

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

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

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

This report was approved by the Inclusive Framework on 30 August 2021 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

Indonesia has a relatively large tax treaty network with over 70 tax treaties. Indonesia has an established MAP programme with modest experience in resolving MAP cases. It has a relatively large MAP inventory, with a modest number of new cases submitted each year and 58 cases pending on 31 December 2019. 62% of these cases concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Indonesia met the majority of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Indonesia worked to address them, which has been monitored in stage 2 of the process. In this respect, Indonesia solved most of the identified deficiencies, even though several new issues were identified in stage 2.

All of Indonesia's tax treaties contain a provision relating to MAP. Those treaties generally follow paragraphs 1 to 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 mainly for the fact that:

- more than 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.
- Close to 45% of its tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Indonesia signed and ratified the Multilateral Instrument. Through this instrument, a number of its tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Indonesia 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, Indonesia 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. Such bilateral negotiations have already been initiated, or are envisaged to be initiated for all of those treaties.

Indonesia 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.

Indonesia also meets all the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2019 not received any MAP request concerning the application of anti-abuse provisions. It further has in place a documented bilateral

consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Indonesia 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 Indonesia for the period 2016-19 are as follows:

2016-19	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2019	Average time to close cases (in months)*
Attribution/allocation cases	23	49	36	36	28.16
Other cases	45	29	52	22	23.02
Total	68	78	88	58	25.12

*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, Indonesia used as a start date one week from the date of notification by the competent authority that receives the MAP request from the taxpayer or five weeks from the receipt of the taxpayer's MAP request, whichever is the earlier date; and as an end date the date of an official communication from the competent authority to inform the taxpayer of the outcome of its MAP request.

The number of cases Indonesia closed in 2016-19 is 51% of the number of all cases started in those years. Further, Indonesia's MAP inventory as on 31 December 2019 decreased by 15% as compared to 1 January 2016, although this concerns only other cases which decreased by 51% as the number of attribution/allocation cases increased by 57%. However, during these years, MAP cases were on average not closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 25.12 months. Finally, peer input suggests that there may be difficulties in discussing and arriving at a resolution in respect of long-pending cases with Indonesia. While Indonesia has made efforts to resolve MAP cases, further actions should be taken to ensure a timely resolution of MAP cases. Accordingly, Indonesia should ensure that resources are made available for the competent authority function in a way that allows an adequate use of such resources for the resolution of MAP cases in a timely, efficient and effective manner. Where necessary, additional resources should be added to the competent authority, in particular to ensure timely and principled resolution of long-pending cases.

Furthermore, Indonesia meets most of the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Indonesia'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. However, Indonesia's competent authority does not seek to resolve MAP cases where a) domestic court decisions are rendered in respect of issues different than those covered in the MAP request involving the same tax assessment for a fiscal year; b) discussions in a MAP case do not result in a bilaterally agreed outcome within 24 months from initiation of the bilateral phase of MAP, allowing the possibility of only one extension of a further 24 months at the unilateral discretion of Indonesia's competent authority, where the other competent authority is of the view that further endeavours may be justified for the case at hand; and c) the domestic time limit is about to expire in respect of the issue being discussed in a MAP case, in situations where the concerned treaty allows implementation notwithstanding domestic time limits.

Lastly, Indonesia does not meet the Action 14 Minimum Standard as regards the implementation of MAP agreements. Indonesia monitors the implementation of such agreements. However, it has a domestic statute of limitation, for which there is a risk that MAP agreements cannot be implemented whether or not the applicable tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

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 Indonesia to resolve tax treaty-related disputes

Indonesia has entered into 72 tax treaties on income (and/or capital), 70 of which are in force.¹ These 72 treaties are being applied to an equal number of jurisdictions. All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, one of the 72 treaties provides for an arbitration procedure as a final stage to the mutual agreement procedure.²

Under Indonesia’s tax treaties, the competent authority function is assigned to the Minister of Finance and further delegated, pursuant to Article 57(1) of Government Regulation No. 74 (2011), to the Director General of Taxes. Since April 2016, the International Tax Dispute Prevention and Resolution section within the Directorate of International Taxation handles mutual agreement procedure (“**MAP**”) and advance pricing arrangement (“**APA**”) cases. This directorate is composed of 40 employees comprising 35 MAP analysts, four section chiefs and one deputy director.

Indonesia has issued rules, guidelines and procedures on the governance and administration of MAP cases. The basis hereof is the Government Regulation No. 74/2011, which in Article 59 stipulates that further provisions regarding MAP cases shall be stipulated by means of a regulation by the Minister of Finance. On 22 December 2014, Indonesia published such guidance through the Minister of Finance Regulation No. 240/PMK.03/2014. This guidance was last modified through the Minister of Finance Regulation No. 49/PMK.03/2019 (“**MAP Guidance**”), which is available (in English) at:

<https://www.pajak.go.id/sites/default/files/2020-06/PMK%2049%202019%20English.pdf>

In addition, Director General Regulation No. 16/PJ/2020 provides additional guidance in relation to MAP, which is available (in Indonesian) at:

<https://www.pajak.go.id/sites/default/files/2020-08/PER%2016%20PJ%202020.pdf>

Further to the above, Indonesia has also established a dedicated webpage containing information on its APA and MAP programmes, which is available (in English) at:

www.pajak.go.id/apa-map

Developments in Indonesia since 1 January 2019

Developments in relation to the tax treaty network

The stage 1 peer review report of Indonesia noted that it was conducting tax treaty negotiations with several jurisdictions. Indonesia clarified that this situation remains the same. Further, the stage 1 report noted that Indonesia had signed a new treaty with Cambodia which had not yet entered into force and that an existing treaty with Tajikistan

had also not yet entered into force. Both treaties have now entered into force. Treaties with Zimbabwe (2001) and Myanmar (2003) have not entered into force as yet since the treaty partner has not yet ratified the former treaty and discussions are ongoing to renegotiate the latter treaty.

In addition, Indonesia signed a new tax treaty with Singapore (2020) which concerns the replacement of the 1995 treaty. This treaty 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). This treaty has not yet entered into force.

Furthermore, on 7 June 2017, Indonesia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. On 28 April 2020, Indonesia deposited its instrument of ratification, following which the Multilateral Instrument entered into force for Indonesia on 1 August 2020. With the deposit of the instrument of ratification of the Multilateral Instrument, Indonesia also submitted its list of notifications and reservations to that instrument.³ In relation to the Action 14 Minimum Standard, Indonesia reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.⁴ This reservation is in line with the requirements of the Action 14 Minimum Standard.

For the 34 treaties that are considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Indonesia reported that it intends to update them via bilateral negotiations. In this regard, Indonesia shared the following overview regarding the actions planned to be taken by it in respect of the 34 treaties mentioned above:

- *17 treaty partners:* Indonesia intends to update its list of notifications and reservations to the Multilateral Instrument to include these treaties and expects the treaty partner to sign the Instrument to have the respective treaties modified by it. If this is seen to not be possible, Indonesia would initiate bilateral negotiations.
- *Three treaty partners:* Indonesia intends to update its list of notifications and reservations to the Multilateral Instrument to include these treaties and expects the treaty partner to do the same to have the respective treaties modified by it. If this is seen to not be possible, Indonesia would initiate bilateral negotiations.
- *Four treaty partners:* Indonesia expects the treaty partners to sign the Multilateral Instrument or revise their list of notifications and reservations to the Instrument to have the respective treaties modified by it. If this is seen to not be possible, Indonesia would initiate bilateral negotiations
- *Five treaty partners:* Indonesia intends to update its list of notifications and reservations to the Multilateral Instrument to have the treaty modified by it.
- *Three treaty partners:* Negotiations are ongoing for amending protocols to bring these treaties in line with the Action 14 minimum standard.
- *Two treaty partners:* No actions have been taken nor are any actions planned to be taken with respect to these treaties.

Other developments

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

- *Introduction of roll-back of APAs:* revision of Indonesia’s APA guidance through Minister of Finance Regulation No. 22/PMK.03/2020 which explicitly includes the possibility of roll-back of APAs subject to verification that the facts and circumstances do not defer materially, if the application is made within statutory time-limits, if no notice for tax assessment has been issued to date and if no criminal investigation is ongoing or punishment is being served by the concerned taxpayer.
- *Access to MAP for Indonesia’s adjustments:* allowing initiation of MAP by Indonesia’s competent authority at its discretion where a taxpayer that is resident of Indonesia informs the competent authority that an adjustment made by Indonesia’s tax administration is not in accordance with the concerned tax treaty.
- *MAP and domestic remedies:* allowing access to MAP and allowing continuation of discussions in a MAP case where domestic courts have rendered a decision on the issue for which a MAP request is submitted.
- *Deadline for MAP negotiations:* prescribing a deadline of 24-months from initiation of the bilateral phase of MAP to conclude MAP negotiations for each MAP request prescribed by Regulation No. 49/PMK.03/2019, with Regulation No. 16/PJ/2020 allowing the possibility of one extension for another 24 months per case if there is initial agreement on the MAP case before six months from expiry of the period or through request made by the treaty partner’s competent authority in writing.
- *Implementation period:* prescribing a deadline of one month from closing letters for Indonesia’s competent authority to implement a MAP agreement.
- *MAP guidance:* revision of Indonesia’s MAP guidance through Regulation No. 49/PMK.03/2019 and Regulation No. 16/PJ/2020 clarifying, inter alia, access to MAP in case of Indonesia’s adjustments, the relationship between MAP and domestic remedies, the deadline for MAP negotiations and the implementation period as described above as well as confirming that access to MAP would be granted for MAP requests filed within three years from the first notification of taxation not in accordance with the treaty where the concerned treaty does not contain a filing period.
- *Reorganisation of competent authority:* addition of eight new staff members to the competent authority and updating of standard operating procedures for the competent authority in light of changes made to the MAP guidance.

