competent authority can open a MAP case anytime.

Anticipated modifications

Bilateral modifications

32. Viet Nam reported its intention to sign the Multilateral Instrument, and some of the tax treaties would be modified by the Multilateral Instrument upon its entry into force. It further reported that when the tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, will not be modified by the Multilateral Instrument, it intends to contact the relevant

treaty partners to update them via bilateral negotiations with a view to be compliant with element B.1. Viet Nam, however, reported not having in place a specific plan for such negotiations.

33. In addition, Viet Nam reported it will seek to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all of its future tax treaties.

Peer input

34. All but one peer that provided input indicated that their treaty with Viet Nam meets the requirements under this element of the Action 14 Minimum Standard.

35. One peer commented that it was informed by one taxpayer that it was of the understanding that in Viet Nam, once a taxpayer initiates the first step in the domestic appeal process (i.e. the case has not reached the courts yet), the taxpayer will have limited access to MAP. Viet Nam responded that it has not received a MAP from a taxpayer and that in practice it has not rejected any MAP case with such reason.

36. For the five treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, the relevant peers did not provide input.

Conclusion

	Areas for Improvement	Recommendations
[B.1]	One out of 78 tax treaties does not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention.	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(1) of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent.</p> <p>Where the treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1) of the OECD Model Tax Convention upon its entry into force, Viet Nam should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ul style="list-style-type: none"> a. as amended in the Action 14 final report, or b. as it read prior to the adoption of Action 14 final report • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>To this end, Viet Nam should put a plan in place on how it envisages updating the treaty to include the required provision.</p>

	Areas for Improvement	Recommendations
[B.1]	One out of 78 tax treaties does not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention.	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent.</p> <p>Where the treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention upon its entry into force, Viet Nam should request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> as amended in the Action 14 final report, or as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision. <p>To this end, Viet Nam should put a plan in place on how it envisages updating this treaty to include the required provision.</p>
	Three out of 78 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, 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.	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention in the treaties that currently do not contain such equivalent.</p> <p>Where treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention upon its entry into force, Viet Nam should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Viet Nam should put a plan in place on how it envisages updating these treaties to include the required provision.</p>
	-	In addition, Viet Nam should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.
	Under Viet Nam's domestic law access to MAP is denied in eligible cases where the issue under dispute is pending or has already been decided via the judicial and administrative remedies provided by Viet Nam's domestic law, even though the requirements for initiating a MAP case under the treaty provision that is equivalent to Article 25(1) of the OECD Model Tax Convention are met.	Viet Nam should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention, as incorporated in its tax treaties, can access the MAP regardless of whether domestic remedies have been initiated or finalized. In particular, Viet Nam should ensure that its domestic law does not obstruct access to MAP in cases where the issue under dispute is pending or has already been decided via the judicial and administrative remedies.

[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).

37. 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

38. As discussed under element B.1, out of Viet Nam's 78 treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

39. Viet Nam reported that it has not introduced a documented bilateral consultation or notification process that allows the other competent authority concerned to provide its views on the case when Viet Nam's competent authority considers the objection raised in the MAP request not to be justified. In that regard, it reported that in case it receives a MAP request and if taxpayer's objection is considered not being justified, its competent authority will consult/notify in writing the other competent authority in the MAP case.

Practical application

40. Viet Nam reported that since 1 January 2017 its competent authority has not received any MAP request from taxpayers. The 2017 and 2019 MAP statistics submitted by Viet Nam also show that none of its MAP cases was closed with the outcome "objection not justified".

41. All peers that provided input indicated not being aware of any cases for which Viet Nam's competent authority denied access to MAP. This can be explained by the fact that since 1 January 2017 Viet Nam has not received any MAP requests from taxpayers.

Anticipated modifications

42. Viet Nam indicated that it will introduce a bilateral notification process for those situations where its competent authority considers an objection raised in a MAP request as being not justified. Viet Nam reported it will notify in writing treaty partners within one month from the receipt date, and it designs the form similar to the template in the MAP Routine.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	None of the 78 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Viet Nam should without further delay follow its stated intention to introduce a documented notification process and provide in that documented process rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Viet Nam should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

43. 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

44. Out of Viet Nam's 78 tax treaties, 42 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, 27 do not contain such equivalent. The remaining nine treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but deviate from this provision for the following reasons:

- In five treaties, corresponding adjustments can only be made through MAP.
- In three treaties, the provision is based on Article 9(2) of the OECD Model Tax Convention, but the granting of a corresponding adjustment could be read as only optional as the word "shall" is replaced by "may".
- In one treaty, a provision that is based on Article 9(2) of the OECD Model Tax Convention is included, but it lacks the second sentence of that provision and is replaced by a sentence that stipulates that a corresponding adjustment can only be made through MAP.

45. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Viet Nam’s tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Viet Nam indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in its tax treaties.

Application of legal and administrative framework in practice

46. Viet Nam reported that since 1 January 2017, it has not received MAP requests concerning a transfer pricing case from taxpayers and therefore has not denied access to MAP in transfer pricing cases.

47. All peers that provided input indicated not being aware of a denial of access to MAP by Viet Nam since 1 January 2017 on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

48. Viet Nam reported that it will consider to include Article 9(2) of the OECD Model Tax Convention in its tax treaties if it is proposed by treaty partners and that it will consider to include Article 9(2) of the OECD Model Tax Convention in all of its future tax treaties depending on each treaty partner.

Conclusion

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

[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.

49. 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

50. None of Viet Nam’s 78 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 Viet Nam 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.

Practical application

51. Viet Nam reported that since 1 January 2017 it has not received any MAP requests for cases concerning the application of anti-abuse provisions and therefore has not denied access to MAP in any 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.

52. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Viet Nam since 1 January 2017 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

53. Viet Nam indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for Improvement	Recommendations
[B.4]	Viet Nam 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. Viet Nam 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.

54. 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

55. Under Viet Nam’s domestic law it is possible that taxpayers and the tax administration enter into an audit settlement. Viet Nam reported that after an audit settlement, a minute is made between taxpayer and tax authority, including the taxpayer’s opinion. It further reported that the conclusion of an audit settlement does not affect access to MAP while it would be an input to be reviewed in the process of MAP.

Administrative or statutory dispute settlement/resolution process

56. Viet Nam reported that it does not have an administrative dispute settlement 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

57. Viet Nam reported that since 1 January 2017 it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration. However, since 1 January 2017 it has not received any MAP requests from taxpayers.

58. All peers indicated not being aware of a denial of access to MAP in Viet Nam since 1 January 2017 in cases where there was an audit settlement between the taxpayer and the tax administration.

Anticipated modifications

59. Viet Nam indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

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

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

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

60. 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

61. As will be discussed under element B.8, Viet Nam has not yet issued any MAP guidance.

62. Where a taxpayer has not included all required information in its MAP request, Viet Nam reported that it normally allows taxpayers 30 working days from the date of receiving the tax authority's written request to supplement the dossier. It also reported that the timeline is stated in the tax authority's document to send the taxpayer and that it would allow an appropriate time period for providing information or documents, depending on each specific case or depending on the complexity of the dossier.

