

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Note by Turkey

The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

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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

Turkey has an extensive tax treaty network with over 90 tax treaties. Turkey also has a MAP programme with modest experience in resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 18 cases pending on 31 December 2018. Of these cases, 39% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Turkey met most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Turkey worked to address them, which has been monitored in stage 2 of the process. In this respect, Turkey solved almost all of the identified deficiencies.

All of Turkey'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 (OECD, 2017). Its treaty network is mostly consistent with the requirements of the Action 14 Minimum Standard, except for the fact that:

- Approximately 70% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Approximately 30% of its tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2017), whereby the majority of these treaties do not a provision allowing taxpayers to file a MAP request within a period of at least three years.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Turkey signed the Multilateral Instrument. Through this instrument, a number of its tax treaties will be modified to fulfil the requirements under the Action 14 Minimum Standard. Turkey 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, Turkey 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. However, Turkey does not have a specific plan in place nor has it taken or planned any specific actions for such negotiations.

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

Turkey 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 May 2018 not received any MAP request concerning transfer pricing cases or 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 May 2018. Turkey also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice under tax treaties.

Concerning the average time needed to close MAP cases, the MAP statistics for Turkey 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	2	10	5	7	9.97
Other cases	9	9	7	11	19.52
Total	11	19	12	18	15.54

* 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, Turkey used as the start date the date when the MAP request from the taxpayer or notification/position paper from the other competent authority to initiate the MAP is received; and as the end date the date of the closing letter sent to the taxpayer or to the other competent authority, or the receipt of such letter from the other competent authority.

The number of cases Turkey closed in 2016-18 is slightly more than half of the number of all cases started in those years. During these years, MAP cases were on average closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 15.54 months. However, Turkey's MAP inventory as on 31 December 2018 increased by 64% as compared to 1 January 2016, with an increase of 250% for attribution/allocation cases. Further, Turkey closed only 3 MAP cases in 2018 and did not close any long pending pre-2016 cases during this year, even though updates regarding the status of such cases were provided. While many organisational steps have been taken and clarifications have been provided explaining the status of the pending pre-2016 cases, Turkey should closely monitor whether the available resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. Where needed, it should in particular devote additional resources to be able to cope with the significant increase in the number of MAP cases, especially attribution/allocation cases, as well as to be able to close long-pending pre-2016 cases.

Furthermore, Turkey meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Turkey'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, Turkey almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Turkey monitors the implementation of such agreements. However, it has a domestic statute of limitation, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), albeit that no problems have surfaced regarding implementation throughout the peer review process.

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>.

Introduction

Available mechanisms in Turkey to resolve tax treaty-related disputes

Turkey has entered into 93 tax treaties on income (and/or capital), 85 of which are in force.¹ These 93 treaties are being applied to 94 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.

Under Turkey’s tax treaties, the competent authority function is assigned to the Minister of Finance (as of 10 July 2018 renamed to the Minister of Treasury and Finance), which in turn has been delegated to Turkey’s Revenue Administration. In practice, the competent authority function is performed by the Department of EU and Foreign Affairs, which is divided into two sections: the transfer pricing section and the double taxation agreement section. The transfer pricing section employs eight staff members, next to the director of the section, head of group and the head of department and is competent to handle attribution/allocation cases as well as requests for APAs. The double taxation agreement section employs 20 staff members, next to the two directors of the sections, the head of the group and the head of the department and handles the other MAP cases. Apart from handling MAP cases, the department is also involved in other tasks, such as: (i) negotiation of tax treaties, (ii) issuing of rulings related to the application of tax treaties and (iii) providing assistance in the collection of taxes.

Turkey has issued guidance on the governance and administration of the mutual agreement procedure (“MAP”) in the Guideline on Mutual Agreement Procedure under Double Taxation Agreements (“MAP guidance”), which has been published on the website of Turkey’s Revenue Administration since 2009 and was last updated in October 2019. This MAP guidance is available at:

https://www.gib.gov.tr/sites/default/files/fileadmin/CifteVergilendirme/KAU_Kilavuzu2019.pdf
(in Turkish)

https://www.gib.gov.tr/sites/default/files/fileadmin/CifteVergilendirme/MAP_Guidelines2019.pdf
(in English)

Developments in Turkey since 1 May 2018

Developments in relation to the tax treaty network

The stage 1 peer review report of Turkey noted that it was conducting tax treaty negotiations with Afghanistan, Argentina, Burkina Faso, Burundi, Cameroon, Cuba, Gabon, Ghana, Hong Kong, Iraq, Kenya, Korea, Libya, Mali, Mozambique, Nigeria, Palestinian Authority, Rwanda, Tanzania, Turkmenistan and Uganda. Turkey reported that since 1 May 2018, it has signed new tax treaties with Argentina, Palestinian Authority and Rwanda

from among these countries, which will be discussed below. Turkey further reported that it is present conducting tax treaty negotiations with Afghanistan, Botswana, Burkina Faso, Burundi, Cambodia, Cameroon, Cuba, Democratic Republic of the Congo, Gabon, Ghana, Hong Kong, Iraq, Kenya, Korea, Libya, Mali, Mozambique, Nigeria, Sri Lanka, Tanzania, Turkmenistan and Uganda. Further, the stage 1 report noted that Turkey had signed a new treaty with Senegal in 2015, with Côte d’Ivoire, Qatar and Somalia in 2016, and with Chad in 2017, all of which had not yet entered into force and an amending protocol to the tax treaty with Kuwait in 2017, which also had not yet entered into force. The amending protocol to the treaty with Kuwait adds the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) to the existing treaty in force where such provision is not present. Turkey reported that the treaty with Qatar has now entered into force and has replaced the erstwhile treaty of 2001. For the remaining treaties and the amending protocol, the situation remains the same.

In addition, Turkey reported that since 1 May 2018 it has signed new tax treaties with Argentina (2018), Palestinian Authority (2018), Rwanda (2018) and Venezuela (2018), which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. The treaties with Argentina and Venezuela 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 treaty with Rwanda 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 Palestinian Authority 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), with the exception of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017), the equivalent of which is not contained in the treaty. None of these treaties have entered into force.

Furthermore, Turkey 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. In relation to the Action 14 Minimum Standard, Turkey has not made any reservation to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure). Turkey reported that the Multilateral Instrument has been dispatched to its parliament for the approval process, but that the expected date of such approval is not clear.

Where treaties will not be modified by the Multilateral Instrument, Turkey reported that it intends to update them via bilateral negotiations. In this respect, Turkey reported that it is in the process of revising its list of notifications and reservations to the Multilateral Instrument to ensure that all treaties with other signatories to the Multilateral Instrument may be revised upon the deposit of its instrument of ratification to make them in line with the Action 14 Minimum Standard. In respect of the remaining treaties, Turkey reported that it intends to initiate bilateral negotiations afterwards. Turkey further reported that countries with which economic ties are stronger would be given preference in such renegotiations.

Therefore, where treaties that do not meet all requirements under the Action 14 Minimum Standard cannot be modified to be in line with the Action 14 Minimum Standard through Turkey’s actions in relation to the Multilateral Instrument, no details were shared as to planned actions, specifically as regards which treaty partners are prioritised for bilateral negotiations.

Other developments

Further to the above, Turkey 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:

- *notification/consultation process*: the introduction and documentation of a bilateral consultation process in its internal procedures
- *MAP guidance*: an update to its MAP guidance to outline that (i) access to MAP may be granted in case of multilateral disputes; (ii) taxpayers may request the multi-year resolution of recurring issues through MAP; (iii) whether or not tax collection can be suspended during the period a MAP case is pending
- *publication of MAP guidance*: the publication of Turkey’s MAP guidance in English on the website of Turkey’s Revenue Administration
- *handling and resolving MAP cases*: addition of more personnel in the Department of EU and Foreign Affairs that deals with other MAP cases
- *training programmes*: in-house training on the Action 14 minimum standard being provided to competent authority staff members as well as participation of such staff in OECD MAP trainings.

Basis for the peer review process

The peer review process entails an evaluation of Turkey’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 Turkey and the peers on 10 April 2018.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Turkey’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 19 October 2018. This report identifies the strengths and shortcomings of Turkey 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.³ 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 Turkey. In this update report, Turkey 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 Turkey 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 2005 tax treaty with former Serbia and Montenegro for those jurisdictions to which these treaties are still being or to be applied by Turkey (being (i) Serbia and (ii) Montenegro). As it concerns the same tax treaty that is applicable to multiple jurisdictions, this treaty is only counted as one treaty. Reference is made to Annex A for the overview of Turkey’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 Turkey was launched on 10 April 2018, with the sending of questionnaires to Turkey and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Turkey in September 2018, with the subsequent approval by the BEPS Inclusive Framework on 19 October 2018. On 19 October 2019, Turkey submitted its update report, which initiated stage 2 of the process.

The period for evaluating Turkey’s implementation of the Action 14 Minimum Standard for stage 1 ranged from 1 January 2016 to 30 April 2018 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 May 2018 and depicts all developments as from that date until 31 October 2019.

In total five peers provided input: Austria, Canada, Finland, Germany and Italy. Out of these five peers, three had MAP cases with Turkey that started on or after 1 January 2016. These peers represent approximately 25% of post-2015 MAP cases in Turkey’s inventory that started in 2016 or 2017.⁴ During stage 2, the same peers provided input. In addition, Australia, Belgium and Japan also provided input during stage 2. For this stage, these peers represent approximately 31.6% of post-2015 MAP cases in Turkey’s MAP inventory that started in 2016, 2017 or 2018.⁵ Generally, peers indicated having limited MAP experience in handling MAP cases with Turkey’s competent authority, but noted that communications have been positive, which was mainly via written correspondence and for one peer via teleconferencing. Specifically with respect to stage 2, most of the peers that provided input reported that the update report of Turkey fully reflects the experiences these peers have had with Turkey since 1 May 2018 and/or that there was no addition to previous input given.

Input by Turkey and co-operation throughout the process

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

- MAP profile⁶
- MAP statistics⁷ according to the MAP Statistics Reporting Framework (see below).

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

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

Overview of MAP caseload in Turkey

The analysis of Turkey’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 Turkey, 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	2	10	5	7
Other cases	9	9	7	11
Total	11	19	12	18

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁸ Apart from analysing Turkey’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Turkey during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Turkey 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 Turkey 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 Turkey 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 Turkey has entered into are available at: www.gib.gov.tr/uluslararasi_mevzuat. Treaties that have been signed but have not yet entered into force are with Argentina (2018), Chad (2017), Côte D'Ivoire (2016), Palestinian Authority (2018), Rwanda (2018), Senegal (2015), Somalia (2016) and Venezuela (2018). Furthermore, in 2017 Turkey signed a new protocol to the existing treaty with Kuwait, which has not yet entered into force, but has been taken into account in the treaty analysis, as this protocol includes a provision modifying the MAP provision. Reference is made to Annex A for the overview of Turkey's tax treaties.
2. Turkey continues to apply the 2005 treaty with Serbia and Montenegro to both (i) Serbia and (ii) Montenegro.
3. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-turkey-stage-1-9789264310087-en.htm.
4. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework. Turkey also provided the relevant information for pre-2016 cases, which shows that the peers that provided input represent almost 75% of pre-2016 MAP cases that were in Turkey's inventory in 2016 and 2017.
5. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework. All cases falling within the *de minimis* rule do not fall in this percentage.
6. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.
7. The MAP statistics of Turkey are included in Annexes B and C of this report.
8. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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- 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 (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>.
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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 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 Turkey's tax treaties

2. All of Turkey's 93 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) 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.

3. Generally, all peers that provided input in relation to their tax treaty with Turkey noted that their treaty was in line with the Action 14 Minimum Standard or if not, that their tax treaty with Turkey will be modified either via the Multilateral Instrument and/or via bilateral negotiations. With respect to element A.1, as noted above, all of Turkey's treaties are considered containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), which also concerns the treaties with these peers.

Recent developments

Bilateral modifications

4. Turkey signed new tax treaties with four treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. None of these treaties have 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, 2017a). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Peer input

5. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Turkey, out of which none provided input in relation to this element.