Basis for the peer review process

The peer review process entails an evaluation of Indonesia’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 Indonesia, its peers and taxpayers. The questionnaires for the peer review process were sent to Indonesia and the peers on 31 December 2018.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Indonesia'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 9 August 2019. This report identifies the strengths and shortcomings of Indonesia in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.⁵ Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Indonesia. In this update report, Indonesia 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 Indonesia 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. Reference is made to Annex A for the overview of Indonesia'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 Indonesia was launched on 31 December 2018, with the sending of questionnaires to Indonesia and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Indonesia in June 2019, with the subsequent approval by the BEPS Inclusive Framework on 9 August 2019. On 9 August 2020, Indonesia submitted its update report, which initiated stage 2 of the process.

The period for evaluating Indonesia's implementation of the Action 14 Minimum Standard for stage 1 ranged from 1 January 2016 to 31 December 2018 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2019 and depicts all developments as from that date until 31 July 2020.

In total 12 peers provided input during stage 1: Australia, Canada, the People's Republic of China, Denmark, Japan, Korea, the Netherlands, Singapore, Sweden, Switzerland, Turkey and the United States. Out of these 12 peers, eight had MAP cases with Indonesia that started on or after 1 January 2016. These eight peers represented more than 95% of post-2015 MAP cases in Indonesia's inventory that started in 2016-18. During stage 2, the same peers provided input. In addition, Austria and the United Kingdom also provided input during stage 2. For this stage, these peers represent approximately 92.3% of post-2015 MAP cases in Indonesia's MAP inventory that started in 2016, 2017, 2018 or 2019. Peers generally indicated a good and co-operative relationship with Indonesia's competent authority, although some of them experienced administrative difficulties in resolving MAP cases in a timely and effective manner. Specifically with respect to stage 2, almost all peers that provided input reported that the update report of Indonesia fully reflects the experiences these peers have had with Indonesia since 1 January 2019 and/or that there was no addition to previous input given. However, several peers raised concerns regarding Indonesia's policy and practice in respect of MAP.

Input by Indonesia and co-operation throughout the process

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

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

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

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

Overview of MAP caseload in Indonesia

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

2016-19	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2019
Attribution/allocation cases	23	49	36	36
Other cases	45	29	52	22
Total	68	78	88	58

General outline of the peer review report

This report includes an evaluation of Indonesia’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 Indonesia’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Indonesia during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Indonesia 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 Indonesia 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 Indonesia 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 Indonesia has entered into are available at: <http://treaty.kemlu.go.id/>. The treaties that are signed but have not yet entered into force are with Myanmar (2003) and Zimbabwe (2001). These treaties are taken into account in the treaty analysis. Indonesia also signed a new treaty with Singapore (2020), which will replace the existing treaty of 1995, once entered into force. For this reason, this newly negotiated treaty is taken into account in the treaty analysis. Reference is made to Annex A for the overview of Indonesia’s tax treaties concerning the mutual agreement procedure.
2. This concerns the treaty with Mexico. Reference is made to Annex A for the overview of Indonesia’s tax treaties.
3. www.oecd.org/tax/treaties/beps-mli-position-indonesia-instrument-deposit.pdf.
4. *Ibid.* This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Indonesia reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified”.

5. Available at: <https://www.oecd.org/indonesia/making-dispute-resolution-more-effective-map-peer-review-report-indonesia-stage-1-deb42398-en.htm>.
6. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.
7. The MAP statistics of Indonesia are included in Annex B and C of this report.
8. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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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 (OECD, 2017a) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of Indonesia’s tax treaties

2. Out of Indonesia’s 72 tax treaties, 69 contain a provision that is 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. Of the remaining three treaties, one does not contain the term “interpretation” and two do not contain the terms “doubts” as well as “interpretation”. For this reason, these three treaties are considered not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

3. Indonesia reported that where the applicable treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), this does not obstruct its competent authority to enter into MAP agreements of a general concerning the interpretation or the application of tax treaties. Indonesia further specified that for the treaties identified above not containing such equivalent, it has treated discussions of MAP cases of a general nature in the same manner as the treaties that do contain such equivalent.

4. In view of the above, Article 2 of Regulation No. 49/PMK.03/2019 stipulates that the Director General of Taxes can request for the initiation of a MAP process concerning interpretation of treaty provisions.

5. Almost all peers that provided input during stage 1 indicated that their treaty with Indonesia meets the requirement under element A.1, which is in line with the above analysis. For the three treaties identified above that do not contain the equivalent of Article 25(3), first

sentence, of the OECD Model Tax Convention (OECD, 2017a), two of the relevant peers provided input, one of which indicated that its treaty does not contain such equivalent. The second peer stated that its treaty meets the requirements under the Action 14 Minimum Standard, which is not in line with the above analysis.

Recent developments

Bilateral modifications

6. Indonesia signed a new tax treaty with a treaty partner which concerns the replacement of an existing treaty currently in force. This treaty has not entered into force yet. This treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) as was the case in the existing treaty. The effects of this newly signed treaty have been reflected in the analysis above where it has relevance.

Multilateral Instrument

7. Indonesia signed the Multilateral Instrument and has deposited its instrument of ratification on 28 April 2020. The Multilateral Instrument has entered into force for Indonesia on 1 August 2020.

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

9. With regard to the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Indonesia listed all of them as a covered tax agreement under the Multilateral Instrument and made for all a notification pursuant to Article 16(6)(d)(i) that they do not contain a provision described in Article 16(4)(c)(i). Of the relevant three treaty partners, one is not a signatory to the Multilateral Instrument. Both of the remaining treaty partners are signatories to the Multilateral Instrument, listed their treaty with Indonesia as a covered tax agreement under such instrument and also made the notification pursuant to Article 16(4)(c)(i).

10. Both of the treaty partners mentioned above have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Indonesia and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified two treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

Peer input

11. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Indonesia. Neither of these peers concern treaty partners to treaties that are not line with this element.

Anticipated modifications

12. For the remaining tax treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) and which will not be modified by the Multilateral Instrument to include such equivalent, Indonesia has not put in place a plan for bringing this treaty in line with the requirements under element A.1.

13. Regardless, Indonesia 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]	<p>Three out of 72 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). Out of these three treaties:</p> <ul style="list-style-type: none"> • two have been modified by the Multilateral Instrument to include the required provision • one will not be modified by that 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>For the remaining treaty that has not been and will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Indonesia should, without further delay, request via bilateral negotiations the inclusion of the required provision.</p>

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

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

14. 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.

Indonesia’s APA programme

15. Indonesia reported that it has introduced an APA programme in 2010, under which it is allowed to enter into unilateral and bilateral APAs. The legal basis of this programme is Article 18 (3a) read with Article 32A of Law No. 7 of 1983 concerning Income Tax Law as amended by Law No. 36 of 2008 along with the MAP provision of the relevant tax treaty.

The authority competent to handle APA cases is, pursuant to Article 58(1) of Regulation No. 74 (2011), the Director General of Taxes of the Ministry of Finance.²

16. Article 58 of the Government Regulation No. 74/2011 concerning Taxation Rights and Obligations Fulfilment Procedure also includes rules relating to Indonesia's APA programme. This provision, for example, stipulates that APAs shall bind the tax administration and the taxpayer during the period the APA applies and that the tax administration cannot make adjustments on matters already agreed in the APA.

17. Further to the above, Indonesia issued Regulation No. 22/PMK.03/2020 replacing its existing APA guidance contained in Regulation No. 7/PMK.03/2015 of 12 January 2015.³ Article 2(1) of this regulation prescribes that Indonesian residents may apply for a unilateral or a bilateral APA before the Director General of Taxes on its own initiative or in relation to a request filed by a non-resident taxpayer in the treaty partner jurisdiction if it fulfils the conditions prescribed in the Regulation. The APA may cover related party transactions relating to transfer pricing criteria and determination of the transfer price in advance. In case of a bilateral APA, the maximum term is five taxable years since the taxable year where the APA application is submitted, subject to possible extension.

18. Furthermore, this regulation contains information on Indonesia's APA programme and how it runs that programme in practice. In particular this concerns information on: (i) which government authority is competent for handling APA requests, (ii) what an APA is and what the requirements for obtaining an APA are, (iii) by whom they can be requested, (iv) what steps have to be followed in the process, (v) a detailed list of information to be included in an APA request, (vi) time limits for the submission of an APA request, (vii) the implementation of an APA and (viii) the possibility to renew an APA.

19. Further to the above, Indonesia also includes information on its APA programme on the website of the Ministry of Finance.⁴ This website reproduces the information included in Regulation No. 22/PMK.03/2020. It is there stated that the information contained on the website should be read in conjunction with Regulation No. 22/PMK.03/2020.

Roll-back of bilateral APAs

20. Indonesia reported that its APA programme allows for roll-back of bilateral APAs. Indonesia noted that the legal basis for this is derived from its APA regulations read with the concerned tax treaty.

21. Regulation No. 22/PMK.03/2020 defines the roll-back period to cover taxable years prior to the APA period without a specific term limitation for roll-back. Article 2(2) provides that an APA application can include roll-back as well if the taxpayer specifically requests for the same. Article 2(4) states that roll-back can be granted subject to verification that the facts and circumstances do not defer materially, if the application is made within statutory time-limits, if no notice for tax assessment has been issued to date and if no criminal investigation is ongoing or punishment is being served by the concerned taxpayer.

Recent developments

22. The stage 1 report noted that Indonesia's APA programme did not provide for roll-back of bilateral APAs. It was stated that although Indonesia could rely on the tax treaty to provide roll-back, the conditions and prerequisites for granting roll-back were not explicitly stated in the MAP guidance or APA regulations.

