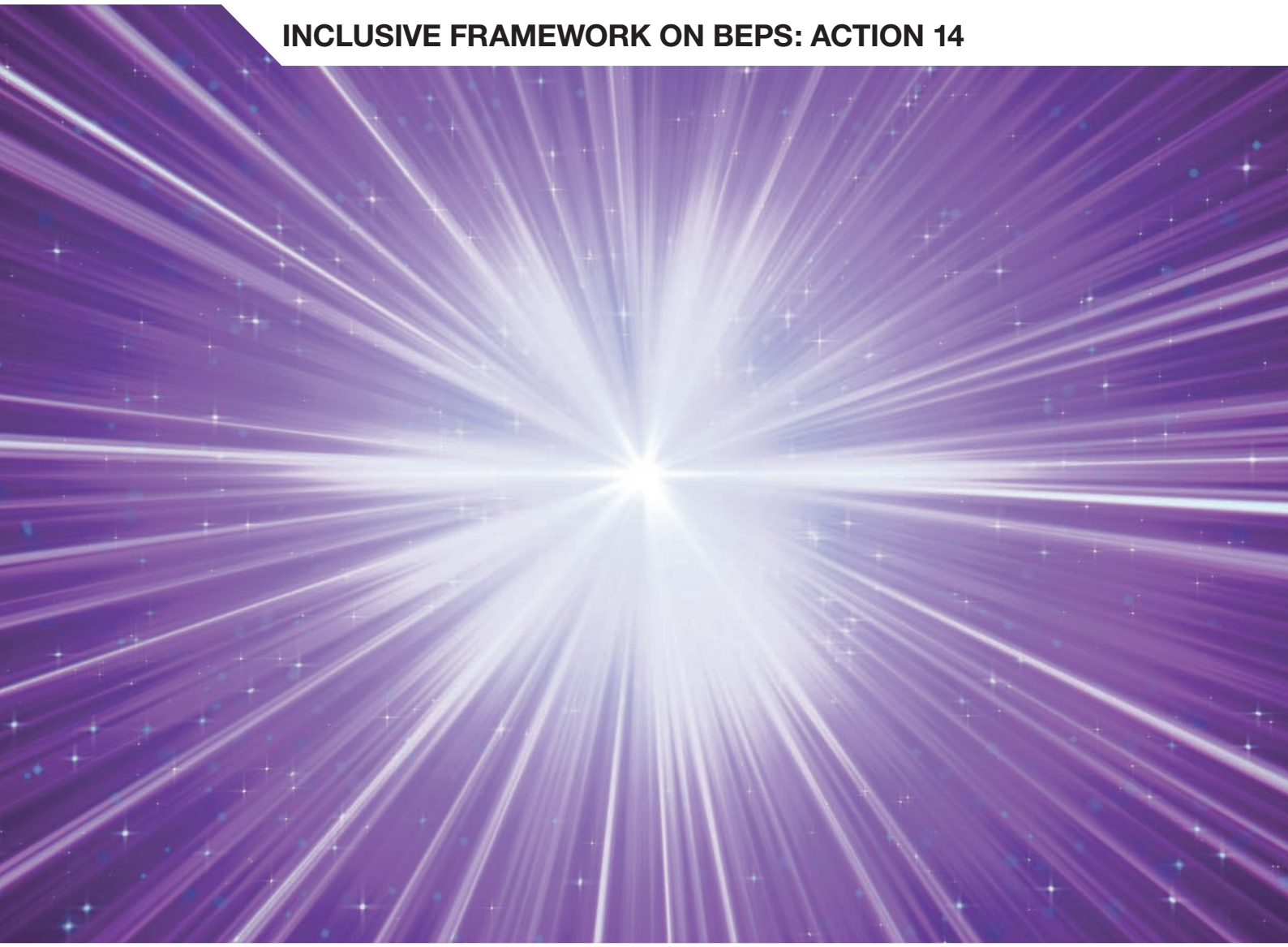
OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 90 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

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

Inclusive Framework, which already has more than 135 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 28 October 2020 and prepared for publication by the OECD Secretariat.

Table of contents

Figures

Abbreviations and acronyms

APA	Advance Pricing Arrangement
ATO	Australian Taxation Office
BEPS	Base Erosion and Profit Shifting
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
PGI	Public Groups and International
PMU	APA/MAP Program Management Unit

Executive summary

Australia has a relatively large tax treaty network with over 50 tax treaties. Australia has an established MAP programme and has significant experience in resolving MAP cases. It has a small MAP inventory, with a modest number of new cases submitted each year and 31 cases pending on 31 December 2018. Of these cases, approximately 61% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Australia met part of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Australia has worked to address them, which has been monitored in stage 2 of the process. In this respect, Australia has solved almost all of the identified deficiencies.

All of Australia's tax treaties contain a provision relating to MAP. Those treaties generally follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention. Its treaty network is partly consistent with the requirements of the Action 14 Minimum Standard. In particular, the main deviations from that standard concern:

- Approximately 25% of its tax treaties do not contain the equivalent of Article 25(1) to the OECD Model Tax Convention, whereby the majority of these treaties do not contain the equivalent of Article 25(1), first sentence (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b) or 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.
- Almost 40% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Almost 70% 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, Australia signed and ratified the Multilateral Instrument. Furthermore, Australia opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Through this instrument a number of its tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Australia will encourage comprehensive treaty partners to implement the Multilateral Instrument and lift their reservations, where possible, to bring these treaties in line with the requirements under the Action 14 minimum standard. Where treaties will not be modified, upon entry into force and entry into effect of the Multilateral Instrument in spite of this, while some

specifications have been provided, no details were shared as to which treaty partners are prioritised and whether all are considered for bilateral negotiations. For that reason, where Australia is unable to successfully convince its treaty partners to have their respective treaties modified by the Multilateral Instrument and for the remaining treaties, Australia is considered to not have put a plan in place and is recommended to initiate negotiations without further delay in such a situation and for such treaties.

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

Furthermore, Australia also meets the 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 2015 not received any MAP request concerning cases where anti-abuse provisions are applied. It further has 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. Australia also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice under its tax treaties.

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

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2018	Average time to close cases (in months)*
Attribution/allocation cases	26	28	35	19	21.40
Other cases	10	32	30	12	10.34
Total	36	60	65	31	16.29

* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Australia used as a start date the date the case was allocated to a competent authority in Australia, and as the end date the date the case was closed subsequent to implementation of the MAP outcome.

The number of cases Australia closed in 2016-18 is approximately 62% of the number of all cases started in those years. During these years, MAP cases were on average closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 16.29 months. Australia's MAP inventory as on 31 December 2018 decreased by approximately 14% as compared to 1 January 2016, which concerns attribution/allocation cases (27%). Taking these factors into account, Australia's competent authority is considered to be adequately resourced to manage its inventory and to resolve MAP cases in a timely, efficient and effective manner.

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

Lastly, Australia almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Australia monitors the implementation of such

agreements. However, it has a domestic statute of limitation, 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, albeit that no problems have surfaced regarding implementation throughout the peer review process.

Introduction

Available mechanisms in Australia to resolve tax treaty-related disputes

Australia has entered into 52 tax treaties on income (and/or capital), all of which are in force.[1] These 52 treaties apply to an equal number of jurisdictions. All but one of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, three of the 52 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.[2]

Under Australia's tax treaties, the competent authority function is assigned to the Commissioner of Taxation, which since 2014, has been delegated to the APA/MAP Program Management Unit ("**PMU**") within the Australian Taxation Office ("**ATO**"). The PMU employs 12 full-time staff, three of whom are authorised to exercise the competent authority function. Other staff members work on case management, reporting functions and assists with other casework. The PMU manages both the APA and MAP programme of Australia and is located within the Internationals area of the Public Groups and Internationals ("**PGI**") business line, which is separate from the audit function located in the Operations area of PGI.

Australia issued guidance on the governance and administration of the mutual agreement procedure ("**MAP**") in 2000, which was last updated in June 2019 and which is available at:

https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Mutual-agreement-procedure/

Developments in Australia since 1 January 2018

Developments in relation to the tax treaty network

The stage 1 peer review report of Australia noted that Australia was conducting tax treaty negotiations with China and Israel. This situation has remained the same for China whereas a new treaty has been signed with Israel (see below).

Furthermore, Australia signed on 7 June 2017 the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**"), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. It further opted in for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. On 26 September 2018, Australia deposited its instrument of ratification, following which the Multilateral Instrument entered into force for Australia on 1 January 2019. With the depositing of the instrument of ratification, Australia also submitted its list of notifications and reservations to that instrument, whereby in relation to the Action 14 Minimum

Standard updates were made in order to meet the requirements under this standard via the instrument. In relation to the Action 14 Minimum Standard, Australia has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).[3]

In addition, Australia reported that it has signed a new tax treaty with Israel (2019) which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place and which entered into force. The treaty with Israel includes Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

For those treaties that will not be modified by the Multilateral Instrument to be in line with the requirements under the Action 14 Minimum Standard, Australia clarified that it had a treaty plan in place for negotiations, but that details of this plan – in terms of status of pending negotiations and future schedule of negotiations as well as prioritisation of treaty partners – are for confidentiality reasons not made public. However, Australia reported that it continues to encourage comprehensive treaty partners to implement the Multilateral Instrument and lift their reservations, where possible, to bring these treaties in line with the requirements under the Action 14 minimum standard. Where this is not possible, in a general sense, Australia reported that its treaty renegotiation programme would include consideration of:

- compliance with the BEPS Action 14 Minimum Standard
- the extent its adoption of the OECD Multilateral Instrument or other relevant bilateral mechanisms have achieved, or are expected to achieve, compliance with the BEPS Action 14 Minimum Standard
- treaty partners with which Australia has active MAP cases.

Australia reported that its treaty programme is also subject to the availability and agreement of the other jurisdiction concerned.

In view of the above, while there is a general aim to initiate negotiations with the relevant treaty partners to those tax treaties that do not meet all requirements under the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, and while some specifications have been provided, no further details were shared as to which treaty partners are prioritised and whether all are included in the plan. For that reason, this report reflects that where Australia is unable to successfully convince its treaty partners to have their respective treaties modified by the Multilateral Instrument and for the remaining treaties, Australia has not put a plan in place.

Other developments

Other than the developments in relation to the treaty network, Australia reported that it has made several changes to the operation of its MAP process and that it has updated its MAP guidance. The changes as to the operation of the MAP process can be summarised as follows:

- *APA process*: an end-to-end review of its APA programme, identifying a number of potential improvements with the intention of enhancing efficiency and transparency, which will be reflected in to be updated APA guidance
- *Notification process*: an update to its internal procedures to document its notification process

- *Monitoring of MAP caseload:*
  - Improvements to data analysis and monthly reporting of MAP statistics, with a view to enhance the competent authority's ability to monitor and manage cases at risk of delay
  - Improvements to its MAP database allowing increased scrutiny of MAP cases and more frequent engagement for case monitoring.
- *Operation of the competent authority*: several steps to improve the efficiency of the MAP process and to reduce the MAP inventory, which concerns:
  - Actively initiating regular communications with the treaty partner's competent authority on long-pending cases and more closely engaging with them, as well as seeking of earlier escalation for those cases that are not progressing as anticipated
  - Initiation of several processes to ensure timely progression of MAP cases by data tagging via caseload management software along with the development of a database that monitors case progression and for sending alerts if taking of action is needed
  - Reorganisation of the reporting line for the PMU to the Assistant Commissioner – BEPS Tax Base Management
  - Negotiations with two treaty partners to increase the frequency of communications
- *Independent functioning of the competent authority*: continuous briefing of its competent authority network on the need for independence and an update to internal guidance/procedures and the MAP guidance concerning the independent functioning of the competent authority and the role of auditors in the process
- *Implementation of MAP agreements*: an improvement to the internal MAP database with a view to allow an increased scrutiny of cases and more frequent engagement to ensure cases are actively managed, also in relation to the process for implementing MAP agreements

Further to the above, Australia has issued a comprehensive update to its MAP guidance, which was last updated in June 2019. The guidance has now been positioned on the website of the ATO with a view to making it easier and more accessible to users. Several substantive changes were also made which concern:

a. the contact details of Australia's competent authority, including an email address
b. a statement that all double taxation cases involving both businesses and individuals are within the scope of MAP, while the previous guidance only contained a statement for transfer pricing cases
c. a statement that access to MAP will be granted for: (i) cases concerning the application of anti-avoidance rules contained in Part IVA of the Income Tax Assessment Act 1936, (ii) *bona fide* foreign-initiated self-adjustments, (iii) cases concerning audit settlements and (iv) multilateral disputes.
d. an update to the information and documentation taxpayers need to include in their MAP request
e. A statement that Australia will apply domestic time limits in a way that is most favourable to the taxpayer
f. a statement on the independent functioning of the competent authority.

Basis for the peer review process

The peer review process entails an evaluation of Australia's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Australia, its peers and taxpayers. The questionnaires for the peer review process were sent to Australia and the peers on 29 December 2017.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Australia's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 14 August 2018. This report identifies the strengths and shortcomings of Australia in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.[4] Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Australia. In this update report, Australia reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

For the purpose of this report and the statistics below, in assessing whether Australia 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 concerns a replacement of an existing treaty. Reference is made to Annex A for the overview of Australia's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received from peers and taxpayers

Stage 1 of the peer review process for Australia was launched on 29 December 2017, with the sending of questionnaires to Australia and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Australia in June 2018, with the subsequent approval by the BEPS Inclusive Framework on 14 August 2018. On 14 August 2019, Australia submitted its update report, which initiated stage 2 of the process.

While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, Australia opted to provide information and requested peer input on a period starting as from 1 January 2015. The period for evaluating Australia's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2017 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2018 and depicts all developments as from that date until 31 August 2019. In addition to the assessment on its compliance with the Action 14 Minimum Standard Australia also asked for peer input on best practices.

In total 18 peers provided input during stage 1: Belgium, Canada, China, Denmark, Germany, India, Italy, Japan, Korea, New Zealand, Norway, Russia, Singapore, Sweden,

Switzerland, Turkey, the United Kingdom and the United States. Out of these 18 peers, nine had MAP cases with Australia that started on or after 1 January 2016. These nine peers represented 76% of post-2015 MAP cases in Australia's inventory that started in January 2016 or 2017. Input was also received from taxpayers during stage 1. During stage 2, the same peers, except for Russia, provided input. In addition, Indonesia also provided input during stage 2. For this stage, these peers represent approximately 82% of post-2015 MAP cases in Australia's inventory that started in 2016, 2017 or 2018.[5] Generally, all peers indicated having a positive working relationship with Australia's competent authority, some of them emphasising good collaboration and the easiness of contact. Specifically with respect to stage 2, almost all peers that provided input reported that the update report of Australia fully reflects the experiences these peers have had with Australia since 1 January 2018 and/or that there was no addition to previous input given. Of the peers that provided additional input, several peers noted that Australia's competent authority adopted a co-operative, principled and consistent approach with a view to resolving cases in a timely manner.

Input by Australia and co-operation throughout the process

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

- MAP profile[6]
- MAP statistics[7] according to the MAP Statistics Reporting Framework (see below).

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

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

Overview of MAP caseload in Australia

The analysis of Australia's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018 ("**Statistics Reporting Period**"). According to the statistics provided by Australia, its MAP caseload during this period was as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2018
Attribution/allocation cases	26	28	35	19
Other cases	10	32	30	12
Total	36	60	65	31

General outline of the peer review report

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

A. Preventing disputes

B. Availability and access to MAP

C. Resolution of MAP cases

D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ("**Terms of Reference**").[8] Apart from analysing Australia's legal framework and its administrative practice, the report also incorporates peer input and taxpayer input and responses to such input by Australia, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Australia to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Australia relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes included in the recent development sections.

