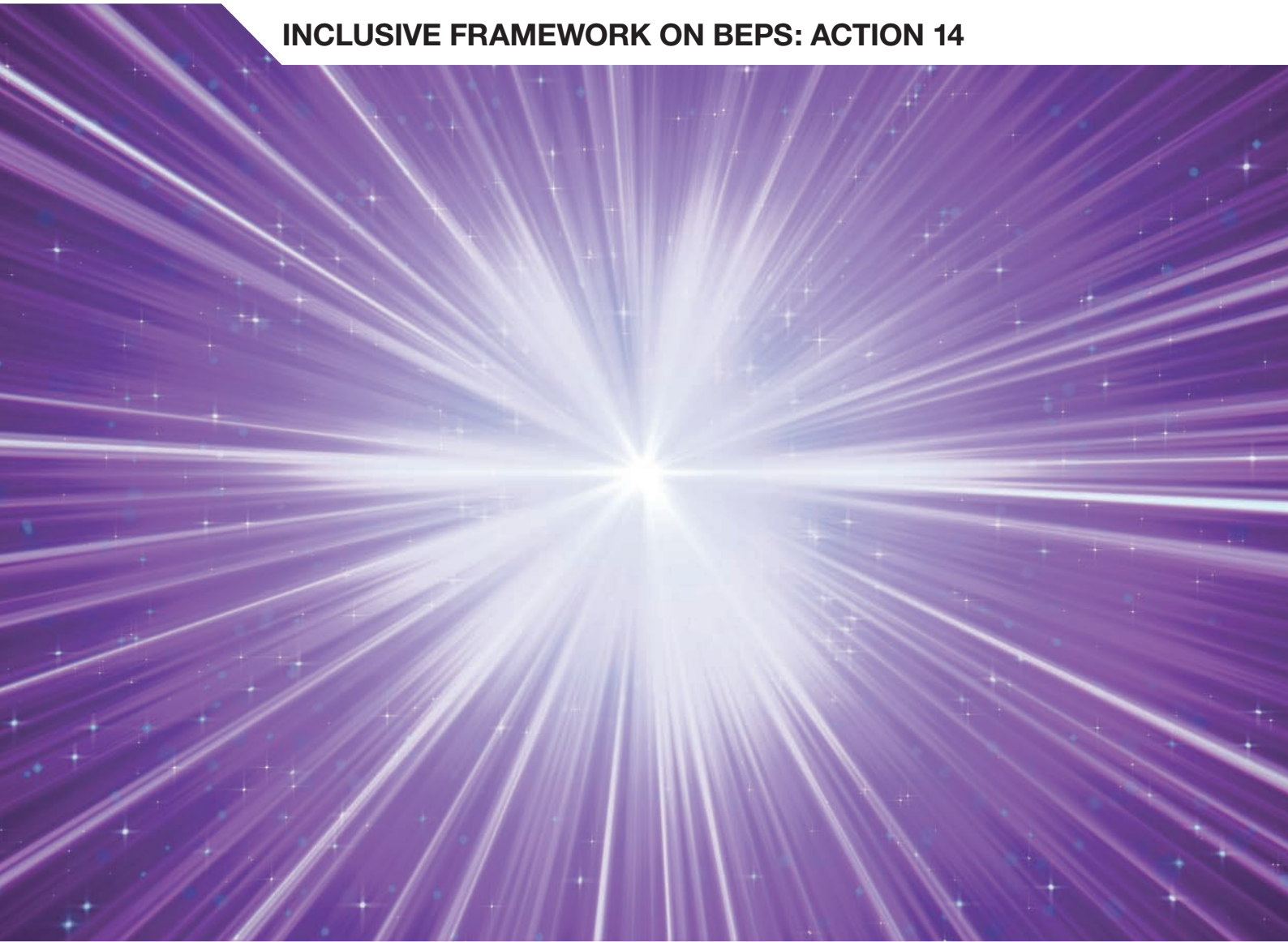


**OECD/G20 Base Erosion and Profit Shifting
Project**



Making Dispute Resolution More Effective – MAP Peer Review Report, Japan (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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.

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Abbreviations and acronyms

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

Executive summary

Japan has a relatively large tax treaty network with over 70 tax treaties. Japan has also an established MAP programme and has long-standing and significant experience in resolving MAP cases. It has a large MAP inventory, with a modest number of new cases submitted each year and 90 cases pending on 31 December 2018. Of these cases, 90% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Japan met most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Japan worked to address them, which has been monitored in stage 2 of the process. In this respect, Japan solved almost all of the identified deficiencies.

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

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Japan signed and ratified the Multilateral Instrument. Furthermore, Japan 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. Japan is in contact with a few treaty partners to strive to include the required provisions via the Multilateral Instrument. Where treaties will not be modified, upon entry into force and entry into effect of the Multilateral Instrument in spite of this, Japan reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. While Japan has a general aim to initiate negotiations with the relevant treaty partners to those tax treaties and while some specifications have been provided in respect of two treaty partners, no further details were shared in respect of the other treaty partners, especially as regards the order of prioritisation or mode of planned communication. For that reason, Japan is considered to not have put a plan in place nor has it taken any specific actions to bring, where necessary, the relevant treaties in line with the requirements of this standard other than negotiations that are already pending or envisaged to be initiated. Taking this into account, Japan is recommended to initiate negotiations without further delay for a number of treaties to ensure compliance with this part of the Action 14 Minimum Standard.

Japan meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme, which is extensively used by taxpayers and Japan's tax administration to prevent disputes. This APA programme also enables taxpayers to request rollbacks of bilateral APAs and such rollbacks are granted in practice.

Japan 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 2014 not received any MAP request concerning the application of anti-abuse provisions. It further has in place a documented bilateral consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, although no such cases have surfaced since 1 January 2014. Japan also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, including a specific Q&A on MAP.

Concerning the average time needed to close MAP cases, the MAP statistics for Japan 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	96	90	105	81	27.95
Other cases	9	10	10	9	17.27
Total	105	100	115	90	27.02

* 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, Japan used as the start date the date of receipt of the MAP request or the date of receipt of a notification from another competent authority of a MAP request, and as the end date the date of formal closure of the case (including an agreement reached), which is the latest date on which the closing letter is sent to or is received from the other competent authority concerned.

The number of cases Japan closed in 2016-18 is 44% of the number of all cases started in those years. During these years, MAP cases were on average not closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 27.02 months. This particularly concerns the resolution of attribution/allocation cases, as the average time to close these cases is longer (27.95 months) than the average time to close other cases (17.27 months). However, Japan's MAP inventory as on 31 December 2018 decreased by 14% as compared to 1 January 2016, which concerns attribution/allocation cases (16%). Further, as additional personnel has been assigned to Japan's competent authority function in recent years and successful organisational steps have been taken to be able to increase the number of cases closed and reduce the average completion time and as Japan has provided comprehensive clarifications explaining the additional time taken to resolve some cases, Japan should continue to closely monitor whether the addition of new staff and the organisational steps taken will further contribute to the resolution of MAP cases in a timely, efficient and effective manner.

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

Lastly, Japan also meets all the Action 14 Minimum Standard as regards the implementation of MAP agreements and its competent authority monitors such implementation.

Introduction

Available mechanisms in Japan to resolve tax treaty-related disputes

Japan has entered into 71 tax treaties on income (and/or capital), 68 of which are in force.¹ These 71 treaties are being applied to 80 jurisdictions.² All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 18 of the 71 treaties provide for a mandatory and binding arbitration procedure as a final stage to the mutual agreement procedure.³

Under Japan's tax treaties, the competent authority function is assigned to the Minister of Finance. Pursuant to the Act for Establishment of the Ministry of Finance, in conjunction with the Order for Organisation of the Ministry of Finance, this function is delegated to the Commissioner of the National Tax Agency. The Commissioner in turn has on the basis of the Ordinance for Organisation of the Ministry of Finance sub-delegated this competence to the Deputy Commissioner for International Affairs. In practice the competent authority function is performed by the Office of Mutual Agreement Procedures (“**MAP office**”) within the National Tax Agency. This competence concerns both attribution/allocation cases and other cases. Where, however, it concerns MAP cases relating to treaty interpretation, the MAP office is assisted by the International Tax Policy Division of the Tax Bureau within Japan's Ministry of Finance.

The MAP office currently employs 46 employees (including the director) and is organised into eleven sections. Nine of these eleven sections are mainly involved in handling MAP and APA cases. The other two sections are among others mainly involved in engagement and co-ordination tasks, drafting administrative guidance or participate in the work of the FTA MAP Forum.

Japan has issued guidance on the governance and administration of the mutual agreement procedure (“**MAP**”) in the Commissioner's Directive on the Mutual Agreement Procedure (“**MAP guidance**”), which was last updated in May 2019. This MAP guidance is in English available at:

www.nta.go.jp/english/00.pdf

Next to issuing this MAP guidance, in 2017 Japan also published Guidance for taxpayers on the mutual agreement procedure in the form of a Q&A (“**Q&A on MAP**”), which touches upon the relevant issues for taxpayers in relation to MAP and is written in easy-to-read language from the perspective of taxpayers. This Q&A was last updated in July 2019 and is available at:

www.nta.go.jp/english/03.pdf

Developments in Japan since 1 January 2018

Developments in relation to the tax treaty network

The stage 1 peer review report of Japan noted that it was conducting tax treaty negotiations with Colombia, Iceland and Spain. Japan reported that it has recently signed new treaties with all three treaty partners (see below). In addition, Japan reported that it is currently conducting or has finalised tax treaty negotiations with Finland, Jamaica, Greece, Morocco, Nigeria, Peru, Tunisia and Uruguay. Further, the stage 1 report noted that Japan had signed new treaties with Austria, Belgium, Denmark, Estonia, Latvia, Lithuania and Russia and amending protocols with Bahamas and the United States. At that time, only the treaty with Latvia had entered into force. Japan reported that all of these treaties and amending protocols have now entered into force. The new treaties with Austria, Belgium, Denmark and Russia have thereby replaced the existing treaties with these jurisdictions.

In addition, Japan signed new tax treaties with Spain (2018) and Uzbekistan (2019). For Spain it concerns the replacement of the 1974 treaty. For Uzbekistan, Japan currently continues to apply the 1986 treaty with the former USSR, but will no longer do so upon entry into force of the new treaty. The treaty with Spain 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). The treaty with Uzbekistan includes Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). Neither of these treaties has entered into force as yet, but Japan has already ratified the treaty with Spain. Further, Japan also reported that it has signed new tax treaties with Argentina (2019), Colombia (2018), Croatia (2018), Ecuador (2019) and Iceland (2018), which are all newly negotiated treaties with treaty partners with which there were no treaties yet in place. The treaties with Colombia and Croatia include 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). The treaties with Argentina, Ecuador and Iceland include Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). The treaties with Croatia, Ecuador and Iceland are already in force while the treaties with Argentina and Colombia are not yet in force.

Furthermore, Japan 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, Japan deposited its instrument of ratification, following which the Multilateral Instrument entered into force for Japan on 1 January 2019. With the depositing of the instrument of ratification, Japan 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. Further, on 14 February 2020, Japan submitted further updates to the list of reservations and notifications made by it. In relation to the Action 14 Minimum Standard, Japan has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).⁴

Where treaties will not be modified by the Multilateral Instrument to be in line with the requirements under the Action 14 Minimum Standard, Japan reported that it intends to update them via bilateral negotiations. In this respect, one treaty partner (Mexico) has

informed Japan that it will withdraw its reservation under the Multilateral Instrument, following which it is expected that this treaty will be modified by the instrument to be in line with the Action 14 Minimum Standard. Besides this treaty, there are then 12 treaties remaining that will not be modified by the Multilateral Instrument and for which bilateral actions are necessary. Two of these treaties, however, concern the treaty with former Czechoslovakia that Japan continues to apply to the Slovak Republic and the former treaty with the United Kingdom that Japan continues to apply to Fiji, for which no bilateral renegotiation of the treaty is necessary. For the 10 remaining treaties, Japan in general noted its preference to modify such treaties through the Multilateral Instrument whether it be through the concerned treaty partner newly signing the instrument or revising its existing list of reservations and notifications if it already signed the instrument. Regardless, in this respect, Japan reported that with Brazil and Switzerland communications are ongoing for a bilateral renegotiation of the concerned treaties. The other eight treaties are with Canada, Italy, Philippines, Romania, Sri Lanka, Thailand, the United States and Zambia. While Japan expect that these treaty partners withdraw their reservations or become signatories to the Multilateral Instrument, Japan reported that it intends to renegotiate these treaties at the earliest in order to meet the requirements under the Action 14 Minimum Standard. In this regard, Japan clarified that it prioritises countries with which important economic relationship exists or treaties which require other modifications in addition to the Action 14 Minimum Standard.

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 while some specifications have been provided in respect of Brazil and Switzerland, no further details were shared in respect of the other treaty partners, especially as regards the order of prioritisation or mode of planned communication. For that reason, this report reflects that Japan has not put a plan in place to bring the relevant treaties in line with the requirements under the Action 14 Minimum Standard.

Other developments

Further to the above, Japan reported that it has made a few changes to the operation of its MAP process and that it has updated its MAP guidance. These changes can be summarised as follows:

- *APA programme*: an update to its APA guidance in respect of the procedure applicable where taxpayers are required to submit additional information and the procedure applicable where the APA process is deferred or closed in exceptional cases and corresponding updates to various Commissioner's directives
- *MAP guidance*: an update to the MAP guidance and accompanying Q&A on MAP comprising the following changes:
 - a. the contact details of Japan's competent authority, including a physical address and telephone number
 - b. a statement that access to MAP may be granted in eligible cases, subject to given conditions, for: (i) cases concerning the application of domestic or treaty based anti-abuse rules, (ii) *bona fide* foreign-initiated self-adjustments and (iii) multilateral disputes involving a Japanese corporation and foreign associated enterprises
 - c. a statement that multi-year resolution of recurring issues may be possible through MAP subject to the given conditions

- d. a statement on the applicability of interest and penalties following MAP
- e. additional information on arbitration and the suspension of collection of taxes during the period a MAP case is pending (in the Q&A on MAP).
- *Handling and resolving MAP cases*: several internal steps to improve the MAP process, including:
 - earlier exchange of position papers
 - scheduling of more face-to-face meetings
 - setting the date and the agenda of the next face-to-face meeting as early as possible
 - monitoring the development of MAP and APA cases before and during face-to-face meetings
 - more frequent usage of communication channels other than face-to-face meetings, specifically electronic means of communication, especially through the newly introduced online information exchange of information system and telephone conferences between face-to-face meetings
 - addition of two additional case handlers and budget for travelling and organising face-to-face meetings allocated to its competent authority
 - allocation of more case handles to MAP cases with Asian treaty partners in light of increasing number of cases with such partners.
- *Monitoring the implementation of MAP cases*: Japan's competent authority was granted access to the taxpayer management system of the National Tax Agency enabling it to track the implementation of MAP agreements.

Basis for the peer review process

The peer review process entails an evaluation of Japan'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 the assessed jurisdiction, its peers and taxpayers. The questionnaires for the peer review process were sent to Japan 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, Japan'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 Japan 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.⁵ 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 Japan. In this update report, Japan 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 Japan 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 modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaties with former Czechoslovakia and the former USSR for those jurisdictions to which these treaties are still being by Japan. As it concerns the same tax treaties that are applicable to multiple jurisdictions, each treaty is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Japan'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 Japan was launched on 29 December 2017, with the sending of questionnaires to Japan and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Japan in June 2018, with the subsequent approval by the BEPS Inclusive Framework on 14 August 2018. On 14 August 2019, Japan 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, Japan opted to provide information and requested peer input on a period starting as from 1 January 2014. The period for evaluating Japan'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 Japan also asked for peer input on best practices.

In total 19 peers provided input during stage 1: Australia, Belgium, Canada, the People's Republic of China, Denmark, France, Germany, India, Ireland, Italy, Korea, the Netherlands, Russia, Singapore, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Out of these 19 peers, 11 had MAP cases with Japan that started on or after 1 January 2016. These peers represented 90% of post-2015 MAP cases in Japan's inventory that started in 2016 or 2017. During stage 2, the same peers, except for France and Russia, provided input. In addition, Indonesia and Spain also provided input during stage 2. For this stage, these peers represent approximately 87% of post-2015 MAP cases in Japan's inventory that started in 2016, 2017 or 2018.⁶ Generally, all peers indicated having a very good working relationship with Japan's competent authority and the easiness of the communication. They also valued Japan's willingness and constructiveness in resolving MAP cases, although a few voiced some concern on the fact that the resolution of cases can generally only be done during a competent authority meeting and not via written correspondence. Specifically with respect to stage 2, all peers that provided input reported that the update report of Japan fully reflects the experiences these peers have had with Japan 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 as having a very positive relationship with Japan's competent authority in relation to handling and resolving MAP cases.

Input by Japan and cooperation throughout the process

Japan provided extensive answers in its questionnaire, which was submitted on time. Japan was also 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, Japan provided the following information:

- MAP profile⁷
- MAP statistics⁸ according to the MAP Statistics Reporting Framework (see below).

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

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

Overview of MAP caseload in Japan

The analysis of Japan’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 Japan, 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	96	90	105	81
Other cases	9	10	10	9
Total	105	100	115	90

General outline of the peer review report

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

- Preventing disputes
- Availability and access to MAP
- Resolution of MAP cases
- 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**”).⁹ Apart from analysing Japan’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Japan during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Japan 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 Japan 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 Japan 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 Japan has entered into are available at: www.mof.go.jp/english/tax_policy/tax_conventions/international_269.htm. New treaties that have been signed but have not yet entered into force are with Argentina (2019), Colombia (2018) and Uzbekistan (2019). Japan also signed a new treaty with Spain (2018), which will replace the existing treaty of 1974, once entered into force. For this reason, this newly negotiated treaty is taken into account in the treaty analysis. Reference is made to Annex A for the overview of Japan's tax treaties regarding the mutual agreement procedure.
2. Japan continues to apply the 1977 treaty with former Czechoslovakia to the Czech Republic and the Slovak Republic; the 1962 treaty with the United Kingdom to Fiji; and the 1986 treaty with the former USSR to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine. Currently, Japan also continues to apply the 1986 treaty with the former USSR to Uzbekistan, but it has in 2019 signed a new treaty with Uzbekistan. As the new treaty is already taken into account in the treaty analysis of this report, there is in this report no further inclusion of Uzbekistan in the list of treaty partners to which the treaty with the former USSR is continued to be applied.
3. This concerns treaties with Austria, Belgium, Chile, Denmark, Estonia, Germany, Hong Kong, Iceland, Latvia, Lithuania, the Netherlands, New Zealand, Portugal, Slovenia, Spain, Sweden, the United Kingdom and the United States. Reference is made to Annex A for the overview of Japan's tax treaties.
4. Available at: www.oecd.org/tax/treaties/beps-mli-position-japan-consolidated.pdf.
5. Available at: www.oecd.org/japan/making-dispute-resolution-more-effective-map-peer-review-report-japan-stage-1-9789264304307-en.htm.
6. 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.
7. Available at: www.oecd.org/tax/dispute/Japan-Dispute-Resolution-Profile.pdf.

8. The MAP statistics of Japan are included in Annex B and C of this report.
9. 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 Japan’s tax treaties

2. Out of Japan’s 71 tax treaties, 70 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.¹ The remaining treaty does not contain this equivalent, as in this treaty the phrase “shall endeavour to resolve by mutual agreement (...)” is replaced by “may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention and for resolving (...)”.