Practical application

63. Viet Nam reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation its competent authority asks the taxpayer to provide. It further reported that since 1 January 2017 it has not received any MAP requests from a taxpayer.

64. All peers that provided input indicated not being aware of a limitation of access to MAP by Viet Nam since 1 January 2017 in situations where taxpayers complied with information and documentation requirements.

Anticipated modifications

65. Viet Nam indicated that it intends to include in the to-be-published MAP guidance procedures and timelines for requesting additional information from taxpayers when such information is not included in the MAP request.

Conclusion

	Areas for Improvement	Recommendations
[B.6]	Viet Nam reported it will give access to MAP in cases where taxpayers have complied with its information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Viet Nam is therefore recommended to follow its policy and grant access to MAP when it receives a request that includes the required information and documentation.	

[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.

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

Current situation of Viet Nam's tax treaties

67. Out of Viet Nam's 78 tax treaties, 69 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining nine treaties do not contain such provision at all.

Anticipated modifications

Bilateral modifications

68. Viet Nam reported its intention to sign the Multilateral Instrument, and some of the tax treaties would be modified by the Multilateral Instrument upon its entry into force. It further reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention will not be modified by the Multilateral Instrument, it intends to contact the relevant treaty partners to update them via bilateral negotiations with a view to be compliant with element B.7. Viet Nam, however, reported not having in place a specific plan for such negotiations.

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

Peer input

70. For the nine treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, one of the relevant peers reported it has listed the treaty with Viet Nam as a covered tax agreement under the Multilateral Instrument and therefore the treaty will be modified if Viet Nam were to sign and ratify the Multilateral Instrument. The peer has approached Viet Nam to amend the treaty in this regard via bilateral negotiation, but it has not received a response from Viet Nam yet. Other peers provided no specific input in relation to element B.7.

Conclusion

	Areas for Improvement	Recommendations
[B.7]	Nine out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention in the treaties that currently do not contain such equivalent.</p> <p>Where treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention upon its entry into force, Viet Nam should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Viet Nam should put a plan in place on how it envisages updating these nine treaties to include the required provision.</p> <p>In addition, Viet Nam should maintain its stated intention to include the required provision in all future tax treaties.</p>

[B.8] Publish clear and comprehensive MAP guidance

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

71. 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.

Viet Nam's MAP guidance

72. Since Viet Nam has not yet 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.²

Information and documentation to be included in a MAP request

73. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.³ This concerns:

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

74. Due to the fact that Viet Nam has not issued MAP guidance, there is also no guidance on any of the above in Viet Nam.

Anticipated modifications

75. Viet Nam indicated currently being in the process of drafting its MAP guidance, and that such guidance would *inter alia* address the following items:

- contact information of the competent authority
- the manner and form in which the taxpayer should submit its MAP request
- the specific information and documentation that should be included in a MAP request
- how the MAP functions in terms of timing and the role of the competent authorities
- information on availability of arbitration
- relationship with domestic available remedies
- access to MAP in transfer pricing cases, audit settlements and anti-abuse provisions, multilateral disputes, bona fide foreign-initiated self-adjustments and for multi-year resolution of cases
- 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)
- rights and role of taxpayers in the process
- suspension of tax collection
- interest charges, refunds and penalties.

76. Viet Nam further indicated that after the Vietnamese version of its MAP guidance is issued, the English version will be available in about 15 working days.

Conclusion

	Areas for Improvement	Recommendations
[B.8]	There is no published MAP guidance.	<p>Viet Nam should, without further delay, introduce and publish guidance on access to and use of the MAP, and in particular include the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation and information that should be included in such a 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 Viet Nam could consider follow its stated intention to include the items identified above.</p> <p>Furthermore, as discussed under element B.6, Viet Nam'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>

[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.

77. 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.⁴

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

78. As discussed under element B.8, Viet Nam has not yet published MAP guidance.

MAP profile

79. The MAP profile of Viet Nam is published on the website of the OECD. This MAP profile is complete and often with detailed information. This profile includes external links that provide extra information and guidance where appropriate.

Anticipated modifications

80. Viet Nam reported that its MAP guidance is under preparation and will be published in the near future.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	The MAP guidance is not publicly available.	Viet Nam should make its MAP guidance publicly available and easily accessible once it has been introduced. Furthermore, the MAP profile should be updated once Viet Nam’s MAP guidance has been introduced.

[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP

Jurisdictions should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, and jurisdictions limit access to the MAP with respect to the matters resolved through that process, jurisdictions should notify their treaty partners of such administrative or statutory processes and should expressly address the effects of those processes with respect to the MAP in their public guidance on such processes and in their public MAP programme guidance.

81. As explained under element B.5, an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction’s MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory

dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the previously mentioned processes.

MAP and audit settlements in the MAP guidance

82. As previously discussed under B.5, it is under Viet Nam's domestic law possible that taxpayers and the tax administration enter into audit settlements. Currently no guidance or documents explaining the relationship between access to MAP and audit settlements has been published as Viet Nam has not published its guidance yet.

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

83. As previously mentioned under element B.5, Viet Nam does not have an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer. In that regard, there is no need to address the effects of such process with respect to MAP in Viet Nam's forthcoming MAP guidance.

84. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Viet Nam.

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

85. Viet Nam reported it notified its treaty partners of this process as the Circular no. 205/2013/TT-BTC of the Ministry of Finance is publicly posted on the website of the Ministry of Finance and the GDT.

86. Peers indicated no issues regarding element B.10 in relation to administrative or statutory dispute settlement or resolution processes.

Anticipated modifications

87. Viet Nam indicated that it will clarify the relationship between access to MAP and audit settlements in its to-be-published MAP guidance.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	There is no published MAP guidance and access to MAP in cases where the outcome of an audit reflects an understanding between the auditors and the taxpayer is not described in any publicly available information.	Viet Nam should follow its stated intention to clarify in its MAP guidance to be published that taxpayers have access to MAP in cases of audit settlements.

Notes

1. 32 treaties of the 50 treaties in the first row of the table also contain additional language that limits MAP requests to actions taken only by a “competent authority” as opposed to actions taken by a “contracting state,” which is considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. However, as will be discussed in paragraph 20 and 21, these treaties are considered to be in line with this part of element B.1.
2. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
3. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
4. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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Part C

Resolution of MAP cases

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

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

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

Current situation of Viet Nam’s tax treaties

89. Out of Viet Nam’s 78 tax treaties, 77 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. The remaining tax treaty contains such a provision, but additional wording stipulating that the mutual agreement procedure “shall expire by the end of the third year following that in which the case was presented by the taxpayer” is included. As the inclusion of this sentence bears the risk that a MAP case cannot be resolved anymore if an agreement is not reached within the three-year period, the treaty is considered to not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Anticipated modifications

Bilateral modifications

90. Viet Nam reported its intention to sign the Multilateral Instrument, and the tax treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will be modified by the Multilateral Instrument.

91. In addition, Viet Nam reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

92. All peers that provided input indicated that their treaty with Viet Nam meets the Action 14 Minimum Standard for this element.