23. However, as discussed above, Indonesia has updated its APA regulations through Regulation No. 22/PMK.03/2020 since then to provide clear conditions and regulations for the granting of roll-back. Accordingly, Indonesia has addressed the recommendation that was included in its stage 1 peer review report.

Practical application of roll-back of bilateral APAs

24. The website of Indonesia’s tax administration includes statistics on unilateral and bilateral APAs.⁵ In this respect, Indonesia reported the following statistics concerning the number of bilateral APA cases:

Year	Beginning inventory	Number of APA requested	Number of APA concluded	Ending inventory
2016	10	13	3	20
2017	20	2	2	20
2018	20	10	3	27
2019	27	11	9	29

25. Regarding these statistics, Indonesia reported that none of these APA request concerned a request for a roll-back of bilateral APAs. While Indonesia clarified that it has granted roll-backs, the relevant agreement hereto was concluded before 2016.

Period 1 January 2016-31 December 2018 (stage 1)

26. Indonesia reported having not received any requests for roll-back of bilateral APAs during the period 1 January 2016-31 December 2018.

27. Of the peers that provided input, five indicated they have no bilateral APA cases with Indonesia and/or also no cases concerning the roll-back of bilateral APAs. Furthermore, three peers reported positive experiences in handling roll-back requests with Indonesia. One peer reported that it has received a request for roll-back in respect of one APA case in the period 1 January 2016-31 December 2018 and that Indonesia provided roll-back. Another peer also reported that it has received one roll-back request and that Indonesia was open to negotiate. The third peer experienced that the outcome of a bilateral APA would sometimes be applied to a previous year, for which it considered that granting roll-back of bilateral APAs to previous tax years does not seem to be a problem.

28. Further to the above, three peers voiced a different input. One of these peers mentioned that in the period 1 January 2016-31 December 2018 it has received three requests for a bilateral APA concerning Indonesia, but that none of them concerned a roll-back as Indonesia does not allow a roll-back due to domestic legal constraints. This input was echoed by that two other peers, who mentioned that in the period 1 January 2016-31 December 2018 their competent authorities have received one request for a roll-back of a bilateral APA. For this case, the peer mentioned that Indonesia’s competent authority has been presenting its firm position not to allow roll-back due to lack of a provision in its relevant domestic legislation, and the case is still under negotiation.

29. To this particular input Indonesia responded and stated that while it did not allow for a roll-back in its previous APA regulations, it had a precedent to grant roll-back by applying the MAP agreement to previous years, provided that the taxpayer officially requested the roll-back. The relevant peer whose input was reflected in paragraph 28 above responded by noting that it is not aware of such a precedent nor was it involved in the

relevant case. In fact, the peer stressed that while one taxpayer officially requested a roll-back of a bilateral APA with the peer's competent authority, in the minutes of a face-to-face meeting between their competent authorities it is clearly stated that because of domestic regulations in Indonesia, it was not possible to grant roll-back of bilateral APAs.

Period 1 January 2019-31 July 2020 (stage 2)

30. Indonesia reported having received 11 requests for bilateral APAs since 1 January 2019, but noted that none of them included a request for roll-back.

31. Almost all peers that provided input during stage 1 stated in stage 2 that the update report provided by Indonesia fully reflects their experience with Indonesia since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by one peer that only provided input during stage 2. In addition, two peers confirmed that there have been no roll-back requests concerning their jurisdictions, but one of them recognised that Indonesia provides for such roll-back and hoped for conclusion of an APA with roll-back with Indonesia once a request is received in the future. Further, one peer that provided input only in stage 2 noted that it has one pending bilateral APA request with Indonesia submitted prior to the enactment of Indonesia's new APA regulations and that thus, this request did not include a request for roll-back.

32. Finally, one peer noted that there was one bilateral APA request involving Indonesia that it received which involves a request for roll-back. This peer provided an update that the roll-back request was denied by Indonesia after the expiry of the period under review for stage 2, since the request was not in line with Indonesia's domestic regulation requiring the taxpayer's proposed arm's length range to be not smaller than the three-year average of its latest filed returns. This peer noted that such a limitation is not desirable or necessary in its view. Indonesia responded to this and noted that the taxpayer and the peer have both been informed in August 2020 that the application can still be resubmitted after the requirements are fulfilled in a new application.

Anticipated modifications

33. Indonesia indicated that it does not anticipate 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. The Government Regulation No. 74/2011 concerning Taxation Rights and Obligations Fulfilment Procedure is available at: <https://www.pajak.go.id/sites/default/files/2019-03/PP-74-2011%20%28EN%29.pdf>.
3. Available in English at: <https://www.pajak.go.id/sites/default/files/2020-08/REGULATION%20OF%20THE%20MINISTER%20OF%20FINANCE%20NUMBER%2022PMK.032020.pdf>.
4. Available at: <http://pajak.go.id/apa-map>.
5. Available at: <http://pajak.go.id/apa-map>.

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- 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.

34. 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 Indonesia's tax treaties

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

35. None of Indonesia's 72 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, 59 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.

36. 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 authority 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 taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident and whereby the taxpayer can pursuant to a protocol provision not submit a MAP request irrespective of domestic available remedies.	1

37. The 12 treaties mentioned in the first row of the table are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (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 treaties are considered to be in line with this part of element B.1:

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

38. 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 the adoption of the Action 14 final report (OECD, 2015b) is therefore not clarified by the absence of or a limited scope of the non-discrimination provision, following which it is considered not to be in line with this part of element B.1.

39. The treaty in the second row of the table incorporates a provision in the protocol to this treaty, which reads:

With reference to paragraph 1 of Article 25, the expression “notwithstanding the remedies provided by the national laws” 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.

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

41. As regards this treaty, Indonesia noted that it treats this treaty as being 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) regardless of this protocol provision.

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

42. Out of Indonesia’s 72 tax treaties, 35 contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

43. The remaining 37 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	4
Filing period less than 3 years for a MAP request (2 years)	33

Peer input

44. Most of the peers that provided input during stage 1 indicated that their treaty with Indonesia meets the requirements under element B.1, which is mostly in line with the analysis of this section. One of these peers is party to a treaty that does not contain the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). Concerning the other treaties that do not contain this equivalent, the relevant peers did not provide input.

Practical application – Article 25(1), first sentence, of the OECD Model Tax Convention*(1) Interaction between MAP and domestic remedies*

Period 1 January 2016-31 December 2018 (stage 1)

45. As noted in paragraphs 35-41 above, all but one of Indonesia’s tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. In this respect, Indonesia reported that taxpayers are allowed to file a MAP request and at the same time initiate domestic remedies. However, MAP proceedings were ended once domestic courts have issued a ruling on the case or where a hearing on the case has been finalised by the tax court. Indonesia clarified that this was because taxpayers or the tax administration could not present additional facts to the court after the hearing process is finalised, and the court decision is delivered on that basis. In such a situation, the further pursuance of the MAP case would have, in Indonesia’s view, become ineffective and could not have resulted in a positive outcome to affect the court decision. Furthermore, where a domestic court had already rendered a decision and the taxpayer would afterwards file a MAP request, Indonesia reported that then access to MAP was denied.

46. This position was confirmed by Minister of Finance Regulation No. 240/PMK.03/2014 and Regulation No. 74/2011.

47. Further to the above, Indonesia clarified that the court process itself did not prevent the taxpayer from accessing MAP until hearings were finalised, and that in practice it could take more than three years from the issuance of a notice of tax assessment before court procedures are finalised. In this respect, Indonesia had reported that it notified its

treaty partners of cases pending in court for which also a MAP request is submitted, but that in the period 1 January 2016-31 December 2018 its competent authority had never denied access to MAP due to a court case already being finalised.

48. Three peers provided input on this subject. One peer pointed to the MAP profile of Indonesia, where it is stated that Indonesia does not proceed MAP discussion when the tax court made a decision. While this peer believes that this is acceptable and reasonable, but only if the court's decision relates to the same issue for which a MAP case is pending. In practice, this peer mentioned that it encountered that Indonesia's competent authority terminated the MAP process after the tax court decision was made on an issue that was not related to the MAP case. The peer clarified that this case was initiated for adjustments made by Indonesia relating to both transfer pricing and local tax issues concerning the same taxable year. The taxpayer thereby requested a MAP for the transfer pricing adjustments and initiated domestic court procedures for the local tax issues. According to the peer, Indonesia's competent authority expressed the view that the court decision was based on the assumption that the taxpayer had agreed and accepted the transfer pricing adjustment even though the tax court only examined and adjudicated on the local tax issue. On that basis Indonesia's competent authority stated that it was impossible to recalculate the amount of taxes after the court decision had been made and therefore it had to terminate the MAP process. Given this input, this peer believes that the consequence of not being able to proceed with the case in MAP for the transfer pricing adjustment based on a court decision that is irrelevant for the MAP case, is critical and unacceptable for the taxpayer. It also believes that Indonesia's legal and narrow interpretation may limit taxpayers' access to MAP for similar cases, or will cause that taxpayers would only apply for domestic remedies to obtain a full resolution of all issues of the case. In the peer's view, in order to obtain a full resolution in a transfer pricing case, the MAP process needs to be finalised before the court procedures are finalised, or taxpayers should not initiate domestic remedies for local tax issues. The peer concluded that these options are not satisfactory, as they provide incomplete remedies to taxpayers. It also concluded that Indonesia's practice constitutes a de-facto limitation of access to MAP. It therefore suggested that Indonesia should change its policy and continue discussions in MAP on the transfer pricing adjustment, unless the tax court takes a decision for this adjustment.

49. The second peer reported similar experiences. It mentioned that for attribution/allocation cases its competent authority and that of Indonesia have different views on the interaction between Indonesia's domestic law and the MAP process. For example, Indonesia's competent authority reported it was not able to discuss attribution/allocation cases when taxpayers also initiated appeals with the Indonesia tax court for non-transfer pricing issues.