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

Notes

1. The tax treaties Australia has entered into are available at: https://treasury.gov.au/tax-treaties/income-tax-treaties. Two treaties that have been signed with the Marshall Islands (2010) and Samoa (2009) but have not yet entered into force that were included in the analysis in the stage 1 report have been excluded since Australia has indicated that these treaties were signed some time ago and have not entered into force. Reference is made to Annex A for the overview of Australia's tax treaties regarding the mutual agreement procedure.

2. This concerns the treaties with Germany, New Zealand and Switzerland.

3. Available at: www.oecd.org/tax/treaties/beps-mli-position-australia-instrument-deposit.pdf.

4. Available at: https://www.oecd.org/australia/making-dispute-resolution-more-effective-map-peer-review-report-australia-stage-1-9789264304208-en.htm.

5. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework. All cases falling within the *de minimis* rule do not fall in this percentage.

6. Available at: www.oecd.org/ctp/dispute/Australia-Dispute-Resolution-Profile.pdf.

7. The MAP statistics of Australia are included in Annex B and C of this report.

8. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

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

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

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

Current situation of Australia's tax treaties

2. Out of Australia's 52 tax treaties, 23 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. For the remaining 29 treaties the following analysis is made:

- Eight treaties do not contain a provision that is based on or equivalent to 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017)
- 20 treaties contain a provision that is based on 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), but these provisions do not contain the word "interpretation" and are therefore considered as not containing the equivalent of Article 25(3), first sentence.
- One treaty contains a provision that is based on 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), but it does not contain the word "application" and is therefore considered as not containing the equivalent of Article 25(3), first sentence.

3. Australia reported that irrespective of whether the applicable treaty contains the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), there is, under its domestic law or administrative practice, no obstruction that would prevent its competent authority from entering into discussions to endeavour to resolve an issue under an interpretative MAP agreement. Australia clarified that there is a limit under its domestic law, however, as to what its competent authority could ultimately agree to in

an interpretative MAP agreement, as an agreement under Article 25(3) concerning the meaning of a treaty term does not necessarily prevail over the meaning of that term under Australia's domestic law under ordinary principles of interpretation.

4. Most of the peers that provided input in relation to their treaty with Australia confirmed that the concerned treaty is in line with the requirements under element A.1. For the 29 treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), some of the relevant peers provided input. One of them specified that its own model tax treaty contains the provision of the OECD Model Tax Convention that is not contained in its treaty with Australia. Other peers indicated that their tax treaty with Australia would be modified by the Multilateral Instrument to be in line with element A.1. One peer noted that there was currently a mismatch in notifications with respect to the Multilateral Instrument and that it was currently working with Australia to align such mismatches so that the instrument will modify its tax treaty with Australia. Another peer reported that it contacted Australia to renegotiate their entire tax treaty, including in relation to the Action 14 Minimum Standard.

Recent developments

Bilateral modifications

5. Australia signed a new tax treaty with one treaty partner, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty has already entered into force. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

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

8. With regard to the 29 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), Australia listed 22 of them as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). Of the relevant treaty partners, four are not a signatory to the Multilateral Instrument, whereas two did not list their treaty with Australia as a covered tax agreement under that instrument. Of the remaining 16 treaty partners, only 12 made a notification pursuant to Article 16(6)(d)(i).

9. Of these 12 treaty partners, nine already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Australia and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified nine treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining three treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

10. Of the peers that provided input during stage 2, five provided input in relation to their tax treaty with Australia. None of these peers concerns a treaty partner to one of the treaties identified above that do not contain Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which not will be modified by the Multilateral Instrument.

Anticipated modifications

11. For the remaining 17 tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent, Australia reported that it would encourage comprehensive treaty partners to implement the Multilateral Instrument and lift their reservations, where possible, to bring these treaties in line with the requirements under the Action 14 minimum standard. Where this is not possible and for the remaining treaties, Australia has not put in place a plan for bringing these treaties in line with the requirements under element A.1.

12. Regardless, Australia reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	29 out of 52 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these 29 treaties: • Nine have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Three are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). • 17 treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: - For ten, the relevant treaty partners have been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken. - For the remaining seven, no actions have been taken nor are any actions planned to be taken.	For those 17 treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), Australia should: • For ten treaties, continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision. • For seven treaties, without further delay, request via bilateral negotiations the inclusion of the required provision.

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

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

13. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.[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.

Australia's APA programme

14. Australia reported that since the mid-1990s it has implemented an APA programme, under which it is authorised to enter into unilateral, bilateral and multilateral APAs. Australia reported that the APA/MAP PMU is the main contact point for taxpayers seeking an APA. Australia further reported that its APA programme is a three-step process consisting of early engagement (stage 1), APA application (stage 2) and monitoring compliance (stage 3). In this respect, Australia's Law Administration Practice Statement PS LA 2015/4[2] ("**APA guidance**") clarifies that in stage 1 the team in charge of APAs will explain the process to the taxpayer, provide initial feedback on the APA request, evaluate whether the taxpayer should be invited to formally apply for an APA and develop agreed plans with the taxpayers to help him proceed through the early engagement stage and to ultimately conclude the APA itself. Further preliminary discussions are held with the taxpayer and APA workshops are also available. Under stage 2, the ATO staff will conduct an analysis and evaluation, and if it determines that the taxpayer has complied with all requirements, an agreement will be reached. Lastly, under the monitoring and compliance phase of stage 3, the Operations area of the PGI business line will verify whether any of the critical assumptions listed in the APA have been breached in addition to confirming whether the terms of the APA have been met.

15. Australia also reported that bilateral APAs typically run for a period between three and five years. Australia clarified that it is possible to renew an APA, for which taxpayers should file a request at least six months before an existing APA expires and that this timeline should also in theory apply to submitting an initial request for a bilateral APA.

16. Australia reported that in mid-2014 the ATO commenced a reinvention of its APA programme. This reinvention emphasised the importance of prevention before correction and this has been a key tenet of enhancing the APA programme since its completion. Australia has expressed its desire to provide early support and certainty to taxpayers with respect to reducing the risk of double taxation. In addition, Australia reported that it also strengthened its APA programme by devoting more resources to the programme to which the competent authority function is actually delegated. Australia further reported that it also conducts an annual forum with taxpayers to improve the operation of the APA programme, as well as to demonstrate that APAs can provide a fair and reasonable solution.

Roll-back of bilateral APAs

17. Australia reported that it is possible to obtain a roll-back of bilateral APAs and that in general roll-backs are typically requested for a period of two to three years. In this respect, Australia clarified that its domestic statute of limitation enables it to grant rollback in theory up to seven years after the notice of assessment of the taxpayer, as provided in sections 815-150 and 815-240 of the Income Tax Assessment Act 1997, which set the time limit for making a transfer pricing adjustment or for adjusting the profits attributed to a permanent establishment.

18. Further to the above, sections 24A-24G of Australia's APA guidance relate to the roll-back of APAs. Section 24C clarifies that ATO's practice in relation to roll-backs of bilateral APAs depends on a taxpayer's specific circumstances and on a risk assessment basis. The criteria set out in Section 24E of Australia's APA guidance, stipulates that ATO:

- will not seek roll-back where the transfer pricing issues for prior years are rated as low-risk under business line risk assessment procedures
- will be more likely to seek roll-back for a lesser number of years in the case of a voluntary APA request than it would be for a case resulting from ATO compliance activity
- is likely to seek roll-back for issues rated as high risk.

Recent developments

19. Australia reported that it has undertaken an end-to-end review of its APA programme since 1 January 2018, identifying a number of potential improvements with the intention of enhancing efficiency and transparency. Australia clarified that these improvements enable Australia's PMU to more closely scrutinise individual cases, identify cases that are not progressing optimally and proactively initiate action or discussion with all parties involved to ensure timeliness. Australia reported that these changes will be reflected in its APA guidance.

Practical application of roll-back of bilateral APAs

20. Statistics on Australia's bilateral APA programme are available on the website of the ATO.[3] The most recent year for which the information is available is the period 1 July 2018 to 30 June 2019.

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

21. Australia reported that in the period 1 January 2015-31 December 2017 it received 12 roll-back requests. As regards those requests, four were withdrawn, five were finalised with agreed roll-back periods and the remaining three are still under consideration.

22. Several peers mentioned that Australia is open to provide roll-back of bilateral APAs and that in their experience such roll-backs were available in appropriate cases in the period 1 January 2015-31 December 2017. One of these peers specified that one APA including a roll-back request was concluded in 2017, while another peer indicated that it has concluded an APA with a roll-back with Australia and that no problems were encountered with the conclusion or the implementation of such an agreement. Several other peers indicated that while they have received roll-back requests in the period 1 January 2015-31 December 2017 concerning Australia, no cases have been finalised yet, but that

roll-back with Australia seems available in appropriate cases. Lastly, other peers also indicated not having received any requests for roll-back in this period with one of them also indicating that it is its impression that the Australian competent authority is amenable to granting roll-backs when requested by the taxpayer.

23. Further to the above, another peer further noted that Australia uses APAs positively to avoid tax treaty related disputes and that it has received multiple requests for bilateral APA with Australia in the period 1 January 2015-31 December 2017. One last peer also mentioned that its jurisdiction worked together with Australia and the taxpayer to encourage the latter to submit an APA request further to a MAP case that relates to an issue that is likely to occur again.

Period 1 January 2018-31 August 2019 (stage 2)

24. Australia reported that since 1 January 2018 its competent authority received 19 requests for a bilateral APA, including 7 new requests and 12 requests for a renewal of an existing APAs, four of which also included a request for a roll-back. All of these four requests are under consideration.

25. All but one peer that provided input during stage 1 stated in stage 2 that the update report provided by Australia fully reflects their experience with Australia since 1 January 2018 and/or there are no additions to the previous input given. In addition, two peers provided specific input. The same input was given by the one peer that only provided input during stage 2. One of these peers mentioned that it has not received any requests for APA roll-back concerning Australia since 1 January 2018. The other peer noted that Australia is generally able to provide for roll-back of bilateral APAs and that it has not encountered any issue in the implementation of the roll-back of bilateral APAs reached with Australia.

Anticipated modifications

26. Australia did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for Improvement	Recommendations
[A.2]	-	-

Notes

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
2. Available at: http://law.ato.gov.au/atolaw/view.htm?docid=%22PSR%2FPS20154%2FNAT%2FATO%2F00001%22.
3. Available at : https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Advance-pricing-arrangements/?anchor=APA_and_MAC_statistics.

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.

27. 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 Australia's tax treaties

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

28. Out of Australia's 52 tax treaties, one contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. Further, ten of Australia's 52 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

29. The remaining 41 tax 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	32
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request for transfer pricing adjustments, whereas the scope of the treaty also covers certain items of income concerning individuals.	6
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are a resident and only where there is double taxation contrary to the principles of the agreement.	1
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1
No MAP provision	1

30. The 32 treaties included in the first row in the table above are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, 30 of these tax treaties do not contain a non-discrimination provision and for that reason they are considered to be in line with this part of element B.1. The remaining two tax treaties contain a non-discrimination provision that is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2017) and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention is therefore not clarified by the absence of or a limited scope of the non-discrimination provision, following which these two treaties are considered not to be in line with this part of element B.1.

31. The six treaties in the second row of the table are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since the scope of the MAP provision is limited to one type of disputes, whereas the treaty has a broader scope of application. These treaties are therefore considered not to be in line with this part of element B.1.

32. The treaty referred to in the third row of the table contains a provision that is based on 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), but taxpayers are only allowed to submit a MAP request in cases of double taxation, whereas Article 25(1) refers to taxation not in accordance with the provisions of the tax treaty. Consequently, as the MAP provision in this treaty is limited in scope as compared to Article 25(1), first sentence, it is considered not to be in line with this part of element B.1.

33. Furthermore, with respect to the one treaty included in the second row of the table above, incorporates a provision in the protocol to this tax treaty, which reads:

> The expression "notwithstanding the remedies provided by the national laws" means that the mutual agreement procedure is not alternative to the national contentious proceedings which shall be, in any case, preventively initiated, when the claim is related to an assessment of Italian tax not in accordance with this Convention.

34. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though the provision contained in the MAP article is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). This treaty is therefore also considered not in line with this part of element B.1.

35. Finally, the one treaty mentioned in the last row of the table does not contain a provision based on Article 25 of the OECD Model Tax Convention (OECD, 2017) that allows taxpayers to file a MAP request and thus, this treaty is 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

36. Out of Australia's 52 tax treaties, 37 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

37. The remaining 15 tax treaties can be categorised as follows:

Provision	Number of tax treaties
No MAP provision	1
No filing period for a MAP request	3
Filing period more than 3 years for a MAP request (4-years)	2
Filing period less than 3 years for a MAP request (2-years)	3
Treaties that have a limited scope of application, whereby the MAP is restricted to transfer pricing cases and whereby the filing period is three years, however, as of the date of the first notification of a transfer pricing adjustment	6

Peer input

38. Most of the peers that provided input in relation to their treaty with Australia confirmed that the concerned treaty is in line with the requirements under element B.1. For the 15 treaties identified that do not include the equivalent of Article 25(1) of the OECD Model Tax Convention, some of the relevant peers provided input. Some of the peers whose tax treaty with Australia does not meet the minimum requirement under this element indicated that their tax treaty with Australia would be modified by the Multilateral Instrument to be in line with element B.1, which is also confirmed by the analysis described previously. Further, one peer reported that it contacted Australia to renegotiate their entire tax treaty, including in relation to the Action 14 Minimum Standard.

Practical application

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

39. As noted in paragraphs 28-35 above, all but two of Australia's tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. In this respect, Australia reported that access to MAP is available regardless of whether taxpayers also have sought to resolve the dispute via domestically available administrative and judicial remedies. This policy is confirmed in Australia's MAP guidance, in the section titled "Impact of domestic dispute resolution processes on the MAP process". This section further provides that where a case is subject to administrative or judicial review in Australia, its competent authority can decide to defer progressing a MAP request until the tribunal/court has rendered a decision. Australia's MAP guidance further clarifies that access to MAP is also available in cases where administrative or judicial review process in Australia already have been completed. However, Australia's competent authority cannot derogate from a tribunal/court decision in MAP and therefore it will only seek to resolve the MAP case by having the treaty partner providing for correlative relief in line with the decision of its domestic tribunal/court.

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

40. Australia reported that when a treaty does not include a filing period for a MAP request, the taxpayer must present the case within the timeframe provided under its domestic law. This timeframe is set forth in Division 3 of Part IVC of the Taxation Administration Act 1953, which stipulates that the time for lodging an objection is generally two years from the date of the assessment for individuals or small businesses, or four years for other entities starting from the date of self-assessment (corresponding to the filing of a tax return).[1] Australia further reported that in case its statute of limitation has already expired, an Australian resident can present along with its MAP request, a request for extension of the time to lodge an objection under Section 14ZX of the Taxation Administration Act 1953. In practice, when Australia receives a MAP request, its Program Management Unit also considers whether the request may be subject to domestic time limits under the treaty. If domestic time limits apply, Australia's competent authority is informed of this for its consideration.

41. While this system in theory allows taxpayers to present its MAP request within an indefinite period of time, Australia reported that it will grant access to cases that would be presented after the expiration of such domestic time limits on a case-by-case basis. Therefore, under those treaties without a filing period, there is a risk that taxpayers are not allowed access to MAP request within a period of at least three years as from the first notification of the action that results or is likely to result in taxation not in accordance with the provisions of the tax treaty.

42. In view of the above, Australia reported that it has not had a MAP case for which access was adversely affected by domestic time limits. In this regard, Australia reported that since 1 April 2017, it has received five MAP requests under a treaty that does not contain a filing period for MAP request and that access to MAP was granted in all situations.