3. In view of the one treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), Japan reported that under its domestic legislation and/or administrative practice there is no obstruction to enter into interpretative MAP agreements, although it has not experienced such a situation so far.

4. Almost all peers that provided input reported their treaty with Japan meets the requirements under element A.1. For the treaty identified above that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant treaty partner did not provide peer input.

Recent developments

Bilateral modifications

5. Japan signed a new tax treaty with a treaty partner that concerns the replacement of an existing treaty currently in force. This newly signed treaty has not yet entered into

force, but Japan has already ratified it. This treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), which was also the case for the existing treaty currently in force. Further, Japan signed new tax treaties with six treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place.² Three of these six treaties have already entered into force. All of these treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Multilateral Instrument

6. Japan signed the Multilateral Instrument and has deposited its instrument of ratification on 26 September 2018. The Multilateral Instrument has entered into force for Japan 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 contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).

8. With regard to the treaty identified above that is considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), Japan listed this treaty as a covered tax agreement under the Multilateral Instrument and made a notification, pursuant to Article 16(6)(d)(i), that it does not contain a provision described in Article 16(4)(c)(i). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its treaty with Japan as a covered tax agreement under that instrument, but did not make a notification on the basis of Article 16(6)(d)(i). Therefore, at this stage the Multilateral Instrument will, upon entry into force, not modify the treaty identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

9. Of the peers that provided input during stage 2, five provided input in relation to their tax treaty with Japan. None of these peers concerns a treaty partner to the treaty identified above that does 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

10. For the remaining tax treaty that does 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, Japan has – as mentioned in the Introduction – not put in place a plan for bringing this treaty in line with

the requirements under element A.1. As this concerns the 1962 treaty between United Kingdom and Japan that continues to be applied to this treaty partner, such renegotiations are also not necessary.

11. Regardless, Japan 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]	-	-

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

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

12. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.³ 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.

Japan’s APA programme

13. Japan reported that it has introduced and applied an APA programme since 1987, thereby allowing for unilateral, bilateral and multilateral APAs. The rules relating to APAs are set forth in chapter 6 of the Commissioner’s Directive on the operation of transfer pricing (“**Transfer Pricing Directive**”).⁴

14. Where it concerns unilateral APAs, the competence to handle APA requests is assigned to the National Tax Agency, and sub-mandated to the Regional Commissioner of the Regional Tax Bureau’s Large Enterprise Examination Division or the District Director of the Examination Group (Corporation) of the Tax Office. Which of these government departments holds competence to handle an APA request is dependent on which department has jurisdiction over the taxpayer submitting the APA request.⁵ Contact details for each department are made available online in Japanese and can be found at:

www.nta.go.jp/taxes/shiraberu/sodan/kobetsu/itenkakakuzeisei/03.htm

www.nta.go.jp/about/organization/index.htm

15. Where an APA requests concerns bilateral or multilateral APAs, it is the Regional Tax Bureau’s Large Enterprise Examination Division that will conduct the initial review of the APA request. However, where such a request is made under the MAP provision of a tax treaty, it is MAP office that will – in cooperation with the Regional Tax Bureau – further

handle the request and conduct negotiations with the treaty partner.⁶ In this respect, Japan noted that next to the request for a bilateral or multilateral APA, taxpayers are also required to submit a MAP request on the basis of the MAP guidance (see element B.8 for a discussion).

16. Further to the above, Japan reported that a request for an APA has to be submitted on or before the first date of the first fiscal year to which the request relates. Chapter 6, section 3 of Japan's Transfer Pricing Directive further defines in detail what information taxpayers need to include in their APA request, whereas sections 10-15 detail the process for obtaining an APA, including the scheduling of a pre-filing meeting. When Japan has reached an agreement with its treaty partner on the content of a bilateral APA, its competent authority will, pursuant to section 17 of the MAP guidance notify the taxpayer hereof. The taxpayer in turn is obliged to file a tax return in conformity with the APA. Chapter 6, section 7 of the Transfer Pricing Directive notes that an APA is generally applied for a period ranging from three to five years.

17. Since 2006 Japan annually publishes statistics relating to APAs on the website of the National Tax Agency.⁷ These statistics *inter alia* relate to the number of APA requests received, the number of cases closed and the inventory of pending APA cases as per year-and. For calendar years 2014-19 Japan reported the following statistics:⁸

Year	Number bilateral APA requests	Number of APAs granted	Inventory per year-end
2014	157	147	302
2015	161	106	357
2016	122	116	363
2017	157	152	368
2018	163	134	397
2019	110	115	392

Roll-back of bilateral APAs

18. Japan reported that it allows roll-back of bilateral APAs. The relevant policy hereon is set forth in chapter 6, section 23 of Japan's Transfer Pricing Guidance, which stipulates that taxpayers can request for the roll back of an existing bilateral APA to previous fiscal years. To this end taxpayers need to specify this in the APA request and subsequently also file a MAP request for the same case. A roll-back will be granted where the application to previous fiscal years is considered to be appropriate.

Recent developments

19. Japan reported that, in relation to its APA programme, it has carried out an update to its Transfer Pricing Directive in February 2018 in respect of (i) the procedure applicable where taxpayers are required to submit additional information and (ii) the procedure applicable where the APA process is deferred or closed in exceptional cases. Accordingly, corresponding updates were also made to several Commissioner's Directives in respect of specific taxpayers.

Practical application of roll-back of bilateral APAs

20. As mentioned above, Japan annually publishes a report on its APA programme, with the last available report concerning fiscal year 2018 (period running from 1 July 2017 up to 30 June 2018). Concerning the number of roll-back requests, Japan reported the following figures for the period 2014-19:⁹

Year	Number roll-back requests	Roll-backs granted	Inventory per year-end
2014	67	38	155
2015	65	30	190
2016	54	45	199
2017	61	60	200
2018	68	56	212
2019	59	53	218

Period 1 January 2014-31 December 2017 (stage 1)

21. Japan reported that in the period 1 January 2014-31 December 2017 it received 247 roll-back requests, out of which 174 requests have been granted.¹⁰

22. Most of the peers that provided input noted having an APA relationship with Japan, some of them also having experiences with Japan on granting of roll-backs of existing bilateral APAs. On the APA relationship in general, one peer noted that it considers that it has with Japan a well-developed bilateral APA programme. Another peer mentioned that it has a strong working relationship with Japan's competent authority and that it valued its experience to prevent tax treaty related disputes with Japan during the review period as very positive. It also highlighted that Japan's competent authority is proactive in its dealings on bilateral APAs and is keen to make progress and to resolve cases in a timely manner. A third peer also valued its relationship with Japan's competent authority in dealing with APA cases, albeit that specific to the financial industry it is in the peer's view challenging to come to an agreement. With regard to this specific peer input, Japan responded that certain cases, including those relating to the financial industry, are challenging due to the complexity of the cases and required expertise, following which Japan's competent authority and also that of the peer are required their best endeavours to overcome differences in views deriving from the nature of the cases. To this Japan added that it believes that both competent authorities will find a common ground and arrive at an acceptable resolution for the cases under review, as was the case for a number of other challenging cases that have been resolved through mutual co-operation and collaboration.

23. Another peer echoed the previous input and noted it has a very positive relationship with Japan's competent authority, whereby contacts are considered easy and frequent, as also that Japan's competent authority provides quick responses. Such contacts take place in various manners such as e-mail, letters and face-to-face meetings, whereby meetings are scheduled once or twice a year. This peer further mentioned that in all pending MAP cases with Japan progress is made in a reasonable time. Lastly, one peer applauded the commitment of Japan's competent authority to APAs in general, including providing of roll-backs, which in the peer's view has prevented many MAP cases from arising in the first place. This peer also expressed its appreciation of the efforts made by Japan's competent authority to pursue principled resolution for APAs in generally a reasonable timeframe. It, however, also identified an area for which it would like to work with Japan to

improve. In this peer's view the APA process is most beneficial when there is a significant number of years between the ending of APA negotiations and the fiscal years to which the APA applies. In its experience with Japan this is not always the case, which the peer considered not to be beneficial, as it does not increase certainty for taxpayers and also leads to lengthy renegotiations that ties up the limited available resources at both the level of the peer's and Japan's competent authority. This peer therefore welcomes discussions on this topic with Japan in a co-operative and collaborative manner. To this particular peer input, Japan responded that its competent authority is open to any discussions to improve the effectiveness and efficiency of the measures to resolve and prevent treaty-related disputes in a consistent and principled manner, such with a view to increase certainty for taxpayers.

24. In total 11 peers provided input on their experiences with Japan on providing roll-backs to bilateral APAs. These peers reported that in the period 1 January 2014-31 December 2017 they altogether received approximately 60 roll-back requests concerning bilateral APAs with Japan. For some of these peers it only concerns a limited number of requests, while for a few peers the number of requests is considerable.

25. The peers that only have a limited number of roll-back requests reported that Japan is open to grant roll-backs of bilateral APAs. Three peers particularly noted that Japan was able to provide for a roll-back and that there were no particular issues encountered in the implementation thereof. One of these peers also noted that for a pending roll-back request it is assumed that it will be managed positively by Japan's competent authority. A second peer mentioned that it was able to have adequate discussions with Japan's competent authority on the availability of a roll-back to an existing bilateral APA and that in the past roll-backs were provided in appropriate cases. Furthermore, another peer noted that it has received a request for a roll-back in 2017, which is currently still under discussion, but based on past experiences the peer expects that the roll-back will be provided. Lastly, one peer noted that while it has not received a request for a bilateral APA, or a roll-back request, in the period 1 January 2014-31 December 2017 concerning Japan, it noted that roll-backs are possible.

26. Those peers that have more cases for which taxpayers requested to provide for a roll-back of a bilateral APA also voiced positive experiences with Japan. One peer mentioned that Japan was able to provide for a roll-back in all cases where an APA agreement has been reached and that no problems were encountered concerning the implementation of these roll-backs. This input was echoed by three other peers, which noted not having found any difficulties with the implementation of roll-backs of bilateral APAs in its relationship with Japan. Another peer addressed that the cases where taxpayers requested a roll-back are currently pending and that face-to-face discussions are foreseen in 2018. In this peer's experience Japan is open to considering roll-backs of bilateral APAs in appropriate cases.

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

27. Japan reported that since 1 January 2018 its competent authority has received 273 bilateral APA requests, out of which 127 include requests for a roll-back. 21 of these requests have been granted, whereas 106 are still under consideration.

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

29. Four of these peers gave additional input as to element A.2. The first peer noted that an APA completed with Japan since 1 January 2018 involved a rollback year and that in the

past, taxpayers' requests for rollbacks were executed by Japan. The second peer reported that it has completed three APAs with Japan since 1 January 2018, all of which included a request for roll-back. In addition, this peer mentioned that it has received two requests for bilateral APAs with Japan since 1 January 2018, which did not include a request for roll-back. This peer cited having a very positive and strong working relationship with Japan's competent authority, which it considers proactive, responsive and co-operative in its approach to reaching agreement on the three bilateral APAs concluded since 1 January 2018. This peer further reported having regular face-to-face meetings with Japan's competent authority since 1 January 2018, having contact through written correspondence in between meetings and anticipated that progress will be made in respect of ongoing bilateral APAs during such meetings. The third peer noted that it has a very good working relationship with Japan as regards prevention of disputes, as their bilateral inventory with Japan only consists of APAs and there are no MAP cases pending. This peer noted that its competent authority meets with Japan's competent authority once or twice a year usually and that they often come to an agreement on a case within two years, whereby Japan's competent authority is agreeable to providing roll-backs. Lastly, the fourth peer noted that Japan is generally able to provide for a roll-back for APA cases and that it has not encountered any issue in the implementation of the roll-back of APAs based on bilateral APAs reached with Japan.

Anticipated modifications

30. Japan did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. These 70 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic and the treaty with the former USSR that Japan continues to apply to Armenia, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine. These 70 treaties also include the newly negotiated treaties with Spain which will replace the currently existing treaty with this jurisdiction of 1974 and the newly negotiated treaty with Uzbekistan, for which Japan currently continues to apply the treaty with the former USSR of 1986 and that it will no longer do so upon entry into force of this new treaty.
2. One of these treaties is with a treaty partner, for which Japan currently continues to apply the 1986 treaty with the former USSR, but which will no longer do so upon entry into force of this new treaty.
3. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
4. Available in English at: www.nta.go.jp/english/07.pdf. Japan has also issued specific guidance for taxpayers to which, pursuant to item 12-7-2 of Article 2 of the Corporations Tax Act, the

consolidated taxation system applies. This guidance is available in Japanese and can be found at: www.nta.go.jp/law/jimu-unei/hojin/050428/00.htm. Furthermore, Japan also provides guidance on APAs in relation to the attribution of profits to permanent establishments in the following documents:

For domestic and foreign corporations: chapters 6 and 7 of the Commissioner’s Directive on the operation of auditing, etc. for income attributable to permanent establishments (in relation to APA programme, lastly updated in February 2018). The information is available at (in Japanese):

www.nta.go.jp/law/jimu-unei/hojin/160630/06.htm

www.nta.go.jp/law/jimu-unei/hojin/160630/07.htm

For domestic consolidated corporations: chapter 5 of the Commissioner’s Directive on the operation of auditing, etc. for consolidated income attributable to consolidated corporation’s permanent establishments located overseas (in relation to APA programme, lastly updated in February 2018). The information is available at (in Japanese):

www.nta.go.jp/law/jimu-unei/hojin/160630_2/00.htm;

For (resident and non-resident) individuals: chapters 5 and 6 of the Commission’s Directive on the operation of auditing, etc. for various income attributable to individual’s permanent establishments (issued on 31 March 2017). The information is available at (in Japanese):

www.nta.go.jp/law/jimu-unei/shotoku/shinkoku/170331/05.htm

www.nta.go.jp/law/jimu-unei/shotoku/shinkoku/170331/06.htm.

5. See chapter 6, section 2 Japan’s Transfer Pricing Directive.
6. See chapter 6, section 12/13 of Japan’s Transfer Pricing Directive.
7. Available in English at: www.nta.go.jp/english/publication/map_report/index.htm. Statistics on APAs are also available in the annual report of the National Tax Agency. For 2019, these statistics are available in Part III-3 (4). Available at: www.nta.go.jp/english/Report_pdf/2019e_06.pdf.
8. The numbers reported in the table deviate slightly from the numbers included in the annual report issued by Japan’s National Tax Agency due to the fact that in the latter the basis is the fiscal year, which in Japan runs from 1 July to 30 June. Further, the number reported for 2019 involves the period until 31 August 2019.
9. The numbers reported in the table deviate slightly from the numbers included in the stage 1 report owing to changes reported by Japan following reconciliation in later years. Further, the number reported for 2019 involves the period until 31 August 2019.
10. The numbers reported deviate slightly from the numbers included in the stage 1 report owing to changes reported by Japan.

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.

31. 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 the Japan's tax treaties

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

32. Out of Japan's 71 tax treaties, 11 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.¹ Further, 43 of Japan's 71 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.²

33. The remaining 17 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.	15*
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 cannot submit a MAP request irrespective of domestic available remedies and can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	2

* These 15 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic.

34. The 15 treaties mentioned in the first row of 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, for the following reasons 11 of those 15 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the states (four treaties).
- The relevant tax treaty does not contain a (specific) non-discrimination provision that is equivalent to Article 24 of the OECD Model Tax Convention (OECD, 2017) (two treaties).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (five treaties).³

35. For the remaining four treaties, the non-discrimination provision is in two of them 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.⁴ In the remaining two treaties, paragraph 1 of the non-discrimination provision also only covers nationals that are resident of one of the contracting states, but by virtue of another paragraph the non-discrimination provision applies to both nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to adoption of the Action 14 final report (OECD, 2015b) is therefore for all four treaties not clarified by a limited scope of the non-discrimination article, following which they are considered not to be in line with this part of element B.1.

36. Furthermore, as the two treaties mentioned in the second row of the table above do not allow taxpayers to submit a MAP request irrespective of domestic available remedies, they are also 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).

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

37. Out of Japan's 71 tax treaties, 59 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.⁵

38. The remaining 12 tax treaties that do not contain such a provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	11*
Filing period less than 3 years for a MAP request (two years)	1

* These 11 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic.

Peer input

39. Almost all peers that provided input reported that their tax treaty with Japan meets the requirements under element B.1. One peer for which its treaty with Japan does not 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) reported that as soon as the Multilateral Instrument will enter into force the treaty will be in line with element B.1. However, for this specific peer the Multilateral Instrument will not modify its treaty with Japan to incorporate the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). Furthermore, another peer noted that the current treaty in force with Japan does not meet the requirements under element B.1, but that it has signed a new treaty with Japan in 2017 that is fully in line with element B.1, which indeed is the case.

Practical application

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

40. As noted in paragraphs 32-36 above, all but two of Japan's tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. In this regard, Japan 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 Japan's MAP guidance, in the note attached to section 3(1) and in Q. 2-11 in Japan's Q&A on MAP. However, the Q&A on MAP also clarifies that Japan's competent authority cannot derogate from an administrative tribunal or 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 court or tribunal.

41. Further, section 23 of Japan's MAP guidance stipulates that where a MAP request is submitted with the competent authority of the treaty partner concerning transactions between associated enterprises resident in Japan and the treaty partner and whereby the outcome of the MAP process may affect the taxable profit of the enterprise resident in Japan, that enterprise will be requested, in order to confirm its intention to seek resolution through MAP, whether it has submitted or will submit a MAP request either in Japan or at the level of the treaty partner if the applicable tax treaty allows so. Where this is the case, the general rules for conducting the MAP process in Japan will apply. Where, however, this is not the case, section 23 of Japan's MAP guidance refers to section 29, which deals with the grounds upon which a MAP process can be terminated. One of these grounds, defined in item 1(b) of that section, is the non-filing of a MAP request by the enterprise resident in Japan in transfer pricing cases. In this respect, Japan reported that it considers it not to be appropriate to proceed with a MAP case against the intention of the taxpayer resident in Japan where this taxpayer has expressed its intention not to seek a MAP resolution, as such proceeding would not align with the spirit and purpose of Article 25(1) of the OECD Model Tax Convention.

It would also not align with Japan’s domestic system of self-assessment, which provides remedies based on taxpayer’s will. In practice, after confirming the taxpayer’s intention, if necessary through repeated inquiries to the taxpayer, Japan’s competent authority will therefore inform the treaty partner of its position and propose to close the case (recognising that the actual closing is only possible if both competent authorities consent herewith). Where the treaty partner wishes to continue MAP consultations, primarily to determine the correct application of the arm’s length principle with respect to the taxpayer resident in the treaty partner’s state, Japan reported that its competent authority would accept such continuation, but that in practice it will have little relevance as Japan’s competent authority would face difficulties in obtaining sufficient information from the taxpayer. In other words, it may then be difficult to come to a mutual understanding in such a situation. Against this background, Japan reported that section 23 of its MAP guidance allows taxpayers an adequate opportunity to execute their right under tax treaties to request for MAP in eligible cases, whereby its competent authority does not deny access to MAP in these cases. Japan therefore considers this practice to be in line with Article 25(1) of the OECD Model Tax Convention.

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

42. Where a tax treaty does not contain a specific filing period for MAP requests, Japan reported that its domestic legislation and administrative practice does not provide for such a filing period either and its competent authority would not apply a specific timeframe within which a MAP request should be filed.

Recent developments

Bilateral modifications

43. Japan signed a new tax treaty with a treaty partner that concerns the replacement of an existing treaty currently in force. This newly signed treaty has not yet entered into force, but Japan has already ratified it. 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), where a provision equivalent to thereof was previously absent.