Anticipated modifications

6. Turkey reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) 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.

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

Turkey’s APA programme

8. Turkey reported it has in place an APA programme, pursuant to which it is allowed to enter into unilateral, bilateral and multilateral APAs. The competence for handling APA requests is, pursuant to Ministerial Decree 2007/12888 of 27 November 2007, delegated to Turkey’s Revenue Administration. Furthermore, the legal basis for entering into bilateral and multilateral APAs is Article 13(5) of the Corporate Income Tax Law No. 5520, which allows taxpayers to request approval in advance from the Turkish Ministry of Finance (as of 10 July 2018 renamed to the Ministry of Treasury and Finance) on the method to be applied in transactions with associated enterprises. Turkey further clarified that requests for bilateral and multilateral APAs are considered within the framework of the mutual agreement procedure under Turkey’s tax treaties in force.

9. Turkey reported that there are no timelines for filing of an APA request and that APAs are entered into for a period of a maximum of five years. When an APA is entered into, Turkey reported that this is announced on the website of its Revenue Administration without disclosing the taxpayer’s identity.² Turkey further clarified that existing APA can be renewed and revised provided that: (i) taxpayers file a request to that effect at least six months before the existing APA expires, (ii) there are no material changes in the facts and circumstances of the underlying case, (iii) the critical assumptions underlying the APA remain valid and relevant, and (iv) the transfer pricing method used remains to be appropriate.

10. Information on Turkey’s APA programme is included in section 6 of the Transfer Pricing General Communiqué No. 1.³ This communiqué contains information on which taxpayers can apply for an APA, what type of APAs are possible, the process for obtaining an APA and the timelines for this process, the period for which an APA can be applied and the relationship between APAs and audits. Furthermore, the communiqué also notes that since December 2017 the requirement of paying fees for obtaining an APA, or the renewal thereof, has been withdrawn. Turkey’s MAP guidance, under section 15 titled “Advance Pricing Agreements” also includes a brief section on its APA programme.

Roll-back of bilateral APAs

11. Turkey reported that it allows for roll-back of bilateral APAs, which was introduced in its law in August 2016. Article 13(5) of Turkey’s Corporate Income Tax Law No. 5520 notes that a roll-back of a bilateral APA is possible for those fiscal years that are still open under Turkey’s domestic statute of limitation during the year the APA is entered into. Furthermore, Turkey reported that a roll-back can only be granted if: (i) the facts and circumstances of the transaction(s) in the previous fiscal years are similar to those of the fiscal years covered by the APA and (ii) it is possible to apply the provisions regarding penalties and rectification as set forth in Article 371 of Tax Procedure Law No. 213. This concerns the requirements for taxpayers to apply for an exception to the issuance of penalties in case they have not reported the correct amount of tax due (for example, the non-initiation of a tax investigation for the years for which a roll-back is requested).

12. Turkey’s MAP guidance, in the above-mentioned section, also references the possibility of roll-backs in brief.

Recent developments

13. As reflected above, Turkey reported that a new transfer pricing communiqué came into effect on September 1, 2020, according to which APAs can now be entered into for a maximum period of five years (as opposed to three years before) and in order for an existing APA to be renewed, taxpayers must file a renewal request at least six months before the existing APA expires (as opposed to nine months before).

Practical application of roll-back of bilateral APAs

Period 1 January 2016-30 April 2018 (stage 1)

14. Turkey reported that it has received one request for a bilateral APA in the period 1 January 2016-30 April 2018, which did not include a request for roll-back and that was granted.

15. All peers that provided input indicated that they have not received a request for a roll-back of bilateral APAs concerning Turkey in the period 1 January 2016-30 April 2018.

Period 1 May 2018-31 October 2019 (stage 2)

16. Turkey reported having received one request for a bilateral APA since 1 May 2018, which did not include a request for roll-back and that this request is presently under consideration.

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

Anticipated modifications

18. Turkey did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).
2. Available at (in Turkish): www.gib.gov.tr.
3. Available at (in Turkish): www.gib.gov.tr/gibmevzuat.

References

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

OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, <https://dx.doi.org/10.1787/tpg-2017-en>.

Part B

Availability and access to MAP

[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a MAP provision which provides that when the taxpayer considers that the actions of one or both of the Contracting Parties result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty, the taxpayer, may irrespective of the remedies provided by the domestic law of those Contracting Parties, make a request for MAP assistance, and that the taxpayer can present the request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty.

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

Current situation of Turkey's tax treaties

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

20. Three of Turkey's 93 tax treaties 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. Furthermore, 77 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.¹

21. The remaining 13 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.	12
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

22. The 12 tax treaties mentioned in the first row of the table are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since 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 12 tax 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 (one tax treaty).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (ten tax treaties).

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

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

In respect of paragraph 1 of Article 25 the expression “irrespective of the remedies provided by the domestic law” means that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, preventively initiated, when the claim is related with an assessment of the taxes not in accordance with this Agreement.

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

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

26. Out of Turkey’s 93 tax treaties, 41 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 three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.²

27. The remaining 52 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	23
Filing period more than 3 years for a MAP request (5 years)	2
Filing period less than 3 years for a MAP request (2 years/1year)	4
No filing period for a MAP request, but reference is made to the time limits in the domestic laws of the treaty partners	18
No filing period for a MAP request at the level of the treaty partner and a reference to domestic time limits in the case of Turkey	1
A filing period for MAP requests of two years for the treaty partner and one year in the case of Turkey	1
A filing period for MAP requests of three years for the treaty partner and one year in the case of Turkey	3

28. The provisions contained in all rows except the first two rows of the above table are considered not to be in line with this part of element B.1 as taxpayers cannot file a MAP request within a period of three years as from the first notification of the action resulting in taxation not in accordance with the treaty in all situations under these provisions.

Peer input

29. Generally, all peers that provided input in relation to their tax treaty with Turkey noted that their treaty was in line with the Action 14 Minimum Standard or if not, that their tax treaty with Turkey will be modified either via the Multilateral Instrument and/or via bilateral negotiations. The tax treaty with all but one of these peers is in line with element B.1. For the last peer, the treaty will be modified only as regards the second sentence of Article 25(1), but not the first sentence.

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

30. As noted in paragraphs 20-25 above, taxpayers can file a MAP request irrespective of domestic remedies in all but one of Turkey’s tax treaties. In this respect, Turkey reported that access to MAP is not available where for the relevant case under review, available judicial remedies under domestic law are still pending or have already been concluded. Turkey reported that access to MAP would be granted in such cases only where the taxpayer has withdrawn the appeal before the national Courts. This is further clarified in Turkey’s MAP guidance, under section 14, titled “Mutual agreement procedure under double taxation agreement and national remedies”. Turkey clarified that this is because under its domestic law, a MAP cannot be initiated simultaneously with domestic judicial remedies since taxpayers and the tax administration are bound by court decisions. In addition, Turkey’s MAP guidance clarifies that access to MAP may be granted in such cases only where, in line with a Court decision, an adjustment needs to be made in the other jurisdiction in order to prevent double taxation.

31. 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) states that access to MAP should be granted to a taxpayer “irrespective of domestic remedies.” In respect of domestic judicial remedies, paragraphs 34-35 of the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017) state that a competent authority may take the position to not deviate from a final Court decision legally or as a matter of administrative policy or practice. Further, paragraph 42 of the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017) allows competent authorities to take the position that where a taxpayer has judicial remedies ongoing in a State as to the issue relating to a MAP request, discussions of any depth in MAP may be suspended till a court decision is obtained. However, even in such a situation, access to MAP must be granted “irrespective of domestic remedies” and such a position may only be taken afterwards, in the bilateral stage of MAP. Turkey’s policy to not grant access to MAP when domestic judicial remedies are pending, therefore, deprives the taxpayer from having effective access to MAP and having its case resolved accordingly in such situations. This practice is contrary to the requirements under the Action 14 Minimum Standard. Further, Turkey’s policy is to not grant access to MAP when a Court has decided on the issue in question, except where an adjustment is needed to be made in the other jurisdiction to prevent double taxation. Since access to MAP may be limited in situations where an adjustment is not needed to be made in the other jurisdiction, even where a taxpayer is of the view that the decision of the Court is not in accordance with the tax treaty, this practice is contrary to the requirements under the Action 14 Minimum Standard as well.

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

32. For those tax treaties mentioned in paragraph 27 above that do not contain a filing period for MAP requests, Turkey reported that its domestic statute of limitation for tax corrections applies. In this respect, Article 114 of the Tax Procedure Law No. 213 defines the statute of limitation as five years from the first day of the year following the calendar year in which the tax claim has arisen. Furthermore, Article 126 of that law defines that the statute of limitations for tax corrections shall not be less than one year for taxes assessed and notified to the taxpayer in the last year of the statute of limitation. These rules bear the risk that taxpayers can, for these 23 treaties, not file a MAP request within a period of at least three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

Recent developments

Bilateral modifications

33. Turkey signed new tax treaties with four treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. None of these treaties have entered into force. The treaties with two of these treaty partners include Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). The treaties with the remaining two treaty partners include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

34. Turkey signed the Multilateral Instrument. 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). Where only one of the treaty partners made such a notification, article 16(4)(a)(i) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty is incompatible with Article 16(1) (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)). Furthermore, 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.

35. With the signing of the Multilateral Instrument, Turkey 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 Turkey's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which they are a resident, Turkey opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Turkey listed 88 of its 93 treaties as covered tax agreements under the Multilateral Instrument and made for all, on the basis of Article 16(6)(a), the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).³ One of these 88 treaties is a treaty mentioned in paragraph 20 above that already allows the submission of a MAP request to either competent authority and for that reason only the remaining 87 treaties are taken into account in the below analysis.

36. In total, 26 of the treaty partners to the 87 relevant treaties are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Turkey as a covered tax agreement and 22 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties.⁴ All of the remaining 39 treaty partners listed their treaty with Turkey 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). Therefore, at this stage, these 39 tax treaties will be modified by the Multilateral Instrument upon its entry into force for these treaties, to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report (OECD, 2015b).

37. In view of the above, for those two treaties identified in paragraphs 20-25 above that are considered not containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), one is included in the list of 39 treaties that will be modified via the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

38. 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).

39. With regard to the four tax treaties identified in the third row of the table of paragraph 27 above that contain a filing period for MAP requests of less than three years, Turkey listed all of them as covered tax agreements under the Multilateral Instrument and made for all, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the relevant four treaty partners, two are not a signatory to the Multilateral Instrument. The remaining two treaty partners are signatories to the Multilateral Instrument, listed their treaty with Turkey as a covered tax agreement and also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, two of these four tax treaties will be modified by the Multilateral Instrument, upon entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

40. With regard to the remaining 23 tax treaties identified in the last four rows of the table of paragraph 27 above that contain a provision that is considered not the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as it refers to domestic laws of the contracting state for the filing period of MAP requests or contain different rules for treaty partners, Turkey listed all of them as covered tax agreements under the Multilateral Instrument, but only for one of them did it make, 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 is signatory to the Multilateral Instrument, listed its treaty with Turkey as a covered tax agreement and also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, one of these 23 tax treaties will be modified by the Multilateral Instrument, upon entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

41. For the remaining 22 treaty partners for which Turkey did not make a notification on the basis of Article 16(6)(b)(i), Turkey made for none of them, a notification on the basis of Article 16(6)(b)(ii) that these treaties contain a provision described in Article 16(4)(a)(ii). Of the relevant 22 treaty partners, 12 are not a signatory to the Multilateral Instrument, whereas one has made a notification on the basis of Article 16(6)(b)(ii) that its treaty with Turkey contains a provision described in Article 16(4)(a)(ii). The remaining nine treaty

partners also listed their treaty with Turkey under the Multilateral Instrument and also did not make a notification on the basis of either Article 16(6)(b)(i) or Article 16(6)(b)(ii). In this situation, Article 16(6)(b)(i) of the Multilateral Instrument stipulates that the second sentence of Article 16(1) – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will supersede the provision of the covered tax agreement to the extent it is incompatible with that second sentence. Since the nine treaties refer to the domestic law of the contracting states to determine the filing period of a MAP request, or otherwise contain a provision that deviates from Article 25(1), second sentence, and given the fact that in the case of Turkey such filing period may in some cases be less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, the provisions in these covered tax agreements are considered to be incompatible with the second sentence of Article 16(1). Therefore, at this stage, the eight tax treaties identified above will be superseded by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

42. Turkey reported that for one of the 15 treaties that does not contain the equivalent of Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument, the treaty partner intends to revise its list of notifications and reservations to the Multilateral Instrument upon deposit of its instrument of ratification to bring this treaty in line with the requirements under the Action 14 minimum standard.