50. The third peer reported that seven MAP cases were initiated under its treaty with Indonesia since 1 January 2016. It noted that two of these cases were withdrawn by the taxpayers, for which it understood from these taxpayers that the reason hereof was that domestic court proceedings were about to finalise and they therefore decided to pursue these proceedings over MAP.

51. Indonesia provided a response to the input given and mentioned that under its Law on General Provision and Tax Procedures, a single tax assessment letter is issued for a fiscal year, which may cover several issues, such as transfer and non-transfer pricing issues. When a taxpayer decided to initiate domestic remedies for the non-transfer pricing issue, the court would decide on this specific issue, but the relevant decision would affect the entire tax assessment (thus including both the transfer pricing and non-transfer pricing issues). Indonesia further clarified that once the court had rendered its decision, there was no possibility for the tax administration to amend the tax assessment, thus also not through the MAP process. To this Indonesia added that both its tax administration and the competent

authority do not have the option to intervene or control the process, since the tax court operates independently. In that regard, Indonesia considered that it would not be effective to continue the MAP process after the court has rendered its decision, albeit that in practice it would be able to continue the process, but in that situation Indonesia's competent authority would be the same as the ruling of the court.

52. Two peers that provided input, reacted to Indonesia's response. The first peer, whose input is reflected in paragraph 48 above, mentioned that the clarification provided by Indonesia does not seem to be in line with the ruling of the tax court. The peer pointed to the fact that upon a request by the taxpayer, the tax court expressed its opinion by stating that the court shall only examine and adjudicate an appeal against an adjustment that is disputed. Therefore, an adjustment that is not disputed shall not be examined by the court in the appeals process. The peer added that even if Indonesia's clarification was in line with the court's reasoning, this practice and policy would limit taxpayers' access to the MAP process and therefore is not in line with the MAP provision in their mutual tax treaty. Indonesia noted the peer's reaction and mentioned it does understand its concern. It also mentioned that it will take the issue into account in the amendment of its MAP guidance, to clarify that taxpayers have access to MAP irrespective of whether a court rendered a decision. That being said, Indonesia also mentioned that while the court in the case mentioned only ruled on the issue for which no adjustment was made, the decision affected the whole tax assessment, including an issue for which an adjustment was made.

53. The second peer, whose input is reflected in paragraph 49 above, expressed its appreciation of Indonesia's explanation. It also suggested that because taxpayers and treaty partners may not fully understand the effect of a judicial decision on the MAP process with respect to issues for which an adjustment was made and that was not subject of the court procedure, Indonesia could highlight this effect in its MAP guidance and the guidance on domestic remedies.

54. Taken Indonesia's policy, peer input and responses into consideration, it was concluded that Indonesia's policy and practice was contrary to 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), which allows taxpayers to request for the initiation of the MAP process irrespective of domestic remedies. Therefore, Indonesia was recommended in stage 1 to ensure that access to MAP is given in all eligible cases where the requirements under Article 25(1) of the OECD Model Tax convention as incorporated in Indonesia's tax treaties have been met and that in particular that Indonesia should not limit such access in cases where domestic courts have rendered a decision relating, or not relating, to cases for which a MAP request was submitted.

Period 1 January 2019-31 July 2020 (stage 2)

55. Pursuant to the recommendation, Indonesia reported that it has revised its policy in relation to access to MAP where a domestic court has rendered a decision. Indonesia reported in this regard that Indonesia's competent authority would now allow access to MAP even where domestic courts have rendered a decision as regards a taxpayer relating to cases for which a MAP request was submitted. However, Indonesia would not be able to deviate from decisions of its domestic courts and thus will only seek correlative relief at the level of the treaty partner.

56. Indonesia further reported that the issue caused by court decisions as regards a taxpayer but not in relation to cases for which a MAP request was submitted would not result in a denial of access either since Indonesia now obliges taxpayers to include all questions in a MAP request in a domestic dispute proceeding as well. This is confirmed

in Article 2(7) of Indonesia’s MAP guidance which states if a MAP request is submitted in parallel with domestic remedies, the issues covered in MAP must also necessarily be covered in the domestic dispute.

57. Although Indonesia’s MAP guidance and webpage on MAP do not specifically address the situation, the restrictions in relation to court decisions as contained in the previous version of the guidance and webpage have now been removed.

58. Indonesia further reported that it has started discussions in one MAP case since 1 January 2019 for which a request was received by the treaty partner’s competent authority and where there was a court decision in respect of the case concerned as well. The concerned treaty partner confirmed that although the possibility of corresponding adjustments in line with the Court decision was not brought to its notice as yet, discussions are ongoing in this case.

59. Three peers provided input in relation to this issue. One peer noted that Indonesia has made changes in relation to access to MAP but that there were no practical cases in which this could be verified by the peer. Another peer noted that in relation to a pre-2016 MAP case, Indonesia’s competent authority informed it that it was bound by a final tax court decision. Since the peer later found out that the taxpayer appealed to the Supreme Court of Indonesia, it noted that it asked for a reconsideration of the MAP case but was then informed by Indonesia’s competent authority in 2015 that Indonesia’s erstwhile MAP regulations did not allow access to MAP to be granted where there was a tax court decision. This peer noted that although Indonesia promised to share the decision of the Supreme Court when available, this has not been shared as yet. Indonesia responded to this input and noted that it has now changed its MAP guidance and that it has since 2019, been able to grant access to MAP where there is a tax court decision. Indonesia further noted that it would get in touch with this peer to share the Supreme Court’s decision once available.

60. The third peer noted that obliging taxpayers to include all issues covered in a MAP request in any possible domestic proceeding as well would have a material effect on access to MAP since Indonesia also requires taxpayers to withdraw pending domestic remedies for implementing MAP agreements in some cases which could lead to the taxpayer realising the possibility of having to withdraw from domestic remedies in relation to more substantial local issues and thus, choosing to not access MAP in the first place.

61. However, based on the above, since access to MAP would now be granted whenever domestic courts have rendered decisions, which would now necessarily consider matters relevant to a MAP request as well, the recommendation made in the stage 1 peer review report has been addressed.

(II) Access to MAP and the finality of a tax assessment

62. One peer provided input with regard to access to MAP and the finality of a tax assessment. It reported that in the period 1 January 2016-31 December 2018, its competent authority has presented MAP requests it had received to Indonesia’s competent authority, which declined to discuss these cases in the MAP process. In 2017, the reason for such refusal was that Indonesia’s tax authority had not yet issued any tax assessments for these taxpayers, which in Indonesia’s view is required before a case can be dealt with in MAP. The peer further noted that Indonesia’s competent authority indicated that it will provide access when such an assessment is issued and that, in the meantime, it would treat the requests as protective MAP requests. This peer takes the position that once a taxpayer has been notified of a potential taxation by Indonesia’s tax authority that is not in accordance with the treaty and that is not merely possible but probable, access to MAP should be given regardless of whether a formal assessment has been issued.

63. Indonesia responded by stating that the notification from the local tax offices to taxpayers is merely an administrative letter that does not have any legal effect. Such letter is generally used to seek clarification for some tax issues that the taxpayer may face in its transactions. However, if the taxpayer could clarify those issues based on the facts, Indonesia clarified that there would not be any legal actions taken by the tax administration (including but not limited to audits). In that regard, Indonesia concluded that the issuing of an administrative letter stand alone would not result in taxation that is not in accordance with the treaty.

64. The peer reacted to this response and stated that in its understanding, which was based on communications with the taxpayer, the taxpayer was under the impression that a tax assessment would directly follow from the issuing of the said letter. In the peer's view, while the letter from itself would not result in taxation that is not in accordance with the provisions of the tax treaty, it may provide evidence that there is a risk that such taxation is probable. In such a situation, the taxpayer – as is explained in paragraph 14 of the Commentary to Article 25 of the OECD Model Tax Convention – should be entitled to set the MAP process in motion. The peer concluded by stating that it would appreciate a further explanation from Indonesia on the likelihood that and/or frequency in which tax assessments are issued in follow-up to the issuing of the letter.

65. In this respect, Indonesia clarified that there may be a misunderstanding at the level of the taxpayer concerning Indonesia's domestic law. It reiterated that the issuing of a letter is just one way of communicating with the taxpayer, for example to obtain information. If the taxpayer would not be able to provide relevant information, or where the relevant information may raise an issue, Indonesia explained that its tax administration may launch an audit. It is only the outcome of this audit, formalised via a tax assessment that may lead to taxation that is not in accordance with the tax treaty and for which the taxpayer may submit a MAP request. In other words, the issuing of a letter would not constitute sufficient ground for a MAP request, since there is no decision yet (or the likelihood thereon) that would cause taxation that is not in accordance with the tax treaty and for which the taxpayer may submit a MAP request. A discussion within the context of the MAP process could in Indonesia's view therefore only be fruitful after the notification of the result of the assessment by the auditor. In any case, Indonesia also expressed that if the peer's competent authority would insist on discussing the case in MAP at the stage where the letter is issued, Indonesia would be willing to do so, regardless how futile the use of resources spent on the case would be.

66. The treaty between Indonesia and this peer contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), where it is clearly stated that taxpayers can file a MAP request if there is, or will be, taxation that is not in accordance with the provisions of the treaty. Paragraph 14 of the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017) in this respect clarifies that taxpayers can file a MAP request if the taxation that he claims not to be in accordance with the treaty has not been charged against or notified to him. It continues by stating that such taxation is not merely possible, but probable. In that regard, the issuing of an administrative letter by Indonesia's tax administration may not constitute a ground upon which the taxpayer can decide that there is a reasonable risk that a coming action will result for him in taxation not in accordance with the provision of the tax treaty. The fact that Indonesia at that stage does not yet accept the MAP request until there is clarity on whether an adjustment will be made is not against the treaty provision as explained in the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017).