93. For the treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant peer did not provide input.

Conclusion

	Areas for Improvement	Recommendations
[C.1]	One out of 78 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent.</p> <p>Where the treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention upon its entry into force, Viet Nam should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Viet Nam should put a plan in place on how it envisages updating the treaty to include the required provision.</p> <p>In addition, Viet Nam should maintain its stated intention to include the required provision in all future tax treaties.</p>

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

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

94. 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

95. 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-2016 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2017 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template.

96. Viet Nam joined in the Inclusive Framework in 2017. For this reason, the statistics referred to are pre-2017 cases for cases that were pending on 31 December 2016, and post-2016 cases for cases that started on or after 1 January 2017, instead of pre-2016 and post-2015 cases.

It is also for this reason that the statistics included in this report do not include 2016 MAP statistics.

97. Viet Nam provided its MAP statistics for 2017 and 2019 pursuant to the MAP Statistics Reporting Framework within the given deadline. Viet Nam, however, did not submit such statistics for 2018. The statistics discussed below include both pre-2017 and post-2016 cases and they are attached to this report as Annex B and Annex C respectively¹ and should be considered jointly for an understanding of the MAP caseload of Viet Nam. With respect to post-2016 cases, Viet Nam reported having reached out to its MAP partner with a view to have their MAP statistics matching for 2019 MAP statistics, but not for 2017 and 2018.

Monitoring of MAP statistics

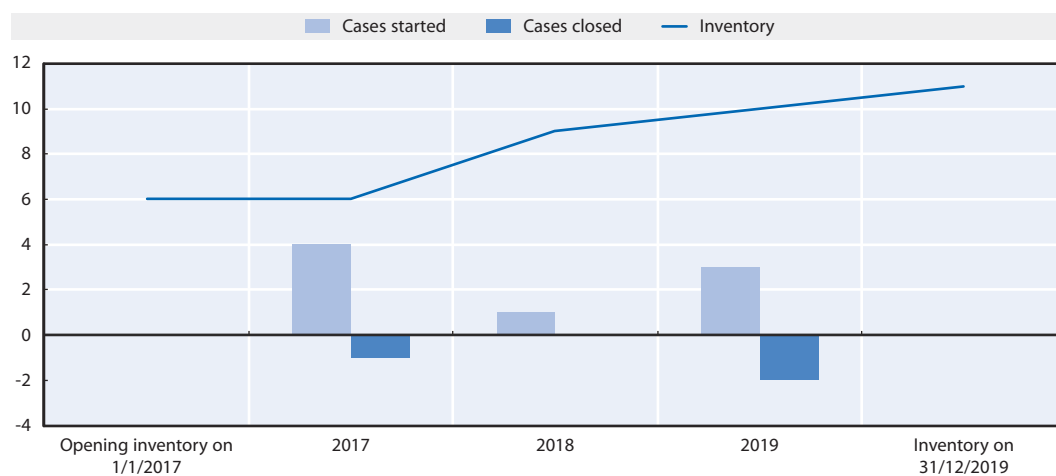
98. Viet Nam reported it does not have a system in place with its treaty partners that communicates, monitors and manages the MAP caseload.

Analysis of Viet Nam’s MAP caseload

Global overview

99. Figure C.1 shows the evolution of Viet Nam’s MAP caseload over the Statistics Reporting Period.

Figure C.1. Evolution of Viet Nam’s MAP caseload



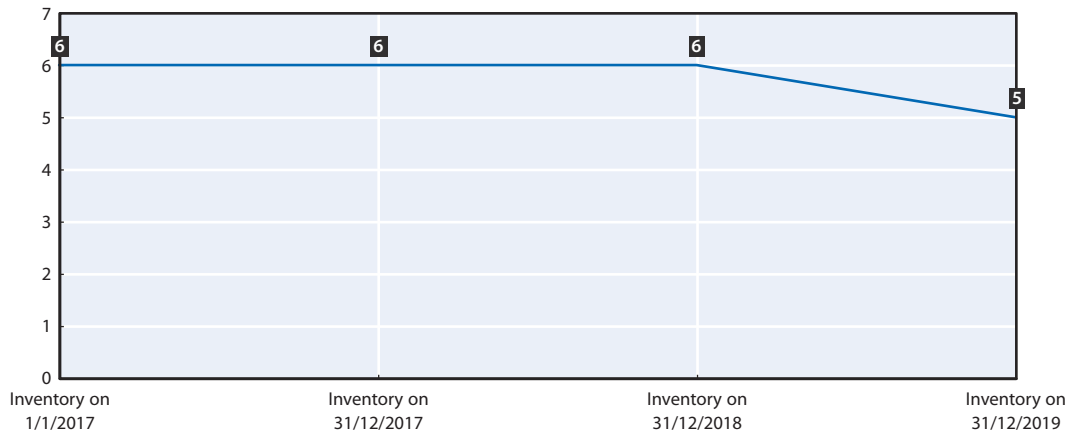
100. At the beginning of the Statistics Reporting Period Viet Nam had six pending MAP cases, all of which were attribution/allocation cases.² At the end of the Statistics Reporting Period, Viet Nam had eleven MAP cases in its inventory, all of which are attribution/allocation cases. Conclusively, Viet Nam’s MAP caseload has increased by 83% during the Statistics Reporting Period.

Pre-2017 cases

101. Figure C.2 shows the evolution of Viet Nam’s pre-2017 MAP cases over the Statistics Reporting Period.

Figure C.2. Evolution of Viet Nam’s MAP inventory

Pre-2017 cases



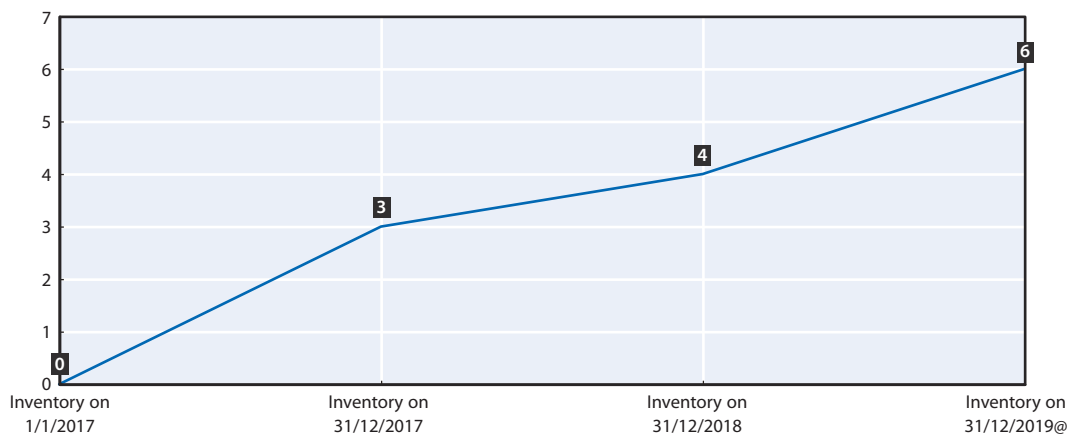
102. At the beginning of the Statistics Reporting Period, Viet Nam’s MAP inventory of pre-2017 MAP cases consisted of six cases, all of which were attribution/allocation cases. At the end of the Statistics Reporting Period the total inventory of pre-2017 cases had decreased to five cases which are attribution/allocation cases. Conclusively, Viet Nam closed one pre-2017 case during the Statistics Reporting Period.