43. For the remaining tax treaties that do not contain the equivalent of Article 25(1), first and/or second sentence, of the OECD Model Tax Convention (OECD, 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, Turkey has not put in place a plan for bringing these treaties in line with the requirements under element B.1.

Peer input

44. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Turkey, out of which only one provided input in relation to this element. This peer concerns one of the two treaties identified above that 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). This peer stated that it has proposed to Turkey to enter into a memorandum of understanding to address the issue that taxpayers have to initiate domestic remedies when submitting a MAP request. Turkey reported that it is presently evaluating this proposal.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
	<p>27 out of 93 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is in these treaties can be shorter than three years, from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these 27 treaties:</p> <ul style="list-style-type: none"> • 12 are expected to be modified or superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • 15 will not be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these 15 treaties: <ul style="list-style-type: none"> - For one, the relevant treaty partner has been or will be contacted by Turkey with a view to have the treaty modified by the Multilateral Instrument. - For 14, no actions have been taken nor are any actions planned to be taken. 	<p>Turkey should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those 12 treaties that currently do not contain such equivalent and that will be modified or superseded by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For one of the remaining 15 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Turkey should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument.</p> <p>For the remaining 14 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Turkey should without further delay request via bilateral negotiations the inclusion of the required provision.</p>
[B.1]	<p>One out of 93 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</p> <p>This treaty is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) but not as regards the first sentence. For this treaty, no actions have been taken nor are any actions planned to be taken.</p>	<p>Turkey should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in this treaty.</p> <p>With respect to Article 25(1), first sentence, Turkey 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 (OECD, 2015a) either:</p> <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	<p>Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>	<p>Turkey should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>
	<p>There is a risk that access to MAP is denied in eligible cases where (a) the issue under dispute is pending appeal or (b) has already been decided and there is no need for adjustments to be made in the treaty partner jurisdiction to prevent double taxation, under the judicial remedies provided by Turkey's domestic law.</p>	<p>Turkey should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP.</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).

46. 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

47. As discussed under element B.1, out of Turkey's 93 treaties, three 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, 39 of these 93 treaties will, upon entry into force, be modified by the Multilateral Instrument to also allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

48. Turkey reported that it has recently introduced an internal MAP procedure that includes a domestic bilateral consultation/notification process. Turkey reported that when Turkey's competent authority considers that the objection raised by a taxpayer in a MAP request is not justified, it will inform the other competent authority and request its views. Turkey clarified that the procedure as well as the template for the same has been documented in its internal procedure, but is not published as it is an internal document. Turkey further clarified that its competent authority has been given an internal training on the newly introduced internal MAP procedure.

Recent developments

49. In the stage 1 report, it was noted that Turkey had not yet introduced a bilateral consultation or notification process which allowed the other competent authority concerned to provide its views on the case when Turkey's competent authority considered the objection raised in the MAP request not to be justified.

50. As detailed above, Turkey has since 1 May 2018 introduced a bilateral notification/consultation process that is applicable in situations where its competent authority considers

the objection raised in the MAP request not to be justified. Therefore, the recommendation made in stage 1 has been addressed.

Practical application

Period 1 January 2016-30 April 2018 (stage 1)

51. Turkey reported that in the period 1 January 2016-30 April 2018 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016 and 2017 MAP statistics submitted by Turkey also show that none of its MAP cases was closed with the outcome “objection not justified”.

52. All peers that provided input indicated not being aware of any cases for which Turkey’s competent authority denied access to MAP in the period 1 January 2016-30 April 2018. They also reported not having been consulted/notified during this period of a case where Turkey’s competent authority considered the objection raised in a MAP request as not justified, which can be clarified by the fact that no such instances have occurred in Turkey during this period.

Period 1 May 2018-31 October 2019 (stage 2)

53. Turkey reported that since 1 May 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 Turkey also show that none of its MAP cases was closed with the outcome “objection not justified”.

54. All peers that provided input during stage 1 also indicated in stage 2 that since 1 May 2018 they are not being aware of any cases for which Turkey’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 Turkey since that date. The same input was given by the three peers that only provided input during stage 2.

Anticipated modifications

55. Turkey 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.

56. 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

57. Out of Turkey’s 93 tax treaties, 88 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.⁵ Furthermore, three treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). The remaining two treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviate from this provision for the following reasons:

- In one treaty, corresponding adjustments can be made only 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 consult together with a view to reach an agreement on the adjustment of profits”. Furthermore, this treaty does not follow the structure and the wording of Article 9(2).

58. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Turkey’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, Turkey 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.

59. Turkey’s MAP guidance, under section 6 titled “In which cases can the commencement of the mutual agreement procedure be requested”, provides that access to MAP would be provided for transfer pricing cases in Turkey.

Recent developments

Bilateral modifications

60. Turkey signed new tax treaties with four treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. None of these treaties have 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

61. Turkey signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding

adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention [OECD, 2017]).

62. Turkey has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). With regard to the five treaties identified in paragraph 58 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), Turkey listed all of them as a covered tax agreement under the Multilateral Instrument and included three in the list of treaties for which Turkey has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Furthermore, Turkey did not make a notification on the basis of Article 17(4) for the remaining two treaties. Of the relevant two treaty partners, one is not a signatory to the Multilateral Instrument, whereas one has not listed its treaty with Turkey under that instrument. Therefore, at this stage, none of the five tax treaties identified above will be modified by the Multilateral Instrument to replace or supersede treaty provisions to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

Application of legal and administrative framework in practice

Period 1 January 2016-30 April 2018 (stage 1)

63. Turkey reported that in the period 1 January 2016-30 April 2018, it has not denied access to MAP on the basis that the case concerned is a transfer pricing case.

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

Period 1 May 2018-31 October 2019 (stage 2)

65. Turkey reported that since 1 May 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. However, no such cases were received in that period.

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

Anticipated modifications

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

68. 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

69. None of Turkey’s 93 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 Turkey 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.

70. Turkey 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, Turkey’s MAP guidance, under section 6 titled “In which cases can the commencement of the mutual agreement procedure be requested?” states that access to MAP would be granted in cases where a taxpayer is denied benefits of a tax treaty owing to anti-abuse provisions.

Recent developments

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

Practical application

Period 1 January 2016-30 April 2018 (stage 1)

72. Turkey reported that in the period 1 January 2016-30 April 2018 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.

73. All peers that provided input indicated not being aware of cases that have been denied access to MAP by Turkey in the period 1 January 2016-30 April 2018 in relation to the application of treaty and/or domestic anti-abuse provisions.

Period 1 May 2018-31 October 2019 (stage 2)

74. Turkey reported that since 1 May 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.

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

Anticipated modifications

76. Turkey 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.

77. 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

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

Administrative or statutory dispute settlement/resolution process

79. Turkey reported it has in place an administrative dispute settlement process that is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer. Turkey clarified that this process is an administrative remedy that is an alternative to domestic judicial procedures and which allows taxpayers to negotiate with Turkey's Revenue Administration on a proposed or issued adjustment prior to accessing domestic judicial remedies. Turkey noted that taxpayers can request this initiation of the settlement process when they are subject to an audit and can do so either prior to assessment or following assessment.⁶ The legal basis for both types of processes is laid down in Additional Articles 1, 6-9 and 11 of the Tax Procedure Law No. 213.

80. Turkey reported that a settlement before assessment can be requested before the tax inspector has issued the final audit report, although the process will only be conducted after that report has been issued.⁷ Turkey clarified that the settlement commission consists of three senior tax inspectors from the Tax Inspection Board of the Ministry of Finance (as of 10 July 2018 renamed to the Ministry of Treasury and Finance). Turkey noted in this regard that tax inspectors making the audit cannot have a seat in the commission.⁸ Turkey reported that this commission will independently decide on the case under review, without any involvement or approval of another authority or person. Turkey further noted that the taxpayer would be notified of the date of the settlement at least 15 days in advance.

81. Turkey reported that a settlement after assessment can be requested only after the tax office has issued an assessment on the basis of the audit report. Turkey clarified that taxpayers should request the initiation of this process within 30 days from the notification of the tax assessment to the taxpayer. Turkey further reported that upon receipt of the taxpayer's written application, the settlement commission will notify the date of the settlement to the taxpayer at least 15 days in advance. Turkey clarified that for such cases, the settlement commission, has a different composition, namely three managers of the Revenue Administration (for example, from the tax offices directorates and tax offices). Nonetheless, Turkey reported that for this process as well, the settlement commission will independently decide on the case under review, without any involvement or approval of another authority or person.

82. Turkey reported that where a settlement is reached, the taxpayer and Revenue Administration will sign a settlement agreement, which will then be effectuated by the latter. Turkey clarified that where a settlement cannot be reached, the final offer will be stated in the settlement agreement, which will be notified to the local tax authority that is responsible for the collection of taxes.⁹ Turkey noted that the audit report (settlement before assessment) or the tax assessment (settlement after assessment) will then be issued, reflecting the outcome of the tax audit. Turkey further clarified that taxpayers would still have the possibility to accept the settlement commission's final offer by providing a written notification to the local tax office within the time period for filing a suit. In such a situation, an agreement is deemed to be reached and accordingly implemented.

83. Concerning the relationship with MAP, Turkey noted that if the process leads to a settlement of the case, there is no dispute between the tax administration and the taxpayer anymore that needs to be resolved. While in such situation, pursuant to Article 6 and 13 of the Tax Procedure Law No, 213, domestic judicial remedies would no longer be available, Turkey reported that its competent authority would, however, still provide access to MAP for the purpose of avoiding double taxation and for allowing the other competent authority concerned to provide correlative relief. Therefore, Turkey noted that its competent authority will not deviate from the position taken in the settlement agreement in a MAP. Further,

where the case is not settled in the process, Turkey reported that taxpayers have the right to further initiate domestic judicial procedures or to request the initiation of a MAP, if still available. Turkey clarified that this is also the case where the case under review is only partially resolved through the settlement process and that in such cases, for the part that has not been settled, MAP would be initiated without any restrictions on the competent authority. Finally, Turkey reported that if a MAP was already initiated, but did not lead to an agreement that resolved the case, then taxpayers would still have the possibility to request the initiation of the settlement process, if still available. This is clarified in detail in Turkey’s MAP guidance under section 14, titled “Mutual Agreement Procedure under the Double Taxation Agreement and National Remedies”.

Recent developments

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

Practical application

Period 1 January 2016-30 April 2018 (stage 1)

85. Turkey reported that it has in the period 1 January 2016-30 April 2018 not denied access to MAP for cases where the taxpayer and the tax administration have entered into an audit settlement, which is explained by the fact that such settlements are not possible in Turkey. Further, Turkey reported it has in the period 1 January 2016-30 April 2018 not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through its administrative settlement process.

86. All peers that provided input indicated not being aware of a denial of access to MAP by Turkey in the period 1 January 2016-30 April 2018 in cases where there was an audit settlement between the taxpayer and the tax administration or in cases that were already resolved via its administrative dispute settlement process.

Period 1 May 2018-31 October 2019 (stage 2)

87. Turkey reported that since 1 May 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 since such settlements are still not possible in Turkey. Further, Turkey reported it has since 1 May 2018 also not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through its administrative settlement process.

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

Anticipated modifications

89. Turkey 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.

90. 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

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

92. Where a taxpayer has not included all required information in its MAP request, Turkey reported that its competent authority will request the taxpayer to supplement the missing information and/or documentation. Turkey noted that there is no defined timeframe for providing such information, but that its competent authority is entitled to give a reasonable timeframe in this regard. Turkey clarified that in practice, it generally requires the information to be provided within a period of 15 days from receipt of the MAP request.