Recent developments

Bilateral modifications

43. Australia signed a new treaty with one treaty partner, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has

already entered into force. This treaty contains a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

44. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

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

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

47. With the depositing of its instrument of ratification, Australia opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Australia's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, Australia opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Australia listed 42 of its 52 treaties as a covered tax agreement under the Multilateral Instrument and made for all, on the basis of Article 16(6)(a), the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). None of these 42 treaties concern the treaty mentioned in paragraph 28 above that already allows the submission of a MAP request to either competent authority.

48. In total, six of 42 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas three have not listed their treaty with Australia as a covered tax agreement under that instrument and 13 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

All remaining 20 treaty partners listed their treaty with Australia as having a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

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

50. In view of the above and in relation to the 11 treaties identified in paragraphs 29-35 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), none are part of the 19 treaties that have been or will be modified via the Multilateral Instrument.

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

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

52. With regard to the nine tax treaties identified in paragraph 37 above that are considered to contain a filing period for MAP requests of less than three years, Australia listed three treaties as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the three relevant treaty partners, one is not a signatory to the Multilateral Instrument. The two remaining tax treaty partners listed their tax treaty with Australia as a covered tax agreement under this instrument and also made a notification pursuant to Article 16(6)(b)(i). Therefore, at this stage, two of the 11 tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

53. Of the peers that provided input during stage 2, five provided input in relation to their tax treaty with Australia and three provided input in relation to element B.1. One of these peers noted that its treaty with Australia will be modified by the Multilateral Instrument to include Article 25(1) of the OECD Model Tax Convention (OECD, 2017), which is in accordance with the above analysis. The remaining two peers concern treaty partners to two of the treaties identified in paragraphs 29-35 above that do not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the

adoption of the Action 14 final report (OECD, 2015b) and which will not be modified by the Multilateral Instrument. One of these peers reported that it has proposed to Australia to enter into a memorandum of understanding to address the issue that taxpayers have to initiate domestic remedies when submitting a MAP request. Australia responded to this input and stated that it acknowledged having received the proposal and that it will respond to the peer. The other peer reported to have engaged with Australia over the years with a view to renegotiate its tax treaty with Australia, including amendments to bring the treaty in line with the requirements under the Action 14 Minimum Standard.

Anticipated modifications

54. For the remaining tax treaties that do not contain the equivalent of Article 25(1), first and/or second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent, Australia reported that it would encourage comprehensive treaty partners to implement the Multilateral Instrument and lift their reservations, where possible, to bring these treaties in line with the requirements under the Action 14 minimum standard. Where this is not possible and for the remaining treaties, Australia has not put in place a plan for bringing these treaties in line with the requirements under element B.1.

55. Regardless, Australia reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for Improvement	Recommendations
[B.1]	Four out of 52 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b). None of these treaties will be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: • For three, the relevant treaty partners have been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken. • For the remaining treaty, no actions have been taken nor are any actions planned to be taken.	For the four treaties that do not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) and have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), Australia should: • for three treaties, continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision. • for one treaty, without further delay, request via bilateral negotiations the inclusion of the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: • as amended by the Action 14 final report (OECD, 2015b); or • as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.

	Areas for Improvement	Recommendations
[B.1]	Two out of 52 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is in these treaties shorter than three years, from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties: • One will be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One will not be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, the relevant treaty partner has been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken.	For the treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Australia should continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision.
	Seven out of 52 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these seven treaties: • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) but not as regards the first sentence. • Six will not be modified by the Multilateral Instrument to include Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to all seven tax treaties: • For one, the relevant treaty partner has been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken • For the remaining six, no actions have been taken nor are any actions planned to be taken.	For the seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017), Australia should: • for one treaty, continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision. • for the remaining six treaties, without further delay, request via bilateral negotiations the inclusion of the required provision. This concerns a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention either: • as amended by the Action 14 final report (OECD, 2015b); or • as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	Where tax treaties do not contain a time limit for submission of a MAP request, there is a risk, under applicable rules under domestic legislation, that taxpayers cannot validly present a MAP request within a period of at least three years as from the first notification of the action that results or will result in taxation not in accordance with the provisions of the tax treaty.	Australia should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from access to MAP if a request thereto is made within a period of three years as from the first notification of the action that results or will result in taxation not in accordance with the provisions of the tax treaty.

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

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

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

Chapter 1. of either treaty partner; or, in the absence of such provision,

Chapter 2. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases, jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

Domestic bilateral consultation or notification process in place

57. As discussed under element B.1, one out of Australia's 52 treaties currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, 14 of the remaining 51 treaties have been modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), and another six will, upon entry into force, be modified by the Multilateral Instrument to include such equivalent.

58. Australia reported that it introduced in early 2017 a notification process, which allows the other competent authority concerned to provide its views on the case when Australia's competent authority considers the objection raised in the MAP request not to be justified. In this respect, Australia clarified that its practice is to notify treaty partners in writing when a MAP request is received and that it requests their input on whether they consider whether the objection raised is justified. It then notifies its treaty partners in writing if it concludes the case is not justified and includes the basis for such a decision. However, Australia's practice in this respect had not yet been documented.

Recent developments

59. Australia reported that it has updated its internal procedures to document its notification process, by outlining that its competent authority sends a letter to the tax treaty partner acknowledging their notification within four weeks of receipt. Australia further clarified that its competent authority will actively ensure that notification has been provided within the required timeframe as set out above.

60. Australia also updated its MAP guidance, where in the section "MAP stages" information on the MAP process is provided, including a clarification in what situations the objection raised in the MAP request will be and will not be considered as justified, as well as the follow-up in both situations.

Practical application

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

61. From Australia's 2016 and 2017 MAP statistics it follows that in six cases the outcome reported was "objection not justified" (one case in 2016 and five in 2017). In this respect, Australia reported that in three of these six cases its competent authority considered an objection not justified in the period 1 January 2015-31 December 2017.

62. For these three cases, Australia clarified that one case occurred in 2015, where there is no record of notification of the other competent authority concerned. In the other two cases that occurred in 2017, Australia clarified that its competent authority notified the other competent authority, which was confirmed by both relevant peers.

63. All other peers that provided input indicated not being aware of a case where Australia's competent authority considered the objection raised in a MAP request as not justified in the period 1 January 2015-31 December 2017. They also reported not having been consulted or notified of a case where Australia's competent authority considered the objection raised in a MAP request as not justified. One peer also reported that its tax treaty with Australia allows the taxpayer to submit its MAP request to the competent authority of either contracting state. Another peer reported that its competent authority considered the objection raised by the taxpayer as not justified in one case. This peer further reported that it notified Australia's competent authority hereof and that the latter confirmed receiving this notification.

Period 1 January 2018-31 August 2019 (stage 2)

64. Australia reported that since 1 January 2018 its competent authority has for two of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. Australia clarified that in both cases, the competent authority of the concerned treaty partner was notified of the reasoning and that the final decision was taken only after consultation and in agreement with the competent authority of the concerned treaty partner.

65. The 2018 MAP statistics submitted by Australia show that three of its MAP cases were closed with the outcome "objection not justified". Two of these three cases concern the cases referred to above, where Australia's competent authority made the decision, while Australia clarified that in the third situation the competent authority of the treaty partner made such a decision.

66. All but one peer that provided input during stage 1 also stated during stage 2 that since 1 January 2018 they are not aware of any cases for which Australia's competent authority considered the objection raised in a MAP request as not justified. In addition, one peer specifically noted that it received no such notifications from Australia since 1 January 2018, which can be clarified by the fact that no such cases have occurred involving such peer since that date. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

67. Australia did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

68. 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

69. Out of Australia's 52 tax treaties, 41 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, 10 treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Out of these 10 treaties, seven are treaties with a limited scope that do not contain a provision that is based on or equivalent to Article 9 of the OECD Model Tax Convention (OECD, 2017), but that allow the MAP to be initiated for transfer pricing cases. The remaining treaty contains a provision that is based on Article 9(2), but as it stipulates that corresponding adjustments can only be made as a result of a mutual agreement procedure in accordance with the MAP article, it is therefore considered not being equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

70. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Australia's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Australia indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, where the scope of the treaty also covers such cases. This applies to all 52 of Australia's tax treaties, including those with a limited scope of application as referred to above.

71. Australia's MAP guidance, in the section titled "Double Taxation" specifies that MAP applies to all cases that involve cross-border double taxation including economic double taxation, with transfer pricing adjustments specified as an example for this. The guidance also describes how economic double taxation may be relieved in transfer pricing cases through correlative adjustments in Australia.

Recent developments

Bilateral modifications

72. Australia signed a new tax treaty with one treaty partner, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). This treaty has already entered into force. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

74. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does for a tax treaty not take effect if one or both of the treaty partners to the tax treaty have, pursuant to Article 17(3), reserved the right to not apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), or not to apply Article 17(1) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017)).

75. Australia has, pursuant to Article 17(3), reserved the right not to apply Article 17(1) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). With regard to the four treaties identified in paragraph 69 above that are considered not to contain an equivalent provision (disregarding the seven treaties that do not contain Article 9 at all), Australia listed all of them as a covered tax agreement under the Multilateral Instrument and included two in the list of treaties for which Australia has, pursuant to Article 17(3), reserved the right not to apply Article 17(1) of the Multilateral Instrument. For the remaining two treaties Australia did not make, pursuant to Article 17(4), a notification that this treaty contains such equivalent.

76. Both relevant treaty partners are signatories to the Multilateral Instrument, listed their treaty with Australia as a covered tax agreement under that instrument and have not, on the basis of Article 17(3), reserved the right not to apply Article 17(1) to the treaty

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

Application of legal and administrative framework in practice

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

77. Australia reported that in the period 1 January 2015-31 December 2017, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

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

79. Taxpayers also reported not being aware of such a limitation of access in the period 1 January 2015-31 December 2017.

Period 1 January 2018-31 August 2019 (stage 2)

80. Australia reported that also since 1 January 2018 for none of the MAP requests it received it has denied access to MAP on the basis that the case concerned was a transfer pricing case. Australia clarified that since 1 January 2018 it received 11 MAP requests relating to transfer pricing, all for which access to MAP was granted.

81. All but one peer that provided input during stage 1 stated in stage 2 that the update report provided by Australia fully reflects their experience with Australia since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

82. Australia reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include Article 9(2) in all of its future tax treaties. Other than this, Australia did not indicate that it anticipates any modifications in relation to element B.3.

Conclusion

	Areas for Improvement	Recommendations
[B.3]	-	-

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

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

83. 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

84. None of Australia's 52 tax treaties allows competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

85. Australia reported that its domestic anti-abuse rules are contained in Part IVA of the Income Tax Assessment Act 1936, or Section 67 of the Fringe Benefits Tax Assessment Act 1986. Australia's recently enacted **Multinational Anti-Avoidance Law** ("**MAAL**") and **Diverted Profits Tax** ("**DPT**") legislation falls within Part IVA of the Income Tax Assessment Act 1936. In this respect, Australia explained that Part IVA of the Income Tax Assessment Act 1936 is a general anti-avoidance provision that gives the ATO Commissioner the power to cancel a tax benefit that has been obtained or would be obtained by a taxpayer. Australia further reported that its domestic anti-abuse rules are not restricted by the application of Australia's tax treaties, as provided under subsections 4(2) and 4AA(2) of its International Tax Agreements Act 1953. Australia further reported that during bilateral treaty negotiations it explains that the application of Australia's general anti-avoidance rules prevails in the event of inconsistency with provisions of the treaty. Australia also reported that a determination to apply its domestic anti-abuse rules is only made after consultation with ATO's chief legal counsel, and review of the case by an independent panel of external private sector professionals. Australia emphasised that a Part IVA determination is not made arbitrarily and is subject to significant internal and external review. Australia also noted that with respect to the newly enacted MAAL and DPT legislation, ATO's emphasis is on proactively avoiding disputes via APAs.

86. Australia stated that taxpayers are entitled to access 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. Australia specified that the latter covers cases arising under the MAAL and DPT legislation. In respect of the MAAL, Australia clarified that this position is confirmed in Australia's published Law Companion Ruling LCR 2015/2.

Recent developments

87. It was noted in Australia's stage 1 peer review report that Australia's MAP guidance did not include any information on how the above-described domestic anti-abuse provisions affected access to MAP in Australia. In addition, it was noted that Australia's MAP profile incorrectly specified that access to MAP would not be granted when Australia's domestic anti-abuse provisions applied and did not reference LCR 2015/2, which may have caused taxpayers not to submit MAP requests for cases where Australia's domestic anti-abuse legislation applies.

88. Australia reported that it has updated its MAP guidance to confirm that taxpayers are able to request MAP for tax that results from the application of the general anti-avoidance rules in Part IVA, including the MAAL as well as the DPT. This is reflected in section "MAP and the general anti-avoidance rules" This section of the MAP guidance also confirms, as noted above, that Part IVA is not restricted by the application of Australia's tax treaties and, as a result, the ATO cannot resolve a case under MAP regarding the application of rules under the Part IVA. Australia further reported it has also updated its MAP profile to clarify that access to MAP would be granted when Australia's domestic anti-abuse provisions applied.

89. By making these changes, Australia has addressed the recommendation that was made in its stage 1 peer review report.

Practical application

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

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

91. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Australia in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2015-31 December 2017. However, one peer mentioned that its competent authority would appreciate further dialogue with Australia's competent authority on whether a taxpayer whom the Australian tax authority deems to be in violation of the MAAL will be denied access to MAP, and on when the resolution of a MAP case may be delayed or impeded pending such concerns. Australia responded to this input in that it is open to further dialogue on the rationale and administrative workings of the MAAL.

92. Taxpayers also reported not being aware of such a limitation of access in the period 1 January 2015-31 December 2017.

Period 1 January 2018-31 August 2019 (stage 2)

93. Australia reported that since 1 January 2018 it has also not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received since that date.

94. All but one peer that provided input during stage 1 stated in stage 2 that the update report provided by Australia fully reflects their experience with Australia since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2. The peer that provided input during stage 1 in relation to the application of Australia's domestic anti-avoidance rules also stated that it has no additions to the previous input given.

Anticipated modifications

95. Australia did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for Improvement	Recommendations
[B.4]	-	-

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

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

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

Legal and administrative framework

Audit settlements

97. Australia reported that under its domestic law it is possible for taxpayers and the tax administration to enter into an audit settlement. Audit settlements can be requested by either ATO or the taxpayer and can occur at any stage, including before or after an audit position paper as well as during the course of an objection or litigation. Australia indicated that audit settlements would generally not be considered available if the case in question relates to a particularly contentious point of taxation law or where it is considered to be in the public interest to litigate.

98. Further to the above, Australia clarified that the factors that ATO takes into consideration for entering into an audit settlement include the relevant strength of the parties' position, the cost versus the benefit of continuing the taxation dispute, as well as the expected impact on future compliance for the taxpayer and the broader taxpaying community. When an audit settlement is reached, Australia reported that the related parties are required to sign a written agreement, which sets out the exact terms of the settlement. According to Australia, this is usually in the form of a settlement deed, which must be adhered to by the signatories unless it emerges that relevant and material facts were not disclosed.

99. Australia reported that its policy is to allow access to MAP for cases that have been decided by way of audit settlement.

Administrative or statutory dispute settlement/resolution process

100. Australia reported that it does not have an administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.[2]

Recent developments

101. In the stage 1 report, it was reflected that audit settlements in Australia could contain clauses denying the taxpayer the right to submit a MAP request and such clauses were included on a case-by-case basis. Consequently, Australia was recommended to ensure that access to MAP is provided in eligible cases, even if it involves audit settlements between the taxpayer and the tax administration.