44. Further, Japan signed new tax treaties with six treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place.⁶ Three of these treaties have already entered into force. Four of these newly negotiated treaties contains a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 Final Report (OECD, 2015b). The remaining two newly negotiated treaties contain 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).

45. The effects of the new treaty with one treaty partner for which the existing treaty will be replaced and the six newly signed treaties have been reflected in the analysis above where they have relevance. This *inter alia* concerns a change of the number of tax treaties that now allow the filing of a MAP request to either contracting state from seven to 11 and the number of treaties containing a three-year filing period for MAP requests from 52 to 59, with the subsequent reduction from 12 to 11 treaties that do not contain a filing period for MAP requests.

Multilateral Instrument

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

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

47. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (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.

48. With the depositing of its instrument of ratification, Japan 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 Japan'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, Japan opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Japan listed 40 of its 71 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for 39 of them 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).⁷ None of these 39 treaties concern the treaties mentioned in paragraphs 32-36 above that already allows the submission of a MAP request to either competent authority.

49. In total, all of the partners to the 39 relevant treaties⁸ are signatories to the Multilateral Instrument and listed their treaty with Japan as a covered tax agreement under that instrument, but 14 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties.⁹ 24 of the remaining 25 relevant treaty partners listed their treaty with Japan 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).¹⁰

50. Of these 24 treaty partners, 16 already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Japan 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 eight treaty partners, the instrument will, upon entry into force for these treaties, modify the concerned treaties to include this equivalent.

51. Furthermore, for the remaining treaty of the 40 treaties, for which Japan did not make a notification on the basis of Article 16(6)(a) and for the one remaining treaty partner that did not list its treaty with Japan on the basis of Article 16(6)(a), the Multilateral Instrument will only supersede these treaties to the extent that the provisions contained therein are incompatible with the first sentence of Article 16(1). Since the provisions of these covered tax agreements do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), they are considered to be incompatible with the first sentence of Article 16(1).

52. Of these two treaty partners, one already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Japan and this treaty partner, and therefore has superseded this treaty 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 treaty, the instrument will, upon entry into force for this treaty, supersede this treaty 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).

53. In view of the above, for those six treaties identified in paragraphs 32-36 above that are considered to not 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), two treaty partners are part of the 25 treaty partners¹¹, the treaties in respect of which have been or will be modified by the Multilateral Instrument, and one is part of the two treaties mentioned in the preceding paragraph that will be superseded by this instrument, to incorporate 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).

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

54. 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).

55. With regard to the one tax treaty identified in paragraph 38 above that contains a filing period for MAP requests of less than three years, Japan listed this treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner also made such notification. This treaty partner has already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Japan and this treaty partner, and therefore has modified these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

56. Of the peers that provided input during stage 2, five provided input in relation to their tax treaty with Japan. One of these peers provided input in relation to element B.1 and noted that it has signed a new treaty with Japan replacing the existing treaty, bringing it in line with the requirements under the Action 14 Minimum Standard, which is in accordance with the above analysis.

Anticipated modifications

57. For the four remaining treaty partners in respect of which the respective treaties do not 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) and which will not be modified by the Multilateral Instrument to include such equivalent, Japan has – as mentioned in the Introduction – not put in place a plan for bringing these treaties in line with the requirements under element B.1 nor conducted any actions to that effect. As one of these partners concerns the 1977 treaty with former Czechoslovakia that Japan continues to apply to this treaty partner, such renegotiations are also not necessary.

58. Regardless, Japan reported it will seek to include Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Six out of 71 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). Of these six treaties:</p> <ul style="list-style-type: none"> • One has 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) • One is expected to 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) • Four will not be modified by the Multilateral Instrument to include the required provision. For these treaties, no actions have been taken nor are any concrete actions planned to be taken. 	<p>For three of the four treaties that do not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b) and has 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), Japan should without further delay request via bilateral negotiations the inclusion of the required provision.</p> <p>This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision. <p>As the remaining treaty that does not contain the equivalent of 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) is the 1977 treaty with former Czechoslovakia that Japan continues to the Czech Republic and the Slovak Republic, and which only will be modified by the Multilateral Instrument with respect to the Czech Republic, Japan should ensure that, once it enters into negotiations with the Slovak Republic, it includes the required provision.</p>

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

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

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

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

Domestic bilateral consultation or notification process in place

60. As discussed under element B.1, out of Japan's 71 treaties, 11 currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, 25 of these 71 treaties have been or will be modified, and two have been or will be superseded, by the Multilateral Instrument to also allow taxpayers to submit a MAP request to the competent authority of either treaty partner.¹²

61. Japan reported that where its competent authority considers that the objection raised in a MAP request is not justified, or where a MAP request does not include the required information/documentation as set out in its MAP guidance, it will apply a consultation process with the competent authority of the relevant treaty partner. Section 13 of the MAP guidance outlines how Japan's competent authority will operate when it considers the objection raised by the taxpayer in its MAP request as not being justified. In this respect, section 13(2) clearly stipulates that the taxpayer and the other competent authority concerned will be notified when Japan's competent authority will not propose the opening of a MAP in case the taxpayer has not included in its MAP request the required information as outlined in section 6 of the MAP guidance or where the objection raised in the request is considered not to be justified. The notification includes an invitation to the other competent authority concerned to provide its views, which will be taken into account in the final decision on whether or not to proceed with the MAP request. Section 18(2) of the MAP guidance further defines that Japan's competent authority will close the case where the other competent authority concerned has not objected to the proposal not to initiate a MAP case as set out in the notification. Subsequently, Japan's competent authority will notify the taxpayer of this closure.

62. Japan further reported as to having specific provisions in amending protocols to two of its treaties that specify that if the competent authority of the state to which a MAP case is presented does not consider the objection to be justified, this competent authority shall notify the competent authority of the treaty partner of that presentation.

Recent developments

63. There are no recent developments with respect to element B.2, except for the specific mention of a bilateral notification process in the amending protocol to a treaty which is a newly negotiated treaty with a treaty partner with which there were no treaty yet in place

Practical application

Period 1 January 2014-31 December 2017 (stage 1)

64. Japan reported that in the period 1 January 2014-31 December 2017 its competent authority for none of the MAP requests it received decided that the objection raised by taxpayers in such request as being not justified. The 2016 and 2017 MAP statistics submitted by Japan also show that in none of its MAP cases was closed with the outcome “objection not justified”.

65. All peers that provided input indicated not being aware of any cases for which Japan’s competent authority denied access to MAP in the period 1 January 2014-31 December 2017. They also reported not having been consulted/notified during this period of a case where Japan’s competent authority considered the objection raised in a MAP request as not justified, which is logical as no such instances have occurred in Japan during this period.

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

66. Japan reported that since 1 January 2018 its competent authority also has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was being not justified. The 2018 MAP statistics submitted by Japan show that none of its MAP cases was closed with the outcome “objection not justified” as well.

67. All but two peers that provided input during stage 1 also indicated in stage 2 that since 1 January 2018 they are not being aware of any cases for which Japan’s competent authority denied access to MAP. They also reported not having been consulted/notified in such cases, which can be clarified by the fact that no such instances have occurred in Japan since that date. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

68. Japan 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.

69. 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

70. Out of Japan's 71 tax treaties, 19 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.¹³ Furthermore, 20 tax treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), six of which does not contain in its entirety a provision that is based on Article 9 of the OECD Model Tax Convention (OECD, 2017) with regard to associated enterprises.¹⁴ The remaining 32 treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviate from this provision for the following reasons:

- In 31 corresponding adjustments can only be made through a consultation between the competent authorities.
- In one treaty granting of a corresponding adjustment is optional, as the phrase "... shall make an appropriate adjustment" is replaced by "... may, where appropriate, make an appropriate adjustment".

71. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Japan's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Japan indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, such regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties, but only insofar the scope of these treaties cover transfer pricing cases. This is the case for all of Japan's 71 tax treaties, except for the six treaties that do not contain a provision based on or equivalent to Article 9 of the OECD Model Tax Convention (OECD, 2017).

72. Article 12 of Japan's Ministerial Ordinance on the Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the application of tax treaties defines the legal basis upon which taxpayers can submit a MAP request. This article does not contain any limitation on the scope of application of MAP. Furthermore, section 3 of Japan's MAP guidance includes examples of cases for which taxpayers are eligible to submit a MAP request. These examples *inter alia* refer to cases on the allocation of income between associated enterprises on the basis of the arm's length principle or the attribution of profits to permanent establishments. Similar examples are included in the response to question 2.10 of Japan's Q&A on MAP.

Recent developments

Bilateral modifications

73. Japan signed a new tax treaty with a treaty partner that concerns the replacement of an existing treaty currently in force. This newly signed treaty has not yet entered into force, but Japan has already ratified it. This treaty contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), which was not the case for the existing treaty currently in force. Further, Japan signed new tax treaties with six treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place.¹⁵ Three of these six treaties have already entered into force. All of these treaties contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

75. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(1) 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 notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017)).

76. Japan has not reserved, pursuant to Article 17(3), 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 46 tax treaties identified in paragraph 70 above (disregarding those six treaties that do not contain Article 9 at all) that are considered not to contain this equivalent, Japan listed 36 treaties as a covered tax agreement under the Multilateral Instrument, but only for 25 of them made a notification on the basis of Article 17(4) that they do contain a provision described in Article 17(2).¹⁶

77. Of the relevant treaty 25 partners, all are signatories to the Multilateral Instrument and have listed their treaty with Japan as a covered tax agreement under that instrument, but 11 have, on the basis of Article 17(3), reserved the right not to apply Article 17(1) as they considered that their treaty with Japan already contains the equivalent of Article 9(2). 12 of the 14 remaining treaty partners also made a notification on the basis of Article 17(4). Of these 12 treaty partners, nine have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Japan and these treaty partners, and therefore has replaced the relevant treaty provision to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017). For the remaining three treaties, the Multilateral Instrument will, upon entry into force, replace the provisions in these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017). For the remaining two treaty partners that did not make a notification on the basis of Article 17(4), these treaty partners have already deposited its instrument of ratification of the Multilateral Instrument. Therefore, the Multilateral Instrument has entered into force for these treaties and has superseded the relevant treaty provisions 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 these treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

78. Furthermore, for the remaining 11 treaties for which Japan did not make a notification on the basis of Article 17(4), all relevant treaty partners are signatories to the Multilateral Instrument and listed their treaty with Japan as a covered tax agreement under that instrument. Of the partners to the 11 relevant treaties, two have, pursuant to Article 17(3), reserved the right not to apply Article 17(1).¹⁷ Four of the remaining nine treaty partners have already deposited their instruments of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Japan and these treaty partners, 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 these treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1). The provision in the remaining five treaties will, upon the entry into force of the Multilateral Instrument for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provision contained in these treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Application of legal and administrative framework in practice

Period 1 January 2014-31 December 2017 (stage 1)

79. Japan reported that in the period 1 January 2014-31 December 2017, it has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

80. All peers that provided input indicated not being aware of a denial of access to MAP by Japan in the period 1 January 2014-31 December 2017 on the basis that the case concerned was a transfer pricing case.

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

81. Japan 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.

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

Anticipated modifications

83. Japan 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, Japan 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.

84. 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

85. None of Japan's 71 tax treaties allow competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Japan do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

86. Japan reported that it will provide access to MAP in cases relating to the application of a treaty anti-abuse provision or for cases concerning the question whether the application of the domestic anti-abuse provision comes into conflict with the provision of a tax treaty. In this respect, Article 12 of Japan's Ministerial Ordinance on the Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the application of tax treaties defines the legal basis upon which taxpayers can submit a MAP request. This article does not contain any limitation on the scope of

application of MAP. Furthermore, section 3(1)(g) of Japan’s MAP guidance states that cases in which a resident taxpayer has been or will be taxed not in accordance with the concerned tax treaty resulting from an adjustment made by Japan or its treaty partner through the application of anti-abuse provisions in the tax treaty or domestic law would be eligible for MAP. This is also clarified in the response to Q 2-10 in the Q&A on MAP.

Recent developments

87. It was noted in the stage 1 peer review report that Japan’s MAP guidance does not specifically address whether taxpayers have access to MAP concerning the application of domestic or treaty anti-abuse provisions. The guidance has in May 2019 been updated to *inter alia* include this information as noted above.

Practical application

Period 1 January 2014-31 December 2017 (stage 1)

88. Japan reported that in the period 1 January 2014-31 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.

89. All peers that provided input indicated not being aware of cases that have been denied access to MAP by Japan in the period 1 January 2014-31 December 2017 in relation to the application of treaty and/or domestic anti-abuse provisions.

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

90. Japan 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.

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

Anticipated modifications

92. Japan did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

93. 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

94. Japan reported that under its domestic law there is no process available allowing taxpayers and the tax administration to enter into a settlement agreement during the course of or after ending of an audit. In practice, it, however, occurs that taxpayers agree with findings of the auditors of the National Tax Agency during an audit. In such situation taxpayers can voluntarily file an amended tax return to reflect these findings. Where taxpayers do not file such amended tax return, these findings will be reflected in an amendment of the tax assessment.

95. Where taxpayers file an amended tax return, for which the legal basis is Article 19(1) of the Act on General Rules for National Taxes, they have to waive their rights to initiate domestic available administrative or judicial remedies with regard to the amounts that are reflected in the amended tax return. In this respect, Japan reported that the voluntary filing of a tax return, however, has no effect on taxpayers' access to MAP for the amount of adjusted income. The same applies when a tax assessment is issued following the conclusion of an audit.

Administrative or statutory dispute settlement/resolution process

96. Japan reported it has no 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.

Recent developments

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

Practical application

Period 1 January 2014-31 December 2017 (stage 1)

98. In view of the fact that it is in Japan not officially possible that the taxpayer and the tax administration enter into audit settlements, Japan reported it has in the period 1 January 2014-31 December 2017 not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

99. All peers that provided input indicated not being aware of a denial of access to MAP by Japan in the period 1 January 2014-31 December 2017 in cases where there was an audit settlement between the taxpayer and the tax administration.

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

100. Japan 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, which is in line with the fact that it is in Japan not officially possible that the taxpayer and the tax administration enter into audit settlements.

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

Anticipated modifications

102. Japan 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.

103. 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

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

105. Where a taxpayer has not included all required information in its MAP request, Japan reported that its competent authority will request the taxpayer to supplement the missing information and/or documentation, the basis of which is set forth in section 8 of Japan's MAP guidance. While no specific timeframe is set for requesting this information or for taxpayers to provide this information, Japan noted that it will request them to provide it as soon as possible in order to be able to timely notify the other competent authority of the receipt of the MAP request in line with the reporting timelines under the MAP Statistics Reporting Framework. Taxpayers, however, are allowed to request for additional time to comply with a request for additional information.

106. Where taxpayers ultimately do not submit the required and requested information, even after repeated requests hereto, Japan reported its competent authority may decide not to initiate MAP discussions with the other competent authority concerned. The basis hereof is laid down in section 13 of Japan’s MAP guidance. In that situation, the other competent authority will be notified of this intention and invited to provide its views on this decision. If this competent authority does not put forward any objection to this intention, Japan’s competent authority will close the case and notify the taxpayer accordingly. Furthermore, in response to questions 1.8, 2.7, 2.12, 2.14 and 2.16 of its Q&A on MAP, Japan emphasised that taxpayers should submit any requested additional information by the MAP office in a timely manner and also that the failure to provide such information in due course may create a serious impediment for resolving the case or may lead to the closure of the case.

107. To ensure that taxpayers include all required information in their MAP request, Japan reported it allows taxpayers to request for a pre-filing meeting. The relevant rules hereon are included in section 5 of its MAP guidance. The response to questions 1.8 and 2.3 of the Q&A on MAP also notes that taxpayers are recommended to have a pre-filing meeting before submitting a MAP request. The response to questions 2.4 and 2.5 further detail the pre-consultation process, including the documents the taxpayer should prepare for such a meeting,

Recent developments

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

Practical application

Period 1 January 2014-31 December 2017 (stage 1)

109. Japan reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that in the period 1 January 2014-31 December 2017 it has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

110. All peers that provided input indicated not being aware of a limitation of access to MAP by Japan in the period 1 January 2014-31 December 2017 in situations where taxpayers complied with information and documentation requirements.

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

111. Japan 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.

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

Anticipated modifications

113. Japan 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.

114. 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 Japan's tax treaties

115. Out of Japan's 71 tax treaties, 63 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.¹⁸

116. The remaining eight treaties do not contain a provision that is based on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Five of these eight treaties have a limited scope of application.¹⁹ 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 five treaties with a limited scope of application.

117. Almost all peers that provided input reported that their treaty with Japan meets the requirements under element B.7. For the eight treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant treaty partners did not provide peer input.

Recent developments

Bilateral modifications

118. Japan signed a new tax treaty with a treaty partner that concerns the replacement of an existing treaty currently in force. This newly signed treaty has not yet entered into force, but Japan has already ratified it. This treaty contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017),

which was also the case for the existing treaty currently in force. Further, Japan signed new tax treaties with six treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place.²⁰ Three of these six treaties have already entered into force. All of these treaties contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

120. 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).

121. With regard to the three 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), Japan listed two of them as a covered tax agreement under the Multilateral Instrument and for both made a notification, pursuant to Article 16(6)(d)(ii), that they do not contain a provision described in Article 16(4)(c)(ii). Both relevant treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Japan as a covered tax agreement under that instrument, but only one also made a notification on the basis of Article 16(6)(d)(ii). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify one of the three comprehensive tax treaties identified above to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

122. Of the peers that provided input during stage 2, five provided input in relation to their tax treaty with Japan. None of these peers concerns a treaty partner to the three comprehensive 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.

Anticipated modifications

123. For the two remaining 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, Japan has – as mentioned in the Introduction – not put in place a plan for bringing this

treaty in line with the requirements under element B.7. As one of these treaties concerns the 1962 treaty between United Kingdom and Japan that continues to be applied to the concerned treaty partner, such renegotiations are also not necessary for this treaty.

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

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>Eight out of 71 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 eight treaties, five concern tax treaties with a limited scope of application. With respect to the three remaining comprehensive treaties:</p> <ul style="list-style-type: none"> • One is 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) • Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, no actions have been taken nor are any concrete actions planned to be taken. 	<p>For one of the two 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), Japan should, without further delay, request via bilateral negotiations the inclusion of the required provision.</p> <p>As the remaining treaty that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument is the 1962 treaty between the United Kingdom and Japan that Japan continues to apply to Fiji, Japan should ensure that, once it enters into negotiations with this treaty partner, it includes the required provision.</p>

[B.8] Publish clear and comprehensive MAP guidance

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

125. 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.

Japan's MAP guidance

126. Japan has included basic information on its MAP process in Article 12 of the Ministerial Ordinance on the Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the application of Tax Treaties. This article stipulates at what moment taxpayers can submit a MAP request, to which governmental agency such a request should be submitted and what basic information needs to be included in a MAP request. It also specifies what information needs to be submitted when a taxpayer intends to submit a request for the initiation of an arbitration procedure where the competent authorities concerned were not able to resolve the case within MAP within the specific period given in a tax treaty containing an arbitration provision.