93. Where taxpayers do not submit the required and requested information, Turkey reported that its competent authority will not consider the MAP request. However, if at any time thereafter the information is submitted, Turkey noted that its competent authority will take the MAP request into consideration provided that the information is submitted within the filing period provided for in the applicable tax treaty.

94. This is clarified in Turkey's MAP guidance, under section 10, titled "What is the information that should be included in the petition given during the request for the commencement of the Mutual Agreement Procedure?"

Recent developments

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

Practical application***Period 1 January 2016-30 April 2018 (stage 1)***

96. Turkey 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 2016-30 April 2018 it has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

97. All peers that provided input indicated not being aware of a limitation of access to MAP by Turkey in the period 1 January 2016-30 April 2018 in situations where taxpayers complied with information and documentation requirements.

Period 1 May 2018-31 October 2019 (stage 2)

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

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

Anticipated modifications

100. Turkey 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.

101. 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 Turkey's tax treaties

102. Out of Turkey's 93 tax treaties, 85 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.¹⁰ The remaining eight treaties do not contain a provision that is based on, or equivalent to, Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

103. Generally, all peers that provided input in relation to their tax treaty with Turkey noted that their treaty was in line with the Action 14 Minimum Standard or if not, that their tax treaty with Turkey will be modified either via the Multilateral Instrument and/or via bilateral negotiations. The tax treaty with all of these peers is in line with element B.7.

Recent developments

Bilateral modifications

104. Turkey signed new tax treaties with four treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. None of these treaties have 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

105. Turkey signed the Multilateral Instrument. 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).

106. With regard to the eight 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), Turkey listed all of them as a covered tax agreement under the Multilateral Instrument and for all made a notification, pursuant to Article 16(6)(d)(ii), that they do not contain a provision described in Article 16(4)(c)(ii). Of the eight relevant treaty partners, one is not a signatory to the Multilateral Instrument. The remaining seven treaty partners are signatories to the Multilateral Instrument, listed their tax treaty with Turkey as a covered tax agreement and also made a notification on the basis of Article 16(6)(d)(ii). Therefore, at this stage, seven of the eight tax treaties identified above will be modified by the Multilateral Instrument upon entry into force for these treaties, to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

107. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Turkey, out of which none provided input in relation to this element.

Anticipated modifications

108. For the remaining tax treaty that does 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, Turkey has not put in place a plan for bringing this treaty in line with the requirements under element B.7.

109. Regardless, Turkey 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 93 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:</p> <ul style="list-style-type: none"> • Seven are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • 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 actions planned to be taken. 	<p>Turkey should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the seven treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Turkey should without further delay request via bilateral negotiations the inclusion of 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.

110. 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.

Turkey's MAP guidance

111. Turkey has issued guidance on the MAP process and how it applies that process in practice in the Guideline on Mutual Agreement Procedure under Double Taxation Agreements. Turkey's MAP guidance has been published on the website of Turkey's Revenue Administration since 2009 and was last updated in October 2019. This MAP guidance is available at:

<https://www.gib.gov.tr/sites/default/files/fileadmin/CifteVergilendirme/KAUKilavuzu2019.pdf>
(in Turkish)

<https://www.gib.gov.tr/sites/default/files/fileadmin/CifteVergilendirme/MAPGuidelines2019.pdf>
(in English)

112. Turkey's MAP guidance contains information on several aspects of the MAP process, which concerns:

- Framework of the mutual agreement procedure
- Persons eligible for filing of a MAP request and cases for which a MAP request can be filed, including transfer pricing cases and multilateral disputes
- Competent authority to submit a MAP request, including examples specifying to which competent authority such a request should be submitted in a given situation

• Commencement date for filing of a MAP request
• Information to be included in a MAP request
• The steps of the MAP process and the timing of such steps, including actions to be taken by taxpayers
• Rights and role of the taxpayer in the MAP process
• Interaction with domestic available remedies and domestic time limits
• Whether taxpayers can request for the multi-year resolution of recurring issues through MAP
• The possibility of suspension of tax collection during the course of a MAP
• The consideration of interest and penalties in the MAP
• Implementation of MAP agreements
• An overview of Advance Pricing Agreements in Turkey

113. Turkey’s MAP guidance also provides an overview of the recent developments concerning the mutual agreement procedure, such as the changes to Article 25(1), first sentence, of the OECD Model Tax Convention (2017) as amended by the Action 14 final report (2017), the choices made by Turkey under the Multilateral Instrument and the effect thereof for Turkey’s tax treaties in relation to MAP. Furthermore, a table specifying the filing period for a MAP request and rules for implementing MAP agreements for each of Turkey’s tax treaties is available (both in Turkish and English) on the website of the Revenue Administration.

114. The above-described MAP guidance of Turkey includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction’s MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.¹¹

Information and documentation to be included in a MAP request

115. Turkey’s MAP guidance sets forth the basic information and documentation taxpayers need to include in their MAP request. The information to be included in a MAP request concerns:

- name, address, tax identification number
- information on whether the taxpayer is associated with an individual and/or the enterprise in the other Contracting State
- contact information of the agent acting on behalf of the competent authority of the other contracting state (if applicable)
- nature of the case, transaction, or of the domestic law provisions applied in relation to the case and the relevant articles of the applicable tax treaty
- relevant taxation periods
- amount of income derived for each taxation period and the amount of the adjusted tax
- summary of the information related to the case that is reflected in the original tax return
- calculation made together with supporting data (financial or economic data, reports, the relevant documents and records of taxpayers as well as explanatory notes), if related to the case

- a statement whether domestic available remedies have been initiated and if yes, information on the date of the application and a copy of the application documents
- a statement whether the taxpayer has previously initiated in Turkey other administrative remedies (settlement, tax ruling, advance pricing arrangement etc.) and if yes, information on the date of the application and a copy of the application documents
- a statement whether the request has been filed before the other competent authority as well and if yes, a copy of the application documents
- a statement that the information submitted is accurate and that requested additional information will be submitted on time.

116. Further to the above, if a taxpayer also has submitted a MAP request to the competent authority of the treaty partner, it should in addition include information on the date of such submission, the contact information of this competent authority and a sample of the submitted documents. Where it concerns transfer pricing cases, the following information should also be submitted in a MAP request:

- general framework of comparable transactions and methods of correction
- explanation of the applied transfer pricing method and of the appropriateness of this method.

117. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance. This agreed guidance is shown below. With respect to Turkey's MAP guidance, the information to be included in a MAP request is checked in the following list:

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

Recent developments

118. Turkey reported that after 1 May 2018 it updated its MAP guidance (last updated in October 2019) to reflect the following information:

- A statement that access to MAP may be granted in eligible cases, subject to given conditions, for multilateral disputes.

- A statement that multi-year resolution of recurring issues may be possible through MAP subject to the given conditions.
- Information on the availability of the suspension of collection of taxes during the period a MAP case is pending.

Anticipated modifications

119. Turkey 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.

120. 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.¹²

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

121. The MAP guidance of Turkey is published in Turkish and in English, which is made publically available at:

https://www.gib.gov.tr/sites/default/files/fileadmin/CifteVergilendirme/KAU_Kilavuzu2019.pdf
(in Turkish)

https://www.gib.gov.tr/sites/default/files/fileadmin/CifteVergilendirme/MAP_Guidelines2019.pdf
(in English)

122. As regards the accessibility of its MAP guidance, it can easily be found on the website of Turkey’s Revenue Administration, for example, when searching in Turkish for the term “mutual agreement procedure” on the homepage.

MAP profile

123. The MAP profile of Turkey is published on the website of the OECD since September 2016 and was last updated in February 2020. This MAP profile is complete and contains detailed information and explanations for all items on how Turkey deals with MAP cases. This profile includes external links, which provide extra information and guidance where appropriate.

Recent developments

124. As noted above, Turkey has published its MAP guidance in English in October 2019 and has made it available on the website of its Revenue Administration.

Anticipated modifications

125. Turkey 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.

126. 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

127. As previously mentioned in B.5, Turkey reported that audit settlements are not available as it is under Turkey's domestic law not possible for taxpayers and the tax administration to enter into audit settlements. Peers indicated no issues regarding element B.10 in relation to audit settlements.

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

128. As previously mentioned under element B.5, Turkey has in place an administrative dispute settlement process that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer.

129. Turkey’s MAP guidance under section 14, titled “Mutual Agreement Procedure under the Double Taxation Agreement and National Remedies” describes the availability of its administrative dispute settlement process, in what forms that process operates (e.g. settlement before and after assessment) and the rules to be applied during that process. It further outlines that where a settlement has been reached between the taxpayer and Turkey’s Revenue Administration, there will not be a need for MAP as the dispute in question between the tax administration and the taxpayer is being resolved. However, Turkey’s MAP guidance states that access to MAP would be granted even where a settlement has been reached to allow correlative adjustments at the level of the treaty partner to avoid double taxation that may arise from the settlement. In addition, Turkey’s MAP guidance also states that where a MAP request has been made, but where competent authorities were not able to resolve the case, taxpayers can still apply for the administrative dispute settlement process, provided domestic time limits for requesting such process have not expired.

130. Turkey reported that Turkey’s instructions on settlement or the domestic law provisions in relation hereto do not contain a description of the effects of this process on MAP.

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

131. Turkey reported that all treaty partners were notified of the existence of its administrative dispute settlement process, by referring to the information included in Turkey’s MAP profile. However, peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Turkey. As Turkey included information hereon in its MAP profile along with a reference to its domestic MAP guidance in which the process is outlined, this is considered to be in line with the requirements under element B.10.

Anticipated modifications

132. Turkey indicated that it intends to revise its public guidance on its administrative dispute settlement process to address the effects of that process on MAP in the near future.

Conclusion

	Areas for improvement	Recommendations
[B.10]	Public guidance on the administrative dispute settlement process does not address the effects of that process on MAP.	Turkey should address in its instructions on the administrative dispute settlement process the effect of that process on MAP.

Notes

1. These 77 tax treaties includes the tax treaty with the former Serbia and Montenegro that Turkey continues to apply to both (i) Serbia and (ii) Montenegro.
2. These 41 treaties include the treaty with former Serbia and Montenegro that Turkey continues to apply to both (i) Serbia and (ii) Montenegro.

3. These 88 treaties include the treaty with former Serbia and Montenegro that Turkey continues to apply to both (i) Serbia and (ii) Montenegro.
4. The 26 treaty partners that are not signatories to the Multilateral Instrument include Montenegro and the 22 treaty partners which made a reservation on the basis of Article 16(5)(a) include Serbia. Therefore, the instrument will not take effect as to the treaty with former Serbia and Montenegro, which continues to be applied to both (i) Serbia and (ii) Montenegro.
5. These 88 treaties include the treaty with former Serbia and Montenegro that Turkey continues to apply to both (i) Serbia and (ii) Montenegro.
6. Turkey reported that taxpayers that have already applied for the settlement before assessment cannot apply for settlement after assessment.
7. Turkey clarified that where a taxpayer is audited on the basis of external information and without taxpayer's knowledge, the tax inspector may invite the taxpayer to request for the initiation of the settlement process. In such a case, the settlement process will commence at least 15 days after the notification to the taxpayer. Furthermore, throughout the process taxpayers are allowed to withdraw their request, by which the process ends and an assessment accordingly will be initiated on the basis of the audit report. In such a situation taxpayers can initiate domestic available remedies, if still available.
8. Where a tax audit was conducted by other persons than tax inspectors, the commission will be composed of the head of the Tax Office Directorate, or the director of the group, and two directors from that directorate.
9. Turkey reported that there are three reasons why a settlement agreement may not be reached. This concerns the situations that a taxpayer: (i) does not participate in the settlement meeting, (ii) avoids signing the minute of settlement, or (iii) does not agree on any settlement.
10. These 85 treaties include the treaty with former Serbia and Montenegro that Turkey continues to apply to both (i) Serbia and (ii) Montenegro.
11. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
12. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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

133. 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 Turkey’s tax treaties

134. All of Turkey’s 93 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

135. Generally, all peers that provided input in relation to their tax treaty with Turkey noted that their treaty was in line with the Action 14 Minimum Standard or if not, that their tax treaty with Turkey will be modified either via the Multilateral Instrument and/or via bilateral negotiations. With respect to element C.1, as noted above, all of Turkey’s treaties are considered containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), which also concerns the treaties with these peers.