102. Australia reported that it revised its policy in this regard and clarified that its current policy is to not include such clauses in audit settlement deeds and that there are no exceptional circumstances in which it would continue to do so. Although it is still legally possible under Australian law (following jurisprudence on this matter) for a taxpayer to voluntarily waive certain rights (e.g. the right to object or appeal) as part of a settlement, Australia reported that inserting such a clause denying the taxpayer the right to submit a MAP request would be inconsistent with its current policy, public guidance, internal procedures and practice. Australia's policy in this regard is also reflected in Australia's MAP guidance, under the section "MAP and settlements".

103. Accordingly, Australia is considered to have addressed recommendation included in its stage 1 peer review report.

Practical application

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

104. Australia reported that in the period 1 January 2015-31 December 2017 it has not denied access to MAP in any cases where the taxpayer and the tax administration have entered into an audit settlement.

105. All peers indicated not being aware of a denial of access to MAP in Australia in the period 1 January 2015-31 December 2017 in cases where the issue presented had already been dealt with in an audit settlement between the taxpayer and the tax administration.

106. Taxpayers expressed concerns about Australia's audit practices in the period 1 January 2015-31 December 2017. These taxpayers noted that they were asked to forego MAP access as part of an audit settlement. These taxpayers reported that such settlement discussions were not undertaken as part of an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions. Concern was expressed by the taxpayers that ATO is exerting pressure on taxpayers to enter into settlement negotiations with a non-negotiable requirement to forego MAP access. Further concern was expressed by these taxpayers that this perceived pressure will increase if the practice of binding arbitration becomes more widespread, which could end up increasing the double tax risk and burden on taxpayers.

107. Australia responded to this input and stated that there have been instances prior to 1 January 2015 where ATO has included a clause in an audit settlement deed to prevent taxpayers from proceeding to MAP and other domestic review rights. However, in the period 1 January 2015-1 December 2017, this has not occurred in practice.

Period 1 January 2018-31 August 2019 (stage 2)

108. Australia reported that since 1 January 2018 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax administration. However, no such cases in relation hereto were received since that date.

109. All but one peer that provided input during stage 1 stated in stage 2 that the update report provided by Australia fully reflects their experience with Australia since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

110. Australia did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for Improvement	Recommendations
[B.5]	-	-

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

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

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

Legal framework on access to MAP and information to be submitted

112. The information and documentation Australia require taxpayers to include in a request for MAP assistance are discussed under element B.8.

113. Australia reported that when a taxpayer does not include the required information and documentation in its MAP request, its competent authority will lodge a formal request for further information with the taxpayer. Australia clarified that in this situation it normally gives taxpayers 28 days to respond to this request for further information.

114. In cases where information is not received within this 28-day timeframe, Australia reported that its competent authority will discuss with the taxpayer the reason for the

non-response to the request for further information. If a taxpayer still does not provide the requested information and does not provide a satisfactory explanation for why it did not provide such information, then Australia would be able to reject the MAP request. Australia's MAP guidance, in section "How you request a MAP", contains a statement that the competent authority may reject a MAP request if the information and documentation listed therein is not submitted by taxpayers.

115. Australia noted that such a rejection would be made on a case-by-case basis and that its competent authority's general aim is to work with the taxpayer to successfully process its MAP request.

Recent developments

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

Practical application

Period 1 January 2015-31 December 2017 (stage 2)

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

118. All peers that provided input indicated not being aware of a limitation of access to MAP by Australia in the period 1 January 2015-31 December 2017 in situations where taxpayers complied with information and documentation requirements.

119. Taxpayers also reported not being aware of such a limitation of access in the period 1 January 2015-31 December 2017.

Period 1 January 2018-31 August 2019 (stage 2)

120. Australia reported that since 1 January 2018 its competent authority has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

121. All but one peer that provided input during stage 1 stated during stage 2 that the update report provided by Australia fully reflects their experience with Australia since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2. This peer added that it would be beneficial if Australia's strict rule on the submission of information and documentation could be applied to existing MAP requests so as to ensure commitment from taxpayers and to prevent backlog of cases resulting from the difficulty of obtaining information from taxpayers.

Anticipated modifications

122. Australia did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for Improvement	Recommendations
[B.6]	-	-

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

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

123. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Australia's tax treaties

124. Out of Australia's 52 tax treaties, 16 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. One of these treaties contains a provision that is similar to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), but refers to the consultation regarding "cases not provided for in this Agreement", whereas the second sentence of Article 25(3) refers to the consultation "for the elimination of double taxation in cases not provided for in the convention". As the particular tax treaty provides for a scope of application that is at least as broad as that second sentence of Article 25(3), it is considered to be in line with element B.7.

125. None of the remaining 36 treaties contain a provision that is based on or equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Seven of these 36 treaties have a limited scope of application.[3] This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention (OECD, 2017) are not followed. As these treaties were intentionally negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, therefore, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) for those seven treaties with a limited scope of application.

126. Most of the peers that provided input in relation to their treaty with Australia confirmed that the concerned treaty is in line with the requirements under element B.7. For the 36 treaties identified that do not include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), some of the relevant peers provided input. Many of the peers whose tax treaty with Australia did not meet the minimum requirement under this element indicated that its tax treaty with Australia

would be modified by the Multilateral Instrument to be in line with element B.7 which was also confirmed by the analysis made previously. Further, one peer reported that it contacted Australia to renegotiate their entire tax treaty, including in relation to the Action 14 Minimum Standard.

Recent developments

Bilateral Modifications

127. Australia signed a new tax treaty with one treaty partner, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty has already entered into force. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

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

130. With regard to the 29 comprehensive tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Australia listed all of them as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(d)(ii), a notification that they do not include a provision described in Article 16(4)(c)(ii). Of the relevant 29 treaty partners, six are not a signatory to the Multilateral Instrument, whereas two did not list their treaty with Australia as a covered tax agreement under that instrument. Of the remaining 21 treaty partners, 20 made a notification on the basis of Article 16(6)(d)(ii).

131. Of the 20 treaty partners mentioned above, 12 have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Australia and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified 12 treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining eight treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

132. Of the peers that provided input during stage 2, five provided input in relation to their tax treaty with Australia. Two of these peers concern treaty partners to two of the treaties identified above that does not contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which not will be modified by the Multilateral Instrument. However, neither of these peers provided input in relation to element B.7.

Anticipated modifications

133. For the remaining nine comprehensive tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent, Australia reported that it would encourage comprehensive treaty partners to implement the Multilateral Instrument and lift their reservations, where possible, to bring these treaties in line with the requirements under the Action 14 minimum standard. Where this is not possible and for the remaining treaties, Australia has not put in place a plan for bringing these treaties in line with the requirements under element B.7.

134. Regardless, Australia reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future comprehensive treaties. Australia also reported that it does not intend to include Article 25(3), second sentence, of the OECD Model Tax Convention in the nine tax treaties with a limited scope as such inclusion would contradict the purpose of those treaties. When states agree on a comprehensive treaty, the intention is to cover all or close to all cases. Against this background, it is Australia's understanding that Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) should enable the competent authorities to deal with rare and exceptional cases, i.e. function as a backup-clause. The opposite applies for treaties with a limited scope. The intention here is to only cover a certain type of situations. Accordingly, in Australia's view it is inappropriate to give the competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of the treaty.

Conclusion

	Areas for Improvement	Recommendations
[B.7]	36 out of 52 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Of these 36 treaties, seven concern tax treaties with a limited scope of application. With respect to the 29 remaining comprehensive treaties: • 12 have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Eight are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Nine will not be modified by the Multilateral Instrument to include the required provision. With respect to these nine treaties, the relevant treaty partners have been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken.	For the nine comprehensive tax treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Australia should continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision.

[B.8] Publish clear and comprehensive MAP guidance

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

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

Australia's MAP guidance

136. Australia has issued guidance that sets out the MAP process and information required by Australia to request a MAP. The guidance is available at:

https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Mutual-agreement-procedure/

137. The MAP guidance provides that taxpayers may access MAP if they believe that they are being or will be taxed not in accordance with a tax treaty and that access to MAP is available for both economic and juridical double taxation, including transfer pricing cases. The MAP guidance also provides extensive details with respect to the MAP in a simple and accessible manner. Specifically, the guidance includes the following items:

01. General outline of the MAP process, including the expectations and obligations from and for taxpayers and the competent authority.
02. A description of double taxation and when it arises as well as how it may be relieved
03. Situations that are eligible for a MAP request, including situations covered by: • Bona fide taxpayer initiated self-adjustments • Application of domestic anti-avoidance rules • Audit settlements • Multi-year resolution of recurring issues
04. Time limits for filing a MAP request and the basis for such request
05. The manner and form for the submission of a MAP request, including: • Contact details of the competent authority • MAP cases involving multiple competent authorities
06. Timeframes for resolving a MAP case, including time limits on implementing the outcome of the MAP process
07. The role and responsibilities of various parties in the MAP, including: • The PMU/competent authority • Other ATO staff • The taxpayer

08. The various stages of the MAP process, including:
- Stage one comprising submission of request, determination whether a case is justified and the possibility of unilateral relief
- Stage two comprising competent authority discussions and how they communicate throughout the process
- Details as regards a MAP agreement, including taxpayers' acceptance thereof
- Details as regards implementation of the MAP agreement
- Interrelation between MAP and domestic remedies
- Availability of arbitration
- The consideration of penalties and interest in MAP
- Suspension of tax collection for the period a MAP case is pending

138. The above-described MAP guidance of Australia includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.

Information and documentation to be included in a MAP request

139. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.[4] This agreed guidance is shown below. Australia's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

Recent developments

140. Australia reported that after 1 January 2018 (lastly as of July 2020) it updated its MAP guidance to reflect the following:

- the contact details of Australia's competent authority, including an email address

- a statement that all double taxation cases involving both businesses and individuals are within the scope of MAP, while the previous guidance only covered transfer pricing cases
- a statement that access to MAP will be granted for: (i) cases concerning the application of anti-avoidance rules contained in Part IVA of the Income Tax Assessment Act 1936, (ii) *bona fide* foreign-initiated self-adjustments, (iii) cases concerning audit settlements and (iv) multilateral disputes.
- an update to the information and documentation taxpayers need to include in their MAP request
- a statement that Australia will apply domestic time limits in a way that is most favourable to the taxpayer
- an update to the process for implementing MAP agreements
- a statement confirming that taxpayers may request multi-year resolution of recurring issues through MAP
- a statement on the independent functioning of the competent authority.

Anticipated modifications

141. Australia did not indicate that it anticipates any modifications in relation to element B.8.

Conclusion

	Areas for Improvement	Recommendations
[B.8]	-	-

[B.9] Make MAP guidance available and easily accessible and publish MAP profile

Jurisdictions should take appropriate measures to make rules, guidelines and procedures on access to and use of the MAP available and easily accessible to the public and should publish their jurisdiction MAP profiles on a shared public platform pursuant to the agreed template.

142. 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.[5]

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

143. The MAP guidance of Australia is available on the ATO's website at:

https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Mutual-agreement-procedure/

144. This guidance was last updated in June 2019. As regards its accessibility, the information on MAP is grouped within the sub-section for "Mutual arrangements for certainty" in the section for "Public business and international" on the website of the ATO (https://www.ato.gov.au/) and as such is easily accessible. It can also be easily found by searching on that website for "double taxation" or "mutual agreement procedure".

MAP profile

145. The MAP profile of Australia is published on the website of the OECD, which was last updated in June 2019.[6] This MAP profile is complete and includes external links which provide extra information and guidance where appropriate.

146. One peer provided input and had mentioned that Australia's published MAP profile only contains the mailing address of Australia's competent authority and not the e-mail address.

Recent developments

147. Australia's stage 1 peer review report reflected that its MAP guidance was not easily accessible, as searches for "double taxation" or "mutual agreement procedure" on ATO's website did not easily lead to Australia's MAP guidance. Australia reported that it has updated its website and changed the location of the MAP guidance in order to make the guidance more accessible to taxpayers in terms of organisation and search results.

148. The stage 1 report further reflected that Australia's MAP profile incorrectly specified that access to MAP would not be granted when Australia's domestic anti-avoidance provisions apply. Australia has updated its MAP profile in June 2019 to: (i) clarify that access to MAP is available for cases concerning the application of its domestic anti-avoidance provisions and (ii) include a link to its MAP guidance that provides the e-mail address of the competent authority.

Anticipated modifications

149. Australia reported that its competent authority is currently engaging with personnel in their information technology department to improve the results when searching for "double taxation" on the ATO website.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	-	-

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

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

150. 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

151. As previously discussed under element B.5, it is under Australia's domestic law possible that taxpayers and the tax administration enter into an audit settlement during the course of or after ending of an audit. Australia's MAP guidance confirms that taxpayers are able to request for MAP for matters which are the subject of a settlement agreement with the ATO. However, the guidance notes that settlement agreements are intended to resolve matters in a dispute for both parties and there may be consequences under the settlement deed for continuing the dispute through the MAP process. The guidance further recommends taxpayers to consider possible double taxation, and whether they intend to request for MAP, prior to entering into a settlement agreement.

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

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

153. As previously mentioned under element B.5, Australia 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 Australia's MAP guidance.

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

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

155. As Australia does not have an internal administrative or statutory dispute settlement/resolution process in place that limits access to MAP, there is no need for notifying treaty partners of such process.

Recent developments

156. It was noted in the stage 1 report that Australia's MAP guidance did not specifically address that taxpayers have access to MAP in cases where they entered into an audit settlement. However, as discussed above, Australia updated its MAP guidance in June 2019, by adding a section titled "MAP and settlements" that confirms that taxpayers are able to request for MAP for matters which are the subject of a settlement agreement with the ATO. By updating its MAP guidance, Australia has addressed the recommendation that was included in its stage 1 peer review report.

Anticipated modifications

157. Australia did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	-	-

Notes

1. Available at: https://www.legislation.gov.au/Details/C2017C00213.
2. In the stage 1 peer review report it was reported that Australia had in place an administrative/statutory dispute settlement/resolution process. However, as this process is part of the regular appellate chain in Australia's tax dispute resolution framework, it is considered not to be such a process and therefore the report has on this point be modified.
3. These seven treaties concern treaties with Aruba, the British Virgin Islands, Cook Islands, Guernsey, Isle of Man, Jersey, and, Mauritius.
4. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
5. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
6. Available at www.oecd.org/ctp/dispute/Australia-Dispute-Resolution-Profile.pdf.

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

Part C

Resolution of MAP cases

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

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

158. 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 Australia's tax treaties

159. Out of Australia's 52 tax treaties, 42 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.

160. Of the remaining ten treaties, one does not contain a provision that is based on or equivalent to Article 25(2), first sentence of the OECD Model Tax Convention (OECD, 2017). The other nine tax treaties are considered not to contain the equivalent of Article 25(2), first sentence of the OECD Model Tax Convention (OECD, 2017) for the following reasons:

- In six treaties the scope of the MAP process is limited to transfer pricing adjustments not in accordance with the arm's length principle while the scope of the treaty is in fact wider than only transfer pricing issues.
- In one treaty the relevant provision differs substantially and does not contain the part of the sentence reading "if it is not itself able to arrive at a satisfactory solution".
- In one treaty a provision based on Article 25(2), first sentence is contained, but also includes additional language that sets a condition for the provision to apply. This condition consists of a notification from the competent authority that received the

MAP request within a time limit of four and a half years from the due date or the date of filing the return in the treaty partner's jurisdiction, whichever is later. Such an obligation may prevent that cases are effectively dealt with in MAP.

- In one treaty the objective of the MAP is to come to an agreement to avoid "double taxation" instead of "taxation not in accordance with the convention".

161. Almost all peers that provided input reported their treaty with Australia meets the requirements under element C.1, which is confirmed by the analysis made previously. For the ten treaties identified that do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), one of the relevant peers noted that there was currently a mismatch in notifications with respect to the Multilateral Instrument and that it was currently working with Australia to align such mismatches so that the Multilateral Instrument can modify its tax treaty with Australia. Another peer specified that its own model tax treaty contains a provision equivalent to Article 25(2), first sentence the OECD Model Tax Convention (OECD, 2017) that is not contained in its treaty with Australia.