127. Furthermore, Japan has since 1992 issued specific guidance on MAP, which since 2001 has been laid down in the Commissioner’s Directive on the Mutual Agreement Procedure (“**MAP guidance**”). This MAP guidance was last updated in May 2019 and is available (in English) at:

www.nta.go.jp/english/00.pdf

128. This MAP guidance consists of six chapters, containing several sub-sections. The six chapters and the main sub-sections are:

Chapter	Content
1. General rules	<ul style="list-style-type: none"> • Organisation of the competent authority function for MAP in Japan and how it and the relevant other divisions within the National Tax Agency should operate when handling MAP cases
2. MAP requested in Japan	<ul style="list-style-type: none"> • Contact information of the office in charge of MAP cases in Japan • Legal basis for MAP requests in Japan • Examples for cases taxpayers can submit a MAP request which includes: transfer pricing cases, cases concerning the application of anti-abuse provisions, multilateral disputes, cases involving bona fide foreign-initiated self-adjustments and the multi-year resolution of recurring issues • Information and documentation that taxpayers should include in their MAP request • Procedures and time limits to be applied by taxpayers when submitting a MAP request, in particular the manner and form of such request and the usage of pre-filing meetings • Review of the MAP request and initial follow-up • Relationship with domestic available remedies • Initiating MAP discussions with the other competent authority concerned • Role and rights of taxpayers during MAP discussions • Process for implementation of MAP agreements, including any actions to be taken by taxpayers • Consequences of the MAP agreement on interest and penalties • Ending of MAP cases
3. MAP initiated by the competent authority of the treaty partner	<ul style="list-style-type: none"> • Procedures to be applied when a MAP request is received from a competent authority of a treaty partner • Relationship with APA procedures • Process for implementation of MAP agreements • Ending of MAP cases
4. MAP without a request by taxpayers	<ul style="list-style-type: none"> • Cases for which a MAP can be initiated without a specific request by taxpayers • Notification of taxpayers when such MAP agreement is reached insofar it affects their tax position
5. Arbitration	<ul style="list-style-type: none"> • Procedures to be followed when taxpayers request for the initiation of an arbitration procedure under a tax treaty • Procedures to be followed when the competent authority of the treaty partner proposes the initiation of an arbitration procedure • Implementation of the mutual agreement that implements the arbitration decision • Ending of an arbitration procedure
6. Administrative procedures for suspension of tax collection	<ul style="list-style-type: none"> • The possibility for taxpayers to request the suspension of tax collection when cases are dealt with in MAP, the conditions upon which a suspension of tax collection can be granted and the period of suspension

129. Japan’s MAP guidance was updated in June 2017 to introduce procedures to ensure that non-resident taxpayers also have access to MAP for those of Japan’s tax treaties that contain Article 25(1) of the OECD Model Tax Convention (OECD, 2017), as amended by

the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In connection herewith, Japan also updated its MAP guidance to add an English translation to the standard MAP application form.

130. Next to issuing specific MAP guidance, Japan also published in June 2017 Guidance for taxpayers on the mutual agreement procedure in the form of a Q&A (“**Q&A on MAP**”), which touches upon the relevant issues for taxpayers in relation to MAP and is written from the perspective of taxpayers. The document notes that it is issued to complement Japan’s MAP guidance and with a view to provide clear MAP guidance to taxpayers, as required by the Action 14 Minimum Standard. This Q&A was last updated in July 2019 and is available (in English) at:

www.nta.go.jp/english/03.pdf

131. The Q&A consists of two sections, which cover: (i) an outline of the MAP process (including a flowchart) and (ii) common issues in the proceeding of a MAP. In total they cover 28 questions in relation to MAP and five additional questions on arbitration in Japan’s tax treaties. Basically the Q&A contains the same information as is included in the MAP guidance, but is written in easy-to-read language and in addition also contains information on the steps to be taken by taxpayers once a MAP agreement is reached between Japan’s competent authority and the other competent authority concerned.

132. The above-described MAP guidance of Japan and this Q&A on MAP include 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.²¹

133. Peers did not provide input in relation to Japan’s MAP guidance.

Information and documentation to be included in a MAP request

134. Article 12 of Japan’s Ministerial Ordinance on the Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the application of tax treaties defines the legal basis upon which taxpayers can submit a MAP request in general. Article 13 of this ordinance contains the basis for MAP requests related to dual residence cases. Articles 12 and 13 also set forth the basic information and documentation taxpayers need to include in their MAP request and further specify that both Japanese resident taxpayers and non-resident taxpayers are eligible to submit a MAP request.²² The information to be included in a MAP request concerns:

- identification of the taxpayer (name, domicile/residence and tax identification number, etc.)
- facts and basis concerning why the taxpayer believes that there is or will be taxation that is not in accordance with the provisions of the underlying tax treaty
- the fiscal years to which the MAP request relates to
- the name and domicile/residence of the tax agent (if applicable)
- other information relevant to the case.

135. Furthermore, section 6 of Japan’s MAP guidance also details the information taxpayers should include in their MAP request. It is thereby stated that these taxpayers should use the standard form “Application for the Mutual Agreement Procedure”. This *inter alia* concerns:

- a. identification of the taxpayer(s) covered in the MAP request and affiliated persons
- b. the person requesting the initiation of a MAP
- c. reasons for the MAP request
- d. fiscal years for which the MAP is requested, the amount of taxable income and the amount of tax due
- e. whether a request is also made for the suspension of tax collection
- f. summary of the facts and circumstances of the case for which a MAP is being requested.

136. The standard form is supplemented with guiding instructions for taxpayers (also available in English), which provides helpful information on how the form should be completed. The Q&A on MAP also includes in the responses to questions 2.1, 2.6 and 2.7 details on what information taxpayers need to include in their MAP request, whereby a reference is made to this standard form.

137. 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.²³ This agreed guidance is shown below. Section 6 of Japan’s MAP guidance, and the response to questions 2.6 and 2.7 of its Q&A on MAP, enumerates which items must be included in a request for MAP assistance (if available). These 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.

138. Further to this specific list, section 6 of Japan’s MAP guidance and the response to question 2.7 of its Q&A on MAP also require taxpayers to specify in their MAP request whether in relation to the case for which a MAP request was filed domestic available remedies have been initiated and, if so, to provide copies of the complaint initiating these remedies. In addition, if it concerns a transfer pricing case, taxpayers should also specify in their MAP request the direct/indirect capital relationship between the parties involved in the transactions under review.

139. Peers did not provide input in relation to the information to be included in a MAP request in Japan.

Recent developments

140. Japan reported that after 1 January 2018 it updated its MAP guidance (last updated in May 2019) and its Q&A on MAP (last updated in July 2019) to reflect the following information:

- the contact details of Japan’s competent authority, including a physical address and telephone number
- a statement that access to MAP may be granted in eligible cases, subject to given conditions, for: (i) cases concerning the application of domestic or treaty based anti-abuse rules, (ii) *bona fide* foreign-initiated self-adjustments and (iii) multilateral disputes involving a Japanese corporation and foreign associated enterprises
- a statement that multi-year resolution of recurring issues may be possible through MAP subject to the given conditions
- a statement on the applicability of interest and penalties following MAP
- additional information on arbitration and the suspension of collection of taxes during the period a MAP case is pending (in the Q&A on MAP).

Anticipated modifications

141. Japan 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.²⁴

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

143. The MAP guidance of Japan is published in both Japanese and English. The guidance was last updated in May 2019. The English version can be found at:

www.nta.go.jp/english/00.pdf

144. Next to this MAP guidance, Japan also published a Q&A on MAP in both Japanese and English. This information was last updated in July 2019. The English version can be found at:

www.nta.go.jp/english/03.pdf

145. As regards the accessibility of its MAP guidance and that of the Q&A on MAP, both can easily be found on the website of Japan’s National Tax Agency under the International Taxation section or when searching for the term “MAP”.

146. Further to the above, the website of the National Tax Agency also includes in the International Taxation Section information on MAP, which concerns the following items: (i) purpose of the MAP process, (ii) legal basis for the procedure, (iii) persons eligible to submit a MAP request, (iv) time limit for submissions of MAP requests, (v) a statement that no fees for MAP are charged, (vi) information and documents to be included in a MAP request, (vii) the standard form for submission of a MAP request, (viii) office in charge of MAP within the National Tax Agency and (ix) operational time for MAP cases.

MAP profile

147. The MAP profile of Japan is published on the website of the OECD, which was last updated in August 2019.²⁵ This MAP profile is complete and contains detailed information and explanations for almost all items on how Japan deals with MAP cases. This profile includes external links which provide extra information and guidance where appropriate.

Recent developments

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

Anticipated modifications

149. Japan did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

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 Japan's domestic law not possible that taxpayers and the tax administration enter into audit settlements. In that regard, there is no need to address in Japan's MAP guidance that audit settlements do not preclude access to MAP.

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

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

153. As previously mentioned under element B.5, Japan 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 in Japan's MAP guidance the effects of such process with respect to MAP.

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

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

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

Recent developments

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These 11 treaties also include the newly negotiated treaty with Uzbekistan, for which Japan currently continues to apply the treaty with the former USSR of 1986 and that it will no longer do so upon entry into force of this new treaty.
2. These 43 treaties include the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine and the newly negotiated treaty with Spain, which will replace the currently existing treaty with this jurisdiction of 1974.
3. Japan considers that for the sole purpose of the peer review process of the Action 14 Minimum Standard it can accept the analysis made for the five treaties listed in the third bullet, but it does not consider itself to be bound by that analysis for any other purposes, particularly its position on the interpretation of the provisions included in its tax treaties.
4. These two treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic.
5. These 59 treaties include the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine and the newly negotiated treaties with Spain which will replace the currently existing treaty with this jurisdiction of 1974 and the newly negotiated treaty with Uzbekistan, for which Japan currently continues to apply the treaty with the former USSR of 1986 and that it will no longer do so upon entry into force of this new treaty.
6. One of these treaties is with a treaty partner, for which Japan currently continues to apply the 1986 treaty with the former USSR, but which will no longer do so upon entry into force of this new treaty.
7. These 39 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic and the treaty with former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine, but only in respect of Ukraine, as Japan only listed this treaty for Ukraine as a covered tax agreement under the Multilateral Instrument.
8. The 39 treaties mentioned above concern 40 treaty partners since as mentioned above, this list includes the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic.
9. With respect to the treaty with former Czechoslovakia, which Japan continues to apply to the Czech Republic and the Slovak Republic, the Slovak Republic is one of the treaty partners that made a reservation on the basis of Article 16(5)(a) of the Multilateral Instrument. The treaty is therefore included in the list of 14 treaties. The treaty with former Czechoslovakia will therefore not be modified concerning the Slovak Republic, but only as regards the Czech Republic. Since the Czech Republic has already deposited its instrument of ratification of the Multilateral Instrument, the Multilateral Instrument has entered into force between Japan and the Czech Republic, and therefore has modified this treaty 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) as regards the Czech Republic.
10. These 24 treaty partners includes the treaty with the former USSR, but only as regards Ukraine.
11. These 25 treaty partners include the 24 treaty partners mentioned above as well as the Czech Republic as the treaty with former Czechoslovakia will be modified concerning the Czech Republic. The Czech Republic is also part of the two treaty partners mentioned here.
12. With respect to the treaty with former Czechoslovakia, which Japan continues to apply to the Czech Republic and the Slovak Republic, the Slovak Republic is one of the treaty partners

- that made a reservation on the basis of Article 16(5)(a) of the Multilateral Instrument. The treaty with former Czechoslovakia will/has therefore not be modified concerning the Slovak Republic, but only as regards the Czech Republic.
- With respect to the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine, the effect of the Multilateral Instrument is only as regards Ukraine, as Japan only listed this treaty for Ukraine as a covered tax agreement under this instrument.
13. These 19 treaties include the newly negotiated treaty with Spain which will replace the currently existing treaty with this jurisdiction of 1974 and the newly negotiated treaty with Uzbekistan, for which Japan currently continues to apply the treaty with the former USSR of 1986 and that it will no longer do so upon entry into force of this new treaty.
 14. These 20 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic and these six treaties include the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine.
 15. One of these treaties is with a treaty partner, for which Japan currently continues to apply the 1986 treaty with the former USSR, but which will no longer do so upon entry into force of this new treaty.
 16. These 36 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic.
 17. With respect to the treaty with former Czechoslovakia, which Japan continues to apply to the Czech Republic and the Slovak Republic, the Czech Republic is one of the treaty partners that made a reservation on the basis of Article 17(3) of the Multilateral Instrument. The treaty is therefore included in these two treaties. The treaty with former Czechoslovakia will therefore not be modified concerning the Czech Republic. However, as regards the Slovak Republic, since it has already deposited its instrument of ratification of the Multilateral Instrument, Article 17(1) of the Multilateral Instrument 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 these treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).
 18. These 63 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic and the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine. These 63 treaties also include the newly negotiated treaty with Spain which will replace the currently existing treaty with this jurisdiction of 1974 and the newly negotiated treaty with Uzbekistan, for which Japan currently continues to apply the treaty with the former USSR of 1986 and that it will no longer do so upon entry into force of this new treaty.
 19. These five treaties concern treaties with Bahamas, Bermuda, the Cayman Islands, Guernsey and Jersey.
 20. One of these treaties is with a treaty partner, for which Japan currently continues to apply the 1986 treaty with the former USSR, but which will no longer do so upon entry into force of this new treaty.
 21. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
 22. It also specifies what information taxpayers need to include in a request for arbitration where the relevant tax treaty includes an arbitration provision and when the competent authorities concerned were not able to resolve the case in MAP within the timeframe specified in that particular tax treaty. This is not further discussed in this element.
 23. See note 21.

24. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
25. <https://www.oecd.org/tax/dispute/Japan-Dispute-Resolution-Profile.pdf>.

References

- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.

Part C

Resolution of MAP cases

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

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

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 (OECD, 2017), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Japan’s tax treaties

159. Out of Japan’s 71 tax treaties, 69 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.¹ The remaining two treaties do not contain a provision that is based on or equivalent to Article 25(2), first sentence of the OECD Model Tax Convention (OECD, 2017).

160. Almost all peers that provided input reported their treaty with Japan meets the requirements under element C.1. For the two treaties identified above that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant treaty partners did not provide peer input.

Recent developments

Bilateral modifications

161. Japan signed a new tax treaty with a treaty partner that concerns the replacement of an existing treaty currently in force. This newly signed treaty has not yet entered into force, but Japan has already ratified it. This treaty contains a provision that is equivalent

to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), which was also the case for the existing treaty currently in force. Further, Japan signed new tax treaties with six treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place.² Three of these six treaties have already entered into force. All of these treaties contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

163. 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).

164. With regard to the two 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), Japan listed one as a covered tax agreement under the Multilateral Instrument and made for it a notification, pursuant to Article 16(6)(c)(i), that it does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its treaty with Japan as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(c)(i). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify one of the two tax treaties identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

165. Of the peers that provided input during stage 2, five provided input in relation to their tax treaty with Japan. None of these peers concerns a treaty partner to the three comprehensive 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

166. For the remaining tax treaty that does 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, Japan has – as mentioned in the Introduction – not put in place a plan for bringing this treaty in line with the requirements under element C.1.

167. Regardless, Japan 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]	<p>Two out of 71 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 two treaties:</p> <ul style="list-style-type: none"> • 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) • One will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, no actions have been taken nor are any concrete actions planned to be taken. 	<p>For the one treaty that has 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), Japan should, without further delay, request via bilateral negotiations the inclusion of the required provision.</p>

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

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

168. 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

169. Statistics regarding all tax treaty related disputes concerning Japan are published on the website of the OECD as of 2007.³ Japan also annually publishes statistics on MAP and APAs on the website of the National Tax Agency.⁴ In respect of the 2018 fiscal year (running from July 2017 up to June 2018), the following items are published:

- number of MAP requests received (including a delineation between MAP requests on transfer pricing cases and otherwise and requests for bilateral APAs)
- number of MAP cases closed (including a delineation between MAP cases on transfer pricing cases and otherwise and APA cases)
- average time to close MAP cases (including a delineation between MAP cases on transfer pricing cases and otherwise and APA cases)
- year-end inventory (including a delineation between MAP cases on transfer pricing cases and otherwise and APA cases and a specification of cases for the American, Asia/Oceania and Europe region)
- specification of MAP cases with non-OECD economies (including a delineation between MAP cases on transfer pricing cases and otherwise and APA cases)
- specification of treaty partners with which MAP cases are pending
- specification of type of transfer pricing MAP cases.

170. 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. Japan provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Japan 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 Japan.⁵

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

172. Two peers provided input on the matching of MAP statistics with Japan and confirmed that they were able to match their statistics with Japan for the years 2016-18 or for any individual year, one of them specifying that they were contacted by Japan for the same.

173. Based on the information provided by Japan’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

174. Japan reported it has a system in place to monitor its MAP inventory, register new MAP cases and record the outcome of cases. At the end of each month, staff within Japan’s competent authority is obliged to report an update of the status of the cases being handled by them.

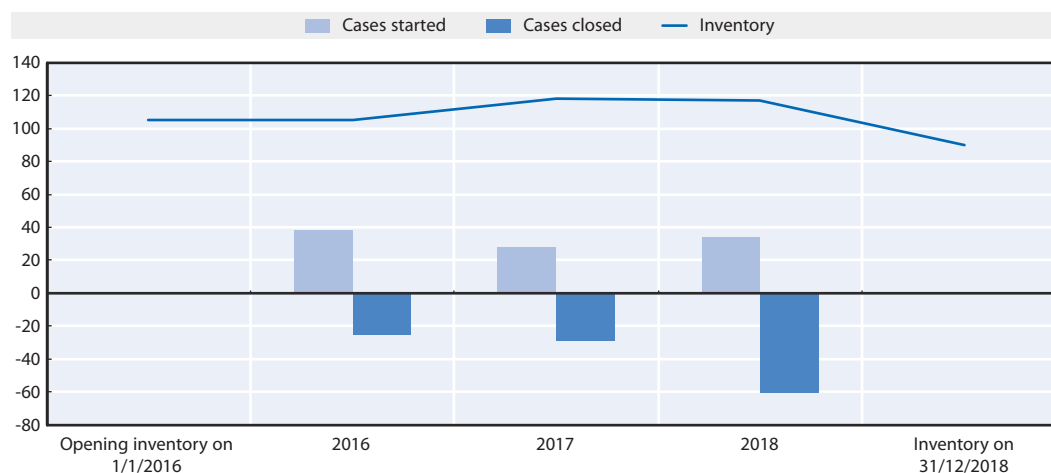
Analysis of Japan’s MAP caseload

Global overview

175. The analysis of Japan’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018.

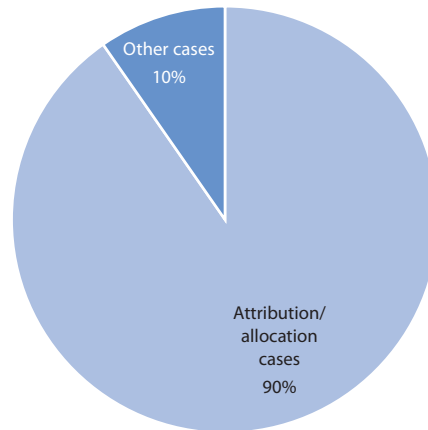
176. Figure C.1 shows the evolution of Japan’s MAP caseload over the Statistics Reporting Period.⁶

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



177. At the beginning of the Statistics Reporting Period Japan had 105 pending MAP cases, of which 96 were attribution/allocation cases and nine other MAP cases.⁷ At the end of the Statistics Reporting Period, Japan had 90 MAP cases in its inventory, of which 81 are attribution/allocation cases and nine are other MAP cases. Japan's MAP caseload has decreased by 14% during the Statistics Reporting Period. This concerns a decrease of 16% in the number of attribution/allocation cases and no change in the number of other cases. The breakdown of the end inventory can be shown as in Figure C.2.