(III) Access to MAP and fiscally transparent entities

67. One peer provided input and reported that in 2018, Indonesia's competent authority indicated that it would not provide treaty benefits or access to MAP with respect to income of fiscally transparent entities that are treated under the peer's domestic legislation as disregarded from its single resident member. The peer specified that the position of Indonesia's competent authority is that a single-member entity does not qualify as a resident under the precise language of the treaty with the peer. In the peer's view, however, the resident article of its treaty with Indonesia may be interpreted to include a single member of a fiscally transparent entity. The peer further noted that paragraph 3 of the MAP provision of the treaty (being equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention [OECD, 2017]), permits the competent authorities to consult together to resolve difficulties relating to the application of the treaty for the elimination of double taxation in cases not provided for in the treaty. In this respect, the peer encouraged Indonesia's competent authority to enter into an arrangement with the peer's competent authority under that paragraph to resolve this incongruity.

68. Indonesia provided a response to this input and mentioned that it recently received a letter from the peer's competent authority seeking a clarification on the issue. It also stressed that Indonesia did not consider the case to be a MAP request, but that it is open to discuss the issue in a competent authority meeting if there is a MAP request on the issue.

69. The peer reacted and stated that it considered that a taxpayer-specific MAP request is no prerequisite for the competent authorities to engage in discussions to reach a MAP agreement of a general nature, on the basis of the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). Such a mutual understanding would in the peer's view help to provide certainty and prevent future disputes on the application of the treaty between the peer and Indonesia, which would benefit both the tax administrations and taxpayers. The peer clarified that the letter that was sent to Indonesia included a request to initiate discussions on status of fiscally transparent entities, with a view to enter into an interpretative MAP agreement. In the peer's view such agreement would be a good use of resources based on the number of inquiries its competent authority received from taxpayers and the attendant uncertainty as regards the eligibility to treaty benefits that is caused by a lack of clarity.

70. Indonesia reacted and noted that it fully agrees with the peer's view and invites the peer's competent authority to formally send a MAP request on the basis of the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).

71. While the above presented issue is clear, it appears to be more of a general interpretative nature than pertaining to a specific individual case and therefore does not fall in the ambit of analysing whether access to MAP is given in eligible cases.

(IV) Access to MAP where the taxation action was taken by Indonesia

Period 1 January 2016-31 December 2018 (stage 1)

72. Article 18(4) of Regulation No. 240/PMK.03/2014 stipulated that if a MAP request for a transfer pricing case is submitted at the level of the treaty partner, a filing by the Indonesian associated enterprise is also required, even though the tax treaty requires taxpayers to submit the request in the state of residence.

73. One peer provided input this issue and reported that in the period 1 January 2016-31 December 2018, 11 attribution/attribution cases were initiated (one in 2016 and ten in 2018), which all related to an adjustment made by Indonesia. The relevant MAP requests

were all submitted to the peer's competent authority, for which taxpayers claimed that they were instructed to do so by Indonesia's tax authority, without giving a clear reason. This peer noted that it would appreciate it if Indonesia could take the necessary steps, including a review of its relevant domestic laws or regulations, to allow taxpayers to present such cases to Indonesia's competent authority with a view of ensuring the availability of and access to MAP in accordance with the Action 14 Minimum Standard.

74. Another peer stated that it had one pre-2016 attribution/allocation case for which a MAP request was rejected by Indonesia one day before the expiration of three year time limit, because they required that the taxpayer should have submitted a MAP request in Indonesia.

75. Indonesia responded to the input given by the first peer and mentioned that based on the applicable regulations, it is possible for an Indonesian taxpayer, which is subject to a transfer pricing adjustment, to submit a MAP request in Indonesia. It thereby confirmed that the MAP process would only be initiated once the related taxpayer also filed a MAP request at the level of the treaty partner, such to confirm the occurred double taxation.

76. The relevant peer provided for a reaction and stated that in its view the practice of Indonesia does not follow the Action 14 Minimum Standard in terms of access to MAP and further that Indonesia should grant access to MAP without having in place such a requirement. It further mentioned that the allowance to file a MAP request in Indonesia is according to Article 7 of Regulation No. 240/PMK.03/2014 only possible for cases whether actions of the treaty partner has led or will lead to taxation that is not in accordance with the provisions of the treaty. In other words, Indonesia does not allow Indonesian resident taxpayers to file a MAP request in Indonesia when the adjustment was taken by its tax administration. The MAP process is in such situation only available to taxpayers when they file a MAP request at the level of the treaty partner, which then opens the process with Indonesia's competent authority. Given this state of play, the peer wondered whether such practice and Indonesia's response is consistent with Article 7 of Regulation No. 240/PMK.03/2014 and also whether it is compliant with the MAP provision included in Indonesia's tax treaties. The peer therefore expressed that it would highly appreciate if Indonesia could clarify its views on the matter.

77. Indonesia provided input on the peer's reaction. It stated that in its view a MAP request should be made by the affected taxpayer. If an adjustment is made by Indonesia at the level of the associated enterprise resident in Indonesia, it is thus the associated enterprises that is resident in the peer's state that has to submit a MAP request. To this Indonesia, however, added that it does not imply that the associated enterprise resident in Indonesia cannot submit a MAP request with Indonesia's competent authority.

78. Since the tax treaty between the peer and Indonesia contains the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to its adoption of the Action 14 final report (OECD, 2015b) which allowed taxpayers the right to submit a MAP request when it considers that there is, or will be, taxation not in accordance with the provisions of the tax treaty due to actions by one or both treaty partners, it was concluded that there is no requirement for taxpayers to file a MAP request at the level of one treaty partner, where the adjustment for which the taxpayers submits a MAP request was made by the other treaty partner and that not granting access to MAP in the situation that the taxpayer did not file the request in the first-mentioned state, therefore is not in line with Article 25(1) of the OECD Model Tax Convention. Therefore, Indonesia was recommended to ensure that access to MAP is given in all eligible cases where the requirements under Article 25(1) of the OECD Model Tax convention as incorporated in

Indonesia's tax treaties have been met and in particular that Indonesia should not limit such access in cases where the taxpayer did not file a MAP request at the level of the treaty partner for adjustments made by Indonesia.

Period 1 January 2019-31 July 2020 (stage 2)

79. Pursuant to the recommendation received, Indonesia reported that Indonesian resident taxpayers are now allowed to file MAP requests to Indonesia's competent authority in relation to adjustments made by Indonesia's tax administration. Indonesia noted that in such cases, the taxpayer may request for MAP before Indonesia's competent authority that may then initiate the MAP case with the treaty partner.

80. However, Article 2(1) of Indonesia's new MAP guidance seems to only allow a taxpayer resident in Indonesia to formally initiate a MAP case with Indonesia's competent authority in relation to adjustments made by the treaty partner's competent authority. Article 2(3) seems to allow Indonesia's competent authority to initiate a MAP case that according to Article 2(5) can also be for avoiding double taxation resulting from an adjustment made by Indonesia's tax administration by proposing a corresponding adjustment at the level of the treaty partner. The MAP guidance as well as Regulation No. 16/PJ/2020 clarify that Indonesia's competent authority may initiate such a MAP case based on recommendation of the taxpayer.

81. One of the peers that had provided input in relation to this issue in stage 1 (noted in paragraph 73 above) provided input in relation to this issue once again. This peer noted that Indonesia has made changes in relation to access to MAP but that there were no practical cases in which this could be verified by the peer.

82. In this regard, Indonesia's MAP profile clarifies that concerning MAP requests filed by taxpayers in respect of actions of one or both of Indonesia and/or the treaty partner (whether concerning transfer pricing adjustments or other actions) that result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty, Indonesia's competent authority would grant access to MAP where the conditions specified in the provision concerning access to MAP in the relevant tax treaty (in most cases, equivalent to or based on Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 report (OECD, 2015b), as interpreted in the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017), are met.

83. Indonesia further clarified that any discretion exercised by Indonesia's competent authority pursuant to Article 2(2) and (3) of Regulation No. 16/PJ/2020 in respect of MAP requests filed concerning actions of Indonesia would only be for the determination of whether the objection raised in the MAP request is justified or not, in line with the treaty provision concerned. Indonesia clarified that this position reflects their policy in respect of access to MAP in general. Therefore, the recommendation made in stage 1 has been addressed by Indonesia.

84. Further, Indonesia noted that in April 2021, following the expiry of the period under review for stage 2, it has received two MAP requests from tax residents in Indonesia concerning adjustments made by Indonesia and that its competent authority has provided access to MAP in both cases.

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

85. Indonesia reported that in the absence of a provision setting a filing period for the submission of a MAP request in its tax treaties, Indonesia's competent authority would require a MAP request to be filed within three years from the date of notice of tax assessment or the date of proof of tax payment, withholding or collection of the income tax; or the notification of tax treatment not in accordance with the tax treaty. Indonesia clarified in this regard that depending on the situation, this date would always be the date of first notification of the taxation not in accordance with the tax treaty as interpreted by the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017).

Recent developments

Bilateral modifications

86. Indonesia signed a new tax treaty with a treaty partner which concerns the replacement of an existing treaty currently in force. This treaty has not entered into force yet. This treaty contains a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b) as was the case in the existing treaty. The effects of this newly signed treaty have been reflected in the analysis above where it has relevance.

Multilateral Instrument

87. Indonesia signed the Multilateral Instrument and has deposited its instrument of ratification on 28 April 2020. The Multilateral Instrument has entered into force for Indonesia on 1 August 2020.

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

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

89. Indonesia reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.¹ In this reservation, Indonesia declared that it would ensure that all of its tax treaties, which are considered covered tax agreements for purposes of

the Multilateral Instrument, 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). It subsequently declared it would implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction and application of such process will be further discussed under element B.2.