Recent developments

Bilateral modifications

162. Australia signed a new tax treaty with one treaty partner, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty contains a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty has already entered into force. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

164. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

165. With regard to the ten tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Australia listed three as a covered tax agreement under the Multilateral Instrument and made for all of them, pursuant to Article 16(6)(c)(i), a notification that they do not include a provision described in Article 16(4)(b)(i). Of the relevant three treaty partners, one is not a signatory to the Multilateral Instrument. The other two treaty partners listed their tax agreement with Australia as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(c)(i).

166. Of the two treaty partners mentioned above, one has already deposited its instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Australia and this treaty partner. Therefore, at this stage, the Multilateral Instrument has modified one treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

167. Of the peers that provided input during stage 2, five provided input in relation to their tax treaty with Australia. None of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which not will be modified by the Multilateral Instrument.

Anticipated modifications

168. For the eight tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent, Australia reported that it would encourage comprehensive treaty partners to implement the Multilateral Instrument and lift their reservations, where possible, to bring these treaties in line with the requirements under the Action 14 minimum standard. Where this is not possible and for the remaining treaties, Australia has not put in place a plan for bringing these treaties in line with the requirements under element C.1.

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

Conclusion

	Areas for Improvement	Recommendations
[C.1]	Ten out of 52 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these ten treaties: • One has been modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Eight will not be modified by the Multilateral Instrument to include the required provision. With respect to these eight treaties: - For one, the relevant treaty partner has been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken. - For the remaining seven, no actions have been taken nor are any actions planned to be taken.	For the eight treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Australia should: • for one treaty, continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision • for the remaining seven treaties, without further delay, request via bilateral negotiations the inclusion of the required provision.

[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).

170. 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

171. Statistics regarding all tax treaty related disputes concerning Australia are published on the website of the OECD as from 2007.[1] Australia also publishes statistics relating to MAP on ATO's website, which essentially relates to the number of MAP cases completed.[2]

172. The FTA MAP Forum has agreed on rules for reporting of MAP statistics ("**MAP Statistics Reporting Framework**") for MAP requests submitted on or after January 1, 2016 ("**post-2015 cases**"). Also, for MAP requests submitted prior to that date ("**pre-2016 cases**"), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Australia provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Australia and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively and should be considered jointly for an understanding of the MAP caseload of Australia.[3]

173. With respect to post-2015 cases, Australia reported that for the years 2016-18, it has reached out to all its MAP partners with a view to have their MAP statistics matching. In that regard, Australia indicated that it could match its statistics with all of them.

174. Three peers provided input on the matching of MAP statistics with Australia. Two of these peers confirmed that they were able to match their statistics with Australia for the years 2016-18 or for any individual year, one of them specifying that the process was quick and easy. The third peer mentioned that it had no pending MAP cases with Australia and therefore had not been in contact to match its statistics.

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

Monitoring of MAP statistics

176. Australia reported that it has a system in place to actively monitor its MAP cases with a view to ensure there is adherence to timeframes. Australia further reported that the PMU prepares monthly reports which include MAP case inventory and other data required for the purposes of reporting to the OECD and internal reporting.

177. In this respect, Australia further reported that when cases get close to the 24 months, they are actively monitored by the PMU to ensure a timely resolution of such cases, which also encompasses the implementation of any MAP agreement reached. When MAP cases are pending longer than two years, Australia reported that it monitors such cases on a monthly basis until implementation is completed. For this Australia concluded that it has greatly enhanced its competent authority's ability to monitor and actively manage MAP cases, with an earlier detection of risks of delay in the MAP process.

178. Further to the above, Australia's MAP guidance, in section "Timeframes for resolving a MAP case", stipulates that ATO has committed to an average timeframe of 24 months to resolve MAP cases, whereby the intent is to resolve cases as quickly as possible.

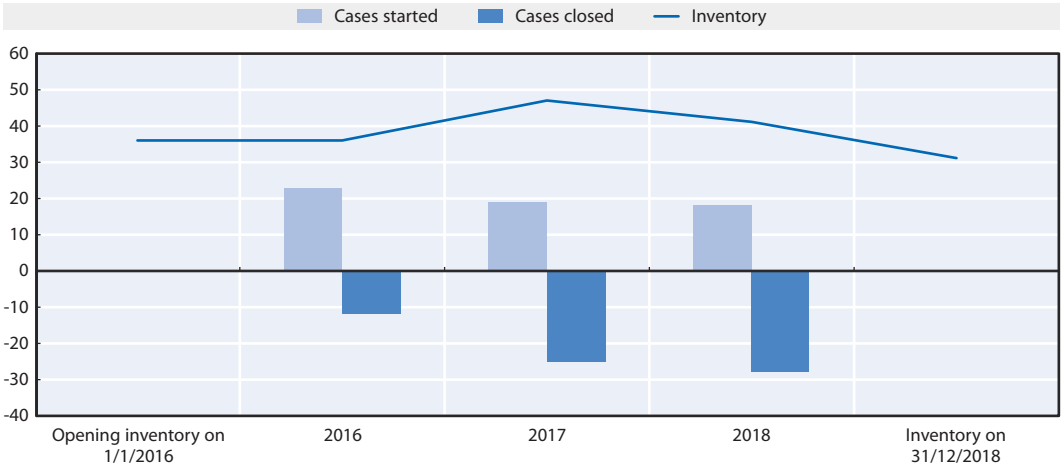
Analysis of Australia's MAP caseload

Global overview

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

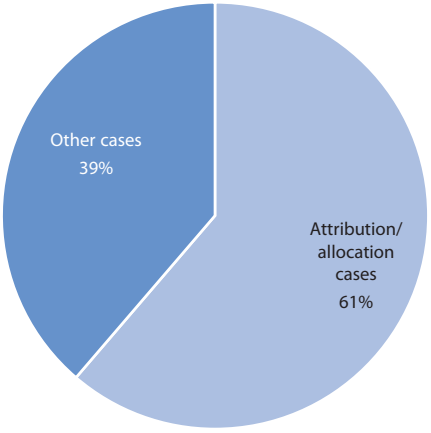
180. Figure C.1 shows the evolution of Australia's MAP caseload over the Statistics Reporting Period[4].

Figure C.1. **Evolution of Australia's MAP caseload**



181. At the beginning of the Statistics Reporting Period, Australia had 36 pending MAP cases, of which 26 were attribution/allocation cases and 10 other MAP cases.[5] At the end of the Statistics Reporting Period, Australia had 31 MAP cases in its inventory, of which 19 are attribution/allocation cases and 12 are other MAP cases. Consequently, Australia's pending MAP inventory has decreased by approximately 14% during the Statistics Reporting Period. This concerns a decrease of 27% in the number of attribution/allocation cases and decrease of 20% in the number of other cases. The breakdown of the end inventory can be shown as in Figure C.2.

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

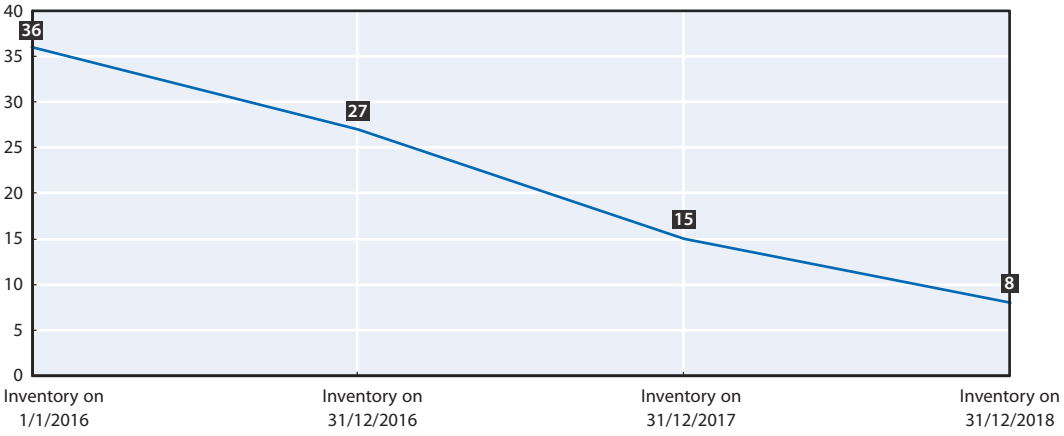


Pre-2016 cases

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

Figure C.3. **Evolution of Australia's MAP inventory**

Pre-2016 cases



183. At the beginning of the Statistics Reporting Period, Australia's MAP inventory of pre-2016 MAP cases consisted of 36 cases, of which were 26 attribution/allocation cases and ten other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 8 cases, consisting of seven attribution/allocation cases and one other case. The decrease in the number of pre-2016 MAP cases is shown in the table below.

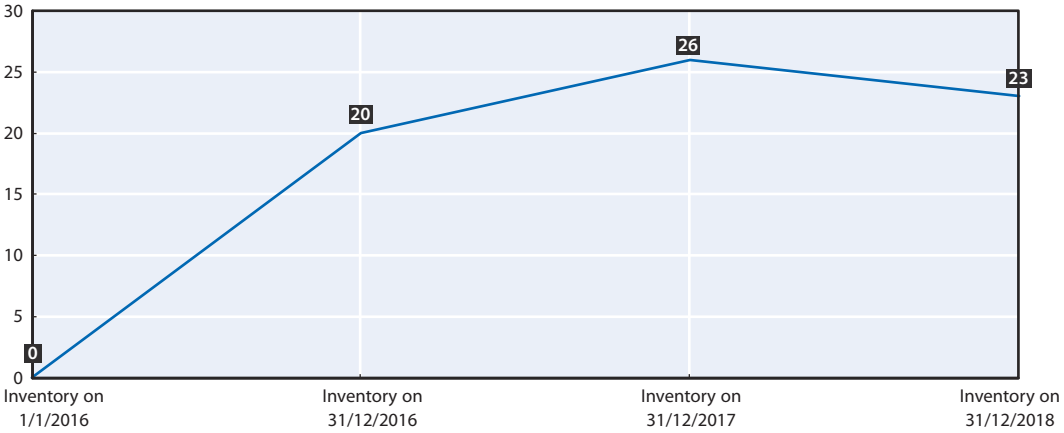
	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	-27%	-47%	-30%	-73%
Other cases	-20%	-38%	-80%	-90%

Post-2015 cases

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

Figure C.4. **Evolution of Australia's MAP inventory**

Post-2015 cases



185. In total, 60 MAP cases started during the Statistics Reporting Period, 28 of which concerned attribution/allocation cases and 32 other cases. At the end of this period the total number of post-2015 cases in the inventory was 31 cases, consisting of 19 attribution/allocation cases and 12 other cases. Accordingly, Australia closed 37 post-2015 cases during the Statistics Reporting Period, 16 of them being attribution/allocation cases and 21 of them of them being other cases. The total number of closed cases represents 62% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

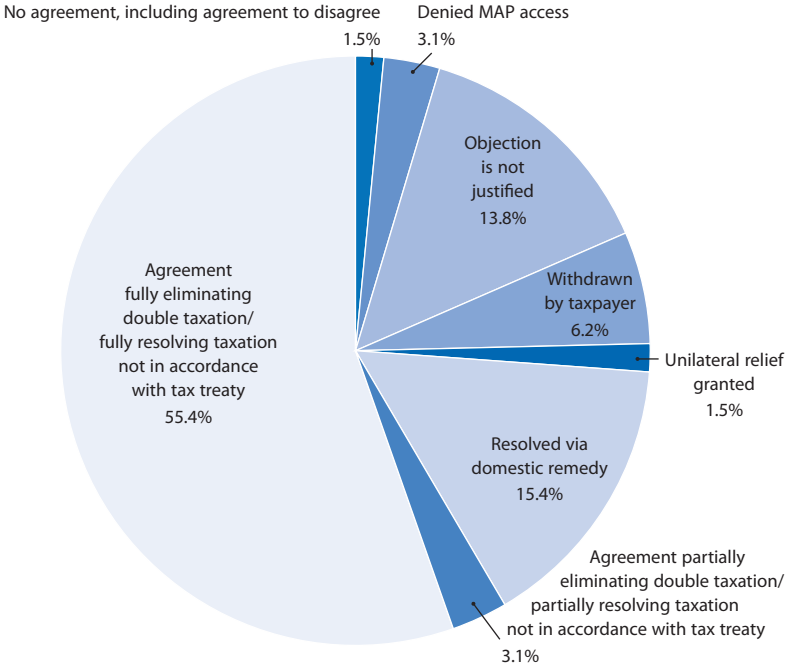
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	8%	56%	167%	57%
Other cases	20%	80%	92%	66%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

187. During the Statistics Reporting Period Australia in total closed 65 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. **Cases closed in 2016, 2017 or 2018 (65 cases)**



188. Figure C.5 shows that during the Statistics Reporting Period, 36 out of 65 cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

189. In total, 35 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation or fully resolving double taxation not in accordance with a tax treaty (63%)
- unilateral relief granted (20%).

Reported outcomes for other cases

190. In total, 30 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation or fully resolving taxation not in accordance with a tax treaty (47%)
- objection not justified (27%)
- unilateral relief granted (10%)

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

191. The average time needed to close MAP cases during the Statistics Reporting Period was 16.29 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	35	21.40
Other cases	30	10.34
All cases	65	16.29

Pre-2016 cases

192. For pre-2016 cases Australia reported that on average it needed 28.00 months to close 19 attribution/allocation cases and 20.64 months to close nine other cases. This resulted in an average time needed of 25.63 months to close 28 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Australia reported that it uses the following:

- *Start date*: the date the case was allocated to a competent authority staff member in Australia. Australia reported that a competent authority staff member is allocated to a case soon after the request is received.
- *End date*: the date the case was closed subsequent to implementation of the MAP outcome.

Post-2015 cases

193. For post-2015 cases Australia reported that on average it needed 13.57 months to close 16 attribution/allocation cases and 5.92 months to close 21 other cases. This resulted in an average time needed of 9.23 months to close 37 post-2015 cases.

Peer input

194. As will be discussed in more detail under element C.3, most peers that provided input generally reported having a good working relationship with Australia's competent authority and noted that no impediments have occurred. Several of these peers also reported that Australia's competent authority endeavours to resolve MAP cases in a reasonable timeframe and in a co-operative way. One peer further reported that Australia's competent authority is very responsive and that it reacted on a position paper in a very short timeframe (2.5 months), which permitted the resolution of the underlying case in a very short timeframe as well. Another peer noted that the resolution of MAP cases with Australia took less than 24 months. Lastly, one peer noted that one of its unresolved cases with Australia was due to the taxpayer's delay in providing the required information to ATO to actively consider the MAP request.

195. Further to the above, another peer also expressed concern by stating that in one of its MAP cases with Australia, Australia's competent authority was constrained by its domestic law on making a downward adjustment and this resulted in double taxation that could not be relieved. This peer remarked that due to this domestic law constraint, along with other unspecified complications, the resolution of the underlying MAP case was delayed.

Recent developments

196. Australia was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 61% of its post-2015 MAP cases that were pending on 31 December 2016 (25 cases), within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

197. With respect to this recommendation, Australia reported that since 1 January 2018 it has performed several internal steps to improve the MAP process and has also undertaken efforts to close long-pending MAP cases with a view to reducing its MAP inventory. This in particular concerns the following steps:

- actively initiating regular communications with the treaty partners' competent authorities on long-pending cases with a view to identifying the issues causing delays as well as discussing and providing solutions to progress these cases
- engaging more closely with competent authorities of treaty partners that are not close to Australia, such to progress pending negotiations, in particular cases that may be referred to an arbitration procedure if no agreement is found within a certain timeframe
- identification of cases that are not progressing as anticipated and seeking an earlier escalation, such as conversation and correspondence at Deputy Commissioner (or similar) level with a view to expedite resolution of the cases concerned.