Post-2016 cases

103. Figure C.3 shows the evolution of Viet Nam’s post-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Viet Nam’s MAP inventory

Post-2016 cases



104. In total, eight MAP cases started during the Statistics Reporting Period, six of which concerned attribution/allocation cases and two other cases. At the end of this period the total number of post-2016 cases in the inventory was six cases, all of which were attribution/allocation cases. Conclusively, Viet Nam closed two post-2016 cases during the Statistics Reporting Period, both of them being other cases. The total number of closed cases represents 25% of the total number of post-2016 cases that started during the Statistics Reporting Period.

105. The number of post-2016 cases closed as compared to the number of post-2016 cases started during the Statistics Reporting Period is shown in the table below.

	% of cases closed compared to cases started in 2017	% of cases closed compared to cases started in 2018	% of cases closed compared to cases started in 2019	Cumulative percentage of cases closed compared to cases started over the three years (2017-19)
Attribution/allocation cases	0%	0%	0%	0%
Other cases	50%	(no case started)	(no case started)	100%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

106. During the Statistics Reporting Period Viet Nam in total closed three MAP cases with the outcomes “Withdrawn by taxpayer” and “No agreement including agreement to disagree”.

Reported outcomes for attribution/allocation cases

107. In total, one attribution/allocation case was closed during the Statistics Reporting Period. The reported outcomes for this case is “Withdrawn by taxpayer”.

Reported outcomes for other cases

108. In total, two other cases were closed during the Statistics Reporting Period. The reported outcome for these cases are “Withdrawn by taxpayer” and “No agreement including agreement to disagree”.

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

109. The average time needed to close MAP cases during the Statistics Reporting Period was 17.77 months. This average can be broken down as follows:

	Number of cases	Start date to end date (in months)
Attribution/Allocation cases	1	23.15
Other cases	2	15.08
All cases	3	17.77

Pre-2017 cases

110. For the one pre-2017 case Viet Nam reported that it needed 23.15 months to close this attribution/allocation case. For the purpose of computing the average time needed to resolve pre-2017 cases, Viet Nam reported that it uses the following dates:

- *start date*: when two tax authorities have received sufficient relevant information and documentation and are ready for the first MAP meeting. The starting date is calculated when the two competent authorities agreed to start the bilateral MAP process

- *end date*: when two tax authorities agree to “close” (MAP is withdrawn by taxpayer) or “conclude” (MAP is solved/settled by the competent authorities). The date is calculated when the two competent authorities agreed to close or conclude the MAP.

Post-2016 cases

111. For post-2016 cases Viet Nam reported that on average it needed 15.08 months to close two post-2016 cases, both of them are other cases.

Peer input

112. Of the peers that provided input, one reported that there are no currently no pending MAP cases with Viet Nam. For the MAP case that was closed during the period of review, it suggested that to be in line with the MAP Statistics Reporting Framework, the number of MAP cases with Viet Nam should count five instead of one, as it concerned the income of five employees (taxpayers) of one company, which concerned the interpretation of Article 15 of the peer’s tax treaty with Viet Nam. The peer clarified that these cases were closed with no agreement being reached and thus with remaining double taxation. The reason that no agreement could be reach was according to the peer that the proof by the taxpayer provided by the peer’s competent authority was not regarded as sufficient enough by Viet Nam’s competent authority to proof the peer’s standpoint. Additionally, although requested by the peer, Viet Nam’s competent authority did not mention which specific documents were needed to prove the peer’s standpoint.

113. The other two peers reported each has one pending MAP case that is in an early stage. Other peers provided no specific input in relation to element C.2.

Anticipated modifications

114. Viet Nam indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for Improvement	Recommendations
[C.2]	MAP statistics for 2018 were not submitted. In addition, matching of MAP statistics was not sought with all of the treaty partners.	Viet Nam should report its MAP statistics in accordance with the MAP Statistics Reporting Framework. In addition, Viet Nam should endeavour matching its MAP statistics with all of its treaty partners.
	Viet Nam’s MAP statistics show that during the Statistics Reporting Period it closed 25% (two out of eight cases) of its post-2016 cases in 15.08 months on average. In that regard, Viet Nam is recommended to seek to resolve the remaining 75% of the post-2016 cases pending on 31 December 2019 (five cases) within a timeframe that results in an average timeframe of 24 months for all post-2016 cases.	

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

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

115. 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 Viet Nam’s competent authority

116. Under Viet Nam’s tax treaties, the competent authority function is assigned to the Minister of Finance. This authority has been delegated to the GDT. In practice, the competent authority function is performed by the International Taxation Department of the GDT. Within the International Taxation Department, there are several working groups, including two groups that are specialised in MAP cases. Each group includes three officials and one head.

117. Viet Nam reported that each MAP case is recorded separately and that the Director of International Taxation Department shall assign specified staff to be in charge of each case depending on its complexity.

Monitoring mechanism

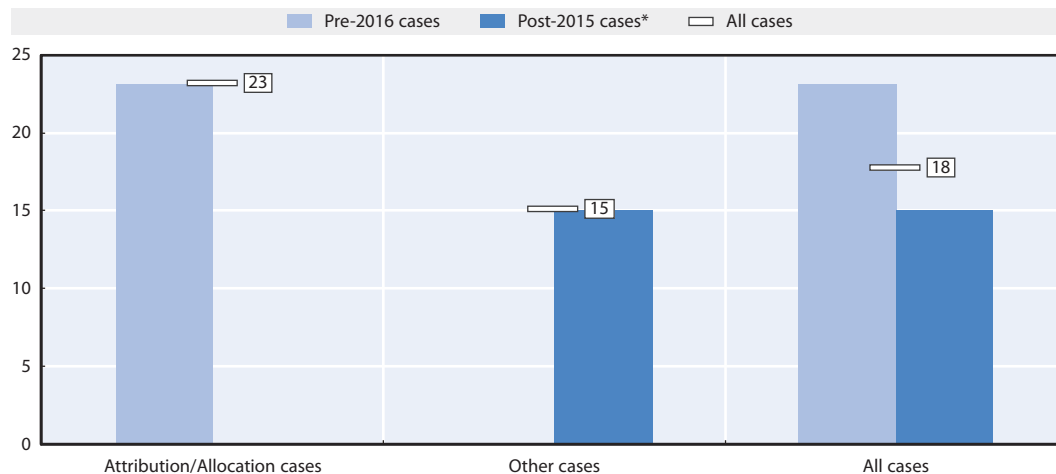
118. Viet Nam reported the framework for the monitoring/assessment of whether resources for the competent authority are adequate is not available for now, but will be developed in the near future.

Practical application

MAP statistics

119. As discussed under element C.2 Viet Nam closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. This can be illustrated by Figure C.4.

Figure C.4. Average time (in months) to close cases in 2017-19



* Note that post-2016 cases only concern cases started and closed during 2017-19.