90. In view of the above, following the reservation made by Indonesia, those two treaties identified in paragraphs 38 and 40 above that are considered not including 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), will not be modified via the Multilateral Instrument with a view 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

91. 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 – 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.

92. With regard to the 33 tax treaties identified in paragraph 43 above that contain a filing period for MAP requests of less than three years, Indonesia listed 21 treaties as a covered tax agreement under the Multilateral Instrument and made for all a notification pursuant to Article 16(6)(b)(i) that they do not contain a provision described in Article 16(4)(a)(ii). Of the 21 relevant treaty partners, two are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Indonesia as a covered tax agreement under that instrument. All of the remaining 18 tax treaties partners also made a notification on the basis of Article 16(6)(b)(i).

93. Of these 18 treaty partners, ten already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Indonesia and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining eight treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

Other developments

94. Indonesia reported that for the 16 tax treaties that do not contain the equivalent of Article 25(1), first 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, the following actions are being taken or planned:

- for three treaties, negotiations are pending for an amending protocol

- for one treaty, it intends to update its list of notifications and reservations to the Multilateral Instrument to have the treaty modified by it
- for two treaties, it expects the treaty partners to sign the Multilateral Instrument or revise their list of notifications and reservations to the Instrument to have the respective treaties modified by it. If this is seen to not be possible, Indonesia would initiate bilateral negotiations
- for nine treaties, it intends to update its list of notifications and reservations to the Multilateral Instrument to include this treaty and expects the treaty partner to sign the Instrument to have the treaty modified by it. If this is seen to not be possible, Indonesia would initiate bilateral negotiations
- for one treaty, no actions have been taken nor are any actions planned to be taken.

Peer input

95. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Indonesia. One of these peers concerns a treaty partner to a treaty that is not line with this element. This peer noted that it is currently in the process of negotiating an amending protocol with Indonesia to bring this treaty in line with the Action 14 minimum standard.

Anticipated modifications

96. Indonesia reported it will seek to include Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Two out of 72 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention and the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties:</p> <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) but not as regards the first sentence. • One will not be modified by the Multilateral Instrument to include the required provision. <p>With respect to these treaties:</p> <ul style="list-style-type: none"> • For one, negotiations are pending. • For one, no actions have been taken nor are any actions planned to be taken. 	<p>For the two treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017), Indonesia should:</p> <ul style="list-style-type: none"> • for one treaty, continue negotiations with the treaty partner with a view to including the required provision • for one treaty, request, without further delay, via bilateral negotiations the inclusion of the required provision. <p>This concerns a provision that is equivalent to Article 25(1), first and second 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 the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.1]	<p>31 out of 72 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these 31 treaties:</p> <ul style="list-style-type: none"> • Ten have been modified by the Multilateral Instrument to include the required provision. • Seven are expected to be modified by the Multilateral Instrument to include the required provision. • 14 will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - For two, negotiations are pending. - For 12, the relevant treaty partners have been or will be engaged by Indonesia with a view to have the treaty modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. 	<p>For the remaining 14 treaties that currently do not contain such equivalent and that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Indonesia should:</p> <ul style="list-style-type: none"> • for two treaties, continue negotiations with the treaty partners with a view to including the required provision • for the remaining 12 treaties, continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision.

[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).

97. 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

98. As discussed under element B.1, none of Indonesia's 72 treaties currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers

to submit a MAP request to the competent authority of either treaty partner. As previously discussed under element B.1, none of these tax treaties will, following Indonesia's reservation according to Article 16(5)(a) of the Multilateral Instrument, be modified by that instrument to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

99. Indonesia reported that it has in place a bilateral consultation process which allows the other competent authority concerned to provide its views on the case when Indonesia's competent authority considers the objection raised in a MAP request not to be justified. This is further clarified in paragraph 14 of Indonesia's webpage providing information on MAP and Article 4(3)(b) of Indonesia's MAP guidance prescribes a time-limit of one month for its competent authority to make this assessment and inform the treaty partner's competent authority. Indonesia also reported that internal regulations for staff in charge of MAP cases provide for this bilateral consultation process to be applied when its competent authority considers the objection raised in a MAP request as not being justified to allow the other competent authority concerned to provide its views on the case. In this respect, Indonesia further clarified that internal regulations define in what circumstances staff in charge of a MAP may arrive at such a conclusion and further contains instructions for such staff to consult with the treaty partner before closing the case.

100. Further to the above, Article 4(2)(b) of Indonesia's MAP guidance stipulates that if a MAP request is not accepted into the process, the competent authority will inform the taxpayer hereof, thereby specifying the reasons that lead to this decision within one month from the filing of the MAP request.

Recent developments

101. There are no recent developments with respect to element B.2.

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

102. Indonesia reported that in the period 1 January 2016-31 December 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 2016-18 MAP statistics submitted by Indonesia also show that none of its MAP cases was closed with the outcome "objection not justified".

103. All peers that provided input indicated not being aware of any cases for which Indonesia's competent authority denied access to MAP in the period 1 January 2016-31 December 2018. They also reported not having been consulted/notified of a case where Indonesia's competent authority considered the objection raised in a MAP request as not justified since that date, which can be clarified by the fact that no such instances have occurred in Indonesia during this period.

Period 1 January 2019-31 July 2020 (stage 2)

104. Indonesia reported that since 1 January 2019 its competent authority has for one MAP request it received decided that the objection raised by taxpayers in such request was not justified. The 2019 MAP statistics submitted by Indonesia also confirm this. Indonesia reported that the relevant peer was consulted before this decision was taken on the case.

105. All but one peer that provided input during stage 1 also indicated in stage 2 that since 1 January 2019 they are not aware of any cases for which Indonesia’s competent authority considered an objection in a MAP request not justified. They also reported not having been consulted/notified in such cases. The same input was given by the two peers that only provided input during stage 2. The remaining peer relates to the case reported above where Indonesia considered the objection not to be justified. This peer confirmed that it was consulted prior to the decision and that the outcome was discussed and agreed.

Anticipated modifications

106. Indonesia indicated that it does not anticipate 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.

107. 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

108. Out of Indonesia’s 72 tax treaties, 48 contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, 20 treaties do not contain such equivalent.

109. The remaining four treaties can be categorised as follows:

- Two contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviate from it as corresponding adjustments can only be granted on the basis of a mutual agreement between the competent authorities.
- One contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but the granting of a corresponding adjustment is only optional as the word “shall” is used instead of “may”.
- One contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but does not incorporate the last sentence of that provision.

110. In view of these four treaties, Indonesia specified that it will facilitate corresponding adjustments, irrespective of whether the treaty concerns the word “may” instead of “shall”. In Indonesia’s view the word “may” cannot be interpreted to make the adjustment only optional without a valid and strong reason.

111. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Indonesia’s tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Indonesia indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties. In that regard, Indonesia mentioned that there has been MAP cases under a treaty that does not contain such equivalent and where access to MAP was granted.

112. In view of the above, Article 2 of Indonesia’s MAP guidance includes examples of cases for which taxpayers can submit a MAP requests, which include cases concerning transfer pricing adjustments. These example also concern transfer pricing adjustments and corresponding adjustments, and that it will grant access to MAP for such cases.

Recent developments

Bilateral modifications

113. Indonesia signed a new tax treaty with a treaty partner which concerns the replacement of an existing treaty currently in force. This treaty has not entered into force yet. This treaty contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) which was not the case for the existing treaty. The effects of this newly signed treaty have been reflected in the analysis above where it has relevance.

Multilateral Instrument

114. Indonesia signed the Multilateral Instrument and has deposited its instrument of ratification on 28 April 2020. The Multilateral Instrument has entered into force for Indonesia on 1 August 2020.

115. 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]).

116. Indonesia has not reserved, pursuant to Article 17(3), the right not to apply Article 17(1) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). With regard to the 24 tax treaties identified in paragraphs 108 and 109 above that are considered not to contain this equivalent, Indonesia listed 17 treaties as a covered tax agreement under the Multilateral Instrument, but only for two of them did it make a notification on the basis of Article 17(4) that they do contain a provision described in Article 17(2).

117. Of the two relevant treaty partners, both are signatories to the Multilateral Instrument, have listed their treaty with Indonesia as a covered tax agreement under that instrument and have made a notification on the basis of Article 17(4) as well. Of these two treaty partners, one has already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Indonesia and this treaty partner, and therefore has replaced the relevant treaty provision to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017). For the remaining treaty, the Multilateral Instrument will, upon entry into force, replace the provisions in this treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

118. Furthermore, for the remaining 15 treaties for which Indonesia did not make a notification on the basis of Article 17(4), all relevant treaty partners are signatories to the Multilateral Instrument, but one did not list its treaty with Indonesia as a covered tax agreement under that instrument and one has on the basis of Article 17(3), reserved the right not to apply Article 17(1) as it considered that its treaty with Indonesia already contains the equivalent of Article 9(2). Seven of the remaining 13 treaty partners have already deposited their instruments of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Indonesia and these treaty partners, and therefore has superseded the relevant treaty provision to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provision contained in these treaties relating to the granting of corresponding adjustments is incompatible with Article 17(1). The provision in the remaining six treaties will, upon the entry into force of the Multilateral Instrument for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provision contained in these treaties relating to the granting of corresponding adjustments is incompatible with Article 17(1).

Application of legal and administrative framework in practice

Period 1 January 2016-31 December 2018 (stage 1)

119. Indonesia reported that in the period 1 January 2016-31 December 2018, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

120. All peers that provided input indicated that they are not being aware of a denial of access to MAP by Indonesia in the period 1 January 2016-31 December 2018 on the basis that the case concerned was a transfer pricing case.

Period 1 January 2019-31 July 2020 (stage 2)

121. Indonesia reported that also since 1 January 2019, it has for none of the MAP requests it received denied access to MAP on the basis that the case concerned was a transfer pricing case.

122. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Indonesia fully reflects their experience with Indonesia since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

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

124. 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

125. None of Indonesia's 72 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Indonesia 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.

126. Indonesia reported that it will provide access to MAP in cases concerning 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 regard, Indonesia's MAP guidance does not contain information whether access to MAP is available for such cases.

Recent developments

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

Practical application***Period 1 January 2016-31 December 2018 (stage 1)***

128. Indonesia reported that in the period 1 January 2016-31 December 2018, Indonesia's competent authority has received MAP requests for 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, and it has not denied access to MAP for these cases.

129. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Indonesia in the period 1 January 2016-31 December 2018 in relation to the application of treaty and/or domestic anti-abuse provisions.

Period 1 January 2019-31 July 2020 (stage 2)

130. Indonesia reported that since 1 January 2019, 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.

131. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Indonesia fully reflects their experience with Indonesia since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

132. Indonesia indicated that it does not anticipate 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.

133. 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

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

Administrative or statutory dispute settlement/resolution process

135. Indonesia reported that it has no administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and can only be accessed through a request by the taxpayer.

Recent developments

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

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

137. In view of the fact that it is in Indonesia not possible that the taxpayer and the tax administration enter into audit settlements, Indonesia reported that in the period 1 January 2016-31 December 2018 it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

138. All peers that provided input indicated not being aware of a denial of access to MAP in Indonesia in the period 1 January 2016-31 December 2018 in cases where there was an audit settlement between the taxpayer and the tax administration, which can be clarified by the fact that no such process is in place in Indonesia.

Period 1 January 2019-31 July 2020 (stage 2)

139. Indonesia reported that since 1 January 2019, 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 Indonesia.

140. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Indonesia fully reflects their experience with Indonesia since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

141. Indonesia indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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

Legal framework on access to MAP and information to be submitted

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

144. Indonesia reported that all information and documentation in relation to the MAP request must be submitted to its competent authority within two months from when the MAP request is accepted or deemed to be accepted. The Director General of Taxes is authorised to ask for more information from the applicant or its affiliates, carry out a review of the application with the applicant, visit the place of business of the applicant and/or Indonesia resident affiliate, exchange information regarding MAP with treaty partners and/or conduct a tax audit to obtain more information or evidence. This is mentioned in Article 6 of Indonesia's MAP guidance. Indonesia clarified that such powers have been granted to its competent authority to confirm whether the actual conduct of the taxpayer's business is in line with the documents submitted and to further confirm the business processes of the taxpayer are in line with the functional analysis provided in complex cases as a sanity check. With respect to the power to initiate a tax audit, Indonesia noted that this only refers to the initiation of a special audit which is required under its domestic law for obtaining further information from the taxpayer where necessary. In any case, Indonesia clarified that these powers are only to be exercised after access to MAP is granted, in order to further understand details with respect to the case and that access to MAP would not be denied or stalled based on the exercise of such powers.

145. Indonesia reported that where a taxpayer has not provided all required information in its MAP request, Indonesia's competent authority will request the taxpayer to submit the missing/additional information and/or documentation as set forth in Article 3 of its MAP guidance. Indonesia noted that if such additional information is requested, taxpayers should provide this information within the time frame that is set forth in the request for information based on the complexity of the case concerned. When taxpayers do not comply with this request for information, Indonesia reported it will not limit access to MAP, but will proceed with the MAP case based on available information. However, this information is not included in Indonesia's MAP guidance and Article 4 of the MAP guidance only provides that the non-submission of all required information is a ground to end proceedings. Indonesia clarified that in practice it has never ended the MAP process

because taxpayers did not file the required information and that the Article is only intended to push the taxpayer to fulfil the requirements of providing information in a timely manner.

Recent developments

146. There are no recent developments with respect to element B.6 except for the fact that Indonesia's new MAP guidance has now removed references to requests for additional information.

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

147. Indonesia reported that in the period 1 January 2016-31 December 2018 it has not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

148. All peers that provided input indicated not being aware of a limitation of access to MAP by Indonesia in the period 1 January 2016-31 December 2018 in situations where taxpayers complied with information and documentation requirements.

Period 1 January 2019-31 July 2020 (stage 2)

149. Indonesia reported that since 1 January 2019 its competent authority has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

150. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Indonesia fully reflects their experience with Indonesia since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

151. Indonesia indicated that it does not anticipate 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.

152. 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 Indonesia's tax treaties

153. Out of Indonesia's 72 tax treaties, 66 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining six 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).

154. Almost all peers that provided input during stage 1 indicated that their treaty with Indonesia meets the requirements under element B.7, which is in line with the analysis above. For the six treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), two of the relevant peers provided input and confirmed the absence of such equivalent in their treaties.

Recent developments

Bilateral modifications

155. Indonesia signed a new tax treaty with a treaty partner which concerns the replacement of an existing treaty currently in force. This treaty has not entered into force yet. This treaty contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) as was the case in the existing treaty. The effects of this newly signed treaty have been reflected in the analysis above where it has relevance.

Multilateral Instrument

156. Indonesia signed the Multilateral Instrument and has deposited its instrument of ratification on 28 April 2020. The Multilateral Instrument has entered into force for Indonesia on 1 August 2020.

157. 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).

158. With regard to the six 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), Indonesia listed all of them as a covered tax agreement under the Multilateral Instrument and made for all a notification pursuant to Article 16(6)(d)(ii) that they do not contain a provision described in Article 16(4)(c)(ii). All six relevant treaty partners are signatories to the Multilateral Instrument, listed their treaty with Indonesia as a covered tax agreement and also made such notification.

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

Peer input

160. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Indonesia. Neither of these peers concern treaty partners to treaties that are not line with this element.

Anticipated modifications

161. Indonesia 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]	-	-

[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.

162. 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.

Indonesia's MAP guidance

163. Indonesia has issued several rules, guidelines and procedures in relation its MAP programme. The basis hereof is the Government Regulation No. 74/2011, which in Articles 57 and 58 include the legal basis of Indonesia's MAP programme. Furthermore, Article 59 stipulates that further provisions regarding the mutual agreement procedure shall be stipulated by means of a regulation by the Minister of Finance. In follow up hereto, Indonesia issued on 22 December 2014 the Minister of Finance Regulation No. 240/PMK.03/2014 on the implementation of guidelines on the mutual agreement procedure, which includes detailed information on its MAP programme. This regulation was last

modified through the Minister of Finance Regulation No. 49/PMK.03/2019 which serves as Indonesia's present MAP guidance and which is available (in English) at:

<https://www.pajak.go.id/sites/default/files/2020-06/PMK%2049%202019%20English.pdf>

164. In addition, Minister of Finance Regulation No. 16/PJ/2020 provides additional guidance in relation to MAP, which is available (in Indonesian) at:

<https://www.pajak.go.id/sites/default/files/2020-08/PER%2016%20PJ%202020.pdf>

165. Indonesia's MAP guidance consists of seven chapters, which are: (i) general provisions, (ii) submission of request for application of MAP, (iii) processing request for application of MAP, (iv) withdrawal of request for application of MAP, (v) implementation of mutual agreement, (vi) transitional provisions and (vii) closing provisions. These chapters cover the following information:

- a. the manner and form in which the taxpayer should submit its MAP request
- b. time-limits within which a MAP request should be submitted
- c. the specific information and documentation that should be included in a MAP request (see also below)
- d. how the MAP functions in terms of timing and the role of the competent authorities including specific deadlines for each step
- e. possibility to submit MAP in parallel with domestic available remedies
- f. access to MAP in transfer pricing cases
- g. suspension of tax collection during the period a MAP case is pending
- h. implementation of MAP agreements including timeframes
- i. forms and templates that are to be used throughout the MAP process by taxpayers and competent authorities.

166. Further to the above, Indonesia also established a dedicated webpage containing information on its APA and MAP programme. The information contained on this website describes in its practical sense how Indonesia's MAP programme operates in practice and reproduces the content of the regulation. It is specifically stated that the information should be read in conjunction with its MAP guidance. The following subjects are covered: (i) definition of a MAP, (ii) the aim of the MAP, (iii) eligibility of cases for MAP, (iv) the mechanisms of MAP request, (v) implementing the MAP outcome, (vi) MAP withdrawal request, (vii) Position on MAP arbitration, (viii) MAP statistics and (ix) contact details of the competent authority. This webpage is available at:

www.pajak.go.id/apa-map

167. The above-described MAP guidance of Indonesia, and the information contained on the website, includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance partially includes part of the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance.² While the manner and form in which the taxpayer should submit its MAP request is described, contact information of the competent authority or the office in charge of MAP cases is not contained. However, this information is displayed accurately and prominently in Indonesia's webpage containing information on MAP.

168. Furthermore, although the information included in Indonesia’s MAP guidance is detailed and comprehensive, various subjects are not specifically discussed in Indonesia’s MAP guidance. This concerns information on:

- whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- confidentiality of information throughout the MAP process
- the consideration of interest and penalties in the MAP.

Information and documentation to be included in a MAP request

169. 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 the request for MAP.³ This agreed guidance is shown below. Indonesia’s MAP guidance enumerates in Article 3 which items must be included in a request for MAP (if available), which are checked in the following list:⁴

- 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.

170. Further to the above, Indonesia’s MAP guidance in Article 3(1) specifies that the MAP request should be filed in the Indonesian language, should be filed using the appropriate form contained in the Annex to its MAP guidance and should be accompanied with identity documents of the taxpayer.

Recent developments

171. There are no recent developments with respect to element B.8 except for the fact that Indonesia has revised its MAP guidance as noted above and there are several changes in its contents which includes, inter alia, the possibility of access to MAP in case of Indonesia’s adjustments, removing restrictions on access to MAP where there is a court decision, adding a 24-month deadline for MAP discussions and adding time-limits for each step of the MAP process.