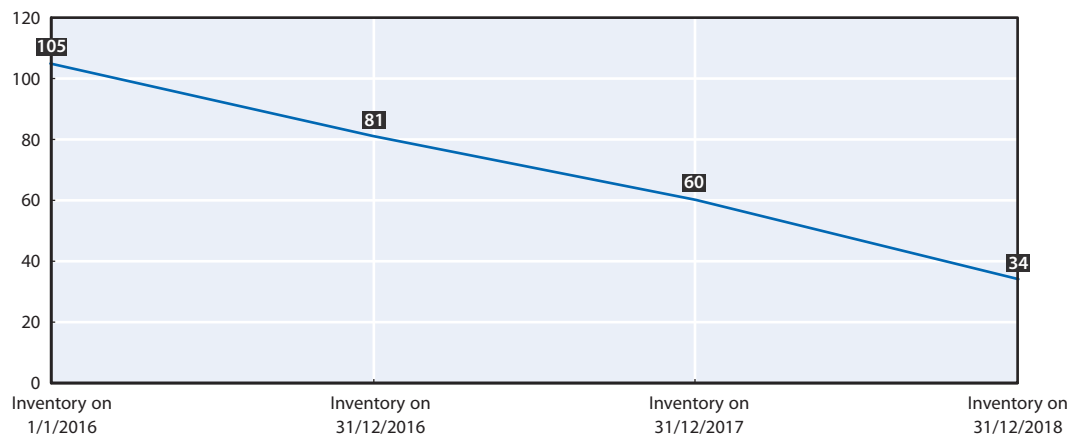
Figure C.2. End inventory on 31 December 2018 (90 cases)



Pre-2016 cases

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

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



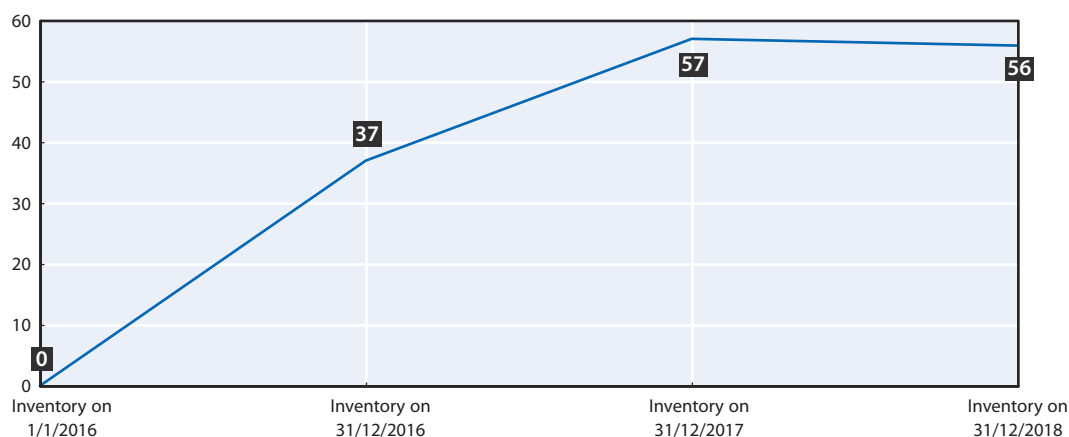
179. At the beginning of the Statistics Reporting Period, Japan's MAP inventory of pre-2016 MAP cases consisted of 105 cases, of which were 96 attribution/allocation cases and nine other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 34 cases, consisting of 31 attribution/allocation cases and three other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	-22%	-27%	-44%	-68%
Other cases	-33%	-17%	-40%	-67%

Post-2015 cases

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

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



181. In total, 100 MAP cases started during the Statistics Reporting Period, 90 of which concerned attribution/allocation cases and ten concerned other cases. At the end of this period the total number of post-2015 cases in the inventory was 56 cases, consisting of 50 attribution/allocation cases and six other cases. Conclusively, Japan closed 44 post-2015 cases during the Statistics Reporting Period, which represents 44% of the total number of post-2015 cases that started during the Statistics Reporting Period and which concern 40 attribution/allocation cases and four other cases.

182. 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.

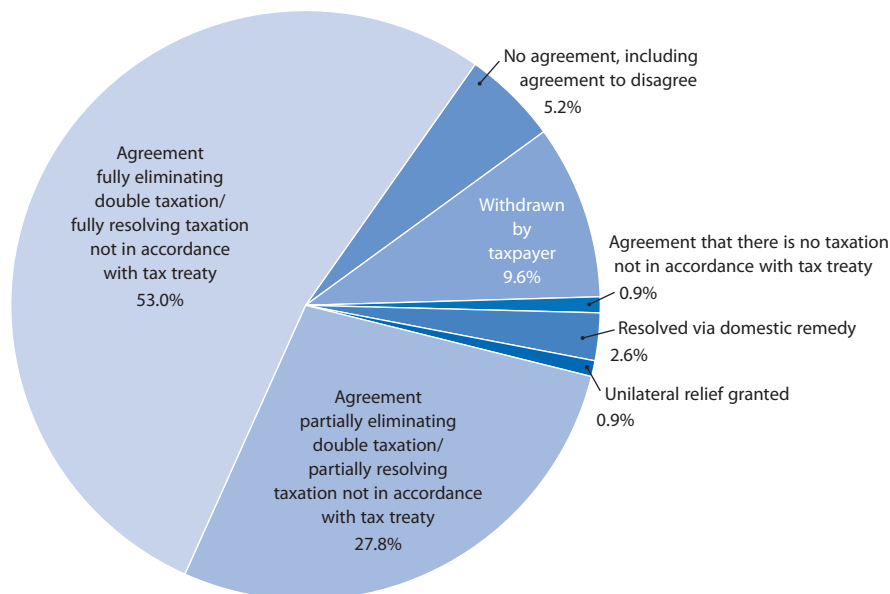
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	3%	25%	103%	44%
Other cases	0%	50%	100%	40%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

183. During the Statistics Reporting Period Japan closed 115 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed in 2016, 2017 or 2018 (115 cases)



184. Figure C.5 shows that half of the cases (61 cases) that were closed during the Statistics Reporting Period, were reported with the outcome “agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty”.

Reported outcomes for attribution/allocation cases

185. In total 105 attribution/allocation cases were closed during the Statistics Reporting Period. The reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty: 54 cases (51%)
- agreement partially eliminating double taxation/partially resolving taxation not in accordance with the tax treaty: 32 cases (30%)
- withdrawn by taxpayers: ten cases (10%).

Reported outcomes for other cases

186. In total, ten other cases were closed during the Statistics Reporting Period. In six cases the outcome resulted in an agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty, whereas in the remaining four cases, one was withdrawn by the taxpayer, one was closed with the agreement that there is no taxation not in accordance with the treaty, one was closed with no agreement reached (including an agreement to disagree) and the remaining one was closed with the result “other outcome”.

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

187. The average time needed to close MAP cases during the Statistics Reporting Period was 27.02 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	105	27.95
Other cases	10	17.27
All cases	115	27.02

Pre-2016 cases

188. For pre-2016 cases Japan reported that on average it needed 36.84 months to close 65 attribution/allocation cases and 21.60 months to resolve six other cases. This resulted in an average time needed of 35.56 months to close 71 pre-2016 cases.

189. For the purpose of computing the average time needed to resolve pre-2016 cases, Japan reported it used the following dates:

- Start date:
 - where a MAP request is filed in Japan: the date of receipt of the request; or
 - where a MAP request is filed in the other contracting state concerned, the date on which Japan’s competent authority receives a notification by that competent authority.
- End date: the date of formal closure of the case (including an agreement reached), which is the latest date on which the closing letter is sent to or is received from the other competent authority concerned.

Post-2015 cases

190. For post-2015 cases Japan reported that on average it needed 13.50 months to close 40 attribution/allocation cases and 10.77 to close four other cases. This resulted in an average time needed of 13.25 months to close 44 post-2015 cases during the Statistics Reporting Period.

Peer input

191. All peers that provided input reported a very good working relationship with Japan’s competent authority, also as regards the resolution of MAP cases. Some of these peers also complimented Japan’s competent authority in its approach to resolve MAP cases. A number

of peers, however, also noted that the limitations in Japan to correspond and exchange positions via e-mail or during conferences impacts the timely resolution of cases, as such resolution is only possible during face-to-face meetings. In a response to this input, Japan reported it is seeking a more efficient and effective approach in communicating with its treaty partners, while ensuring that its information security requirements are met. One of these peers also mentioned the rotation of personnel as a factor that may impact the timely resolution of MAP cases. Japan mentioned that, in order to ensure the timely resolution of MAP cases, it is making the best endeavours for seamlessly handing over the cases to new officials.

Recent developments

192. Japan was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 86.4% of its post-2015 MAP cases that were pending on 31 December 2017 (57 cases), within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

193. With respect to this recommendation, Japan reported that since 1 January 2018 it has performed several internal steps to improve the MAP process. This in particular concerns the following steps:

- earlier exchange of position papers
- scheduling more face-to-face meetings
- setting the date and the agenda of the next face-to-face meeting as early as possible
- monitoring the development of MAP and APA cases before and during face-to-face meetings.

194. In addition, to accelerate communication with the competent authority of treaty partners, Japan also reported that its competent authority has made changes in its MAP practice such as more frequent usage of communication channels other than face-to-face meetings, specifically:

- electronic means of communication, especially through the newly introduced online information exchange of information system through which information is exchanged in a secured and efficient manner
- telephone conferences between face-to-face meetings.

195. In this regard, Japan reported that it has recently held conference calls with some treaty partners instead of face-to-face meetings for the sake of seeking a more efficient and effective approach. Japan further reported that it has started using secure e-mail for exchanging sensitive information in the MAP process, while ensuring that the confidentiality conditions of Japan and the concerned treaty partners are met, to speed up and ease communications in the MAP process.

196. In view of these steps and the statistics discussed above, it follows that Japan was able to reduce its MAP inventory by 14%, whereby the number of attribution/allocation cases was reduced by almost 16%. However, the statistics also show that Japan has in the period 2016-18 not closed its MAP cases within the pursued average of 24 months. For these years, the number of post-2015 cases closed as compared to the cases that started in these years was 44%. Element C.3 will further consider these numbers in light of the adequacy of resources.

197. Almost all peers that provided input during stage 1 confirmed that this input holds equally relevance for the period starting on 1 January 2018, albeit that some peers and the additional peer that provided input commented on their experience with Japan concerning the resolution of MAP cases since that date. Their input is further discussed under element C.3.

Anticipated modifications

198. Japan 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.

199. 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 Japan’s competent authority

Organisation of the competent authority function

200. The competent authority function in relation to MAP is, pursuant to the Act for Establishment of the Ministry of Finance in conjunction with the Order for Organisation of the Ministry of Finance, delegated to the Commissioner of the National Tax Agency. Article 12(1) of the of the Ministerial Ordinance Implementing the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the Application of Tax Treaties also defines that it is the Commissioner of the National Tax Agency to which taxpayers should submit a MAP request. The competence to handle MAP cases has been further sub-delegated to the Deputy Commissioner for International Affairs within the National Tax Agency, such on the basis of Article 381 of the Ordinance for Organisation of the Ministry of Finance.

201. The competent authority function in Japan is performed by the Office of Mutual Agreement Procedures (“**MAP office**”), such in pursuance to Article 388 and Article 406(2) of the Ordinance for Organisation of the Ministry of Finance. The MAP office is supervised by the Deputy Commissioner for International Affairs within the National Tax Agency. Section 2(1) and 6(1) of Japan’s MAP guidance also specifies that taxpayers should submit a MAP request to this MAP office. It thereby is particularly noted that where by mistake taxpayers send a MAP request to a department other than the MAP office, such department is obliged to forward the request to the MAP office without delay and also to notify the submitting taxpayer accordingly. Japan mentioned that in such a situation its competent authority will consider the MAP request as being rightfully submitted.

202. The competence to handle MAP cases at the level of the MAP office concerns both attribution/allocation cases and other cases. Where, however, it concerns MAP cases relating to treaty interpretation, Japan reported that the MAP office is assisted by the International

Tax Policy Division of the Tax Bureau within the Ministry of Finance. Section 2(1) of Japan's MAP guidance, in this respect, also notes that the Tax Bureau of the Ministry of Finance shall deal with the general treaty interpretation.

Staff involved in handling MAP cases

203. Japan reported that currently the MAP office is organised into eleven sections that in total employs 46 persons, including the director of the MAP office. Nine of these eleven sections are mainly involved in handling MAP and APA cases. The other two sections are mainly involved in, for example, engagement and co-ordination tasks, drafting administrative guidance and participation in the work of the FTA MAP Forum.

204. During recent years Japan has increased staff involved in MAP, which can be illustrated as follows:

Year	Number of staff
2007	19
2008	23
2009	31
2010	33
2011-14	41
2015	42
2016	43
2017	44
2018	44
2019-20	46

205. Furthermore, concerning training of the staff in charge of MAP, Japan reported that employees of the MAP office are provided training on international tax issues by the National Tax College, such with a view to obtain basic knowledge and advanced expertise. The curriculum of this training includes modules on the functioning of international tax law (including tax treaties), available examination methods for international transactions, as also rules and practices on international trade. In relation hereto, Japan noted that most persons that are employed in the MAP office were selected from those officials that have finished these trainings. In addition, next to trainings at the level of the National Tax College, Japan reported that within the MAP office also trainings are provided on the processes and procedures in MAP and APA cases. Such trainings are provided when new personnel start working within the MAP office. On a regular basis, experiences in MAP discussions with other competent authorities are also shared with staff working in the MAP office.

Handling MAP cases

206. Section 2(2) of Japan's MAP guidance notes that the MAP office shall endeavour to resolve MAP cases appropriately and immediately, such with the aim to eliminate a situation of taxation that is not in accordance with the provisions of an underlying tax treaty. In this respect, Japan reported that when a MAP request is submitted, staff in charge of MAP needs to follow specific steps in handling such a request. These steps are as shown in the table below.

Analyse whether the request is eligible for MAP
Send an opening letter to the other competent authority concerned, which will include the necessary information pertaining to the case under review (<i>inter alia</i> the name and contact details of the official handling the case, details of the taxpayer that submitted the request and the years for which the request is submitted) and will be sent within four weeks as from the date of receipt of the MAP request*
Prepare and exchange a position paper on the case
Discuss the case with the other competent authority concerned, including (where necessary) scheduling of face-to-face meetings and informing taxpayers of progress made
Entering into a tentative MAP agreement with the other competent authority concerned (if possible) and inform the taxpayer hereof, including asking its confirmation on whether it can accept this agreement
Upon receiving the taxpayer's consent, enter into a formal agreement concerned, such by an exchange of letters
Notify the taxpayer of the entering into the formal agreement and subsequently inform the related division within the National Tax Agency hereof

* Where it is Japan's competent authority that receives an opening letter, it will not send out an opening letter itself. In this respect, Japan reported that it will only notify the name and contact details of the official handling the MAP case.

207. Further to the above, sections 7 and 8 of Japan's MAP guidance stipulate that where the MAP office receives a MAP request, it shall notify the related divisions of the National Tax Agency thereof, thereby providing a copy of the MAP request and asking to take measures to retain the tax returns of the taxpayer submitting the MAP request. The MAP office hereby ensures that MAP agreements can be implemented, once reached (see element D.1 for a discussion). Where a MAP request is submitted with the competent authority of the treaty partner, section 22 of Japan's MAP guidance notes that the MAP office also has to inform the relevant department within the National Tax Agency and ask for measures to retain the tax returns. In that regard, *inter alia* also the following information has to be provided: (i) name of the treaty partner, (ii) date of receipt of the notification of the MAP request, (iii) whether the request concerns taxation (of a non-resident taxpayer) in Japan and details of that taxpayer and (iv) the specific subject of the request.

208. In addition, section 15 of Japan's MAP guidance notes that the MAP office will, if the taxpayer requests so, update the taxpayer on the status of its MAP case, such to the extent that it does not interfere with the process.

Resolving MAP cases

209. Japan reported that in processing MAP cases, staff in charge of MAP is obliged to take into account the Commentary to the OECD Model Tax Convention (OECD, 2017) and the OECD Transfer Pricing Guidelines. Staff also has to abide to the procedures and rules set forth in Japan's MAP guidance.

210. In addition, Japan reported that concerning the process of resolving MAP cases the content of a position paper has to be approved by the Director of the MAP office before it is communicated to the other competent authority concerned. Where a face-to-face meeting is organised, the persons in charge of handling the MAP cases have to internally discuss the case with the Deputy Commissioner of Internal Affairs, following which a mandate will be issued on the basis of which the cases that are discussed during such a meeting can be resolved. Where the MAP agreement is within the mandate, no formal approval afterwards is necessary. Where a MAP agreement is negotiated that is not within the given mandate, Japan reported that formal approval is necessary from the Deputy Commissioner before it can be formalised with the other competent authority concerned.

211. Japan further reported that in order to be able to resolve MAP cases within an average of 24 months, its competent authority has been making efforts at various levels. This, among others, concerns: (i) the exchange of position papers earlier on in the process, (ii) increased scheduling of face-to-face meetings, (iii) setting the date and the agenda of the next face-to-face meeting as early as possible and (iv) to monitor MAP/APA cases on their progress before and during face-to-face meetings. With regard to the number of face-to-face meetings, Japan noted that there has already been a significant increase in such meetings in the period 2014-17. These numbers are as follows:

- 2014: 33 meetings with more than 12 jurisdictions (in total 123 meeting days)
- 2015: 33 meetings with more than 12 jurisdictions (in total 130 meeting days)
- 2016: 45 meetings with more than 13 jurisdictions (in total 161 meeting days)
- 2017: 39 meetings with more than 13 jurisdictions (in total 143 meeting days)
- 2018: 37 meetings with more than 21 jurisdictions (in total 147 meeting days)
- 2019: 35 meetings with more than 21 jurisdictions (in total 129 meeting days)

212. Furthermore, in order to provide for a more effective and efficient MAP process, Japan also reported it has agreed with those treaty partners where it has a substantial number of MAP and APA cases on working procedures. For those jurisdictions that have less experience with handling MAP cases, Japan noted that its competent authority provides technical assistance with a view to facilitate MAP discussions between Japan and these jurisdictions.

213. Another element in improving the resolution of MAP cases in a timely and principled manner is that Japan uses interpreters during face-to-face meetings with other competent authorities. While Japan acknowledged that this may be time-consuming, it stressed that in its view this process will reduce the risk of miscommunications and misunderstandings, especially concerning technical discussions. Japan therefore believes that in the end this may reduce the time needed to resolve MAP cases.

Monitoring mechanism

214. In terms of allocating resources to the competent authority function, Japan reported that its MAP office requests annually the necessary budget for the subsequent year. Regardless, Japan also reported that there has been sufficient budget available for performing the MAP function, in terms of travelling, hiring translators and organising face-to-face meetings with other competent authorities.

Recent developments

215. In the stage 1 report, Japan was recommended to ensure that the governance within its competent authority enables that the resources available are adequately used in order to resolve MAP cases in a timely, efficient and effective manner. Further, based on peer input received, Japan was particularly recommended to ensure the discussion and progressing of cases outside face-to-face meetings, through, for example, e-mail correspondence, faxes or conference calls, thereby taking into account that any change should comply with domestic information security requirements.

216. As discussed in element C.2, Japan reported that it has revised its handling of MAP cases by now frequently using electronic means of communications, addressing this recommendation. Further, Japan reported that its competent authority continues to monitor

its inventory of MAP cases and based on such monitoring, reported that two additional case handlers and sufficient budget for travelling and organising face-to-face meetings have been allocated to its competent authority.