120. Based on these figures, it follows that on average it took Viet Nam 17.77 months to close MAP cases during the Statistics Reporting Period. Viet Nam, however, reported that the processing time for MAP cases was prolonged due to the disagreement of views between the two competent authorities and intermittent meeting/negotiation periods. It further reported that its competent authority makes every effort to resolve MAP cases as soon as possible in accordance with common practices of other countries, in which there are recommendations of the OECD and the UN.

Peer input

121. Of the peers that provided input, five provided input in relation to their experience with Viet Nam as to handling and resolving MAP cases.

122. One peer reported that as to the handling of the case, the communication was conducted via regular mail as well as via e-mail. It further reported both competent authorities replied swiftly to requests for information or clarification by the other competent authority, which enabled that position papers could be exchanged within a short period of time. The peer nonetheless suggested to communicate via encrypted e-mail to ensure efficient and frequent communication also in the future. Viet Nam responded to this input and agreed with this suggestion.

123. Another peer reported that it has one post-2015 case pending with Viet Nam, which concerns a tax dispute between a resident and local tax office in Viet Nam. The peer noted that while its position paper has been provided for quite some time, the official corresponding comments from Viet Nam are still being expected, although the competent authority of Viet Nam has been aware of this case and the two parties have been contacting each other about this case during the breaks of certain international meetings. The peer expressed its hopes the efficiency of the resolution of MAP cases with Viet Nam can be improved.

124. The third peer reported that it has with Viet Nam two MAP cases in its inventory on 31 December 2019. This peer stated that it does not encounter any obstacle to contact with Viet Nam's competent authority. However, the peer also noted that it has experienced some difficulties in scheduling face-to-face meetings in a timely manner with a view to resolve cases in a satisfactory way. According to the peer this was due to domestic procedure in Viet Nam and the delay of Viet Nam's response to the peer's questions on each case, noting that for a MAP request in 2015 the first MAP meeting was held in 2018. In that regard, the peer expressed that it would appreciate if Viet Nam could review the internal process in order to deal with these issues. Furthermore, this peer also provided input on the authority of staff in charge of MAP to resolve cases, for which it expressed its concern. It reported that during face-to-face meetings, Viet Nam's competent authority explained that its Ministry of Finance has a discretionary authority to agree with the treaty partners on specific cases, but that Viet Nam's competent authority sometimes put off the decision because they do not have sufficient discretion to decide on some items. In that regard, the peer noted it would appreciate if Viet Nam could delegate its authority for resolving individual MAP cases to the representatives in face-to-face meetings or, alternatively, the staff from the Ministry of Finance could participate in such meetings.

125. Viet Nam responded to this input and stated that the GDT, as the competent authority of Viet Nam, has the authority to negotiate and decide related issues within its authority during the competent authorities' meetings. Viet Nam, however, clarified that according to its internal procedures, GDT will consult with relevant units and report to the Ministry of Finance for approval before conducting MAP negotiations. In a response, the peer noted such internal procedure, but expressed its concern that in its view, if staff of the competent authority that is present at a face-to-face meeting are not fully empowered to solve cases, it would lead to a delay in the process and affect the resolution of MAP cases within an average time frame of 24 months. This peer concluded that it would appreciate if Viet Nam's competent authority would ensure that staff being present at the meeting has enough authority for the sake of the resolution within 24 months and dealing with an increasing number of MAP cases effectively and efficiently.

126. Further to the above, another peer reported that it has a post-2016 pending other MAP case with Viet Nam concerning a non-transfer pricing adjustment reported. This peer mentioned that it has notified Viet Nam’s competent authority about a MAP case for which a MAP request was submitted with the peer’s competent authority in 2017 and that Viet Nam was properly available to have exchange of letters regarding the case after the notification.

127. Lastly, the fifth peer reported that it has been trying to contact Viet Nam’s competent authority by e-mail or phone for a face-to-face meeting, but that in its experience it has not been easy in keeping in touch with Viet Nam. In the peer’s view, this caused a delay in reaching a resolution for the case under review. The peer further reported that it has doubts and concerns as to whether Viet Nam’s competent authority has adequate resources invested in the MAP function. The peer concluded that based on its experience, (i) it has been difficult to contact and keep in touch with Viet Nam’s competent authority, (ii) since 2018, the peer has barely received position papers on the cases or explanations about the tax assessments raised by Viet Nam, and (iii) opening letters or receipt letters are seldom received. Viet Nam responded to this input and mentioned that the two sides would need to discuss with each other to take measures to improve the scheduling of face-to-face meetings and promote exchange of position papers.

Anticipated modifications

128. Viet Nam indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for Improvement	Recommendations
[C.3]	<p>Although MAP cases were closed within 24 months on average (which is the pursued average for resolving MAP cases received on or after 1 January 2017), peers indicated that they experienced some difficulties in resolving MAP cases, which concerns:</p> <ul style="list-style-type: none"> • issuing of positions papers/letters in due time • receiving timely responses to position papers issued by peers. <p>The peer input indicates that the competent authority may not be adequately resourced, which causes that there is a risk that pending or future MAP cases cannot be resolved in a timely, effective and efficient manner.</p>	<p>Viet Nam should ensure that adequate resources are made available for the competent authority function in order to resolve MAP cases in a timely, efficient and effective manner. This, as also suggested by peers, in particular concerns to be able to ensure that:</p> <ul style="list-style-type: none"> • position papers/letters are issued in due time • timely responses are provided to position papers issued by peers

[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.

129. 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

130. Viet Nam reported that staff in charge of MAP must have qualifications set out by GDT such as sufficient knowledge and experiences in accounting, laws, tax treaties and transfer pricing to be able to handle MAP cases. When handling MAP cases, the competent authority asks the audit team in the related departments, including the relevant Provincial Tax Offices, to provide the underlying documentation of the case under review and to clarify the issue to be able to establish the actual facts of the case. In this respect, Viet Nam stated that staff involved in the adjustment will not be part of the decision making process of the MAP case.

131. In regard of the above, Viet Nam reported that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations that Viet Nam would like to see reflected in future amendments to the treaty.

Practical application

132. One peer provided input on this element and observed that Viet Nam's competent authority has in practice allowed the tax administration personnel directly involved in the adjustment at issue to attend face-to-face meetings, not only to explain the facts and circumstances of the cases under review, but also to assert their views on these cases. In the peer's view, such participation in face-to-face meetings could act as a hindrance to the timely, effective and efficient resolution of MAP cases.

133. Viet Nam responded to this input by stating that if it is necessary the representative of the local tax office, who has the jurisdiction over the taxpayer can be asked to be present at the competent authority meetings. This is then for purposes to provide the facts and information of the case in question (if any), since the information provided by the taxpayers on the case is often incomplete. Viet Nam further clarified that such presence can be requested, for example for attribution/allocation MAP cases, in the beginning of a MAP discussion and when the other competent authority asks for clarification on background and reasons for the adjustment as well as to present actual interactions between the taxpayer and the auditor team that led to the adjustment. Viet Nam also noted that this presence is solely to support verifying the facts and circumstances of the cases under review and only at the beginning/initial stage of the competent authorities' discussion, but not to assert or to decide on the competent authority's views on the case. Viet Nam therefore concluded that by following this rule, its competent authority is in practice in charge of the MAP case management and is seeking resolution with the other competent authority pursuant to the relevant treaties and domestic laws/regulations.