198. Further to the above, Australia also reported that it is currently developing processes to ensure that new MAP cases progress in order to avoid they will become long-pending. This concerns:

- conducting a "data tagging" exercise with the caseload management software to ensure that data on pending MAP cases is tracked and updated in real time

- the development of a database that monitors case progression through milestones and which identifies cases when they fall behind schedule as well as accordingly alert the PMU that active case intervention may be required.

199. In view of these steps, Australia concluded that it has made significant improvements to data analysis and monthly reporting in relation to its MAP inventory, which enhanced its competent authority's ability to monitor and actively manage cases at the risk of delay at an early stage in the MAP process.

200. As follows from the statistical analysis above, Australia indeed has managed to reduce its MAP inventory by approximately 14%. Further, Australia has closed MAP cases within an average timeframe of 24 months, which concerns both attribution/allocation as well as other MAP cases.

201. All but one peer that provided input during stage 1 confirmed that this input holds equally relevance for the period starting on 1 January 2018. One of these peers added that it had one MAP case pending with Australia during the Statistics Reporting Period, but that this case was resolved in June 2019. Specific input on the resolution of MAP cases will be further discussed under element C.3.

Anticipated modifications

202. Australia did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for Improvement	Recommendations
[C.2]	-	-

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

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

203. 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 Australia's competent authority

204. Under Australia's tax treaties, the competent authority function is assigned to the Commissioner of Taxation, which has been delegated to the ATO. In this respect, Australia reported that in August 2014 it created the APA/MAP PMU within the PGI of the ATO in order to centralise the management of MAP and APA cases. The PMU is the entity that manages the competent authority function. Australia further reported that the PMU consists of 12 staff members, three of whom are authorised to exercise the competent authority function. Other staff within PMU assists with casework, case management and reporting functions.

205. In addition to the 12 staff members mentioned above, Australia reported that it has established a "competent authority network" of 14 staff who are authorised to act as the competent authority. The staff of this network meet approximately every six weeks to raise

awareness of current issues, provide ad hoc training and to assist each other by sharing knowledge and experience. In this respect, Australia concluded that it considers its current funding level is adequate to support the MAP function in the competent authority.

206. Australia further reported that the PMU conducts training and awareness sessions for all staff in the PGI who are involved with the work of the PMU. The timing of these trainings is flexible and typically conducted when new staff commences their work. Australia also mentioned that conferences are occasionally organised with advisory firms and academics to solicit input regarding the work of the PMU and to consider where improvements could be made. These conferences commenced in 2015 and are ongoing.

207. Further to the above, Australia's MAP guidance, in the sections "Timeframes for resolving a MAP case" and "MAP stages" include statements on Australia's policy as to the MAP process. In this respect, the following is stated:

- ATO has committed to an average timeframe of 24 months to resolve MAP cases, whereby the intent is to resolve cases as quickly as possible.
- The PMU is responsible for the general administration of MAP requests, which will acts as the initial point of contact, reviews the MAP request and assigns a competent authority to the case to handle it. It also states what actions will be taken as to the operation of the MAP process, in particular the striving at resolving cases on the basis of the provisions of the tax treaty by exploring opportunities to reach an agreement.

Monitoring mechanism

208. Australia reported that its competent authority monitors its MAP caseload on a monthly basis to provide for an indication regarding whether or not target timeframes are being effectively managed and whether existing resources are sufficient or need to be increased. If the need for additional resources, such as an increase in staff members or face-to-face meetings arises, Australia reported that a business case for the additional resources is made by the PMU. Australia noted that in the past it had already increased the number of its competent authority staff to assist in relation to MAAL and DPT legislation.

Recent developments

209. As discussed under element C.2, Australia reported that since 1 January 2018 it has performed several internal steps to improve the MAP process and has undertaken efforts to close long-pending MAP cases with a view to reducing its MAP inventory. This in particular concerns the following steps:

- actively initiating regular communications with the treaty partners' competent authorities on long-pending cases with a view to identifying the issues causing delays as well as discussing and providing solutions to progress these cases
- engaging more closely with competent authorities of treaty partners that are not close to Australia, such to progress pending negotiations, in particular cases that may be referred to an arbitration procedure if no agreement is found within a certain timeframe
- identification of cases that are not progressing as anticipated and seeking an earlier escalation, such as conversation and correspondence at Deputy Commissioner (or similar) level with a view to expedite resolution of the cases concerned.

210. Further to the above, as was also noted under element C.2, Australia also reported that it is currently developing processes to ensure that new MAP cases progress in order to avoid they will become long-pending. This concerns:

- conducting a "data tagging" exercise with the caseload management software to ensure that data on pending MAP cases is tracked and updated in real time
- the development of a database that monitors case progression through milestones and which identifies cases when they fall behind schedule as well as accordingly alert the PMU that active case intervention may be required.

211. Next to these internal process steps, Australia also reported that other organisational changes have also been made, which concerns that the internal reporting line for the PMU has been reorganised. Previously, the PMU was reporting directly to the Deputy Commissioner – International Division. Australia clarified in this regard that the PMU now reports directly to the Assistant Commissioner – BEPS Tax Base Management, but PMU still indirectly reports to the Deputy Commissioner – International Division and that this is an additional layer of senior engagement in the process. As to the operation of the MAP process, Australia reported that it has negotiated with two treaty partners to increase the frequency of communications. Further, Australia mentioned that it is considering implementing MAP forums, or similar regular meetings, with those treaty partners that Australia has a higher volume of MAP cases and that would benefit from a closer engagement.

212. Lastly, Australia reported that due to geographic constraints, its competent authority's frequency of face-to-face meetings has remained the same, but that it intends to increase the use of videoconferencing.

Practical application

MAP statistics

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

Figure C.6. **Average time (in months) to close cases in 2016-2018**

* Note that these post-2015 cases only concern cases started and closed during 2016, 2017 or 2018.

214. Based on these figures, it follows that on average it took Australia 16.29 months to close MAP cases during the Statistics Reporting Period. The average time needed to resolve attribution/allocation cases is 21.40 months, while the average time required to resolve other cases is 10.34 months.

215. The stage 1 peer review report of Australia analysed the 2016-17 MAP statistics and showed an average of 14.49 months, which concerns an average of 20.00 months for attribution/allocation cases and 6.40 months for other cases. It was on that basis concluded that as the overall average was below the pursued average of 24 months, Australia was considered to be adequately resourced.

216. For stage 2, the 2018 MAP statistics are also taken into account. The average time to close MAP cases for this year are as follows:

	2018
Attribution/Allocation cases	23.77
Other cases	14.27
All cases	18.68

217. The 2018 statistics of Australia show that the average completion time of MAP cases slightly increased from 14.49 to 18.68 months, which is still below the pursued average of 24 months.

218. Furthermore – as analysed in element C.2 – the MAP inventory of Australia decreased substantially since 1 January 2016, which regards both type of cases. This can be shown as follows:

	Opening Inventory on 1/1/2016	Cases started	Cases closed	End inventory on 01/01/2018	Increase in %
Attribution/allocation cases	26	28	35	19	-27%
Other cases	10	32	30	12	20%
Total	**36**	**60**	**65**	**31**	**-14%**

219. The figures in the above table show that the number of closed cases is around 108% of all cases started in the period 2016-18.

Peer input: Period 1 January 2015-31 December 2017 (stage 1)

General

220. Of the 18 peers that provided input on Australia's implementation of the Action 14 Minimum Standard, almost all provided input on their contacts with Australia's competent authority as well as the resolution of MAP cases. Generally, all peers indicated having a positive working relationship with Australia's competent authority, some of them emphasising the good collaboration and the easiness of contact.

Contacts and relationship with Australia's competent authority

221. Several peers noted the ease of communication with Australia's competent authority. Most peers thereby mentioned that their communication with Australia's competent authority mainly took place via written communication, with email being used most frequently followed by regular mail and fax. These peers considered such means of communication to be efficient. One peer specified that although the contacts with Australia's competent authority have mainly taken place via email, its published MAP profile only contains the mailing address of Australia's competent authority. Two peers with challenging time differences with Australia noted that they were able to overcome such a challenge due to their strong and active relationship and by scheduling regular telephone calls.

222. A number of peers that provided input noted that Australia's competent authority is available to scheduling face-to-face meetings. One of these peers described its system with Australia's competent authority to hold face-to-face meetings, which is five consecutive days two times per year in order to resolve their existing MAP cases. The other one of these peers noted that it had an in-person meeting for discussing the MAP cases between them. A third peer with only a few MAP cases with Australia explained that there was no need for an in-person meeting thus far.

Handling and resolving MAP cases

223. In addition to the input already reflected under element C.2, several peers offered specific and positive comments on how Australia's competent authority handles and resolves MAP cases, some of them emphasising the positive and constructive experience they had. Some of them also remarked that when dealing with Australia's competent authority they found its staff to be competent, productive, flexible, efficient and co-operative. One peer remarked that Australia's competent authority reacts quickly to its position papers and another noted that Australia took a constructive approach to resolving MAP cases. A third peer remarked that Australia's competent authority makes time devoted specifically to handling MAP cases with it and a fourth peer commented that agreements were reached with it was transparent and professional.

Suggestions for improvement

224. A few peers offered suggestions for improvement. Two peers expressed a desire for more frequent communication. One of these peers stated that due time difference, both jurisdictions should make every effort to increase the frequency of teleconferences to further improve upon the timeliness of MAP cases. The other peer noted that more face-to-face meetings would help expedite the MAP process but acknowledged that such meetings due to the high costs and time requirements involved with especially long-distance travel pose a challenge to such efforts.

Peer input: Period 1 January 2018-31 August 2019 (stage 2)

225. All but one peer that provided input during stage 1 stated in stage 2 that the update report provided by Australia fully reflects their experience with Australia since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2. Four peers provided additional input in this regard, one of them only specifying the number of pending and resolved MAP cases with Australia. One peer stated that its few MAP cases with Australia were resolved by staff in its competent authority that were knowledgeable, competent and worked to resolve

the cases in a timely manner and on this basis, it assumes that Australia's competent authority is well staffed and trained. One of the two remaining peers noted that it did not see any concerns with Australia's adequacy of resources since they were able to close all pending non attribution/allocation MAP cases with Australia within the pursued average of 24-month. This peer further clarified that the single attribution/allocation MAP case was a pre-2016 case and the delay was due to factors other than adequacy of resources. In its experience, the peer found Australia's competent authority to be principled and consistent in the adopted approached, which contributed to a timely resolution of MAP cases. Finally, the remaining peer noted that it appreciates Australia's commitment to resolving dispute, especially for cases that have been delayed, by engaging in co-operative communication.

Anticipated modifications

226. Australia did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for Improvement	Recommendations
[C.3]	-	-

[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.

227. 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

228. With respect to handling and resolving MAP cases, Australia reported that the staff member that is delegated the competent authority function for the case concerned will ultimately decide on the resolution in the case. Australia clarified in this respect that its competent authority is independent in its decision-making but that it does at times rely upon economists, technical specialists, and case teams within the ATO to assist with MAP cases where necessary. Australia further explained that its competent authority may at times need to consult with senior advisors and colleagues as part of the process of reaching a final MAP decision.

229. With respect to the organisation of its competent authority, Australia reported that the PMU is located within the PGI business line and reports directly to an Assistant Commissioner within the ATO. Australia further explained that audits are undertaken by the Operations area of PGI, which is separated from the Internationals area and which report to a different Deputy Commissioner in ATO. Australia further reported that treaty negotiations and policy considerations are undertaken by its Treasury department, with

input from ATO. According to Australia, this input is provided by the tax counsel network, Policy, Analysis and Legislation Area, and a newly established treaty consultation unit within the PGI. Australia clarified that the treaty consultation unit was set up to handle the implementation of the Multilateral Instrument. Australia explained that the outside consultations occur on an ad hoc basis and are undertaken to ensure consistency.

230. With regard to the above, Australia concluded that its competent authority can enter into MAP agreements absent from approval or the direction of the tax administration personnel who made the adjustment at issue or being influenced by policy considerations that it wants to see in future amendments to the treaty.

Recent developments

231. Australia reported to have taken further steps to ensure the independence of this competent authority in that it has briefed its competent authority network twice on the need for independence. Australia clarified that it will continue to hold competent authority network meetings on a six weekly basis.

232. Further, Australia reported to have included in its MAP guidance, in the section titled "Other ATO Staff" a specific clarification that in order to ensure the independence of the competent authority, ATO staff involved in the original action or adjustment will only be present at competent authority negotiations to the extent that they would provide factual information or background analysis that would help the competent authority deliberations.

233. Australia also reported to have updated its internal guidance and procedures to clearly state that the competent authority should take care to ensure that their decision making is independent of any ATO officers involved in the original adjustment at issue. Additionally, Australia reported to have updated its internal procedures to set out explicitly that where the MAP agreement is connected to adjustments made by the ATO, ATO staff who were involved in the original adjustments should not usually be present at any competent authority discussions.

234. Finally, as discussed under element C.3 above, Australia reported a change in its reporting line, that the PMU now reports directly to the Assistant Commissioner – BEPS Tax Base Management, but PMU still indirectly reports to the Deputy Commissioner – International Division and that this is an additional layer of senior engagement in the process.

Practical application

Period 1 January 2015-31 December 2017 (Stage 1)

235. All peers that provided input reported not being aware of any impediments in Australia to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy in the period 1 January 2015-31 December 2017. One peer specifically mentioned it was not aware that staff in charge of the MAP in Australia are dependent on the approval of MAP agreements by tax administration personnel that made the adjustment under review.

236. Taxpayers, however, reported concerns that the ATO personnel who are involved with the adjustments at issue were highly involved with in the MAP process and were actively involved in the discussion between the competent authorities, which in their view had a direct impact on the decision by Australia's competent authority. These taxpayers

further reported that Australia's competent authority appears to be less empowered than other authorities to reach a position, and that competent authority personnel always appear to greatly outnumber their counterparty attendance at meetings and the decision making process is slowed as a result.

237. Australia responded to the taxpayer input in the preceding paragraph by noting that because some cases are particularly complex and due to its desire to ensure consistency, additional resources are sometimes drawn upon to support the competent authority. Australia further reported that it is standard practice for audit personnel to not be present at competent authority meetings and that personnel associated with an audit may be consulted as part of competent authority meetings with the prior consent of the other jurisdiction and only for the purpose of providing a full factual understanding of the case but a question confirming this practice was not posed to peers. Australia emphasised that the support of the audit personnel does not affect the independence of its competent authority. Australia further responded by stating that it fully recognises the importance of and need to have independence between the competent authority and the audit functions.

238. In the stage 1 peer review report it was concluded that as peers were not able to provide input on this specific issue, the particular issue could not be assessed in stage 1. Given Australia's statement outlined above and that none of the peers in stage 2 reporting any experience to the contrary (see below), the risk identified of a possibly not entirely independent functioning of its competent authority has not materialised and the processes in place lead to the conclusion that such risk is not apparent. Australia therefore has addressed the recommendation in its stage 1 report.

Period 1 January 2018-31 August 2019 (Stage 2)

239. All but one peer that provided input during stage 1 stated in stage 2 that the update report provided by Australia fully reflects their experience with Australia since 1 January 2018 and/or there are no additions to the previous input given.

Anticipated modifications

240. Australia did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for Improvement	Recommendations
[C.4]	-	-

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

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

241. 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 Australia

242. Australia reported that staff in charge of MAP processes are assessed through biannual performance reviews and a series of regular check-ins with each staff member's managers. According to Australia, these performance reviews include an assessment of whether a staff member is on track to meet his or her objectives. Furthermore, Australia clarified that staff and managers agree to a development plan and on an annual basis all staff are required to complete capability assessments in order to gauge their level of tax technical knowledge.