217. Japan also noted that in light of the recommendation, its competent authority has reviewed the assignment of case handlers to MAP cases with specific treaty partners and as a result, more case handles have been allocated to MAP cases with Asian treaty partners in light of the fact that the number of cases with those treaty partners are trending upwards.

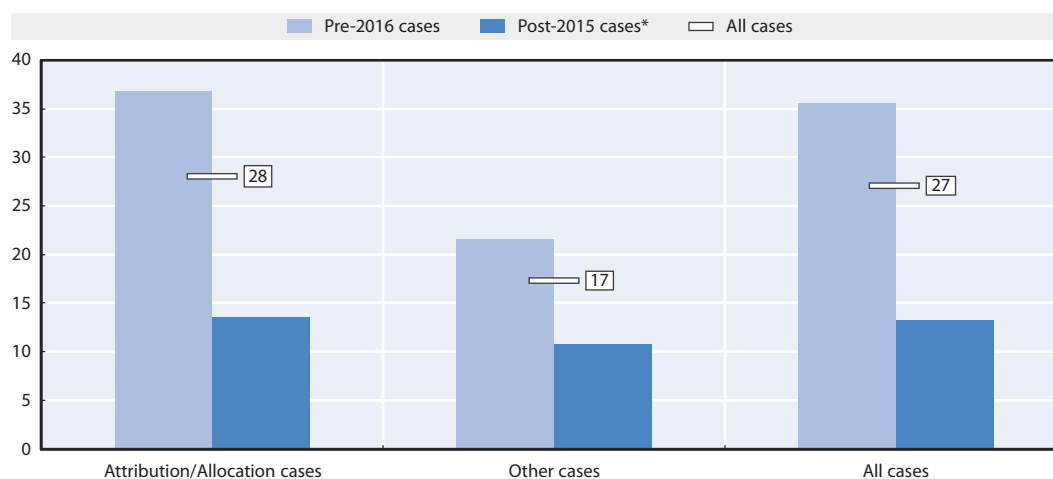
218. On addressing the peer input that discussed the frequent rotation of personnel (see paragraph 235 onwards below), Japan reported that its competent authority continues to make the best endeavours for seamlessly handing over cases to new officials, including through ways to accelerate communication with the competent authority of peers that provided input on Japan’s MAP practice through the means discussed above and in element C.2.

Practical application

MAP statistics

219. As discussed under element C.2, Japan did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average, as it needed 27.02 months to close MAP cases. This primarily concerns attribution/allocation cases where the average time needed was 27.95 months, as the average time to close other MAP cases was 17.27 months. The average time to resolve MAP cases in 2016, 2017 and 2018 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.

220. The stage 1 peer review report of Japan analysed the 2016-17 MAP statistics and showed an average of 26.34 months, which concerns an average of 27.42 months for attribution/allocation cases and 17.77 months for other cases. The median for closed cases in 2016 and 2017 (both pre-2016 and post-2015 cases) was 25.36 months. It was on that basis concluded that as the overall average was above the pursued average of 24 months, Japan was recommended to ensure that the governance within its competent authority enables that the resources available are adequately used in order to resolve MAP cases in a timely, efficient and effective manner.

221. 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	28.40
Other cases	16.67
All cases	27.62

222. The 2018 statistics of Japan show that the average completion time of MAP cases slightly increased from 26.34 (2016-17) months to 27.62(2018) months, which is still higher than the pursued 24-month average, owing to a further increase in time taken for attribution/allocation cases from 27.42(2016-17) months to 28.40(2018) months, albeit that the average completion time for other MAP cases decreased to be further below the pursued average of 24 months.

223. However – as analysed in element C.2 – the MAP inventory of Japan decreased substantially since 1 January 2016, owing to a decrease in attribution/allocation 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	96	90	105	81	-16%
Other cases	9	10	10	9	0%
Total	105	100	115	90	-14%

224. The figures in the above table show that the number of closed cases is 115% of all cases started in the period 2016-18. In addition, Japan reduced its MAP inventory by 23% in 2018 alone.

Clarifications by Japan

225. Japan also provided the median time taken for MAP cases closed in 2016, 2017 and 2018. These medians are as follows:

	Pre-2016 cases			Post-2015 cases		
	Closed in 2016	Closed in 2017	Closed in 2018	Closed in 2016	Closed in 2017	Closed in 2018
Average	26.62	33.69	45.30	3.65	9.02	14.49
Median	26.01	34.03	43.20	3.65	11.18	15.39

226. Taking these figures into account, the median for closed cases in 2016, 2017 and 2018 (both pre-2016 and post-2015 cases) is 25.02 months.

227. Given the fact that on average it took Japan 27.02 months to close MAP cases during the Statistics Reporting Period, which foremost concerned attribution/allocation cases. With regard to the average timeframe for resolving MAP cases, Japan provided a number of justified reasons why the average is above 24 months. In this respect, Japan reported that in a substantial number of cases that were closed on average above 24 months or were

pending longer than 24 months, it took more than one year to initiate discussions and to schedule face-to-face meetings. The related figures presented by Japan are as follows:

	Closed in			Closed > 2 years			Initiation > 1-year			Percentage		
	2016	2017	2018	2016	2017	2018	2016	2017	2018	2016	2017	2018
Adjustment Japan	6	10	5	3	6	3	2	1	1	67%	17%	33%
Adjustment treaty partner	19	19	56	10	9	29	6	5	10	60%	56%	34%
Total	25	29	61	13	15	32	8	6	11	62%	40%	34%

	Pending per 31/12			Pending > 2 years			Initiation > 1-year			Percentage		
	2016	2017	2018	2016	2017	2018	2016	2017	2018	2016	2017	2018
Adjustment Japan	17	11	9	9	6	5	4	4	3	45%	67%	60%
Adjustment treaty partner	101	106	81	44	52	45	31	34	35	70%	65%	78%
Total	118	117	90	53	58	50	35	38	38	66%	65%	76%

228. Further to the above, Japan noted that in total 13 of the 25 cases closed cases in 2016, 15 of the 29 cases resolved in 2017, and 32 of the 61 cases resolved in 2018 took on average longer than 24 months to close them. Primary reasons hereof were: (i) pursuing domestic remedies alongside a MAP case, (ii) a late exchange of position papers and (iii) a limited number of face-to-face meetings with certain jurisdictions due to a lack of resources at the level of their competent authorities. In addition to that, Japan noted that approximately 70% of its MAP inventory of pre-2016 cases consisted of transfer pricing cases initiated by a few treaty partners and the delay caused were due to the same reasons as above. With respect to the second reason mentioned above, Japan clarified that almost 90% of its MAP inventory as per 31 December 2018 consisted of foreign initiated transfer pricing cases. For these cases receipt of a position paper is very important for Japan's competent authority in order to be able to prepare for and to proceed with MAP discussions. Japan further stressed that with some jurisdictions it is very difficult in receiving any position papers, or position papers that are well-prepared.

229. In addition, Japan clarified that for three of the 25 cases closed in 2016, four of the 29 cases closed in 2017 and, 10 of the 61 cases closed in 2018 it on average took more than 48 months to resolve, whereby in most of these cases it took almost two years to receive a position paper from the other competent authority concerned. If these cases were not taken into account in the computation of the average, the average time to close MAP cases would be 21.80 months in 2016 (25.70 months now), 22.52 months in 2017 (26.89 months now) and 20.45 months in 2018 (27.62 months now).

Peer input: Period 1 January 2014-31 December 2017 (stage 1)

General

230. Of the 19 peers that provided input on Japan's implementation of the Action 14 Minimum Standard, 16 provided input on their contacts with Japan's competent authority in general and as regards the resolution of MAP cases. However, most of these peers also mentioned that most of the cases being dealt with concern APAs (including roll-backs) rather than MAP cases. In total ten of the 16 peers considered Japan to be an important partner in relation to MAP and APAs.

Contacts and relationship with Japan’s competent authority

231. All ten peers that consider their MAP relationship with Japan to be important, reported having a long established relationship with Japan’s competent authority in preventing and resolving cases. Most peers thereby mentioned being in frequent contact with Japan, which they consider to be easy and generally takes place via letters and e-mails. One peer in particular noted that it has a positive, productive and professional working relationship with Japan and that they jointly have developed a communication protocol, as also some other administrative procedures, with a view to maximise the effectiveness in resolving MAP cases. This peer also held the view that Japan has very formal processes to manage MAP cases, which it considered to provide certainty in managing these cases. Another peer considered its MAP relationship with Japan to be successful and that their competent authorities are regular in contact with each other via e-mail and fax. A third peer emphasised that it views its MAP relationship with Japan as being one of the most important ones and noted that the contacts with Japan’s competent authority are without any difficulty, as also that it enjoys an active and engaged relationship with this competent authority. In addition, a fourth peer noted that it considers the co-operation and communication with Japan’s competent authority as good and prospering. Lastly, one peer qualified its relationship with Japan’s competent authority as robust, productive and co-operative, reflecting their countries’ deep, longstanding commercial and cultural ties. This peer’s inventory with Japan primarily concerns APA cases. In that regard, the peer applauded Japan’s competent authority’s longstanding commitment to APAs as being the most direct and viable means for preventing disputes and providing taxpayers with certainty. This peer further noted that it recognises and appreciates the fact that Japan shares the peer’s commitment to the goal of continuous improvement that underlies the Action 14 Minimum Standard and the strategic plan of the FTA MAP Forum

232. Also the six peers for which the MAP relationship with Japan is of less importance all noted to have a very good or strong working relationship with Japan’s competent authority. Some of them appreciated the easiness of contacts. One peer thereby noted that the ease of contact with Japan’s competent authority is high. Another peer noted that contacts with this authority normally take place via e-mail, whereby the references and contact details of the official handling the specific case are usually made available in the relevant correspondence. This peer, however, also considered that the indication of an e-mail address/fax number in Japan’s MAP profile would speed up and ease communications. While the e-mail address is not reflected in this MAP profile, a fax number is available.

Scheduling face-to-face meetings

233. Both the peers for which the MAP relationship with Japan is of major or of less importance mentioned that they have regular face-to-face meetings with Japan’s competent authority to discuss and resolve MAP/APA cases, mostly once or twice a year. Some of those peers with a high inventory with Japan reported that they meet with Japan’s competent authority two or three times a year, one of them reporting meeting at least three times a year.

234. One of the peers for which the MAP relationship with Japan is of less relevance further noted that face-to-face meetings usually take three days per meeting. After each of such meetings, a subsequent meeting is held at managerial level to discuss the results of the meeting and to agree on the steps that need to be taken in advance of the next face-to-face meeting. Another peer reported a similar process. Furthermore, one peer also mentioned that in 2017 it held a trilateral competent authority meeting to which Japan was also an

attendant, where one multilateral MAP case was discussed and resolved. Afterwards this peer held a bilateral meeting with Japan's competent authority to discuss MAP and APA cases.

Handling and resolving MAP cases – major MAP partners

235. A number of peers for which the MAP relationship with Japan is important provided specific input on handling and resolving MAP cases by Japan's competent authority. In this respect, one peer noted that the distance and language restraints between the two jurisdictions imply that discussions on MAP/APA cases tend to be restricted to face-to-face meetings, which are scheduled each six months. This peer, however, also noted that nevertheless some progress is possible via an exchange of faxes in the period between meetings, for which there are named contact points in Japan's competent authority that reply promptly to any request from the peer's side.

236. In addition, this peer reported that while sometimes there are strong differences of opinion in certain cases, particularly concerning the financial industry, all pending cases were resolved through an open and regular dialogue and following a collaborative approach, as also the shared objective to eliminate double taxation. Where it concerns cases not relating to the financial industry, this peer noted that its experience with Japan's competent authority in resolving MAP cases is much more positive and that all pending MAP/APA cases were resolved within a 24-month period. On this specific point, Japan reacted by stating that certain cases, including relating to the financial industry, are challenging for reasons of complexity and expertise requirements. The competent authorities of Japan and its treaty partners are required to use their best endeavours to overcome differences in views deriving from the nature of the cases. Japan, however, believes that both competent authorities will find a common ground and an acceptable resolution for those cases, as was the case for other challenging cases that have been resolved through mutual co-operation and collaboration.

237. Another peer reported in its experience Japan's competent authority is very proactive in their efforts to prevent treaty disputes and further that it is well-resourced and has processes/systems in place to manage treaty disputes. This peer also mentioned that Japan also has a very formal system in place, which provides certainty of administrative details on how it deals with MAP cases. While this peer noted positive experiences in its MAP relationship with Japan, it also stressed that the rotation policy for staff within Japan's National Tax Agency – and thus also within the MAP office – can be disruptive for resolving MAP cases. It added that this can be overcome by a good transfer of cases to new staff. The peer further mentioned that negotiations of MAP cases by Japan's competent authority are limited to face-to-face meetings, whereby e-mails and faxes only serve as means to exchange position papers and to facilitate an exchange of information. It also emphasised that telephone conferencing is generally not accepted for MAP negotiations. Concerning the input on the rotation policy for staff, Japan noted that in order to ensure the timely resolution of MAP cases, Japan is making the best endeavours for seamlessly handing over the cases to new officials.

238. A third peer reported that it generally has very positive experiences with Japan's competent authority in discussing and negotiating MAP cases during the period 1 January 2014-31 December 2017. This peer further noted that Japan takes taxpayers' unhindered access to MAP with the utmost seriousness. However, in that regard this peer also reported that it experienced several instances where Japan's competent authority held the view that an adjustment involving significant transfer pricing consequences (and therefore

resulting in double taxation) was of a domestic nature and on that basis not appropriate for being resolved in MAP. Although Japan's competent authority has constantly expressed a willingness to accept such cases into MAP, this peer mentioned that it was only for the narrow purpose of providing the peer's competent authority the opportunity to provide for relief of double taxation. Allowing taxpayers full access to MAP in such cases (e.g. the willingness to discuss the case into full) for the purposes of substantive analysis, negotiation and resolution thereof is in this peer's view the best and most appropriate way of making use of the MAP process. In a response to the input given by this peer, Japan mentioned it would like to stress that its competent authority has not limited access to MAP irrespective of its view on whether a MAP request has been made in reference to taxation of a domestic nature in light of whether or not it is not in accordance with the provisions of the applicable tax treaty. If a MAP request is filed, Japan reported that its competent authority will always consult the treaty partner's competent authority to know its views and to seek a resolution of the case through mutual co-operation and collaboration in light of the spirit and purpose of the underlying treaty.

239. Other peers generally voiced positive input concerning the resolution of MAP cases by Japan's competent authority, or reported not being aware of any impediments in (timely) resolving of MAP cases. One peer noted that they are keeping increased input (in terms of working hours, negotiations and resources) to improve the resolution of their mutual MAP cases. Another peer noted that Japan's competent authority endeavours to resolve MAP cases in a reasonable timeframe. A third peer observed that MAP cases with Japan are resolved at a good pace and that face-to-face meetings have been successful in resolving their pending MAP cases.

Handling and resolving MAP cases – other MAP partners

240. The six peers for which the MAP relationship with Japan is of less importance, all applauded Japan's co-operation in handling and resolving MAP cases. One peer noted that it was in contact with Japan's competent authority in between meetings and that it is very responsive in its communications and extremely co-operative to deal with. A second peer stressed that although most cases it has with Japan are complex with substantial amounts at stake, for all cases a solution can be found during face-to-face meetings, albeit that for some cases two meetings are necessary. This peer further complimented Japan for having well-trained personnel to handle MAP cases, as also that they share and appreciate Japan's pragmatic orientation to resolve cases within the pursued average of 24 months. Another peer noted that while it had no MAP cases during the period 1 January 2014-31 December 2017, it agreed with Japan on two bilateral APAs during this period. In this peer's view, Japan's competent authority is very competent, very efficient and solution-oriented. A similar comment was made by a different peer, who currently has no MAP cases pending with Japan, but noted that as per 2014 it held several face-to-face meetings with Japan's competent authority to resolve their mutual cases.

241. Furthermore, one peer specifically noted that Japan's competent authority is very meticulous and detailed oriented. Even when there is a change in staff dealing with MAP, its competent authority continues to work seamless and effective. This peer, however, also voiced some criticism in that as a general observation, negotiations with Japan require comprehensive discussions without a demonstrated progress or a clear path to a negotiated settlement.

242. A second peer noted that there have not been relevant impediments in resolving MAP cases with Japan, although it referred to one case where a notification letter was sent

by Japan's competent authority, but not an application of the MAP request submitted in Japan.

Suggestions for improvement

243. Four peers for which the MAP relationship with Japan is important made suggestions for improvement, three of which made such suggestions in general and one made detailed suggestions. The first of the three peers suggested that for transfer pricing cases it would be valuable if Japan's competent authority would also have economists available. Furthermore, this peer suggested that telephone or videoconferencing (with interpreters) would be welcomed for discussing and resolving MAP cases next to face-to-face meetings. A second peer also suggested that next to face-to-face meetings, Japan's competent authority could resort to a regular exchange of views via e-mail or letters to improve the (timely) resolution process of MAP cases. The third peer made a similar suggestion and mentioned that in its contacts with Japan's competent authority faxes are used for exchanging positions, for which it considered that it would be better to use additional and more efficient communication methods, such as e-mail.

244. The fourth peer made as a general suggestion for improvement to create consistency of communication on both procedural and substantive matters at each level of their tax administrations/competent authority: case handlers, managers, senior management or executives. This peer stressed that in its experience such consistency at all levels will facilitate resolution of individual MAP/APA cases and also will lead to a better management of the overall inventory of pending cases. To this the peer added that robust channels of communication between case handlers and managers will in its view ensure that cases are initiated, discussed and resolved in an efficient manner, as also that frequent and fulsome discussions between senior management/executives can contribute to ensure that principles and practical resolution of cases can be reached when they need to be elevated to a higher level in the organisation. This peer further mentioned it appreciates that Japan's competent authority is open to discuss substantive issues that are common in many cases, although some of these can be technical. In the peer's view, such discussions will foster a sharing of knowledge and experience and will also lead to a more consistent and efficient resolution of MAP and APA cases. To that effect, the peer also expressed its appreciation of the willingness of Japan's competent authority to discuss using so-called reference sets of comparable companies in those cases where it concerns presenting common fact patterns and transfer pricing issues. The peer estimated that the majority of cases that it discusses with Japan's competent authority concerns such common fact patterns and transfer pricing issues. In addition, the peer believes such reference sets would provide a useful tool to promote an efficient and consistent resolution of MAP and APA cases with Japan. To that effect, the peer expressed its appreciation to discuss these and other ideas to improvement of the current practices with Japan to resolve cases.

245. For the peers for which the MAP relationship with Japan is of less importance, three peers made suggestions for consideration or for further improving the resolution of MAP cases. One peer considers regular face-to-face meetings to discuss MAP and bilateral APA cases to be an efficient manner to make progress, which could work even better if such meetings are combined with follow-up actions, such as (video) conference calls. This peer therefore suggested to make more use of such follow-up actions or to make use of alternative venues for meetings, such as at the OECD in advance or after meetings. The second peer suggested that for future negotiations, detailed agendas can be exchanged in advance in order to enable negotiations to demonstrate progress. The third peer noted that electronic communication with Japan's competent authority can be somewhat challenging, as Japan only

accepts confidential information to be communicated by fax. To this end, the peer suggested that Japan could be open to exchange encrypted e-mails about their mutual pending cases.

246. In a response to the input provided on dealing with cases outside or in between face-to-face meetings, Japan mentioned it is seeking a more efficient and effective approach in communicating with its treaty partners while ensuring its information security requirements are met.