134. The clarification given by Viet Nam, however, was not shared by the peer, who noted that it would appreciate if Viet Nam's competent authority would ensure its independency from tax administration personnel directly involved in the adjustments at issue. With respect to the administrative personnel who made the adjustment at issue and was present at the competent authority meetings, the peer clarified that presence of such personnel was notified at the outset of the meetings, and did not request such personnel to leave the meetings.

Anticipated modifications

135. Viet Nam indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

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

136. 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 Viet Nam

137. Viet Nam reported that it has a general framework for reporting work performance as well as a general system of work performance evaluation for staff. It further reported performance indicators have not yet been set for the MAP office due to a small number of MAP cases.

138. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below in bullet form:

- 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).

139. Further to the above, Viet Nam 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

140. Peers that provided input indicated not being aware of the use of performance indicators by Viet Nam that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Anticipated modifications

141. Viet Nam indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

	Areas for Improvement	Recommendations
[C.5]	-	Viet Nam 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.

142. 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

143. Viet Nam's MAP profile clearly states that it has no domestic law limitations for including MAP arbitration in their tax treaties but its treaty policy does not allow to include MAP arbitration in its tax treaties.

Practical application

144. Viet Nam has not incorporated an arbitration clause in any of its tax treaties as a final stage to the MAP.

145. Peers provided no specific input in relation to element C.6.

Anticipated modifications

146. Viet Nam 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-2016 cases, if the number of MAP cases in Viet Nam’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, Viet Nam 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. For pre-2017: The average time taken to close MAP cases that started before 1 January 2017 was computed by applying the following rules: (i) the start date: when two tax authorities receive sufficient relevant information and document and ready for the first MAP meeting. The starting date is calculated when the two competent authorities agreed to start the MAP process, and (ii) the end date: when two tax authorities agree to “close” (MAP is withdrawn by taxpayer) or “conclude” (MAP is solved/settled by the competent authorities). The date is calculated when the two competent authorities agreed to close or conclude the MAP. For post-2016: Viet Nam 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

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- OECD (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

147. 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

148. Viet Nam reported that the internal law of Viet Nam stipulates that the time limit for tax assessment is five years while it can be waived when cases are dealt with in MAP and the relevant tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Viet Nam would not implement a MAP agreement if the relevant treaty does not contain such equivalent.

149. In addition, Viet Nam reported that it is in the process of drafting the MAP process to be applied in Viet Nam, including the timeframe for implementing MAP agreements. It also reported that according to the draft content, Viet Nam will follow up the agreements reached in MAP discussions with foreign competent authorities.

Practical application

150. Viet Nam reported that since 1 January 2017 there are no MAP agreements that needed to be implemented by Viet Nam and therefore it was not possible to assess the implementation of MAP agreements by Viet Nam.

151. All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2017 that was not implemented by Viet Nam, and three peers noted that they have not reached any agreements after 1 January 2017 with Viet Nam.

Anticipated modifications

152. Viet Nam indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for Improvement	Recommendations
[D.1]	<p>As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Viet Nam would have implemented all MAP agreements thus far.</p> <p>As will be discussed under element D.3 not all of Viet Nam's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to time limits in its domestic law.</p>	<p>When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in an assessed jurisdiction's relevant tax treaty, prevent the implementation of a MAP agreement, Viet Nam should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Viet Nam should for clarity and transparency purposes notify the treaty partner thereof without delay.</p>

[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.

153. 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

154. As discussed under element D.1, Viet Nam reported that there is no theoretical timeframe for implementing mutual agreements, but it will follow up on the agreements reached in MAP discussions with foreign competent authorities.

Practical application

155. Viet Nam reported that since 1 January 2017 there are no MAP agreements that needed to be implemented by Viet Nam and therefore it was not possible to assess the timely implementation of MAP agreements by Viet Nam.

156. All peers that provided input have not indicated experiencing any problems with Viet Nam regarding the implementation of MAP agreements reached on a timely basis, and three peers noted that they have not reached any agreements after 1 January 2017 with Viet Nam.

Anticipated modifications

157. Viet Nam reported that it is in the process of drafting the MAP process to be applied in Viet Nam.

Conclusion

	Areas for Improvement	Recommendations
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented in Viet Nam, it was not yet possible to assess whether Viet Nam 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.

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

Legal framework and current situation of Viet Nam’s tax treaties

159. As discussed under element D.1, Viet Nam’s domestic legislation includes a statute of limitations of five years for implementing MAP agreements, unless overridden by tax treaties.

160. Out of Viet Nam’s 78 tax treaties, 67 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Furthermore, one tax treaty contains such equivalent and also the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments. Additionally, ten do not contain such equivalent or the alternative provisions.

Anticipated modifications

Bilateral modifications

161. Viet Nam reported its intention to sign the Multilateral Instrument, and some of the tax treaties would be modified by the Multilateral Instrument upon its entry into force. It further reported that when the tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2) will not be modified by the Multilateral Instrument, it intends to contact the relevant treaty partners to update them via bilateral negotiations with a view to be compliant with element D.3. Viet Nam, however, reported not having in place a specific plan for such negotiations.

162. In addition, Viet Nam reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives in all of its future tax treaties.

Peer input

163. For the ten treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or both alternatives two of the relevant peers provided the following input. One peer reported that the relevant treaty does not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, however any problem has not occurred from this lack of provision as there has been no agreement between two competent authorities since 1 January 2017.

164. Another peer reported it has listed the treaty with Viet Nam as a covered tax agreement under the Multilateral Instrument and therefore the treaty will be modified if Viet Nam were to sign and ratify the Multilateral Instrument. The peer has approached Viet Nam to amend the treaty in this regard via bilateral negotiation, but it has not received a response from Viet Nam yet. In addition, another peer reported that in order to meet the Minimum Standard it made all necessary notifications under Article 16 of the Multilateral Instrument. Other peers provided no specific input in relation to element D.3.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	Ten out of 78 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2).	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternative provisions in the treaties that currently do not contain such equivalent.</p> <p>Where treaties do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax or both alternative provisions, Viet Nam 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, Viet Nam should put a plan in place on how it envisages updating these ten treaties to include the required provision or its alternative.</p> <p>In addition, Viet Nam 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]	19 out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention in the treaties that currently do not contain such equivalent.</p> <p>Where treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention upon its entry into force, Viet Nam should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Viet Nam should put a plan in place on how it envisages updating these 19 treaties to include the required provision.</p> <p>In addition, Viet Nam should maintain its stated intention to include the required provision in all future tax treaties.</p>
[A.2]	Roll-back of bilateral APAs is not available.	Viet Nam should without further delay introduce the possibility of, and in practice provide for, roll-back of bilateral APAs in appropriate cases.
Part B: Availability and access to MAP		
[B.1]	One out of 78 tax treaties does not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention.	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(1) of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent.</p> <p>Where the treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1) of the OECD Model Tax Convention upon its entry into force, Viet Nam should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ul style="list-style-type: none"> a. as amended in the Action 14 final report, or b. As it read prior to the adoption of Action 14 final report • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>To this end, Viet Nam should put a plan in place on how it envisages updating the treaty to include the required provision.</p>