Recent developments

Bilateral modifications

136. Turkey signed new tax treaties with four treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. None of these treaties have 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.

Peer input

137. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Turkey, out of which none provided input in relation to this element.

Anticipated modifications

138. Turkey 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]	-	-

[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).

139. 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

140. Statistics regarding all tax treaty related disputes concerning Turkey are published on the website of the OECD as from 2006.¹

141. 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. Turkey provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Turkey 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 Annex C respectively and should be considered jointly for understanding of the MAP caseload of Turkey.²

142. With respect to post-2015 cases, Turkey 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, Turkey indicated that it could match its statistics with all of them.

143. One peer provided input on the matching of MAP statistics with Turkey and stated that it was able to successfully match statistics with Turkey.

144. Based on the information provided by Turkey’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

145. Turkey reported that the policy of its competent authority is to make efforts that the resolution of MAP cases does not exceed the period of two years and further that in practice its staff works diligently on MAP cases with awareness of the sensitivity and importance of the process. This is also reflected in Turkey’s MAP guidance, under section 11 titled “How does the process continue after taxpayer’s request for the commencement of the mutual agreement procedure”, where it is specified that although there is no time limit for concluding MAP cases, Turkey generally complies with the internationally accepted standard of two years for resolving MAP cases.

146. Further to the above, Turkey reported that it monitors its MAP statistics on the basis of the MAP Statistics Reporting Framework.

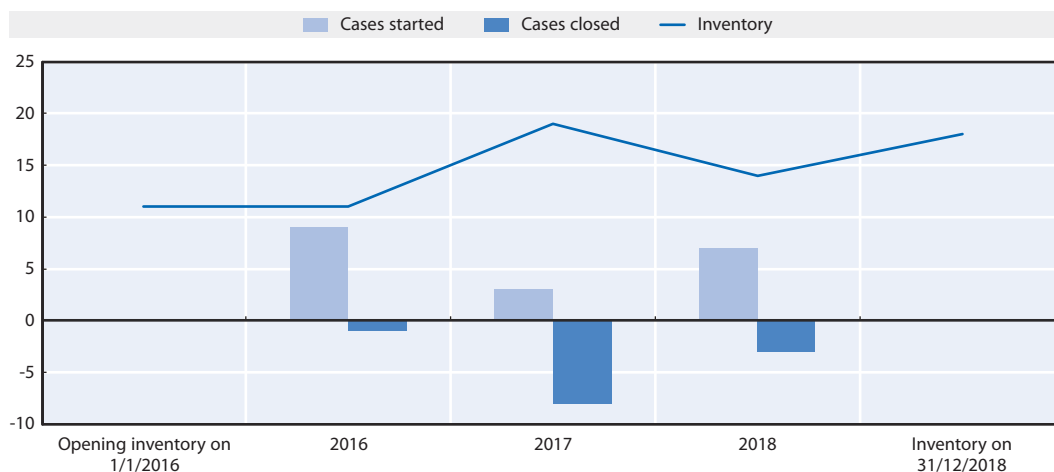
Analysis of Turkey’s MAP caseload

Global overview

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

148. Figure C.1 shows the evolution of Turkey’s MAP caseload over the Statistics Reporting Period³.

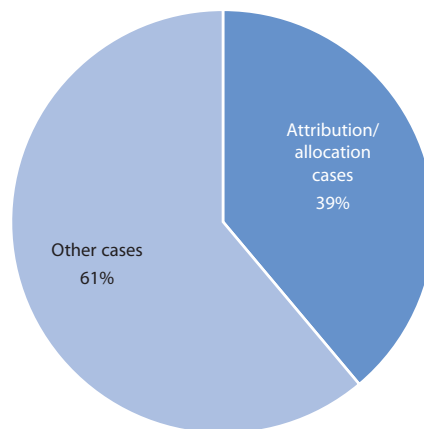
Figure C.1. Evolution of Turkey’s MAP caseload



149. At the beginning of the Statistics Reporting Period Turkey had 11 pending MAP cases, two of which were attribution/allocation cases and nine were other MAP cases.⁴ At the end of the Statistics Reporting Period, Turkey had 18 MAP cases in its inventory, of which seven are attribution/allocation cases and 11 are other MAP cases. Consequently, Turkey’s MAP inventory has increased by 64% during the Statistics Reporting Period. This increase can be broken down into a significant increase for attribution/allocation cases and an increase by 22% for other cases.

150. The breakdown of the end inventory can be shown as in Figure C.2.

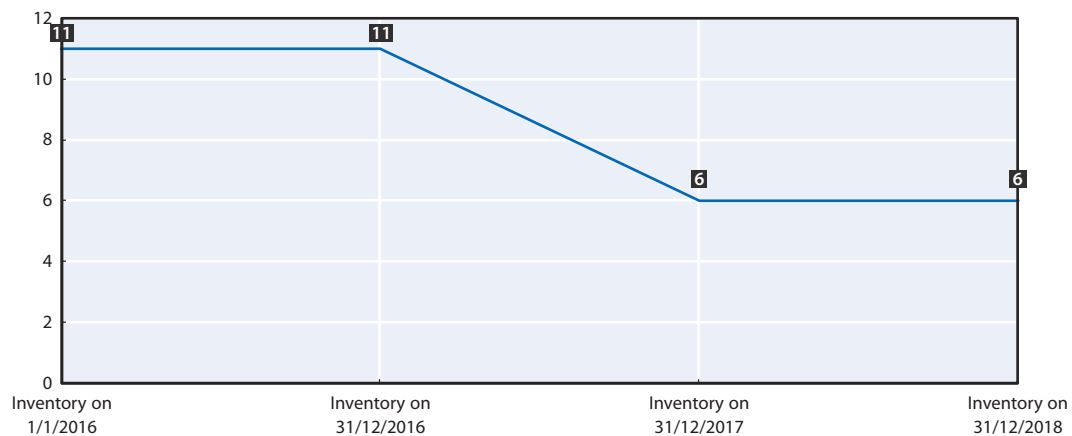
Figure C.2. End inventory on 31 December 2018 (18 cases)



Pre-2016 cases

151. Figure C.3 shows the evolution of Turkey’s pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Turkey’s MAP inventory
Pre-2016 cases



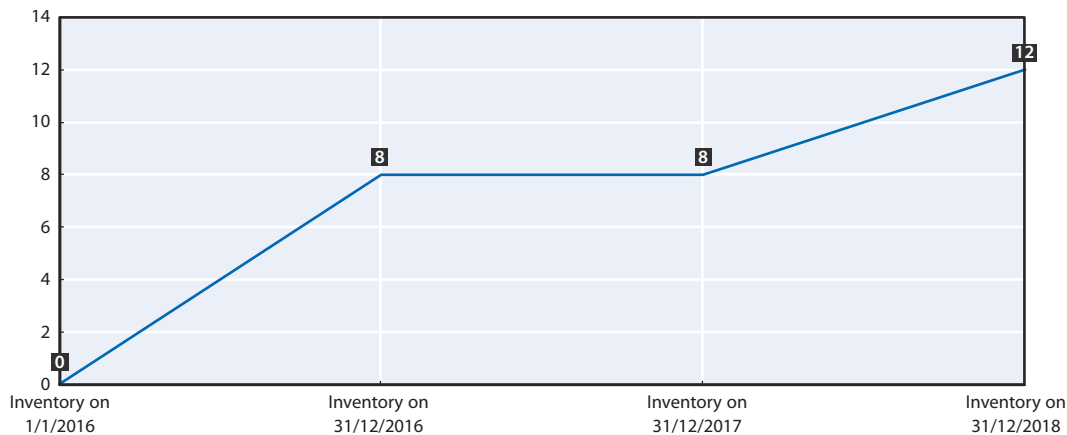
152. At the beginning of the Statistics Reporting Period, Turkey’s MAP inventory of pre-2016 MAP cases consisted of 11 cases, two of which were attribution/allocation cases and nine were other cases. At the end of the Statistics Reporting Period, the total inventory of pre-2016 cases decreased to six cases, consisting of one attribution/allocation case and five other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

Pre-2016 cases	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	(no cases closed)	-50%	(no cases closed)	-50%
Other cases	(no cases closed)	-44%	(no cases closed)	-44%

Post-2015 cases

153. Figure C.4 shows the evolution of Turkey’s post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of Turkey’s MAP inventory
Post-2015 cases



154. In total, 19 MAP cases started during the Statistics Reporting Period, ten of which concerned attribution/allocation cases and nine other cases. At the end of this period, the total number of post-2015 cases in the inventory was 12 cases, consisting of six attribution/allocation cases and six other cases. Conclusively, Turkey closed seven post-2015 cases during the Statistics Reporting Period, four of them being attribution/allocation cases and three being other cases. The total number of closed cases represents 37% of the total number of post-2015 cases that started during the Statistics Reporting Period.

155. 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.

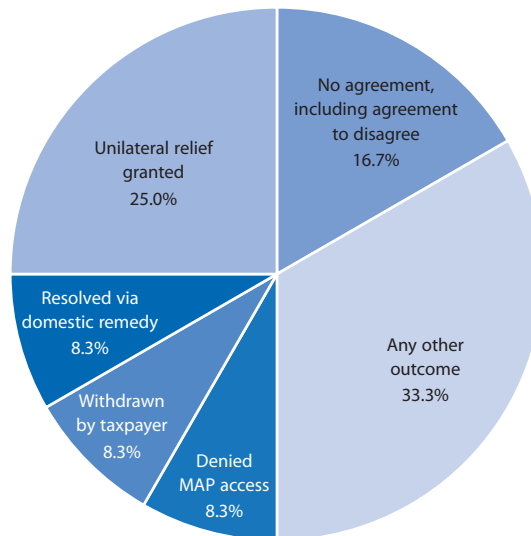
Post-2015 cases	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	0%	150%	20%	40%
Other cases	17%	0%	100%	33%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

156. During the Statistics Reporting Period Turkey in total closed twelve MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed in 2016, 2017 or 2018 (12 cases)



157. Figure C.5 shows that during the Statistics Reporting Period, no cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

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

- unilateral relief granted (60%)
- withdrawn by taxpayer (20%)
- any other outcome (20%).

Reported outcomes for other cases

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

- any other outcome (43%)
- no agreement including an agreement to disagree (29%)
- resolved via domestic remedy (14%)
- denied MAP access (14%).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

160. The average time needed to close MAP cases during the Statistics Reporting Period was 15.54 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	5	9.97
Other cases	7	19.52
All cases	12	15.54

Pre-2016 cases

161. For pre-2016 cases, Turkey reported that on average it needed 11.52 months to close one attribution/allocation case and 25.56 months to close four other cases. This resulted in an average time needed of 22.75 months to close five pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Turkey reported that it uses the following dates:

- start date: the date when the MAP request from the taxpayer or notification/position paper from the other competent authority to initiate the MAP is received
- end date: the date of the closing letter sent to the taxpayer or to the other competent authority, or the receipt of such letter from the other competent authority.

Post-2015 cases

162. For post-2015 cases, Turkey reported that on average it needed 9.58 months to close four attribution/allocation cases and 11.46 months to close three other cases. This resulted in an average time needed of 10.39 months to close seven post-2015 cases.

Peer input

163. The peer input in relation to resolving MAP cases will be discussed under element C.3. In relation to the timely resolution of MAP cases, while one peer did not provide input on Turkey's implementation of the Action 14 Minimum Standard, due to the absence of any substantive experience in handling and resolving MAP cases, it noted that Turkey was co-operative and responsive in the process of matching the MAP statistics for 2017.