247. In addition, Japan made a general response that it is open to any discussions to improve the effectiveness and efficiency of the measures to resolve and prevent treaty-related disputes in a consistent and principled manner with a view to increasing certainty for taxpayers.

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

248. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Japan fully reflects their experience with Japan since 1 January 2018 and/or there are no additions to the previous input given. Five of these peers and the two peers who provided input only during stage 2 provided additional input in this regard, two of them also specifying the number of pending and resolved MAP cases with Japan.

249. Of these seven peers, six voiced positive inputs. One of them stated that the peer has a very good working relationship with Japan's competent authority and that as a result, there are no pending MAP cases and only APAs between the two jurisdictions. Another peer noted that it was able to resolve the one MAP case that it had with Japan and noted that preparing an agenda in advance of those negotiations assisted the resolution thereof. Based on this experience, this peer noted that the adequacy of resources provided by Japan with respect to the resolution of MAP cases is sufficient and that Japan transfers cases seamlessly when there is a rotation of staff in within the competent authority. A third peer mentioned the number of cases resolved with Japan in 2018 and noted that it is not aware of any impediment in resolving MAP cases with Japan's competent authority, nor does it see any concerns with Japan's adequacy of resources since both parties were able to close all MAP cases within the 24-month period.

250. Further to the above, a fourth peer reported that its experiences of dealing with Japan's competent authority since 1 January 2018 have been extremely positive. This peer noted that their competent authorities have worked collaboratively on complex issues in relation to transfer pricing in the financial services sector and stated that that as a result of Japan's competent authority's constructive approach to negotiations, both competent authorities have agreed principles that will lead to greater certainty for taxpayers in the financial services sector. This peer commended Japan's competent authority's efforts in attending extra face-to-face meetings, sometimes on a trilateral basis with a third jurisdiction, and observed that this showed their mutual willingness to improve the MAP process for taxpayers. This peer concluded by hoping that its strong working relationship with Japan's competent authority continues.

251. The fourth peer reported that it appreciated Japan's endeavours to conduct face-to-face meetings in a cordial atmosphere and to address transfer pricing disputes amicably. However, this peer also noted that it usually received position papers from Japan's competent authority only immediately prior to such face-to-face meetings that in its view did not give its competent authority time to analyse Japan's competent authority's position before the meeting. This peer stated that it would appreciate if Japan's competent authority could provide its position papers in a timely manner, which in its view would help both jurisdictions expedite the conclusion of MAP.

252. In response to this input, Japan clarified that its competent authority usually shares position papers containing all the necessary information on a timely basis. Further, Japan noted that since almost all MAP cases between Japan and this peer during 2018 are related to actions by this peer, Japan stated that based on section 3.4.1 of the OECD Manual on Effective Mutual Agreement Procedures (“MEMAP”), the peer should have been the first one to share a position paper. Japan noted that in these cases, the peer shared its position papers related to these actions immediately prior to face to face meeting or only on the first day of the meeting. This was also reflected in the peer’s stage 1 and stage 2 peer review reports, for which a specific recommendation was made to address this. Therefore, Japan clarified that it was not able to get necessary information, such as a description of the exact nature of the issue or adjustment, or an explanation of the appropriateness of the transfer pricing methodology employed for the adjustment and thus, was not able to provide our position papers before the first meeting. Japan further stated that it fully supports the MEMAP as a reliable guidance and would greatly appreciate it if the peer could follow the provisions of MEMAP in order to achieve timely resolution and to facilitate meaningful discussions for all their mutual pending cases. Finally, Japan noted that since this peer is one of the most important MAP partners for Japan, it understands the peer’s constructive efforts for improving such situations recently and hopes that it would continue its efforts at ensuring the efficient and effective resolution of MAP cases.

253. The sixth peer concerns a peer that only provided input during stage 2. It noted that it has recently requested Japan to participate in the resolution of two attribution/allocation MAP cases involving third jurisdictions, where Japan has answered positively in one of the cases. Japan clarified in respect of this input that there are two attribution/allocation cases between Japan and this peer and that it recognises that these cases are related to the transactions with third jurisdictions. However, Japan noted that it does not have any objection to pursue resolutions with the MAP among Japan, the peer and the third countries in both cases, if necessary. Japan further stated that it would greatly appreciate this peer’s co-operation for effective and timely resolution of disputes through the MAP process.

254. The seventh peer also concerns a peer that only provided input during stage 2. It noted that it was highly appreciate of Japan’s shift from fax and written communications to email communications and that this is one of the essential aspects that could help both jurisdictions promptly resolve MAP cases. The peer also noted that it would appreciate the possibility of virtual meetings with Japan in the future. Further, this peer reported that although Japan’s use of interpreters during meetings reduces the risk of miscommunication, the involvement of interpreters could cause further delays in some cases.

Anticipated modifications

255. Japan did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	MAP cases were closed in 27.02 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This particularly concerns attribution/allocation cases, as the average time needed for such cases is 27.95 months while for other cases the average is below the pursued 24-month average (17.27 months). Although there was a substantial reduction in Japan's caseload in 2017-18, the average time taken to resolve cases in 2018 increased as compared to 2016-17, which was higher than the pursued 24-month average as well. Therefore, there is a risk that post-2015 cases are not resolved within the average of 24 months.	As additional personnel has been assigned to Japan's competent authority function in recent years and successful organisational steps have been taken to be able to increase the number of cases closed and reduce the average completion time and as Japan has provided comprehensive clarifications explaining the additional time taken to resolve some cases, Japan should continue to closely monitor whether the addition of new staff and the organisational steps taken will further contribute to the resolution of MAP cases in a timely, efficient and effective manner.

[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.

256. 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

257. Japan reported that where a MAP request concerns taxation levied by Japan, the staff handling the case has to request the department within the National Tax Agency that holds jurisdiction over this taxpayer for documents that explain the details of such taxation and to gather those facts that are relevant for the case under review. This enables the MAP office to prepare a position on the case. In relation to the resolution of MAP cases, Japan reported that the MAP office is separated from those departments within the National Tax Agency that are involved in the examination and assessment of taxpayers. These departments are only involved in MAP cases as a source of information, but are not involved in handling and resolving them. This is also reflected in section 2(3) of Japan's MAP guidance, which notes that the MAP office may exchange opinions with the related divisions within the National Tax Agency. Where it concerns taxes imposed by local governments, section 2(3) notes that the MAP office should consult with the Ministry of Internal Affairs and Communicate in advance.

258. Japan reported that when its competent authority reaches an agreement with the other competent authority concerned on how to resolve a MAP case, there is no approval requirement from other departments of the National Tax Agency. In this respect, Japan reported that the Deputy Commissioner for International Affairs is delegated full authority to enter into MAP agreements.

259. With regard to the above, Japan reported that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment at issue. Furthermore, since only the MAP office is competent to handle and resolve MAP cases, and as this office is placed within the National Tax Agency and not within the Ministry of Finance, Japan reported that the process for negotiating MAP agreements is also not influenced by policy considerations.

Recent developments

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

Practical application

Period 1 January 2014-31 December 2017 (Stage 1)

261. Peers generally reported no impediments in Japan 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 2014-31 December 2017. One peer specifically mentioned that it is not being aware that staff in charge of the MAP in Japan is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

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

262. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Japan fully reflects their experience with Japan since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2. One peer specifically noted that it has experienced no issues with respect to the authority of Japan's competent authority to resolve cases.

Anticipated modifications

263. Japan 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.

264. 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 Japan

265. Japan reported that on an annual basis the National Tax Agency sets objectives for the coming fiscal year. These objectives are included in a Result Evaluation Implementation Plan, which is published each June. In October of each year the National Tax Agency publishes a self-evaluation report titled “Result Evaluation Report”, which includes an analysis on whether the objectives have been attained.⁸ The National Tax Agency’s evaluation plan includes a specific objective for the MAP office: to resolve MAP cases in a principled and timely manner. To this end and with a view to ensure a precise evaluation, Japan reported that quantitative indicators are being used as reference. These, for example, concern MAP cases started, closed and their average resolving time.

266. Japan further reported that each government official sets its own qualitative objectives at the beginning of an evaluation period, which concerns two periods per year: April-September and October-March. In setting these objectives, officials have to ensure that they are consistent with the organisational goals of the National Tax Agency, their own position and the tasks assigned to them. In this respect, Japan pointed out that officials have to avoid setting quantitative objectives, as it may become a norm for officials and may also affect taxpayers’ rights and obligations. When setting these objectives, officials have to consult with their evaluators, who in turn will provide instructions and advice to ensure that the objectives set are appropriate for each official.

267. In Japan, Government officials are twice per year evaluated on their performance and ability under the National Public Services Act, as also on the basis of the specific objectives set for each official. These officials are furthermore evaluated on the basis of their actions taken during the evaluation period and on the basis of qualitative criteria. These *inter alia* concern: ethics (e.g. responsibilities of the official, fairness and equitability in administration), issue identification and resolution, technical knowledge, performance (e.g. accuracy, planning and efficiency), co-operation and co-ordination (e.g. interaction with other departments and other officials).

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

- 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).

269. In relation to these examples, Japan reported that the consistency performance indicator aligns with the ethics evaluation criteria discussed above (e.g. fairness and equitability in administration). While the other examples are not used as such evaluation criteria, Japan explained that they are indirectly taken into account in evaluating the performance of staff in charge of MAP.

270. Furthermore, Japan emphasised that none of the objectives for government officials relate to the amounts of sustained audit adjustments or the amount of tax revenue that is maintained. The same applies to the objectives set by the National Tax Agency for the MAP office.

Recent developments

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

Practical application

Period 1 January 2014-31 December 2017 (Stage 1)

272. All peers that provided input indicated not being aware that Japan uses performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue in the period 1 January 2014-31 December 2017. One peer noted that it is not aware of the use of performance indicators by Japan that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

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

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

Anticipated modifications

274. Japan 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.

275. 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

276. Japan reported that it has no domestic law limitations for including MAP arbitration in its tax treaties and that its policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties. Japan's position on MAP arbitration is included in its MAP profile published on the OECD website.

Recent developments

277. Japan signed the Multilateral Instrument and has deposited its instrument of ratification on 26 September 2018. The Multilateral Instrument has entered into force for Japan on 1 January 2019. With the depositing of the instrument of ratification, Japan 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.

278. Japan signed a new tax treaty with a treaty partner that concerns the replacement of an existing treaty currently in force. This newly signed treaty has not yet entered into force, but Japan has already ratified it. This treaty contains an arbitration provision that is equivalent to Article 25(5) of the OECD Model Tax Convention (OECD, 2017), which was not the case for the existing treaty currently in force. Further, Japan signed new tax treaties with six treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place.⁹ One of these treaties contain an arbitration provision that is equivalent to Article 25(5) of the OECD Model Tax Convention (OECD, 2017). These treaties are included in the specification below.

279. Further, Questions 3-1 to 3-5 of Japan's Q&A on MAP have been added to provide guidance regarding MAP arbitration in easy-to-read language. These questions confirm that no fee is applicable for arbitration and provide details regarding the outline of arbitration in a tax treaty, who is eligible to make a request for arbitration, the mode of application for arbitration and when arbitration is not applicable.

Practical application

280. To date, Japan has incorporated an arbitration clause in 18 of its 71 treaties as a final stage to the MAP. These clauses can be specified as follows:

- equivalent of Article 25(5) of the OECD Model Tax Convention (OECD, 2017): 17 treaties
- mandatory and binding arbitration: one treaty.

281. These arbitration provisions are either included in the treaty itself, or in a protocol provision. In seven of these treaties the arbitration provision is supplemented – via protocol provisions, administrative agreements or memoranda of understanding – with rules for conducting the arbitration procedure and defining the cases eligible for arbitration. These are based on the Sample Mutual Agreement on Arbitration as included either in the Annex to the 2017 version of the Commentary to Article 25 of the OECD Model Tax Convention (OECD, 2017) or in the Annex to the 2014 version of the Commentary to Article 25 of the OECD Model Tax Convention (OECD, 2015a).

282. Further to the above, Japan included a most-favoured nation clause in two tax treaties, which stipulates that where the treaty partner agrees to include an arbitration provision in one of its tax treaties it will subsequently start negotiations with Japan to also include such a provision in its treaty with the latter.

283. Concerning the practical application of arbitration under Japan's tax treaties, Article 12(3) of Japan's Ministerial Ordinance on the Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the application of tax treaties includes information on when taxpayers can submit a request for the initiation of an arbitration procedure under a tax treaty and what information needs to be included in such a request. In addition, sections 34 to 42 of Japan's MAP guidance include detailed information on *inter alia*: (a) what procedures to be followed when a taxpayer has

requested for the initiation of an arbitration procedure under Japan’s tax treaties, or when the treaty partner has initiated such a procedure, (b) the information taxpayers should include in their request for the initiation of an arbitration procedure and (c) the process for implementing the mutual agreement that implements the arbitration decision. As discussed above, Questions 3-1 to 3-5 of Japan’s Q&A on MAP also provides guidance regarding MAP arbitration.

284. In addition, with respect to the effect of part VI of the Multilateral Instrument on Japan’s tax treaties, there are next to Japan in total 29 signatories to this instrument that also opted for part VI. Concerning these 29 signatories, Japan listed 15 as a covered tax agreement under the Multilateral Instrument and all of these treaty partners also listed their treaty with Japan under that instrument.

285. With respect to these 15 treaty partners, Japan already included an arbitration provision in six of the relevant tax treaties. For these six treaties, Japan opted, pursuant to Article 26(4) of the Multilateral Instrument, not to apply part VI. For the remaining nine treaties, seven treaty partners have already deposited their instrument of ratification. In this respect, part VI will apply to these seven treaties and introduce the arbitration provision of the Multilateral Instrument in these treaties. For the remaining two treaties for which the treaty partner has not yet ratified the Multilateral Instrument, Japan reported it expects that part VI will introduce a mandatory and binding arbitration procedure in both treaties.

286. Peers did not provide input in relation to element C.6.

Anticipated modifications

287. Japan did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 69 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic and the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine. These 69 treaties also include the newly negotiated treaty with Spain which will replace the currently existing treaty with this jurisdiction of 1974 and the newly negotiated treaty with Uzbekistan, for which Japan currently continues to apply the treaty with the former USSR of 1986 and that it will no longer do so upon entry into force of this new treaty.
2. One of these treaties is with a treaty partner, for which Japan currently continues to apply the 1986 treaty with the former USSR, but which will no longer do so upon entry into force of this new treaty.
3. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2018.

4. Available in English at: www.nta.go.jp/english/publication/map_report/index.htm. These statistics are up to and include fiscal year 2018 (running from July 2017 to June 2018).
5. For post-2015 cases, if the number of MAP cases in Japan’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, Japan reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
6. Japan’s 2016 and 2018 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016 and 2018. See for a further explanation Annex B for the corrections for 2016 and C for the corrections for 2018.
7. For pre-2016 and post-2015 Japan 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”.
8. The most recent report is in Japanese available at: www.mof.go.jp/about_mof/policy_evaluation/nta/index.html.
9. One of these treaties is with a treaty partner, for which Japan currently continues to apply the 1986 treaty with the former USSR, but which will no longer do so upon entry into force of this new 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.

288. 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

289. Article 70 of the Act on General Rules for National Taxes contains Japan's rules for amending a taxpayer's taxable income. The timeframe for making such adjustments, ranges, depending on the specific situation under review, from five to ten years as from the date of the filing of the tax return. In this respect, Japan reported that its domestic legislation includes different rules for upward and downward adjustments to a taxpayer's taxable income. This concerns:

- *Upward adjustments*: the general rule of Article 70 applies concerning the time limits to implement a MAP agreement
- *Downward adjustments*: item 2 of Article 71(1) of the Act on General Rules for National Taxes provides for an exception to Article 70 and stipulates that the National Tax Agency can amend a taxpayer's taxable income in certain prescribed situations and for reasons specified in a cabinet order. Such amendment can then be made within three years as from the date when these situations/reasons occurred. As will be discussed below, one of the reasons specified in the Cabinet Order is an agreement under the MAP article of a tax treaty. As a consequence, there is *de facto* no time limit for implementing MAP agreements entailing a downward adjustment to be made by Japan. This rule applies thus also regardless of whether a treaty includes the equivalent of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017).

290. Further to the above, Japan explained that it operates a self-assessment system for filing of tax returns and determining the amount of tax to be paid. Concerning the implementation of MAP agreements, a distinction is therefore made between the situation where the taxation subject of MAP discussions is levied by Japan or its treaty partner. This is as follows:

- Where the taxation at issue is initiated by Japan's treaty partner, the tax return filed under the self-assessment system can only be amended on the basis of a MAP agreement and following a taxpayer's request of the adjustment of this return. Article 23 of the Act on General Rules for National Taxes allows taxpayers to

make a request hereto after the expiry of the due date for filing of a tax return in certain prescribed circumstances. One of these circumstances is a specified cabinet order. In this respect, item 4 of Article 6 of the Cabinet Order for Enforcement of the Act on General Rules for National Taxes defines a MAP agreement as such a circumstance. In such a situation a taxpayer has to file a request for an amendment of its tax return within two months as from the date of that agreement. Upon receipt of this request, the competent department within the National Tax Agency will, pursuant to Article 23 of the Act on General Rules for National Taxes – or in case of transfer pricing, Article 7 of the Implementing Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the Application of Tax Treaties – make an adjustment to the filed tax return so as to reflect the MAP agreement. Section 17 of Japan’s MAP guidance stipulates that the MAP office will inform the taxpayer and the relevant department within the National Tax Agency when it has reached a tentative MAP agreement. The MAP office will thereby ask the taxpayer for his written consent to the proposed agreement. To this end, a specific form titled “Notification that a mutual agreement has been reached” should be used. Upon receipt of this consent, Japan’s competent authority will formalise the tentative agreement with the other competent authority concerned and exchange closing letters. Afterwards, Japan’s competent authority will notify the taxpayer and the relevant department within the National Tax Agency hereof, the latter being instructed to implement the agreement upon receipt of the taxpayer’s request for an amended of the filed tax return (see above).

- Where the taxation at issue is initiated by Japan, the National Tax Agency can amend a taxpayer’s taxable income under item 2 of Article 71(1) of the Act on General Rules for National Taxes as explained in paragraph 289 above. Section 17 of Japan’s MAP guidance stipulates that the MAP agreement entered into will, pursuant to Article 26 of the Act on General Rules for National Taxes, be notified to the taxpayer and to the relevant departments within the National Tax Agency that holds responsibility over the taxpayer, the latter being instructed to implement the agreement by an ex-officio adjustment.¹

291. Concerning the process and steps to be taken for implementation of MAP agreements when the MAP request was submitted in Japan, Japan’s MAP guidance includes the following information in addition to the information described above:

- a. *Section 28*: where the MAP request was submitted with the treaty partner, the MAP agreement will be notified to the relevant department of the National Tax Agency, which will subsequently implement the agreement.
- b. *Section 41*: the rules for implementing MAP agreements as laid down in sections 16, 17 and 28 also apply where a MAP agreement has been reached as a follow-up to the outcome of the arbitration procedure.

292. The responses to questions 2-17 and 2-18 of Japan’s Q&A on MAP also includes information on the process and steps to be taken for implementation of MAP agreements, which is similar to the information included in sections 16 and 17 of Japan’s MAP guidance.