	Areas for Improvement	Recommendations
	One out of 78 tax treaties does not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention.	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent.</p> <p>Where the treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention upon its entry into force, Viet Nam should request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended in the Action 14 final report, or b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision. <p>To this end, Viet Nam should put a plan in place on how it envisages updating this treaty to include the required provision.</p>
[B.1]	Three out of 78 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, 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.	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention in the treaties that currently do not contain such equivalent.</p> <p>Where treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention upon its entry into force, Viet Nam should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Viet Nam should put a plan in place on how it envisages updating these treaties to include the required provision.</p>
	-	In addition, Viet Nam should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.
	Under Viet Nam's domestic law access to MAP is denied in eligible cases where the issue under dispute is pending or has already been decided via the judicial and administrative remedies provided by Viet Nam's domestic law, even though the requirements for initiating a MAP case under the treaty provision that is equivalent to Article 25(1) of the OECD Model Tax Convention are met.	Viet Nam should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention, as incorporated in its tax treaties, can access the MAP regardless of whether domestic remedies have been initiated or finalized. In particular, Viet Nam should ensure that its domestic law does not obstruct access to MAP in cases where the issue under dispute is pending or has already been decided via the judicial and administrative remedies.
[B.2]	None of the 78 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	<p>Viet Nam should without further delay follow its stated intention to introduce a documented notification process and provide in that documented process rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps.</p> <p>Furthermore, Viet Nam should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.</p>

	Areas for Improvement	Recommendations
[B.3]	Viet Nam reported that it will provide access to MAP in transfer pricing cases. Its competent authority, however did not receive any MAP requests for such cases during the Review Period. Viet Nam is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.4]	Viet Nam 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. Viet Nam is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	Viet Nam reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Viet Nam is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.6]	Viet Nam reported it will give access to MAP in cases where taxpayers have complied with its information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Viet Nam is therefore recommended to follow its policy and grant access to MAP when it receives a request that includes the required information and documentation.	
[B.7]	Nine out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention in the treaties that currently do not contain such equivalent.</p> <p>Where treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention upon its entry into force, Viet Nam should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Viet Nam should put a plan in place on how it envisages updating these nine treaties to include the required provision.</p> <p>In addition, Viet Nam should maintain its stated intention to include the required provision in all future tax treaties.</p>
[B.8]	There is no published MAP guidance.	<p>Viet Nam should, without further delay, introduce and publish guidance on access to and use of the MAP, and in particular include the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation and information that should be included in such a 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 Viet Nam could consider follow its stated intention to include the items identified above.</p> <p>Furthermore, as discussed under element B.6, Viet Nam'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>
[B.9]	The MAP guidance is not publicly available.	Viet Nam should make its MAP guidance publicly available and easily accessible once it has been introduced. Furthermore, the MAP profile should be updated once Viet Nam's MAP guidance has been introduced.

	Areas for Improvement	Recommendations
[B.10]	There is no published MAP guidance and access to MAP in cases where the outcome of an audit reflects an understanding between the auditors and the taxpayer is not described in any publicly available information.	Viet Nam should follow its stated intention to clarify in its MAP guidance to be published that taxpayers have access to MAP in cases of audit settlements.
Part C: Resolution of MAP cases		
[C.1]	One out of 78 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent.</p> <p>Where the treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention upon its entry into force, Viet Nam should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Viet Nam should put a plan in place on how it envisages updating the treaty to include the required provision.</p> <p>In addition, Viet Nam should maintain its stated intention to include the required provision in all future tax treaties.</p>
[C.2]	<p>MAP statistics for 2018 were not submitted.</p> <p>In addition, matching of MAP statistics was not sought with all of the treaty partners.</p>	<p>Viet Nam should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.</p> <p>In addition, Viet Nam should endeavour matching its MAP statistics with all of its treaty partners.</p>
	Viet Nam's MAP statistics show that during the Statistics Reporting Period it closed 25% (two out of eight cases) of its post-2016 cases in 15.08 months on average. In that regard, Viet Nam is recommended to seek to resolve the remaining 75% of the post-2016 cases pending on 31 December 2019 (five cases) within a timeframe that results in an average timeframe of 24 months for all post-2016 cases.	
[C.3]	<p>Although MAP cases were closed within 24 months on average (which is the pursued average for resolving MAP cases received on or after 1 January 2017), peers indicated that they experienced some difficulties in resolving MAP cases, which concerns:</p> <ul style="list-style-type: none"> • issuing of positions papers/letters in due time • receiving timely responses to position papers issued by peers. <p>The peer input indicates that the competent authority may not be adequately resourced, which causes that there is a risk that pending or future MAP cases cannot be resolved in a timely, effective and efficient manner.</p>	<p>Viet Nam should ensure that adequate resources are made available for the competent authority function in order to resolve MAP cases in a timely, efficient and effective manner. This, as also suggested by peers, in particular concerns to be able to ensure that:</p> <ul style="list-style-type: none"> • position papers/letters are issued in due time • timely responses are provided to position papers issued by peers.
[C.4]	-	As it has done thus far, Viet Nam should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Viet Nam would like to see reflected in future amendments to the treaty.
[C.5]	-	Viet Nam 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]	-	-

	Areas for Improvement	Recommendations
Part D: Implementation of MAP agreements		
	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Viet Nam would have implemented all MAP agreements thus far.	
[D.1]	As will be discussed under element D.3 not all of Viet Nam's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to time limits in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in an assessed jurisdiction's relevant tax treaty, prevent the implementation of a MAP agreement, Viet Nam should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Viet Nam should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented in Viet Nam, it was not yet possible to assess whether Viet Nam would have implemented all MAP agreements on a timely basis thus far.	
[D.3]	Ten out of 78 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2).	<p>Viet Nam should follow its stated intention and as quickly as possible sign and ratify the Multilateral Instrument to incorporate the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternative provisions in the treaties that currently do not contain such equivalent.</p> <p>Where treaties do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax or both alternative provisions, Viet Nam 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, Viet Nam should put a plan in place on how it envisages updating these ten treaties to include the required provision or its alternative.</p> <p>In addition, Viet Nam 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 Viet Nam