Recent developments

164. Turkey was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 67% of its post-2015 MAP cases that were pending on 31 December 2017 (eight cases), within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

165. With respect to this recommendation, Turkey reported that since 1 May 2018 it has added more staff members to resolve pending cases, which will be discussed under element C.3.

166. The statistics also show that Turkey has in the period 2016-18 closed its MAP cases within the pursued average of 24 months. However, in view of statistics discussed above, it follows that Turkey saw a significant increase of 64% in its MAP inventory in the Statistics Reporting Period, including an increase of 29% in 2018. For these years, the number of post-2015 cases closed as compared to the cases that started in these years was 37%. Element C.3 will further consider these numbers in light of the adequacy of resources.

167. All peers that provided input during stage 1 confirmed that this input holds equally relevance for the period starting on 1 May 2018.

Anticipated modifications

168. Turkey 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.

169. 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 Turkey's competent authority

170. Under Turkey's tax treaties, the competent authority function is assigned to the Minister of Finance (as of 10 July 2018 renamed to the Minister of Treasury and Finance), which has delegated this authority to Turkey's Revenue Administration. As its number of MAP cases is relatively low, Turkey reported that there is no specific section that is only involved in handling MAP cases. Within the Revenue Administration, the competence for handling both attribution/allocation and other MAP cases is assigned to the Department of EU and Foreign Affairs. In this respect, Turkey noted that it has informed and will inform any changes to its competent authority to all of its treaty partners, such through written notification that includes names, titles, addresses, email address, telephone and fax numbers.

171. Within the Department of EU and Foreign Affairs, the transfer pricing section is responsible for handling all transfer pricing MAP cases and APA cases, and employs eight persons, next to the director of the section, the head of the group and the head of department. Within the Department of EU and Foreign Affairs, the double taxation agreements section handles other MAP cases and employs 20 persons, in addition to the two directors of the sections, the head of the group and the head of the department. Next to handling MAP cases, the department is also involved in other tasks, such as: (i) negotiating tax treaties, (ii) issuing of rulings related to the application of tax treaties and (iii) providing assistance in the collection of taxes.

172. Turkey reported that all personnel within its Revenue Administration are selected through a merit based examination. Furthermore, Turkey reported that only persons that have at least four years of experience in double taxation cases and have a certain level of knowledge of tax treaties are responsible for handling MAP cases. To keep their knowledge up to date, Turkey reported that these staff members receive in-service training within the Revenue Administration and further attend trainings organised by the OECD as well as other international tax seminars and courses.

Monitoring mechanism

173. In terms of allocating resources to the competent authority function, Turkey reported that its competent authority is funded by the general budget and that the available resources are considered sufficient given the limited number of MAP cases in Turkey.

Recent developments

174. In the stage 1 report, Turkey was recommended to continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.

175. For this purpose, Turkey reported that six additional team members were added to its competent authority, all dealing with other MAP cases. Turkey further reported that several team members attended MAP training sessions organised by the OECD as well as internal trainings on the Action 14 minimum standard and its newly introduced internal procedure for MAP.

Practical application

MAP statistics

176. As discussed under element C.2, Turkey closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average, as it needed 15.54 months to close MAP cases. 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 2016-18



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

177. The stage 1 peer review report of Turkey analysed the 2016-17 MAP statistics and showed an average of 15.15 months, which concerns an average of 7.63 months for attribution/allocation cases and 21.17 months for other cases. It was on that basis, concluded that since the overall average was below the pursued average of 24 months, Turkey was considered to be adequately resourced.

178. 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	19.33
Other cases	15.38
All cases	16.70

179. The 2018 statistics of Turkey show that the average completion time of MAP cases increased slightly from 15.15 (2016-17) months to 16.70 (2018) months, which is still lower than the pursued 24-month average.

180. However – as analysed in element C.2 – the MAP inventory of Turkey has significantly increased since 1 January 2016, owing to an increase in both attribution/allocation and other MAP 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	2	10	5	7	250%
Other cases	9	9	7	11	22%
Total	11	19	12	18	64%

181. The figures in the above table show that the number of closed cases is slightly more than half of the number of all cases started in the period 2016-18.

182. In addition, Turkey has only managed to close three MAP cases in 2018, with no pre-2016 cases being closed, whereas seven new cases were started.

183. Turkey reported the following updates with regard to the six pending pre-2016 cases as of 31 December 2018:

- In one case, the other competent authority had informed Turkey's competent authority that the taxpayer has accessed domestic judicial remedies in the other State. The case was closed in 2019 since the MAP request was withdrawn by the taxpayer.
- For three cases, although Turkey's competent authority has sent position papers to or notified its position to the other competent authorities, it has not received a reply for two cases. For the remaining case, the other competent authority provided a reply to Turkey's position paper and discussions are pending.
- For one of the remaining two cases, Turkey's competent authority has concluded discussions with the other competent authority and has recently agreed that no agreement is possible in this case. For the other case, Turkey's competent authority is still arriving at a position.

Peer input

Period 1 January 2016-30 April 2018 (stage 1)

184. Of the five peers that provided input, two reported having no actual experience with Turkey’s competent authority in resolving MAP cases. One of them also noted that there have only been a limited number of MAP cases with Turkey and for that reason, it was unable to assess whether Turkey’s competent authority endeavours to resolve MAP cases within a reasonable timeframe. The third peer considered the working relationship with Turkey’s competent authority as well-functioning in that it received replies in a timely manner. However, it also mentioned that in the case under review, the reply of Turkey’s competent authority only stated that it did not agree with the position set forth in this paper, without any reasoning supporting this conclusion. This peer noted that in order to be able to proceed with the case under review, it would appreciate some reasoning as well as further correspondence. With respect to the input given by this peer, Turkey expressed that this input is duly noted for future MAP cases, although it considers that it has indicated the article that the income in question should be dealt with in the view of its competent authority. Since Turkey’s competent authority did not receive any response to its position, it was assumed that the evaluation presented was satisfactory to the peer. The fourth peer mentioned that it has had two post-2015 MAP cases with Turkey and reported having a very positive experience in resolving these cases, thereby appreciating the easiness of communication with Turkey’s competent authority. While this peer noted that the initiation of the bilateral phase of the MAP process was a bit slow and cumbersome as it had to insist to be able to discuss the case, once the case was under discussion, it reported that the resolution phase went very well through telephone conferences. Finally, the fifth peer reported having one MAP case with Turkey and that contacts with Turkey’s competent authority have taken place in writing by regular mail and email, for which no problems were encountered.

Period 1 May 2018-31 October 2019 (stage 2)

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

Anticipated modifications

186. Turkey did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	While MAP cases were on average closed within 24 months, which is the pursued average for closing MAP cases that started on or after 1 January 2016, the MAP caseload has increased by 64% since 1 January 2016. Further, the number of cases resolved is only slightly more than half of the number of cases started during this period, with the inventory still containing some pre-2016 cases. This might indicate that additional resources need to be devoted by Turkey’s competent authority to ensure that MAP cases continue to be closed in a timely, effective and efficient manner and to cope with this increase. .	Although many organisational steps have been taken and clarifications have been provided explaining the status of the pending pre-2016 cases, Turkey should closely monitor whether the available resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. Where needed, it should in particular devote additional resources to be able to cope with the significant increase in the number of MAP cases, especially attribution/allocation cases, as well as to be able to close long-pending pre-2016 cases.

[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty

Jurisdictions should ensure that the staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty, in particular without being dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty.

187. 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

188. Turkey reported that where a MAP request is received, staff in charge of MAP will first analyse whether or not to accept the request. Input can be requested from other relevant departments within Turkey's Revenue Administration, if needed. When, subsequently, the case is accepted into MAP, Turkey noted that a position paper will be prepared and shared with the other competent authority concerned. Turkey further reported that the response to this paper will be analysed and evaluated by the person responsible for handling the MAP cases, and further discussed with the group of experienced case handlers. In view of this process, Turkey reported that all decisions in relation to the acceptance of a MAP request, the preparation and issuing of position papers and the approval of MAP agreements are made by its competent authority.

189. Concerning the independent functioning of staff in charge of MAP from the audit department, Turkey 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. In this respect, Turkey clarified that its competent authority has no relationship with the Tax Inspection Board, which is responsible for conducting audits and other relevant departments within Turkey's Revenue Administration. Turkey reported that where needed on the basis of the facts and circumstances of the case under review, it may be that staff in charge of MAP will request the Tax Inspection Board for additional information or additional auditing, but the relevant decision hereto and the final decision on the case remains with the competent authority.

190. Furthermore, Turkey reported that the process for negotiating MAP agreements is also not influenced by policy considerations. While the Department of EU and Foreign Affairs is, apart from handling MAP cases, also involved in treaty negotiations, Turkey clarified that staff members conducting treaty negotiations are always different from staff members handling MAP cases. Turkey further noted that as MAP cases require a certain specialisation and expertise, only selected persons are involved in handling these cases. Although in practice it may be that staff in charge of MAP may be involved in the preparation of treaty negotiations, Turkey reported that all tax treaty negotiations are conducted by an authorised delegation that consist of persons who are employed within a different department within the Revenue Administration.

Recent developments

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

Practical application***Period 1 January 2016-30 April 2018 (stage 1)***

192. Peers generally reported no impediments in Turkey 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 2016-30 April 2018. One peer specifically mentioned that it is not being aware that staff in charge of the MAP in Turkey is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

Period 1 May 2018-31 October 2019 (stage 2)

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

Anticipated modifications

194. Turkey 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.

195. 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 Turkey

196. As discussed under element C.3, Turkey reported that staff in charge of MAP in Turkey is hired via a merit based competitive examination and all staff members need to be revenue experts. For becoming such expert, Turkey noted that staff within Turkey's Revenue Administration need to pass a proficiency exam, which is subject to evaluation by the director of the section and the head of the group. This evaluation addresses the criteria to be met, which are: (i) general criteria (such as objectivity and fairness), (ii) compliance with discipline rules, (iii) level of performance, (iv) compliance with co-operation and (v) professional knowledge about tax laws and special legislation applied in the relevant department. In other words, Turkey reported that a certain level of knowledge and expertise required to join Turkey's competent authority.

197. Concerning the evaluation process itself, Turkey reported that the Revenue Administration prepares a strategic plan to evaluate the performance of its staff. This plan includes performance targets and performance indicators, for which each of the departments within the administration, including those in charge of MAP, are assigned some targets and indicators. Turkey reported that given the relatively small amount of MAP cases, there are no specific criteria or performance indicators in relation hereto to evaluate staff in charge of MAP, but that such criteria could be put in place depending on the evolution of its MAP inventory. More generally, Turkey noted that there are no written instructions for personnel that handle MAP cases, but that they have to take into consideration the guidelines under the Action 14 Minimum Standard in terms of applying tax treaties in good faith and the timely resolution of MAP cases. Moreover, Turkey reported that personnel are instructed to evaluate MAP cases in an objective manner, without prejudice to possible revenue losses or specific performance indicators. In that regard, Turkey specified that directors of the sections handling MAP cases review the evaluation of MAP cases on a monthly basis.

198. The Action 14 final report (OECD, 2015b) includes examples of performance indicators that are considered appropriate. These indicators are:

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

199. With respect to these indicators, Turkey reported that none of these indicators are being used. However, Turkey also reported that it does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue. In other words, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions.

Recent developments

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

Practical application

Period 1 January 2016-30 April 2018 (stage 1)

201. All peers that provided input indicated not being aware that Turkey used performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue in the period 1 January 2016-30 April 2018. One peer particularly noted that it is not aware of the use of performance indicators by Turkey that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Period 1 May 2018-31 October 2019 (stage 2)

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

Anticipated modifications

203. Turkey 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.

204. 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

205. Turkey reported that its constitution contains limitations for including MAP arbitration in its tax treaties. Article 36 of the constitution includes a right to the initiation judicial process for all kinds of disputes, including disputes relating to the application and interpretation of international agreements. Furthermore, Article 125 defines which disputes can be subject to an arbitration procedure. Tax-treaty related disputes, however, are not included in that definition.