243. Australia reported that reviews are based upon staff behaviours and outcomes and use a wide variety of performance indicators relating to the following three criteria: (i) outcomes of job description, duty statements, capabilities and knowledge; (ii) outcomes of team plan; and (iii) behaviour. Further, Australia clarified that the specific criteria for all three objectives include assessments on, *inter alia*, technical knowledge, communication, teamwork, professionalism and client management.

244. The Action 14 final report (OECD, 2015b) includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist for Australia:

- ☑ 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).

245. Further to the above, Australia 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. Australia clarified that in other words, staff in charge of MAP are not evaluated on the basis of the material outcome of MAP discussions.

Recent developments

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

Practical application

Period 1 January 2015-31 December 2017 (Stage 1)

247. All peers that provided input indicated not being aware that Australia uses performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue.

Period 1 January 2018-31 August 2019 (Stage 2)

248. All but one peer that provided input during stage 1 stated in stage 2 that the update report provided by Australia fully reflects their experience with Australia since 1 January 2018 and/or there are no additions to the previous input given.

Anticipated modifications

249. Australia did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for Improvement	Recommendations
[C.5]	-	-

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

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

250. 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

251. Australia reported that it has no domestic law limitations for including MAP arbitration in its tax treaties and that its tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties. Australia further reported that it is committed to including a mandatory binding arbitration clause in its bilateral tax treaties.

252. Australia's position on MAP arbitration is included in its MAP profile published on the OECD website.[6] Furthermore, as discussed below, Australia has recently published guidance on arbitration as part of its MAP guidance

Recent developments

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

254. Further, as noted above, Australia has recently updated its MAP guidance to include information on arbitration in its tax treaties. This revised guidance includes information on arbitration in Australia's tax treaties, the eligibility criteria, how to request arbitration, and Memorandums of Understandings (MOUs) on the mode of application of arbitration. The ATO will publish bilateral MOUs with each affected treaty partner when finalised. The arbitration guidance of Australia is available on the ATO's website at:

https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Mutual-agreement-procedure/?page=8#Arbitration

Practical application

255. Australia has incorporated an arbitration clause in three of its 52 treaties as a final stage to the MAP. All three of these treaties contain a provision that is based on Article 25(5) of the OECD Model Tax Convention. In one of these treaties the arbitration procedure, however, cannot be initiated for the application of the limitation of benefit provision or a provision designed to prevent evasion or avoidance of taxes listed in that provision. Furthermore, in another treaty the arbitration procedure is limited to issues of fact and issues for which the jurisdictions agree they are covered by the arbitration provision. Lastly, the third treaty deviates from Article 25(5) in that the arbitration procedure can only be initiated after three years instead of two years of the mutual agreement procedure, as well as that competent authorities have a possibility to agree on a deviating solution from the arbitration decision within six months as from the date that decision was rendered.

256. In relation to Australia's anti-avoidance legislation discussed under element B.4, Australia made a reservation on Article 25 of the OECD Model Tax Convention, which stipulates that:

> Australia reserves the right to exclude a case presented under the mutual agreement procedure article from the scope of paragraph 5 to the extent that any unresolved issue involves the application of Australia's general anti-avoidance rules contained in Part IVA of the Income Tax Assessment Act 1936 and section 67 of the Fringe Benefits Tax Assessment Act 1986.

257. As mentioned under element B.4, Australia's MAAL and DPT legislation falls under Part IVA of the Income Tax Assessment Act of 1936 and therefore MAP cases related to either law would also be excluded from the scope of arbitration.

258. In addition, with respect to the effect of part VI of the Multilateral Instrument on Australia's tax treaties, there are next to Australia in total 29 signatories to this instrument that also opted for part VI. Concerning these 29 signatories, Australia listed 19 as a covered tax agreement under the Multilateral Instrument and 16 of these 19 treaty partners also listed their treaty with Australia under that instrument. In one of these 16 treaties, Australia has already included an arbitration provision, which is the provision referred to above where the arbitration procedure was limited to issues of fact and issues for which the jurisdictions agree they are covered by the arbitration provision. Australia listed this treaty under Article 26(1) with a view to replacing the arbitration provision contained in that treaty with part VI. With respect to this treaty, the relevant treaty partner also made a notification under Article 26(1). As both Australia and this treaty partner have already deposited their instrument of ratification of the Multilateral Instrument, part VI has replaced the arbitration provision contained in this treaty.[7]

259. With respect to the other 15 treaty partners, 11 treaty partners have already deposited their instrument of ratification. In this respect, part VI will apply to these 11 treaties and introduce the arbitration provision of the Multilateral Instrument in these treaties. For the other four treaties for which the treaty partner has not yet ratified the Multilateral Instrument, Australia reported it expects that part VI will introduce a mandatory and binding arbitration procedure in all four treaties.

Anticipated modifications

260. Australia did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for Improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2018.
2. Available at: https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Advance-pricing-arrangements/?anchor=APA_and_MAC_statistics#APA_and_MAC_statistics. These statistics are up to and include fiscal year 2018-19.
3. For post-2015 cases, if the number of MAP cases in Australia'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, Australia reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
4. Australia's 2016 and 2017 MAP statistics were corrected in the course of the peer review process and deviate from the 2016 and 2017 published MAP statistics. See for a further explanation Annex B and Annex C.
5. For pre-2016 cases and for post-2015, Australia 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".
6. www.oecd.org/ctp/dispute/Australia-Dispute-Resolution-Profile.pdf.
7. Annex A reflects the effect of part VI of the Multilateral Instrument for this treaty.

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.

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.

261. 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

262. Australia reported that when Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) is not contained in a tax treaty, domestic time limits apply for the implementation of MAP agreements. Australia reported that different situations apply depending on where the MAP request was initially presented to Australia's competent authority or to that of its treaty partner. For both situations the following rules apply:

- *MAP request submitted with Australia's competent authority*: it is possible that domestic time limits do not apply if both of the following conditions are met:
  - The MAP request must have been presented to Australia's competent authority within the applicable filing period as specified in the applicable tax treaty. In case no filing period is provided in the treaty, the taxpayer may submit its MAP request within two to four years from the date of assessment, or later if it also files a request for an extension of such time limit, as provided under section 14ZX of the Taxation Administration Act 1953 (see element B.1).
  - The taxpayer must lodge a formal objection to the tax assessment that fulfils the conditions stipulated under Part IVC of the Taxation Administration Act 1953. These conditions must be fulfilled within the applicable time limits, unless the taxpayer also requested an extension of time to lodge an objection, as provided under section 14ZX of the Taxation Administration Act 1953.
- *MAP request submitted with the treaty partner's competent authority*: the application of domestic time limits depend on the type of case submitted to MAP. This concerns:
- *Attribution/allocation cases*: there are no domestic time limits for granting downward adjustments associated with correlative relief (which can result from the implementation of a MAP agreement), as provided under item six of section 170(1) of the Income Tax Assessment Act 1936.

- *Other cases*: the ordinary domestic time limits of two to four years from the date of self-assessment of the taxpayer to implement MAP agreements applies. In the latter case, taxpayers could also request an extension of time to lodge an objection to have the MAP agreement implemented irrespective of domestic time limits.

263. Australia further clarified that when a MAP request is received and accepted, the PMU would verify whether domestic time limits will be an issue and will engage with the competent authority to ensure awareness of the time limits and any potential associated issues. If there is such an issue, Australia clarified that its internal procedures prescribe that if the treaty under which the MAP request has been made does not contain a provision allowing MAP agreements to be implemented irrespective of domestic time frames, the following actions are required:

- identification if domestic time limits might prevent the implementation of any MAP agreement
- discussions with the taxpayer whether actions need to be taken to keep open fiscal years for which a MAP request was submitted, including a consideration of whether the taxpayer should be asked to agree to an extension of the amendment period or to lodge an objection.

264. With respect to the possibility of obtaining an extension of time to lodge an objection as referred to above, Australia reported that there is no set period of time in which a taxpayer may request an extension to lodge an objection. Subsections 14ZW(2) to (3) allow a taxpayer to lodge an objection outside of the period in which filing is required so long as it is accompanied by a written extension request. However, Australia further indicated that the decision to allow an extension is at the discretion of ATO's Commissioner. The breadth of such discretion by ATO's commissioner is stipulated in PS LA 2003/7. Therefore, there is a risk that such extension is not granted in practice and that not all MAP agreements are implemented if Australia's domestic time limits have expired and the applicable tax treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017).

265. In view of the above, Australia reported that its implementation of MAP agreements have never been obstructed by the two or four year time limits under its domestic law.

266. Concerning the process for implementing MAP agreements, Australia reported that its competent authority seeks consent from a taxpayer before proceeding with implementation. Australia further reported that there is no timeline for obtaining such consent from the taxpayer. Furthermore, Australia clarified that if an objection decision has been made or will be made to reflect the agreement between the competent authorities, the taxpayer has to agree not to seek review of the decision by the Administrative Appeals Tribunal or appeal to the Federal Court against the decision. Once the taxpayer has given its consent to the MAP agreement, Australia reported that it lodges an amendment request with its amendment support team, which is located within the Private Groups and High Wealth Individuals unit, with a view to give effect to the agreement.

267. To keep track of the implementation of MAP agreements, Australia reported that it keeps a MAP case open in its internal system until amendments to implement said agreements have been effectuated.

Recent developments

268. Australia reported that PMU improved its internal MAP database with a view to allow an increased scrutiny of cases and more frequent engagement to ensure cases are actively managed. Australia further mentioned that this increased scrutiny and engagement extends the implementation process for MAP outcomes.

269. Australia clarified that these improvements comprise several changes that collectively provide for a much more advanced reporting database. These changes include the building in of automatic calculations based on the MAP Statistics Reporting Framework, a high level status update on open cases and tagging of data references to identify and filter MAP cases.

Practical application

Period 1 January 2015-31 December 2017 (Stage 1)

270. Australia reported that in the period 1 January 2015-31 December 2017 it has reached the following number of MAP agreements:

Year	MAP agreements
2015	10
2016	11
2017	8

271. In view of these MAP agreements, Australia reported that all required an implementation by Australia and that all but one have been implemented, once accepted by taxpayers. Australia reported that the remaining MAP agreement was reached by the end of 2017 for which implementation is pending.

272. All peers that provided input reported not being aware of MAP agreements that were reached in the period 1 January 2015-31 December 2017 that were not implemented in Australia. Furthermore, two peers noted that Australia implements MAP agreements correctly and in a timely manner.

273. Taxpayers reported no difficulties in relation to implementation of MAP agreements in the period 1 January 2015-31 December 2017.

Period 1 January 2018-31 August 2019 (Stage 1)

274. Australia reported that all MAP agreements that were reached on or after 1 January 2018 also have been (or will be) implemented. Specifically, Australia noted that the one MAP agreement referred to above that was pending implementation a on 31 December 2017 was implemented in March 2018.

275. All but one peer that provided input during stage 1 stated in stage 2 that the update report provided by Australia fully reflects their experience with Australia since 1 January 2018 and/or there are no additions to the previous input given. In addition, one peer reported that it has implemented all agreements reached with Australia's competent authority in a timely manner and without delay.

Anticipated modifications

276. Australia reported that it is presently working on developing appropriate procedures to ensure that all agreements reached under MAP will be implemented, including those agreements under tax treaties which do not contain the second sentence of Article 25(2) of the OECD Model Tax Convention.

Conclusion

	Areas for Improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Australia's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). 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 of two to four years in its domestic law that can only be overridden by discretionary authority in certain circumstances.	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 (OECD, 2017) in Australia's relevant tax treaty, prevent the implementation of a MAP agreement when the adjustment is made at the level of the treaty partner, Australia 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, Australia should for clarity and transparency purposes continue its practice to notify the treaty partner thereof without delay.

[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.

277. 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

278. As discussed under element D.1, the first step in the process for implementing MAP agreements in Australia is the issuing of a communication to the taxpayer notifying them of the agreement and offering to discuss the nature and terms of the agreement. The taxpayer is then requested to give its consent to the MAP agreement. However, the taxpayer is not given a certain timeframe within which they should declare whether or not they give consent to the MAP agreement. If the taxpayer gives consent, Australia reported that it lodges an amendment request with its amendment support team, as also discussed under element D.1. According to Australia, this amendment support team generally processes the request within ten business days, with delays occurring occasionally due to interest calculations or other complexities. Australia further mentioned that the time taken to implement MAP agreements is monitored as part of the general monitoring of MAP case times.

279. Australia's MAP guidance does not include any information in relation to the timing of the steps for implementation of MAP agreements. This has been discussed under element B.8.

Recent developments

280. Australia reported it has improved its internal MAP database and has updated its internal procedures and processes to ensure the PMU is able to more closely monitor implementation of MAP agreements. In this regard, Australia clarified that the PMU will actively identify and manage cases where there is a delay in implementation. In addition, Australia also mentioned it has updated internal procedures to explicitly prompt that debt and interest issues, which may arise in relation to the implementation of MAP agreements, should be considered earlier in the process with the aim of reducing the possibility of delay in implementation.

Practical application

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

281. Australia reported that all MAP agreements that were reached in the period 1 January 2015-31 December 2017 have been (or will be) implemented on a timely basis.

282. All peers that provided input generally reported not being aware of MAP agreements that were reached in the period 1 January 2015-31 December 2017 that were not implemented by Australia on a timely basis. One peer noted that implementation of MAP agreements by Australia has been efficient. Another peer noted that the taxpayer is informed very soon by Australia's competent authority after the MAP agreement is concluded.

Period 1 January 2018-31 August 2019 (stage 2)

283. Australia reported that all MAP agreements that were reached on or after 1 January 2018 have been (or will be) implemented on a timely basis. In this respect, it noted that it not has experienced any significant delays in the implementation process for those MAP agreements its competent authority has entered into since 1 January 2018. Furthermore, as mentioned under element D.1, there was one MAP agreement that was pending implementation as per 31 December 2017 and was implemented in March 2018. Australia clarified that delay in implementation was caused by (i) end of the year closedown of the ATO, (ii) staff leave, (iii) internal correspondence and (iv) internal processes to finalise the case.

284. All but one peer that provided input during stage 1 stated in stage 2 that the update report provided by Australia fully reflects their experience with Australia since 1 January 2018 and/or there are no additions to the previous input given. In addition, one peer reported that it has implemented all agreements reached with Australia's competent authority in a timely manner and without delay.

Anticipated modifications

285. Australia did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for Improvement	Recommendations
[D.2]	-	-

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

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

286. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

Legal framework and current situation of Australia's tax treaties

287. As discussed under element D.1, Australia's domestic legislation includes a statute of limitations of two to four years for implementing MAP agreements, which apply when the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) is not contained in a tax treaty.

288. Out of Australia's 52 tax treaties, 32 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. One of these tax treaties contains such an equivalent, but an obligation is included for taxpayers to ask for a refund of taxes within a certain period after the MAP agreement has been notified to them. While this puts an additional obligation on taxpayers, the provision itself does not obstruct the implementation of MAP agreements notwithstanding domestic time limits. This treaty is, therefore, considered to contain the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

289. For the remaining 20 treaties the following analysis is made:

- 16 tax treaties do not contain a provision equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) nor the alternative provisions in Article 9(1) and Article 7(2) setting a time limit for making transfer pricing adjustments.
- One tax treaty stipulates that a MAP agreement may be implemented within a period of seven years from the presentation of the case. While this time period does not constitute a limitation of the implementation of MAP agreements, the wording used in the provision could nevertheless in practice obstruct such implementation and therefore this provision is considered not being the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017).
- One does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), but includes a provision that stipulates that a MAP agreement may be implemented notwithstanding domestic time limits, but only if the MAP request is made within six years of the end of the year of assessment or the year of tax. For similar reasons discussed in the previous bullet point, this extra wording could also in practice obstruct the implementation of a MAP agreement

and therefore this provision is also considered not being the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017).