Recent developments

293. With respect to the process for implementing MAP agreements when the underlying taxation was made by the other jurisdiction concerned, it was in Japan’s stage 1 peer review report identified that the time limit for taxpayers to request an amendment of its filed tax return, being two months as from the date of the MAP agreement, bears the risk

that not all MAP agreements will be implemented. In that regard Japan was recommended to closely monitor whether this period in practice acts as an obstruction to implement said agreements and, if so, that Japan should consider amending this process. In this respect, and as will be discussed below, since neither Japan nor peers reported any impediments as regards the implementation of MAP agreements due to the time period for requesting an amendment of the tax return, the recommendation made in stage 1 is considered addressed.

294. Furthermore, it was suggested in the stage 1 peer review report that Japan could introduce a tracking system to ensure that all MAP agreements continue to be implemented if the conditions for such implementation are fulfilled. In this regard, Japan reported that its competent authority has requested relevant divisions within the National Tax Agency to be authorised to access the taxpayer management system. As a result, Japan's competent authority is now allowed access to the system, which enables it to track the implementation of MAP agreements.

Practical application

Period 1 January 2014-31 December 2017 (Stage 1)

295. Japan reported that in the period 1 January 2014-31 December 2017 it has reached the following number of MAP agreements:

Year	MAP agreements
2014	29
2015	21
2016	21
2017	21

296. In view of these MAP agreements, all required an implementation by Japan. In this respect, Japan reported that all of them, once accepted by taxpayers, have been implemented.

297. Japan further reported that the requirement for taxpayers to request for an amendment of a filed tax return within two months as from the date of a MAP agreement had in no situation impacted the implementation of such agreements.

298. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2014-31 December 2017 that was not implemented by Japan. One of these peers noted that it has one MAP case with Japan in this period, which was still pending. In that regard it reported not being aware of any impediments to the implementation of MAP agreements in Japan.

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

299. Japan reported that in the period 1 January 2018-31 August 2019 it has reached the following number of MAP agreements:

Year	MAP agreements
2018	51
2019	43

300. Japan reported that all MAP agreements that were reached on or after 1 January 2018 also have been implemented.

301. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Japan fully reflects their experience with Japan since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2. Two peers provided specific input where one noted that all MAP agreements have been implemented and the other reported that it is not aware of any impediment to implement MAP agreements with Japan.

Anticipated modifications

302. Japan did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

[D.2] Implement all MAP agreements on a timely basis

Agreements reached by competent authorities through the MAP process should be implemented on a timely basis.

303. 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

304. As discussed under element D.1, Japan uses a two-track system for implementation of MAP agreements, such depending on whether the taxation that is subject of the MAP case was levied in Japan or at the level of the treaty partner. In the first situation a MAP agreement can be implemented via an ex-officio adjustment of the filed tax return. In the second situation a MAP agreement will be implemented via a taxpayer's request for an amendment of its filed tax return.

305. Further to the above, Japan's MAP guidance discusses the steps to be followed by taxpayers and the National Tax Agency in order to have MAP agreements implemented. This guidance, however, does not further describe the timing process for such implementation. In this respect, Japan noted that it has no fixed deadline for implementing MAP agreements. In practice, where a taxpayer has filed a request of an amendment of its filed tax return, Japan noted that implementation will be completed within approximately two months as from the date of receipt of such request. Where the agreement is to be implemented via an ex-officio assessment, Japan reported that implementation will be completed within approximately two weeks as from the date of the notification of the MAP agreement by the MAP office to the relevant department within the National Tax Agency.

Recent developments

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

Practical application*Period 1 January 2014-31 December 2017 (Stage 1)*

307. Japan reported that all MAP agreements that were reached in the period 1 January 2014-31 December 2017, once accepted by taxpayers, have been timely implemented and that no cases of noticeable delays have occurred.

308. All peers that provided input have not indicated experiencing any problems with Japan regarding the implementation of MAP agreements reached on a timely basis.

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

309. Japan reported that all MAP agreements that were reached on or after 1 January 2018 have also been implemented on a timely basis.

310. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Japan fully reflects their experience with Japan since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2. One peer specifically noted that it has experienced no delays with respect to implementation of the one MAP agreement it had entered into with Japan during this stage.

Anticipated modifications

311. Japan 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.

312. 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.

Current situation of Japan's tax treaties

313. As discussed under element D.1, Japan's domestic legislation does not include a statute of limitation for implementing MAP agreements when it concerns downward

adjustment and a period of five to ten years as from the date of the filing of the tax return for upward adjustments, unless overridden by tax treaties.

314. Out of Japan’s 71 tax treaties, 54 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.² Of these 54 tax treaties, 22 also contain the alternative provision for Article 9(1), setting a time limit for making primary adjustments.

315. For the remaining 17 treaties the following analysis is made:

- 12 tax treaties do not contain the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) or the alternative provisions for Article 9(1) and Article 7(2) setting a time limit for making adjustments.³
- In two treaties, the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) is contained, as also the alternative provisions for Article 9(1), but is supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states (e.g. “except such limitations as apply for the purposes of giving effect to such an agreement”). Although Japan uses no statute of limitations for implementing MAP agreements, such statute of limitation may be in existence in the domestic legislation of the treaty partner. These two treaties therefore are considered as not having the full equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).
- One treaty also contains Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but a protocol provision introduces a time limit for implementation of MAP agreements at the level of the treaty partner. As this may obstruct the full implementation of a MAP agreement notwithstanding domestic time limits in both states, this treaty considered as not having the full equivalent of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017).
- Two treaties do not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but do contain the alternative for Article 9(1) setting a time limit for imposing primary adjustments.

316. Most of the peers that provided input reported that their treaty with Japan meets the requirements under element D.3. For those seven peers that provided input and where the treaty does not contain the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), six reported their treaty does not contain this second sentence. Of these six peers, one noted that its treaty does contain the alternative provision to Article 9(1), which indeed is the case. None of the six peers reported that there are ongoing contacts or negotiations with Japan or that they were contacted by Japan, to amend the treaty with a view to incorporate the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Four of these six peers mentioned that their treaty with Japan will be modified by the Multilateral Instrument in order to bring the treaty in line with element D.3. At this stage, however, only three of the four relevant treaties will indeed be modified via the Multilateral Instrument.

Recent developments

Bilateral modifications

317. Japan signed new tax treaties with a treaty partner that concerns the replacement of an existing treaty currently in force. This newly signed treaty has not yet entered into

force, but Japan has already ratified it. This treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), which was not the case for the existing treaty currently in force. Further, Japan signed new tax treaties with six new treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place.⁴ Three of these six treaties have already entered into force. All of these treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

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

320. With regard to the 17 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), Japan listed ten as a covered tax agreement under the Multilateral Instrument and for all of them made a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii). All relevant ten treaty partners are a signatory to the Multilateral Instrument, but two made a reservation on the basis of Article 16(5)(a) and one did not list its treaty with Japan under Article 16(6)(c)(ii).

321. Of the remaining seven treaty partner, four have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Japan and these treaty partners.⁵ 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 three 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).

Peer input

322. Of the peers that provided input during stage 2, five provided input in relation to their tax treaty with Japan, one of which provided input in relation to element D.3. This peer noted that its treaty with Japan will be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), which is in accordance with the above analysis.

Anticipated modifications

323. Japan reported that for one of the ten 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 has informed Japan that it will withdraw its reservation under the Multilateral Instrument, following which it is expected that the treaty with that treaty partner will be modified by the instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017).

324. For the nine remaining tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent, Japan has – as mentioned in the Introduction – taken actions to initiate the process for the bilateral renegotiations as regards two treaties. For the remaining eight treaties, Japan not put in place a plan for bringing these treaties in line with the requirements under element D.3. As one of the remaining eight treaty partners concerns the 1962 treaty between United Kingdom and Japan that continues to be applied to this treaty partner, such renegotiations are also not necessary for this treaty.

325. Regardless, Japan 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]	<p>17 out of 71 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 17 treaties:</p> <ul style="list-style-type: none"> • Four have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Three 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). • 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. • Nine 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 treaties: <ul style="list-style-type: none"> - Two are included in the list for which negotiations are envisaged. - For the remaining seven treaties, no actions have been taken nor are any concrete actions planned to be taken. 	<p>For two of the nine 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), Japan should continue with the process to initiate negotiations with the concerned treaty partners with a view to including the required provision or both alternative provisions.</p> <p>For six of the remaining seven treaties, Japan should without further delay, request via bilateral negotiations the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>As the remaining treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument is the 1962 treaty between the United Kingdom and Japan that Japan continues to apply to Fiji, Japan should ensure that, once it enters into negotiations with this treaty partner, it includes the required provision or is willing to accept both alternative provisions.</p>

Notes

1. Where the MAP agreement entails a refund of withholding taxes withheld by Japan, certain procedures are in place if such taxes were withheld by a withholding agent. If the withholding tax was voluntarily withheld, the agent needs to request a refund via a specific form. In other cases, Japan will automatically refund the tax to the withholding agent. See in this regard, the response to question 2.18 of the Q&A on MAP.
2. These 54 treaties include the treaty with the former USSR that Japan continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine. These 54 treaties also include the newly negotiated treaty with Spain which will replace the currently existing treaty with this jurisdiction of 1974 and the newly negotiated treaty with Uzbekistan, for which Japan currently continues to apply the treaty with the former USSR of 1986 and that it will no longer do so upon entry into force of this new treaty.
3. These 12 treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic.
4. One of these treaties is with a treaty partner, for which Japan currently continues to apply the 1986 treaty with the former USSR, but which will no longer do so upon entry into force of this new treaty.
5. These four treaties include the treaty with former Czechoslovakia that Japan continues to apply to the Czech Republic and the Slovak Republic, as both of them made such a notification and have deposited their instruments of ratification of the Multilateral Instrument.

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]	-	-
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	<p>Six out of 71 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). Of these six treaties:</p> <ul style="list-style-type: none"> • One has 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). • One is expected to 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). • Four will not be modified by the Multilateral Instrument to include the required provision. For these treaties, no actions have been taken nor are any concrete actions planned to be taken. 	<p>For three of the four treaties that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b) and has 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), Japan should without further delay request via bilateral negotiations the inclusion of the required provision.</p> <p>This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either:</p> <ul style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or a. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision. <p>As the remaining treaty that does not contain the equivalent of 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) is the 1977 treaty with former Czechoslovakia that Japan continues to the Czech Republic and the Slovak Republic, and which only will be modified by the Multilateral Instrument with respect to the Czech Republic, Japan should ensure that, once it enters into negotiations with the Slovak Republic, it includes the required provision.</p>
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-

	Areas for improvement	Recommendations
[B.7]	<p>Eight out of 71 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 eight treaties, five concern tax treaties with a limited scope of application. With respect to the three remaining comprehensive treaties:</p> <ul style="list-style-type: none"> • One is 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). • Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, no actions have been taken nor are any concrete actions planned to be taken. 	<p>For one of the two 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), Japan should, without further delay, request via bilateral negotiations the inclusion of the required provision.</p> <p>As the remaining treaty that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument is the 1962 treaty between the United Kingdom and Japan that Japan continues to apply to Fiji, Japan should ensure that, once it enters into negotiations with this treaty partner, it includes the required provision.</p>
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	<p>Two out of 71 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 two treaties:</p> <ul style="list-style-type: none"> • 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). • One will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, no actions have been taken nor are any concrete actions planned to be taken. 	<p>For the one treaty that has 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), Japan should, without further delay, request via bilateral negotiations the inclusion of the required provision.</p>
[C.2]	-	-
[C.3]	<p>MAP cases were closed in 27.02 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This particularly concerns attribution/allocation cases, as the average time needed for such cases is 27.95 months while for other cases the average is below the pursued 24-month average (17.27 months). Although there was a substantial reduction in Japan's caseload in 2017-18, the average time taken to resolve cases in 2018 increased as compared to 2016-17, which was higher than the pursued 24-month average as well. Therefore, there is a risk that post-2015 cases are not resolved within the average of 24 months.</p>	<p>As additional personnel has been assigned to Japan's competent authority function in recent years and successful organisational steps have been taken to be able to increase the number of cases closed and reduce the average completion time and as Japan has provided comprehensive clarifications explaining the additional time taken to resolve some cases, Japan should continue to closely monitor whether the addition of new staff and the organisational steps taken will further contribute to the resolution of MAP cases in a timely, efficient and effective manner.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-

	Areas for improvement	Recommendations
[D.3]	<p>17 out of 71 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 17 treaties:</p> <ul style="list-style-type: none"> • Four have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Three 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). • One is 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) once the treaty partner has amended its notifications. • Nine 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 treaties: <ul style="list-style-type: none"> - Two are included in the list for which negotiations are envisaged. - For the remaining seven treaties, no actions have been taken nor are any concrete actions planned to be taken. 	<p>For two of the nine 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), Japan should continue with the process to initiate negotiations with the concerned treaty partners with a view to including the required provision or both alternative provisions.</p> <p>For six of the remaining seven treaties, Japan should without further delay, request via bilateral negotiations the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>As the remaining treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument is the 1962 treaty between the United Kingdom and Japan that Japan continues to apply to Fiji, Japan should ensure that, once it enters into negotiations with this treaty partner, it includes the required provision or is willing to accept both alternative provisions.</p>

Annex A

Tax treaty network of Japan

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

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration					
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6											
Treaty partner	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?											
Bangladesh	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Belarus	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Belgium	E	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Bermuda	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Brazil	O	i	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Brunei	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Bulgaria	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Canada	O	Y*	N/A	i	Y	Y	Y	Y	Y	Y	ii	Y	Y	Y	Y	Y	Y	Y	Y	Y***
Cayman Islands	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Chile	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
China (People's Republic of)	O	Y	N/A	i**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Colombia	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Croatia	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Czech Republic	E**	i	N/A	i	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Treaty partner	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.1	B.3	B.4	C.1	C.1	D.3	A.1	A.1	B.7	C.6											
Denmark	E	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Ecuador	E	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Egypt	O*	i	N/A	i	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Estonia	E	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Fiji	N**	i	N/A	i	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Finland	E**	i	N/A	i	i	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***
France	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***
Georgia	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Germany	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Guernsey	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hong Kong (China)	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Hungary	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Iceland	E	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
India	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Indonesia	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ireland	E*	i	N/A	i	Y	Y	Y*	Y	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***

Treaty partner	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration										
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6														
Israel	Y	O	Y	N/A	Y*	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	
Italy	Y	N	i	N/A	i**	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Jersey	Y	O	Y	N/A	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Kazakhstan	Y	E***	Y	N/A	Y*	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Korea	Y	E*	Y	N/A	i***	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Kuwait	Y	O*	Y	N/A	i*	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Kyrgyzstan	Y	O	Y	N/A	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Latvia	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Lithuania	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Luxembourg	Y	E*	Y	N/A	Y*	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***	Y***
Malaysia	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Mexico	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	Y	N	N
Moldova	Y	O	Y	N/A	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Netherlands	Y	E*	Y	N/A	Y*	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
New Zealand	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Norway	Y	E*	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Oman	Y	E*	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.1	B.3	B.4	C.1	C.1	D.3	A.1	A.1	B.7	C.6									
Treaty partner	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?											
Pakistan	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	N									
Philippines	O	Y	N/A	i	Y	N	Y	Y	Y	Y	N									
Poland	O	Y	N/A	i***	Y	Y	Y	Y	Y	Y	N									
Portugal	O	Y	N/A	Y*	Y	Y	Y	Y	Y	Y	Y									
Qatar	E*	Y	N/A	i	Y	Y	Y	Y	Y	Y	N									
Romania	N	i	N/A	i**	Y	N*	Y	Y	Y	Y	N									
Russia	E	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N									
Saudi Arabia	E*	Y	N/A	i	Y	Y	Y	Y	Y	Y	N									
Singapore	O	Y	N/A	Y*	Y	Y	Y	Y	Y	Y	Y***									
Slovak Republic	N	i	N/A	i***	Y	Y*	Y	Y	Y	Y	N									
Slovenia	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y									
South Africa	O	Y	N/A	i*	Y	Y	Y	Y	Y	Y	N									
Spain	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y									
Sri Lanka	N	i	N/A	i	N	N	Y	Y	Y	N	N									
Sweden	E*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y									
Switzerland	O	Y	N/A	i	Y	ii	Y	Y	Y	Y	N									

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6											
Treaty partner	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?											
	If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)														
Tajikistan	O	Y	N/A	i	Y	Y	Y	Y	N											
Thailand	O	Y	N/A	i	Y	N	Y	Y	N											
Turkey	O*	i	N/A	i	Y	Y	Y	Y	N											
Turkmenistan	O	Y	N/A	i	Y	Y	Y	Y	N											
Ukraine	E*	Y	N/A	i	Y	Y	Y	Y	N											
United Arab Emirates	E*	Y	N/A	i	Y	Y	Y	Y	N											
United Kingdom	E*	Y	N/A	i	Y	Y*	Y	Y	Y											
United States	O	Y	N/A	i	Y	N	Y	Y	Y											
Uzbekistan	E	Y	N/A	i	Y	Y	Y	Y	N											
Viet Nam	O	Y	N/A	i	Y	Y	Y	Y	N											
Zambia	O	i	N/A	i	Y	N	Y	Y	N											

Legend

E* The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.

E** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.

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

Annex B

**MAP Statistics Reporting for the 2016, 2017 and 2018 Reporting Periods
(1 January 2016 to 31 December 2018) for Pre-2016 Cases**

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
Attribution/Allocation	96	0	0	1	0	1	16	3	0	0	0	75	26.45
Others	9	0	0	0	0	0	2	0	0	1	0	6	27.84
Total	105	0	0	1	0	1	18	3	0	1	0	81	26.62

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

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
Attribution/Allocation	75	0	0	4	0	1	13	0	0	2	0	55	35.03
Others	6	0	0	0	0	0	1	0	0	0	0	5	6.97
Total	81	0	0	4	0	1	14	0	0	2	0	60	33.69

2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		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	55	0	0	3	0	0	6	12	0	3	0	31	47.45
Others	5	0	0	1	0	0	1	0	0	0	0	3	19.55
Total	60	0	0	4	0	0	7	12	0	3	0	34	45.3

Annex C

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

2016 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	0	34	0	0	1	0	0	0	0	0	0	0	0	33	3.65
Others	0	4	0	0	0	0	0	0	0	0	0	0	0	4	0
Total	0	38	0	0	1	0	0	0	0	0	0	0	0	37	3.65

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

2017 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	33	24	0	0	0	0	0	3	3	0	0	0	0	51	9.44
Others	4	4	0	0	0	0	0	1	0	1	0	0	0	6	7.75
Total	37	28	0	0	0	0	0	4	3	1	0	0	0	57	9.02

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 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	51	32	0	0	1	1	1	16	14	0	0	0	0	50	14.54
Others	6	2	0	0	0	0	0	2	0	0	0	0	0	6	13.8
Total	57	34	0	0	1	1	1	18	14	0	0	0	0	56	14.49

Notes: The numbers of attribution/allocation cases started and agreement fully eliminating double taxation during 1 January 2018 and 31 December 2018 and the number of the cases remaining on MAP inventory on 31 December 2018 in the table above are different from the number of such cases in Japan's published 2018 MAP statistics. Japan's competent authority and the competent authorities of its treaty partners recognised that one attribution/allocation case has started and 4 cases have been concluded with the outcome "agreement fully eliminating double taxation" during the reporting period after reporting 2018 MAP statistics.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
Transfer Pricing Directive	Commissioner’s Directive on the operation of transfer pricing
MAP guidance	Commissioner’s Directive on the Mutual Agreement Procedure
MAP office	Office of Mutual Agreement Procedures of the International Operation Division within the National Tax Agency
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
Q&A on MAP	Guidance for taxpayers on the mutual agreement procedure in the form of a Q&A
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, Japan (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 Japan, which is accompanied by a document addressing the implementation of best practices.



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