206. Furthermore, Turkey reported that its policy is not to include arbitration provisions in its tax treaties. To this end, Turkey reserved the right in the commentary to the 2017 OECD Model Tax Convention (OECD, 2017) not to include paragraph 5 of Article 25 in its tax treaties. This is also mentioned in Turkey's MAP profile.

Recent developments

207. There are no recent developments with respect to element C.6.

Practical application

208. To date, Turkey has not incorporated in its tax treaties an arbitration clause as a final stage to the MAP.

Anticipated modifications

209. Turkey did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2019.
2. For post-2015 cases, if the number of MAP cases in Turkey’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, Turkey reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
3. Turkey’s 2016 MAP statistics were corrected in the course of the peer review process and deviate from the 2016 published MAP statistics. See for a further explanation Annex B and Annex C.
4. For pre-2016 and post-2015 Turkey follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.

References

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

210. 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

211. Turkey reported that it has a domestic statute of limitation for both upward and downward adjustments. This statute of limitation is five years following the related fiscal year and commences on the first day of the calendar year following the year in which the tax claim arose. This statute of limitation also applies for the implementation of MAP agreements, unless a tax treaty contains a provision equivalent to the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017).

212. Concerning the process for implementing MAP agreements, Turkey reported that once a MAP agreement has been reached with the other competent authority, its competent authority will notify the taxpayer thereof in writing and, if applicable, include the amount of refund. While there is no specific timeline set for notifying the taxpayer, Turkey clarified that in practice, given that a MAP agreement entails an administrative action, such notification will be given immediately following the MAP agreement.

213. Turkey further reported that where a MAP agreement entails a correction to the pre-assessed tax or the issuing of an additional tax assessment, taxpayers have to give their written consent to the agreement reached within a certain timeframe. This timeframe is, pursuant to Article 14 and 18 of the Tax Procedure Law No. 213 15 days following the day of the notification of the MAP agreement. If such consent is not given within this timeframe, it is assumed that the agreement has not been accepted. When the taxpayer has timely given its consent, Turkey clarified that its Revenue Administration will notify the local tax office of the MAP agreement and give them the instruction to implement it. The local tax office will subsequently inform the taxpayer about the implementation and, accordingly, the Revenue Administration will inform the competent authority of the treaty partner.

214. Where the MAP agreement, however, entails a refund of taxes in Turkey, Turkey reported that the taxpayer should apply to the local tax office within one year from the date of the notification of the MAP agreement in order to obtain this refund. As will be further discussed under element D.3, this requirement has been reflected in a number of Turkey's tax treaties.

215. The process for implementing MAP agreements, as well as the rules on the statute of limitations, are clearly described in Turkey’s MAP guidance, under section 8 titled “Can the request for the commencement of the mutual agreement or the commencement of the mutual agreement procedure by competent authorities be considered among the circumstances halting or interrupting the statute of limitation?” and section 12 titled “Is the final decision reached by competent authorities within the framework of the mutual agreement procedure binding on the taxpayer?”.

216. Furthermore, Turkey reported not having a system in place that monitors the actual implementation of MAP agreements, although the local tax office has to provide feedback to the competent authority on the actual implementation of a MAP agreement.

Recent developments

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

Practical application

Period 1 January 2016-30 April 2018 (stage 1)

218. Turkey reported it will implement all MAP agreements resulting from MAP discussions, including making appropriate adjustments to the tax assessed when the case under review is a transfer pricing case. In this respect, Turkey further reported that in the period 1 January 2016-30 April 2018 it has not reached a MAP agreement that required an implementation by Turkey.

219. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2016-30 April 2018 that was not implemented by Turkey.

Period 1 May 2018-31 October 2019 (Stage 2)

220. Turkey reported that all MAP agreements that were reached on or after 1 May 2018 have been implemented.

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

Anticipated modifications

222. Turkey did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Turkey’s tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternatives provided in Article 9(1) and 7(2). Therefore, there is a risk that for those tax treaties that do not contain those provisions, not all MAP agreements will be implemented due to the five year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in Turkey’s relevant tax treaty, prevent the implementation of a MAP agreement, Turkey should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Turkey should for clarity and transparency purposes notify the treaty partner thereof without delay.

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

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

223. 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

224. As discussed under element D.1, Turkey has a specific system in place for the implementation of MAP agreements. However, there are no specific timelines for each step in the process concerning the implementation.

Recent developments

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

Practical application***Period 1 January 2016-30 April 2018 (stage 1)***

226. Turkey reported that all MAP agreements that were reached in the period 1 January 2016-30 April 2018, once accepted by taxpayers, have been (or will be) implemented in a timely manner and that no cases of noticeable delays have occurred.

227. All peers that provided input reported not being aware of any impediments to the implementation of MAP agreements in Turkey on a timely basis in the period 1 January 2016-30 April 2018.

Period 1 May 2018-31 October 2019 (Stage 2)

228. Turkey reported that all MAP agreements that were reached on or after 1 May 2018 have been implemented on a timely basis.

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

230. One peer provided additional input with regard to a MAP case that was pending between this peer and Turkey relating to the fiscal year 2015. The peer noted that the two competent authorities arrived at a MAP agreement in September 2019 based on which Turkey was to reimburse taxes issued by it. The peer reported that on the same day, Turkey's competent authority stated that the taxpayer had to ask for a refund along with Turkish translations of relevant documents concerning the case for it to implement such agreement. The peer noted that as it was unsure as to whether the limitation period had expired for the taxpayer to make such a request, it had written to Turkey's competent authority to verify this. Turkey confirmed in this regard that it had received the letter and had replied in November 2019. Turkey further confirmed that the agreement has now been implemented. The peer in turn clarified that Turkey responded to its request promptly and that it considers

the issue resolved. The peer further noted that Turkey was very helpful and reacted quickly while dealing with this question.

Anticipated modifications

231. Turkey 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.

232. 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 Turkey's tax treaties

233. As discussed under element D.1, Turkey's domestic legislation includes a statute of limitation for implementing MAP agreements of five years for both upward and downward adjustments, unless overridden by tax treaties.

234. Out of Turkey's 93 tax treaties, six 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.¹ In addition, one tax treaty does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but contains both alternative provisions in Article 9(1) and Article 7(2). For the remaining, 86 tax treaties, the following analysis is made:

- 20 tax treaties contain a provision equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017), but an obligation is included, either in the MAP article or in a protocol provision, for taxpayers to ask for a refund of taxes within a certain period after the MAP agreement has been notified to them. While this puts an additional obligation on taxpayers, the provision itself does not obstruct the implementation of MAP agreements notwithstanding domestic time limits. These treaties are, therefore, considered to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

- One tax treaty contains a provision equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) but also contains additional wording that requires a MAP agreement to be implemented within one year. As this treaty also does not limit the implementation of such agreement notwithstanding domestic time limits, the treaty is also be considered to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).
- 53 tax treaties do not contain a provision that is based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or the alternative provisions in Article 9(1) and Article 7(2) of the OECD Model Tax Convention (OECD, 2017).
- One tax treaty does not contain a provision that is based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but contains only the alternative provision in Article 9(1).
- Six tax treaties make the implementation of MAP agreements subject to the domestic time limits of the treaty partners and is thus considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).
- Two treaties contain a provision equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) but also contain additional language making the implementation dependent on the notification of a MAP request within a period of five years from the end of the taxable year to which the tax relates. As these provisions may cause that MAP agreements cannot be implemented when the other competent authority was not notified in a timely manner, these tax treaties are considered not to contain the equivalent of Article 25(2) second sentence of the OECD Model Tax Convention (OECD, 2017).
- Two treaties do not contain a provision equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) but instead contain a provision stating that MAP agreements shall be implemented within one year without a reference to domestic statute of limitations. Thus, these treaties are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).
- One tax treaty contains a provision equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017), but which applies only to time limits in Turkey’s domestic legislation and not the treaty partner’s. Thus, this treaty is considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

235. Generally, all peers that provided input in relation to their tax treaty with Turkey noted that their treaty was in line with the Action 14 Minimum Standard or if not, that their tax treaty with Turkey will be modified either via the Multilateral Instrument and/or via bilateral negotiations. The tax treaty with all of these peers is in line with element D.3.

Recent developments

Bilateral modifications

236. Turkey signed new tax treaties with four treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. None of these treaties have entered into force. Three of these four treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD,

2017) whereas the remaining treaty neither contains such equivalent nor the alternative provisions in Articles 9(1) and 7(2). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Multilateral Instrument

237. Turkey signed the Multilateral Instrument. 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), first 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 does will for a tax treaty not take effect if one or both of the treaty partners has, pursuant 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.

238. With regard to the 65 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives provided for in Articles 9(1) and 7(2), Turkey listed 63 as covered tax agreements under the Multilateral Instrument and for 61 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). Of the relevant 61 treaty partners, 24 are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Turkey under that instrument and three made a reservation on the basis of Article 16(5)(a). Therefore, at this stage, 33 of the 65 tax treaties identified above will be modified by the Multilateral Instrument upon entry into force for these treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

239. Turkey reported that for one of the 32 treaties that does 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, the relevant treaty partner has informed Turkey 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).

240. Further, Turkey reported that for one of the remaining 31 treaties that does 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, it intends to revise its list of notifications and reservations to the Multilateral Instrument upon deposit of its instrument of ratification to bring this treaty in line with the requirements under the Action 14 minimum standard.

241. For the remaining 30 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, Turkey has not put in place a plan for bringing these treaties in line with the requirements under element D.3.

Peer input

242. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Turkey, out of which one provided input in relation to this element. This peer noted that its treaty with Turkey is in line with the Action 14 minimum standard as regards element D.3, which is indeed the case.

Anticipated modifications

243. Turkey 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
[D.3]	<p>65 out of 93 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 provided for in Article 9(1) and Article 7(2). Of these 65 treaties:</p> <ul style="list-style-type: none"> • 33 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. • 31 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 31 treaties: <ul style="list-style-type: none"> - For one, Turkey will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument. - For 30, no actions have been taken nor are any actions planned to be taken. 	<p>Turkey should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those 34 treaties that currently do not contain such equivalent and that are expected to be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For one of the remaining 31 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), Turkey should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument.</p> <p>For the remaining 30 treaties, Turkey 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. With regard to the one treaty among these 30 treaties that was recently signed but not in force as yet, Turkey should enter into bilateral negotiations with the concerned treaty partner to make this treaty in line with element D.3.</p> <p>In addition, Turkey should as quickly as possible ratify the protocol to the one tax treaty that added a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) to modify the existing treaty currently in force with the same jurisdiction that does not contain such equivalent.</p>

Note

1. These six treaties include the treaty with former Serbia and Montenegro that Turkey continues to apply to both (i) Serbia and (ii) Montenegro.

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>27 out of 93 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is in these treaties can be shorter than three years, from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these 27 treaties:</p> <ul style="list-style-type: none"> • 12 are expected to be modified or superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • 15 will not be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these 15 treaties: <ul style="list-style-type: none"> - For one, Turkey will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument. - For 14, no actions have been taken nor are any actions planned to be taken. 	<p>Turkey should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those 12 treaties that currently do not contain such equivalent and that will be modified or superseded by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For one of the remaining 15 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Turkey should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument.</p> <p>For the remaining 14 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Turkey should without further delay request via bilateral negotiations the inclusion of the required provision.</p>
	<p>One out of 93 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</p> <p>This treaty is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) but not as regards the first sentence. For this treaty, no actions have been taken nor are any actions planned to be taken.</p>	<p>Turkey should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in this treaty.</p> <p>With respect to Article 25(1), first sentence, Turkey 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 (OECD, 2015a) either:</p> <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.1]	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Turkey should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.
	There is a risk that access to MAP is denied in eligible cases where (a) the issue under dispute is pending appeal or (b) has already been decided and there is no need for adjustments to be made in the treaty partner jurisdiction to prevent double taxation, under the judicial remedies provided by Turkey's domestic law.	Turkey should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	<p>Eight out of 93 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:</p> <ul style="list-style-type: none"> • Seven are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • 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 actions planned to be taken. 	<p>Turkey should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the seven treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Turkey should without further delay request via bilateral negotiations the inclusion of the required provision.</p>
[B.8]	-	-
[B.9]	-	-
[B.10]	Public guidance on the administrative dispute settlement process does not address the effects of that process on MAP.	Turkey should address in its instructions on the administrative dispute settlement process the effect of that process on MAP.
Part C: Resolution of MAP cases		
[C.1]	-	-
[C.2]	-	-
[C.3]	While MAP cases were on average closed within 24 months, which is the pursued average for closing MAP cases that started on or after 1 January 2016, the MAP caseload has increased by 64% since 1 January 2016. Further, the number of cases resolved is only slightly more than half of the number of cases started during this period, with the inventory still containing some pre-2016 cases. This might indicate that additional resources need to be devoted by Turkey's competent authority to ensure that MAP cases continue to be closed in a timely, effective and efficient manner and to cope with this increase. .	Although many organisational steps have been taken and clarifications have been provided explaining the status of the pending pre-2016 cases, Turkey should closely monitor whether the available resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. Where needed, it should in particular devote additional resources to be able to cope with the significant increase in the number of MAP cases, especially attribution/allocation cases, as well as to be able to close long-pending pre-2016 cases.