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11			
	Article 25(1) of the OECD Model Tax Convention ("MTC")	Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	
	B.1	B.3	B.4	B.3	B.3	B.1	B.1	B.3	B.3	B.4	C.1	C.1	C.1	D.3	A.1	A.1	A.1	B.7	B.7	B.7	C.6	
	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons	Inclusion Art. 9(2) of the OECD MTC (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) of the OECD MTC? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) of the OECD MTC?	Inclusion Art. 25(3) of the OECD MTC?	Inclusion Art. 25(3) of the OECD MTC?	Inclusion Art. 25(3) of the OECD MTC?	Inclusion Art. 25(3) of the OECD MTC?	Inclusion Art. 25(3) of the OECD MTC?	Inclusion Art. 25(3) of the OECD MTC?	Inclusion Art. 25(3) of the OECD MTC?	Inclusion Art. 25(3) of the OECD MTC?	Inclusion Art. 25(3) of the OECD MTC?	Inclusion Art. 25(3) of the OECD MTC?	Inclusion Art. 25(3) of the OECD MTC?	Inclusion Art. 25(3) of the OECD MTC?
	DTC in force? Y = yes N = signed pending ratification	If N, date of signing	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no
Australia	Y	N/A	O	Y	i = no and such cases will be accepted for MAP	Y	Y	Y	i	Y	Y	Y	Y	N	N	N	N	N	N	N	N	N
Austria	Y	N/A	O	Y	i = no but such cases will be accepted for MAP	Y	Y	Y	i	Y	Y	Y	Y	N	N	N	N	N	N	N	N	N
Azerbaijan	Y	N/A	O	Y	ii = no but such cases will not be accepted for MAP	Y	Y	Y	i	Y	Y	Y	Y	N	N	N	N	N	N	N	N	N
Bangladesh	Y	N/A	O	Y	iii = no and access will not be given to TP cases	N/A	N/A	N/A	i	Y	Y	Y	Y	N	N	N	N	N	N	N	N	N
Belarus	Y	N/A	O	Y	iv = no, other reasons	N/A	N/A	N/A	i	Y	Y	Y	Y	N	N	N	N	N	N	N	N	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6											
Belgium	Y	N/A	O	Y	N/A	Y	Y	i	Y	N	Y	Y	Y	N	N	Y	N	N	N	N
Brunei Darussalam	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Bulgaria	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Cambodia	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Canada	Y	N/A	O	ii	2-years	Y	Y	i	Y	iii	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
China (People's Republic of)	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Croatia	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Cuba	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Czech Republic	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Denmark	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Estonia	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Finland	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
France	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Germany	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hong Kong (China)	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hungary	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Iceland	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
India	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Indonesia	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Iran	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Arbitration
	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6								
	Article 25(1) of the OECD MTC	Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC	C.1	D.3	A.1	B.7	C.6										
Ireland	Y	N/A	O	Inclusion Art. 25(1) first sentence?	O	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N	N	N
Israel	Y	N/A	O	If yes, submission to either competent authority? (new Art. 25(1), first sentence)	O	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Italy	Y	N/A	N	Inclusion Art. 25(1) second sentence? (Note 1)	ii	Y	2-years	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	N	N	N	N	N
Japan	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Kazakhstan	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Korea (Dem. People's Rep.)	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Korea	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Kuwait	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Laos	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	N	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Latvia	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Macau (China)	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Malaysia	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Malta	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Mongolia	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	N	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Morocco	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Mozambique	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Myanmar	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
Netherlands	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
New Zealand	Y	N/A	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N
North Macedonia	N	10/15/2014	O	Inclusion Art. 25(1) second sentence? (Note 1)	Y	Y	N/A	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6											
Norway	Y	N/A	O	Y	N/A	i	Y	Y	Y	Y	Y	N	Y	Y	N	Y	N	N	N	
Oman	Y	N/A	O	ii	2 years	i	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	N	N	
Pakistan	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N	N	
Panama	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Palestinian Authority	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Philippines	Y	N/A	O	ii	2 years	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Poland	Y	N/A	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Portugal	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Qatar	Y	N/A	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Romania	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Russia	Y	N/A	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
San Marino	Y	N/A	O	Y	N/A	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	
Saudi Arabia	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Serbia	Y	N/A	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Seychelles	Y	N/A	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Singapore	Y	N/A	O	Y	N/A	i	Y	Y	Y	Y	N	Y	Y	Y	N	Y	Y	Y	N	
Slovak Republic	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Spain	Y	N/A	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Sri Lanka	Y	N/A	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Sweden	Y	N/A	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Switzerland	Y	N/A	O	Y	N/A	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11			
	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Arbitration	
	B.1	B.1	B.3	B.4	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.6	
Chinese Taipei	Y	N/A	O	Y	N/A	Y	Y	i	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	N	Y	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N
Thailand	Y	N/A	O	Y	N/A	Y	Y	i	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N
Tunisia	Y	N/A	O	Y	N/A	Y	Y	i	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	N	Y	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N
Turkey	Y	N/A	O	Y	N/A	Y	Y	i	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N
Ukraine	Y	N/A	N	Y	N/A	Y	Y	i	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	N	Y	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N
United Arab Emirates	Y	N/A	O	Y	N/A	Y	Y	i	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N
United Kingdom	Y	N/A	O	i	N/A	Y	Y	i	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N
United States	N	7/7/2015	O	Y	N/A	Y	Y	i	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N
Uruguay	Y	N/A	O	Y	N/A	Y	Y	i	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N
Uzbekistan	Y	N/A	O	Y	N/A	Y	Y	i	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	N	Y	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N
Venezuela	Y	N/A	O	Y	N/A	Y	Y	i	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N

Annex B

MAP Statistics Reporting for the 2017, 2018 and 2019 Reporting Periods (1 January 2017 to 31 December 2019) for pre-2017 cases

2017 MAP Statistics														
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2017	Number of pre-2017 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-2017 cases during the reporting period	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13
Attribution/Allocation	6	0	0	0	0	0	0	0	0	0	0	0	6	-1.00
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	-1.00
Total	6	0	0	0	0	0	0	0	0	0	0	0	6	n.a.

2018 MAP Statistics														
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2018	Number of pre-2017 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-2017 cases during the reporting period	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13
Attribution/Allocation	6	0	0	0	0	0	0	0	0	0	0	0	6	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	6	0	0	0	0	0	0	0	0	0	0	0	6	n.a.

2019 MAP Statistics													
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2019	Number of pre-2017 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-2017 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	6	0	0	1	0	0	0	0	0	0	0	5	23.15
Others	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	6	0	0	1	0	0	0	0	0	0	0	5	23.15

Annex C

MAP Statistics Reporting for the 2017, 2018 and 2019 Reporting Periods (1 January 2017 to 31 December 2019) for post-2016 cases

2017 MAP Statistics															
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2017	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome							No. of post-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2016 cases during the reporting period				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	0	2	0	0	0	0	0	0	0	0	0	0	0	2	n.a.
Others	0	2	0	0	0	0	0	0	0	0	1	0	0	1	7.00
Total	0	4	0	0	0	0	0	0	0	0	1	0	0	3	7.00

2018 MAP Statistics															
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2018	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome							No. of post-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2016 cases during the reporting period				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	2	1	0	0	0	0	0	0	0	0	0	0	0	3	n.a.
Others	1	0	0	0	0	0	0	0	0	0	0	0	0	1	n.a.
Total	3	1	0	0	0	0	0	0	0	0	0	0	0	4	n.a.

2019 MAP Statistics															
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2019	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome								No. of post-2016 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-2016 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	3	3	0	0	0	0	0	0	0	0	0	0	0	6	n.a.
Others	1	0	0	0	1	0	0	0	0	0	0	0	0	0	23.15
Total	4	3	0	0	1	0	0	0	0	0	0	0	0	6	23.15

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
GDT	The General Department of Taxation
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-2017 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2016
Post-2016 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2017
Review Period	Period for the peer review process that started on 1 January 2017 and ended on 31 December 2019
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2017 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, Viet Nam (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 Viet Nam.



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