- One tax treaty allows for a MAP agreement to be implemented only when a submitted MAP request has been notified in due time to the competent authority of the other contracting state and where it concerns the other contracting jurisdiction, within ten years as from the due date of the filing of a tax return or, if later, the time period under the other contracting jurisdiction's domestic law. As this provision may cause that MAP agreements cannot be implemented when the other competent authority was not notified in a timely manner and since it does not state that MAP agreements shall be implemented notwithstanding domestic time limits, this tax treaty is considered not to contain the equivalent of Article 25(2) second sentence of the OECD Model Tax Convention (OECD, 2017).
- One tax treaty stipulates that MAP agreements will be implemented notwithstanding any time limits in the domestic laws. but only if, in the case of the other contracting jurisdiction, a case is presented within three years from the determination of the other jurisdiction's tax liability to which the case relates. As this additional text imposes a possible limitation on the implementation of MAP agreements, it is considered not to contain the equivalent of Article 25(2) second sentence of the OECD Model Tax Convention (OECD, 2017). This treaty, however, contains a time limit to make primary adjustments in the MAP article. This provision is considered being equivalent to the alternative provisions for Article 9(1) and Article 7(2).

Recent developments

Bilateral modifications

290. Australia signed a new tax treaty with one treaty partner, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty has already entered into force. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

292. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements

under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) of the OECD Model Tax Convention (OECD, 2017) concerning the introduction of a time limit for making transfer pricing profit adjustments.

293. With regard to the 20 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Australia listed 13 treaties as covered tax agreements under the Multilateral Instrument and made for all, pursuant to Article 16(6)(c)(ii), a notification that they do not include a provision described in Article 16(4)(b)(ii). Of the relevant 13 treaty partners, two are not a signatory to the Multilateral Instrument, whereas one did not list their treaty with Australia as a covered tax agreement and two made a reservation on the basis of Article 16(5)(c). All remaining eight treaty partners also made a notification on the basis of Article 16(6)(c)(ii).

294. Of the eight treaty partners mentioned above, four have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Australia and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these four treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining four treaties, the instrument will, upon entry into force for the treaties concerned, modify them to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

295. For one of the 12 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant treaty partner will withdraw its reservation under the Multilateral Instrument, following which it is expected that the treaty with that treaty partner will be modified by the instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017).

Peer input

296. Of the peers that provided input during stage 2, five provided input in relation to their tax treaty with Australia. Two of these peers concerns a treaty partner to two of the treaties identified above that does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which not will be modified by the Multilateral Instrument. However, neither of these peers provided input in relation to element D.3.

Anticipated modifications

297. For the remaining 11 tax treaties that do not contain the equivalent of Article 25(1), first and/or second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent, Australia reported that it would encourage comprehensive treaty partners to implement the Multilateral Instrument and lift their reservations, where possible, to bring these treaties in line with the requirements under the Action 14 minimum standard. Where this is not possible and for the remaining treaties, Australia has not put in place a plan for bringing these treaties in line with the requirements under element D.3.

298. Regardless, Australia reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	20 out of 52 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), nor, the alternative provisions to Article 9(1) and Article 7(2). Of these 20 treaties: • Four are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Four have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) once the treaty partner has amended its notifications. • 11 will not be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these 11 treaties: - for four, the relevant treaty partner has been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken - for the remaining seven, no actions have been taken nor are any actions planned to be taken.	For the 11 treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Australia should: • for four treaties, continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision • for the remaining seven treaties, without further delay, request via bilateral negotiations the inclusion of the required provision.

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]	29 out of 52 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these 29 treaties: • Nine have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Three are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). • 17 treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: - for ten, the relevant treaty partners have been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken - for the remaining seven, no actions have been taken nor are any actions planned to be taken.	For those 17 treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), Australia should: • for ten treaties, continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision • for seven treaties, without further delay, request via bilateral negotiations the inclusion of the required provision.
[A.2]	-	-

	Areas for Improvement	Recommendations
Part B: Availability and access to MAP		
[B.1]	Four out of 52 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b). None of these treaties will be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: • For three, the relevant treaty partners have been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken. • For the remaining treaty, no actions have been taken nor are any actions planned to be taken.	For the four treaties that do not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) and have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), Australia should: • for three treaties, continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision • for one treaty, without further delay, request via bilateral negotiations the inclusion of the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: • as amended by the Action 14 final report (OECD, 2015b); or • as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	Two out of 52 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is in these treaties shorter than three years, from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties: • One will be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One will not be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, the relevant treaty partner has been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken.	For the treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Australia should continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision.

	Areas for Improvement	Recommendations
[B.1]	Seven out of 52 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these seven treaties: • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) but not as regards the first sentence. • Six will not be modified by the Multilateral Instrument to include Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to all seven tax treaties: • For one, the relevant treaty partner has been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken. • For the remaining six, no actions have been taken nor are any actions planned to be taken.	For the seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017), Australia should: • for one treaty, continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision • for the remaining six treaties, without further delay, request via bilateral negotiations the inclusion of the required provision. This concerns a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention either: • as amended by the Action 14 final report (OECD, 2015b); or • as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	Where tax treaties do not contain a time limit for submission of a MAP request, there is a risk, under applicable rules under domestic legislation, that taxpayers cannot validly present a MAP request within a period of at least three years as from the first notification of the action that results or will result in taxation not in accordance with the provisions of the tax treaty.	Australia should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from access to MAP if a request thereto is made within a period of three years as from the first notification of the action that results or will result in taxation not in accordance with the provisions of the tax treaty.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	36 out of 52 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Of these 36 treaties, seven concern tax treaties with a limited scope of application. With respect to the 29 remaining comprehensive treaties: • 12 have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Eight are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) • Nine will not be modified by the Multilateral Instrument to include the required provision. With respect to these nine treaties, the relevant treaty partners have been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken.	For the nine comprehensive tax treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Australia should continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision.

	Areas for Improvement	Recommendations
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	Ten out of 52 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these ten treaties: • One has been modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Eight will not be modified by the Multilateral Instrument to include the required provision. With respect to these eight treaties: - for one, the relevant treaty partner has been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken - for the remaining seven, no actions have been taken nor are any actions planned to be taken.	For the eight treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Australia should: • for one treaty, continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision • for the remaining seven treaties, without further delay, request via bilateral negotiations the inclusion of the required provision.
[C.2]	-	-
[C.3]	-	-
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of Australia's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). 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 of two to four years in its domestic law that can only be overridden by discretionary authority in certain circumstances.	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 (OECD, 2017) in Australia's relevant tax treaty, prevent the implementation of a MAP agreement when the adjustment is made at the level of the treaty partner, Australia 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, Australia should for clarity and transparency purposes continue its practice to notify the treaty partner thereof without delay.
[D.2]	-	-

	Areas for Improvement	Recommendations
[D.3]	20 out of 52 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), nor, the alternative provisions to Article 9(1) and Article 7(2). Of these 20 treaties: • Four are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Four have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) once the treaty partner has amended its notifications. • 11 will not be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these 11 treaties: - for four, the relevant treaty partner has been or will be engaged by Australia with a view to have the treaty modified by the Multilateral Instrument. However, where this is not possible, no actions are planned to be taken - for the remaining seven, no actions have been taken nor are any actions planned to be taken.	For the 11 treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Australia should: • for four treaties, continue to work in accordance with its stated intention to strive to include the required provision via the Multilateral Instrument and where this is not possible, without further delay, request via bilateral negotiations the inclusion of the required provision • for the remaining seven treaties, without further delay, request via bilateral negotiations the inclusion of the required provision.

Annex A

Tax treaty network of Australia

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	**Column 2**	**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**
Treaty partner	DTC in force?	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the 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?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
	Y = yes N = signed pending ratification	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no
Argentina	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Aruba	Y	N	iv	N/A	i	i	N	N	N	N	N
Austria	Y	O	Y	N/A	Y	i	Y	Y	N	N	N
Belgium	Y	E*	Y	N/A	Y	i	Y	Y*	Y*	Y*	Y***
British Virgin Islands	Y	N	i	N/A	i	i	N	N	N	N	N
Canada	Y	O	i	N/A	Y	i	Y	N	Y*	Y	Y***
Chile	Y	O	Y	N/A	Y	i	Y	N*	Y	N*	N

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	**Column 2**	**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**
		Inclusion Art. 25(1)?	Inclusion Art. 25(1) second sentence?		Inclusion Art. 9(2)?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	
Treaty partner	DTC in force?	If yes, submission to either competent authority	If no, please state reasons		If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	If no, alternative provision in Art. 7 & 9 OECD MTC?			Inclusion arbitration provision?
China (People's Republic of)	Y	O	Y	N/A	Y	i	Y	Y	N*	N*	N
Cook Islands	Y	N	iv	N/A	i	i	N	N	N	N	N
Czech Republic	Y	E*	ii	4-years	Y	i	Y	Y	Y	Y*	N
Denmark	Y	E*	Y	N/A	Y	i	Y	Y	Y*	Y*	Y***
Fiji	Y	O*	Y	N/A	Y	i	Y	N*	N	N*	N
Finland	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y***
France	Y	E*	Y	N/A	i***	i	Y	Y	Y	Y	Y***
Germany	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y
Guernsey	Y	N	iv	N/A	I	i	N	N	N	N	N
Hungary	Y	O	Y	N/A	Y	i	Y	Y	N	N	N
India	Y	N	Y	N/A	Y	i	Y	Y	Y*	Y*	N
Indonesia	Y	O	Y	N/A	Y	i	Y	Y	Y*	Y*	N
Ireland	Y	E*	Y	N/A	Y	i	Y	Y*	Y*	Y*	Y***
Isle of Man	Y	N	iv	N/A	I	i	N	N	N	N	N
Israel	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Italy	Y	N	ii*	2-years	i**	i	Y	N*	N*	N*	N
Japan	Y	E*	Y	N/A	I	i	Y	Y	Y	Y	Y***
Jersey	Y	N	iv	N/A	i	i	N	N	N	N	N
Kiribati	Y	O	Y	N/A	Y	i	Y	Y	N	N	N
Korea	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y*	N
Malaysia	Y	O*	ii*	2-years	Y	i	Y	N*	Y	N*	N
Malta	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y*	Y***
Mauritius	Y	N	iv	N/A	i	i	N	N	N	N	N

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	**Column 2**	**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**
Treaty partner	DTC in force?	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the 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?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
Mexico	Y	O*	Y	N/A	i	i	N*	N	Y	Y	N
Netherlands	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y*	Y***
New Zealand	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y**
Norway	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	N
Papua New Guinea	Y	O*	Y	N/A	Y	i	Y	Y	N	N*	N
Philippines	Y	O	ii	2-years	Y	i	Y	N	N	N	N
Poland	Y	O	Y	N/A	Y	i	Y	Y	Y*	Y*	N
Romania	Y	O	Y	N/A	Y	i	Y	Y	N	N*	N
Russia	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	N
Singapore	Y	N	i	N/A	Y	i	Y*	Y*	Y*	Y*	Y***
Slovak Republic	Y	O	ii	4-years	Y	i	Y	Y	Y*	Y*	N
South Africa	Y	N	Y	N/A	Y	i	Y	Y	Y	Y	N
Spain	Y	O	Y	N/A	Y	i	Y	Y	N*	N*	N
Sri Lanka	Y	O	Y	Y	Y	i	Y	Y	N	N	N
Sweden	Y	O	Y	N/A	Y	i	Y	Y	N	N	N
Switzerland	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y
Chinese Taipei	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Thailand	Y	O	Y	N/A	Y	i	Y	N	Y	N	N
Turkey	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
United Kingdom	Y	E*	i	N/A	Y	i	Y	Y*	Y	Y	Y***
United States	Y	O	Y	N/A	Y	i	N	Y	Y	N	N
Viet Nam	Y	O	Y	N/A	Y	i	Y	Y	N	N	N

Annex B

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

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-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**
Attribution/ Allocation	26	0	0	0	0	0	7	0	0	0	0	19	28
Others	10	0	0	0	0	0	2	0	0	0	0	8	9
Total	36	0	0	0	0	0	9	0	0	0	0	27	23.78

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-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**
Attribution/ Allocation	19	0	1	0	3	0	4	1	0	0	0	10	22.21
Others	8	0	0	0	1	0	1	0	0	1	0	5	14.56
Total	27	0	1	0	4	0	5	1	0	1	0	15	20.3

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

- The reported number of MAP cases pending on 31 December 2016 was 23, which consists of 16 attribution/allocation cases and 7 other cases.
- The reported number of MAP cases pending on 1 January 2017 was 31, which consists of 21 attribution/allocation cases and 10 other cases.

In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of pre-2016 cases pending on 1 January 2016 was corrected.

2018 MAP Statistics													
		Number of pre-2016 cases closed during the reporting period by outcome											
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	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	No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
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	10	0	0	0	1	0	1	1	0	0	0	7	45.37
Others	5	0	1	0	1	0	2	0	0	0	0	1	31.01
Total	15	0	1	0	2	0	3	1	0	0	0	8	37.16

Notes: There is a discrepancy between the number of pre-2016 MAP cases in Australia's inventory as per 31 December 2017 and 1 January 2018.

- The reported number of MAP cases pending on 31 December 2017 was 19, which consists of 12 attribution/allocation cases and 7 other cases.
- The reported number of MAP cases pending on 1 January 2018 was 15, which consists of 10 attribution/allocation cases and 5 other cases.

In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of pre-2016 cases pending on 1 January 2016 was corrected.

Annex C

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

2016 MAP Statistics														
			Number of post-2015 cases closed during the reporting period by outcome											
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	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	No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
Column 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	13	0	0	0	0	0	1	0	0	0	0	12	7.5
Others	0	10	0	1	0	0	0	1	0	0	0	0	8	5.75
Total	0	23	0	1	0	0	0	2	0	0	0	0	20	6.33

2017 MAP Statistics														
			Number of post-2015 cases closed during the reporting period by outcome											
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	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	No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
Column 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	12	9	0	0	1	1	0	3	0	0	0	0	16	7.33
Others	8	10	2	4	1	0	1	0	0	0	0	0	10	2.86
Total	20	19	2	4	2	1	1	3	0	0	0	0	26	4.58

Notes: There is a discrepancy between the number of post-2015 MAP cases in Australia's inventory as per 31 December 2016 and 1 January 2017.

- The reported number of MAP cases pending on 31 December 2016 was 19, which consists of 11 attribution/allocation cases and 8 other cases.
- The reported number of MAP cases pending on 1 January 2017 was 20, which consists of 12 attribution/allocation cases and 8 other cases.

In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of post-2015 cases received in 2016 was corrected.

2018 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	**Column 12**	**Column 13**	**Column 14**	**Column 15**
Attribution/ Allocation	16	6	0	0	2	2	0	6	0	0	0	0	12	17.29
Others	10	12	0	2	0	1	0	8	0	0	0	0	11	8.18
Total	26	18	0	2	2	3	0	14	0	0	0	0	23	12.52

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

- The reported number of MAP cases pending on 31 December 2017 was 25, which consists of 15 attribution/allocation cases and 10 other cases.
- The reported number of MAP cases pending on 1 January 2018 was 26, which consists of 16 attribution/allocation cases and 10 other cases.

In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of post-2015 cases received in 2017 was corrected.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
APA Guidance	Law Administration Practice Statement 2015/4
MAP Guidance	Taxation Ruling TR 2000/16
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2018
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, Australia (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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

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