	Areas for improvement	Recommendations
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of Turkey's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternatives provided in Article 9(1) and 7(2). Therefore, there is a risk that for those tax treaties that do not contain those provisions, not all MAP agreements will be implemented due to the five year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in Turkey's relevant tax treaty, prevent the implementation of a MAP agreement, Turkey should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Turkey should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	-	-
[D.3]	<p>65 out of 93 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 provided for in Article 9(1) and Article 7(2). Of these 65 treaties:</p> <ul style="list-style-type: none"> • 33 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. • 31 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 31 treaties: <ul style="list-style-type: none"> - For one, Turkey will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument. - For 30, no actions have been taken nor are any actions planned to be taken. 	<p>Turkey should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those 32 treaties that currently do not contain such equivalent and that are expected to be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For one of the remaining 32 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), Turkey should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument.</p> <p>For the remaining 31 treaties, Turkey 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. With regard to the one treaty among these 31 treaties that was recently signed but not in force as yet, Turkey should enter into bilateral negotiations with the concerned treaty partner to make this treaty in line with element D.3.</p> <p>In addition, Turkey should as quickly as possible ratify the protocol to the one tax treaty that added a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) to modify the existing treaty currently in force with the same jurisdiction that does not contain such equivalent.</p>

Annex A

Tax treaty network of Turkey

		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		
Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons	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? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(2) first sentence? (Note 5)	Inclusion Art. 25(3) first sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 7)	Inclusion arbitration provision?		
	Y = yes N = signed pending ratification	If N, date of signing	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no			
Albania	Y	N/A	O	iv*	Domestic law	Y	i	Y	N*	Y	Y	N			
Algeria	Y	N/A	O	ii	1-year	Y	i	Y	N	Y	Y	N			
Argentina	N	1-Dec-18	E	Y	N/A	Y	i	Y	Y	Y	Y	N			
Australia	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N			
Austria	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N			

		Article 25(1) of the OECD Model Tax Convention (“MTC”)				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 2		Column 3		Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)			Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons				If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?					
Azerbaijan	Y	N/A	O	iv	Domestic law	Y	i	Y	N	Y	Y	N
Bahrain	Y	N/A	E*	i	N/A	Y	i	Y	N*	Y	Y	N
Bangladesh	Y	N/A	O	iv	Domestic law	Y	i	Y	N	Y	Y	N
Belarus	Y	N/A	O	iv	Domestic law	Y	i	Y	N	Y	Y	N
Belgium	Y	N/A	O*	iv**	1 year	Y	i	Y	N*	Y	N*	N
Bosnia and Herzegovina	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Brazil	Y	N/A	O	iv	Domestic law	i	i	Y	N	Y	N	N
Bulgaria	Y	N/A	O*	i	N/A	Y	i	Y	N*	Y	Y	N
Canada	Y	N/A	O	iv*	1 year	Y	i	Y	iii	Y	Y	N
Chad	N	26-Dec-17	O	Y	N/A	Y	i	Y	N	Y	Y	N
China (People’s Republic of)	Y	N/A	O	ii*	1-year	Y	i	Y	N*	Y	Y	N
Côte d’Ivoire	N	29-Feb-16	O*	Y	N/A	Y	i	Y	N*	Y	Y	N
Croatia	Y	N/A	O	Y	N/A	Y	i	Y	N*	Y	Y	N
Czech Republic	Y	N/A	O*	iv**	Domestic law	Y	i	Y	N*	Y	Y	N
Denmark	Y	N/A	O*	iv	1 year	Y	i	Y	Y	Y	Y	N
Egypt	Y	N/A	O*	i	N/A	Y	i	Y	N*	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention (“MTC”)				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?	
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons			If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?						
Estonia	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Ethiopia	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N
Finland	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
France	Y	N/A	O*	i	N/A	Y	i	Y	Y	Y	Y	N
Gambia	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N
Georgia	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Germany	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Greece	Y	N/A	O*	Y	N/A	Y	i	Y	N*	Y	Y	N
Hungary	Y	N/A	O	i	N/A	Y	i	Y	N*	Y	Y	N
India	Y	N/A	O	i	N/A	Y	i	Y	N	Y	Y	N
Indonesia	Y	N/A	O*	i	N/A	Y	i	Y	N*	Y	Y	N
Iran	Y	N/A	O	iv	Domestic law	Y	i	Y	N	Y	Y	N
Ireland	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	N*	N
Israel	Y	N/A	O	i	N/A	Y	i	Y	Y	Y	Y	N
Italy	Y	N/A	N	ii*	2-years	Y	i	Y	N*	Y	N*	N
Japan	Y	N/A	O*	i	N/A	i	i	Y	Y	Y	Y	N
Jordan	Y	N/A	O*	i	N/A	Y	i	Y	N*	Y	N*	N
Kazakhstan	Y	N/A	O*	i	N/A	Y	i	Y	N*	Y	Y	N
Korea	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N
Kosovo	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N
Kuwait	Y	N/A	E	Y	N/A	Y	i	Y	Y	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention (“MTC”)				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 2		Column 3		Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 25(1) second sentence? (Note 1)		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Kyrgyzstan	Y	N/A	O	iv	Domestic law	Y	i	Y	N	Y	Y	N
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Lebanon	Y	N/A	O	ii	2-years	Y	i	Y	N	Y	Y	N
Lithuania	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O*	Y	N/A	Y	i	Y	N*	Y	Y	N
Malaysia	Y	N/A	O*	i	N/A	Y	i	Y	N*	Y	Y	N
Malta	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Mexico	Y	N/A	O*	Y	N/A	Y	i	Y	N	Y	Y	N
Moldova	Y	N/A	O	iv	Domestic law	Y	i	Y	N	Y	Y	N
Mongolia	Y	N/A	O	i	N/A	Y	i	Y	N	Y	Y	N
Montenegro	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Morocco	Y	N/A	O*	Y	N/A	Y	i	Y	N*	Y	Y	N
Netherlands	Y	N/A	O*	i	N/A	Y	i	Y	Y	Y	Y	N
New Zealand	Y	N/A	O*	ii	5-years	Y	i	Y	Y	Y	Y	N
North Macedonia	Y	N/A	O	ii	5-years	Y	i	Y	N*	Y	Y	N
Norway	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Oman	Y	N/A	O*	Y	N/A	Y	i	Y	N*	Y	Y	N
Palestinian Authority	N	25-Oct-18	O	Y	N/A	Y	i	Y	N	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11		
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?	
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons			If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)				
Pakistan	Y	N/A	O*	i	N/A	Y	i	Y	N*	Y	N*	N
Philippines	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N
Poland	Y	N/A	O	i	N/A	Y	i	Y	N*	Y	Y	N
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N*	N
Qatar	Y	N/A	O*	Y	N/A	Y	i	Y	N*	Y	Y	N
Romania	Y	N/A	O	i	N/A	Y	i	Y	N*	Y	Y	N
Russia	Y	N/A	O*	iv**	1 year	Y	i	Y	N*	Y	Y	N
Rwanda	N	1-Dec-18	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Saudi Arabia	Y	N/A	O*	Y	N/A	Y	i	Y	N*	Y	Y	N
Senegal	N	14-Nov-15	O*	Y	N/A	Y	i	Y	N	Y	Y	N
Serbia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Singapore	Y	N/A	O	Y	N/A	Y	i	Y	N*	Y	Y	N
Slovak Republic	Y	N/A	O	iv**	Domestic law	Y	i	Y	N*	Y	Y	N
Slovenia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Somalia	N	3-Jun-16	O	Y	N/A	Y	i	Y	N	Y	Y	N
South Africa	Y	N/A	O	iv**	Domestic law	Y	i	Y	N*	Y	Y	N
Spain	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Sudan	Y	N/A	O	iv	Domestic law	Y	i	Y	N	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11		
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?		
Sweden	Y	N/A	O*	iv**	Domestic law	Y	i	Y	N*	Y	Y	N
Switzerland	Y	N/A	O*	i	N/A	i	i	Y	ii	Y	Y	N
Syrian Arab Republic	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N
Tajikistan	Y	N/A	O	iv	Domestic law	Y	i	Y	N	Y	Y	N
Thailand	Y	N/A	O	iv	Domestic law	Y	i	Y	N	Y	Y	N
Tunisia	Y	N/A	O*	iv**	Domestic law	Y	i	Y	Y	Y	Y	N
Turkish Republic of Northern Cyprus	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N
Turkmenistan	Y	N/A	O	iv	Domestic law	Y	i	Y	N	Y	Y	N
Ukraine	Y	N/A	O*	iv**	Domestic law	Y	i	Y	N*	Y	Y	N
United Arab Emirates	Y	N/A	O*	i	N/A	Y	i	Y	N*	Y	Y	N
United Kingdom	Y	N/A	O*	i	N/A	Y	i	Y	N*	Y	N*	N
United States	Y	N/A	O	i	N/A	Y	i	Y	N	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11		
Treaty partner	DTC in force?	Inclusion Art. 25(1) 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? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?		
Uzbekistan	Y	N/A	O	iv	Domestic law	Y	i	Y	N	Y	Y	N
Venezuela	N	3-Dec-18	E	Y	N/A	Y	i	Y	Y	Y	Y	N
Viet Nam	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N
Yemen	Y	N/A	O	Y	N/A	Y	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.

Annex B

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

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

Note: The inventory of pre-2016 attribution/allocation cases has been increased by one case and pre-2016 other cases has been increased by two cases as Turkey either misreported the case as a post-2015 case or was informed afterwards by its treaty partners about the case.

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	2	0	0	0	0	0	0	0	0	0	1	1	11.52
Others	9	0	0	0	0	1	0	0	0	2	1	5	25.56
Total	11	0	0	0	0	1	0	0	0	2	2	6	22.75

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 on 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	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	5	0	0	0	0	0	0	0	0	0	0	5	n.a.
Total	6	0	0	0	0	0	0	0	0	0	0	6	n.a.

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	3	0	0	0	0	0	0	0	0	0	0	3	n.a.
Others	0	6	0	0	0	0	0	0	0	0	0	1	5	3.62
Total	0	9	0	0	0	0	0	0	0	0	0	1	8	3.62

Note: The inventory of post-2015 attribution/allocation cases has been increased by one case as Turkey was informed in 2017 by its treaty partner of this case.

2017 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	3	2	0	0	0	3	0	0	0	0	0	0	2	6.33
Others	5	1	0	0	0	0	0	0	0	0	0	0	6	n.a.
Total	8	3	0	0	0	3	0	0	0	0	0	0	8	6.33

2018 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	2	5	0	0	1	0	0	0	0	0	0	0	6	19.33
Others	6	2	1	0	0	0	0	0	0	0	0	1	6	15.38
Total	8	7	1	0	1	0	0	0	0	0	0	1	12	16.7

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP guidance	Guideline on the Mutual Agreement Procedure in Double Taxation Agreements
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 15 July 2014
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that 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, Turkey (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 Turkey.



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