Anticipated modifications

172. Indonesia indicated that it does not anticipate 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.

173. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.⁵

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

174. Indonesia’s MAP guidance (Minister of Finance Regulation No. 49/PMK.03/2019) is published and available at:

<https://www.pajak.go.id/sites/default/files/2020-06/PMK%2049%202019%20English.pdf>

175. As regards its accessibility, Indonesia’s MAP guidance can easily be found on the webpage titled with “APA MAP” of the website of Indonesia’s tax administration. It can also be easily found via the website:

www.pajak.go.id/apa-map

MAP profile

176. Indonesia’s MAP profile is published on the website of the OECD and was last updated in May 2021. This MAP profile is almost complete and often with detailed information. This profile includes external links that provide extra information and guidance where appropriate, including links to Indonesia’s MAP guidance.

Recent developments

177. As mentioned above, Indonesia has updated its MAP profile to provide more detailed information, including links to its updated MAP guidance.

Anticipated modifications

178. Indonesia indicated that it does not anticipate 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.

179. 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

180. As previously discussed under B.5, under Indonesia's domestic law it is not possible that taxpayers and the tax administration enter into audit settlements. In that regard, there is no need for Indonesia to address in its MAP guidance whether taxpayers can have access to MAP in such circumstances.

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

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

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

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

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

184. As Indonesia does not have an internal administrative or statutory dispute settlement/resolution process in Indonesia relevant to MAP in place, there is no need for Indonesia to notify its treaty partners of such process.

Recent developments

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

Anticipated modifications

186. Indonesia indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Indonesia reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified.” An overview of Indonesia’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-indonesia.pdf.
2. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
3. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
4. The same information requirements are reproduced at: www.pajak.go.id/apa-map.
5. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

References

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Part C

Resolution of MAP cases

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

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

187. 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 Indonesia's tax treaties

188. All but one of Indonesia's 72 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.

189. The remaining treaty contains a provision that is based on Article 25(2), first sentence, but also contains additional language that sets a condition for the provision to apply. This condition consists of a notification from the competent authority that received the MAP request to the other competent authority within a time limit of three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement. Since this provision places an additional condition for the provision to apply, this treaty is not considered as having the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

190. In view of this treaty, Indonesia reported that since its domestic law obliges its competent authority to notify the other competent authority of MAP requests submitted under this treaty, it would not make any practical difference on the side of Indonesia. Indonesia therefore views this provision as effectively being the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

191. All peers that provided input during stage 1 indicated that their treaty with Indonesia meets the requirement under element C.1, which in line with the above analysis. For the treaty identified above that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peer did not provide input.

Practical application

(I) Interaction between MAP and domestic remedies

Period 1 January 2016-31 December 2018 (stage 1)

192. As was discussed under element B.1 (paragraphs 45-61), Indonesia's policy was to terminate MAP proceedings once domestic courts have issued a ruling on the case or where a hearing on the case has been finalised by the tax court. Indonesia clarified that it is because taxpayers or the tax administration could not present additional facts to the court after the hearing process is finalised, and the court decision was delivered on that basis. In such a situation, the further pursuance of the MAP case was in Indonesia's view become ineffective and could not result in a positive outcome to affect the court decision. This policy was confirmed in Indonesia's previous MAP guidance as well.

193. Three peers provided input on this issue, which is reflected in paragraphs 48-54 of this report. In their experience, Indonesia terminates the MAP after the tax court decision was made on issues that relate or are not related to the MAP case. A fourth peer also mentioned that it is aware that Indonesia may terminate a MAP case due to domestic court cases being finalised. It further noted that it has several cases with Indonesia that are in this situation, which caused that the competent authorities could not resolve a case because Indonesia's competent authority forced to close the case after a court hearing was concluded or after the court made a decision. The peer concluded that this resulted in severe double taxation for its taxpayers.

194. Since the automatic termination of the case once domestic courts have rendered a decision is not in line with the obligations put on the competent authorities would deprive the taxpayer of relief of double taxation, Indonesia was recommended to seek to resolve all MAP cases that were accepted into the MAP process and that meet the requirements under Article 25(1) and (2) of the OECD Model Tax Convention (OECD, 2017) as incorporated in Indonesia's tax treaties and particularly to not automatically terminate MAP cases on the grounds that there was already a final court decision, regardless of whether such decision relates to the MAP case or not.

Period 1 January 2019-31 July 2020 (stage 2)

195. Pursuant to the recommendation, Indonesia reported that it has revised its policy to automatically terminate a MAP case where there is a court decision, regardless of whether such decision relates to the MAP case or not. Indonesia reported that its present position is that since its competent authority would be legally bound by the decision, it would not be able to deviate from such decision in the MAP case and accordingly, it would present this position to the other competent authority allowing the possibility for correlative relief. This is confirmed in Article 5(5)(c) of Indonesia's MAP guidance which notes that a MAP case could be closed through disagreement of the competent authorities if there is a decision of the Court in accordance with Article 27 of Law Number 6 of 1983 on General Provisions and Tax Procedures. Indonesia clarified that this is incorporated in the MAP guidance since Law 14 of 2002 stipulates that decisions of the tax court are final and have permanent

legal force requiring implementation. As discussed under element B.1 above, since matters that are covered in a MAP request must mandatorily be covered in domestic dispute resolution proceedings, Indonesia reported that the issue concerning court decisions on unrelated issues has been mitigated as well.

196. Three peers provided input in relation to this issue in addition to the peer input covered in the context of access to MAP in a similar context in paragraphs 60-61 under element B.1. One peer that has several long-pending attribution/allocation MAP cases with Indonesia noted that some of its earlier pending cases with Indonesia had to be closed without agreement owing to court decisions relating to the taxpayer. Another peer noted that it has several MAP cases pending with Indonesia, but that most of these cases had finalised court decisions and since the Indonesian competent authority is bound by the court's decision, there would be no room for those cases to be discussed further. Indonesia responded to this input and acknowledged that it is legally bound to follow domestic court decisions.

197. Another peer noted that even though Indonesia has revised its policy, the issue still remains unsolved in relation to cases initiated before the revision of Indonesia's MAP guidance. This peer noted that Indonesia's competent authority still cannot proceed on a MAP case if the tax court rendered a decision in relation to a taxpayer on an issue that is not covered in the MAP request. The peer noted that Indonesia's competent authority has not changed its position on this and should provide a solution for such cases. Indonesia responded to this input and noted that it provides the option of going to domestic remedies along with MAP to taxpayers and that Indonesia would implement all the administrative and technical parts of both remedies in a truthful and professional manner and that this does not create a barrier in the form of double taxation.

198. The peer further responded to Indonesia and provided details of a case in relation to an Indonesian resident subsidiary of a company resident in the peer jurisdiction. This peer noted that there were two different adjustments for the Indonesian entity in relation to transactions with different affiliates in different jurisdictions and the taxpayer proceeded to go for MAP in respect of the adjustment pertaining to the peer jurisdiction ("**first adjustment**"), but proceeded to access domestic remedies in respect of the other adjustment ("**second adjustment**"). The peer reported that in June 2020, since there was a court decision in respect of the second adjustment, Indonesia's competent authority initiated closing of the MAP case with the peer in respect of the first adjustment as well on the grounds that although the court's decision was on the second adjustment, the decision affects the entire tax assessment including the first adjustment. The peer noted that Indonesia's competent authority also informed its competent authority that the court decision is final and that in relation to the first adjustment that had not been disputed in the appeal, the court had assumed that the taxpayer had accepted it although in the peer's view, the court decision itself states that it is limited to the second adjustment and that the decision is not final but subject to further appeal before the Supreme Court.

199. Indonesia responded to this input and noted that this response is based on the differences between administrative systems in Indonesia and the peer jurisdiction. Indonesia noted that although there were two different adjustments, they formed part of the same tax assessment that was questioned before the court. Indonesia stated that under its law, the court's decision is in relation to the entire tax assessment and that its competent authority is bound by such determination. Indonesia also noted that the peer had misunderstood certain elements of the court's decision in the case noted and that it would welcome discussion with the peer to clarify the same. Finally, Indonesia stated that the Action 14 minimum standard cannot force Indonesia to revise its legal and administrative

system as a whole and that it had addressed the recommendation by requiring taxpayers to proceed to a domestic appeal in respect of the adjustment being considered in MAP as well and not just other parts of the assessment.

200. The peer responded to this and expressed its view that its concerns still remain and that Indonesia had not addressed the recommendation provided in the stage 1 report in respect of existing MAP cases where domestic remedies are pending as well. Finally, Indonesia responded to this by noting that the recommendation has been addressed for future cases, but that the changes cannot be given retroactive application under its law to annul the closing of MAP cases that were previously closed.

201. Although Indonesia has addressed the recommendation given in its stage 1 report to the extent that new MAP cases being accessed along with newly initiated domestic remedies will not be automatically closed once there is a court decision, Indonesia's policy to oblige taxpayers to include issues considered in MAP in domestic appeals does not extend to situations where domestic appeals have already been filed and are pending before or have been decided by a court. Therefore, as noted by the peer above, in any MAP case where domestic remedies are already ongoing for the taxpayer in respect of the same tax assessment but covering issues that are not covered in the MAP request, Indonesia's competent authority would take the position that the adjustment relating to the MAP request has been approved by the court and thus, refuse to make any further changes to its original adjustment in these MAP discussions.

202. Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) clearly stipulates that competent authorities have an obligation to endeavour to resolve MAP cases with a view to come to taxation that is in accordance with the provisions of the convention. In this respect paragraph, 5.1 of the Commentary to Article 25 of the OECD Model Tax Convention (OECD, 2017) clearly stipulates that this obligation entails that competent authorities are obliged to seek to resolve the case in a fair and objective manner, on its merits, in accordance with the terms of the convention and applicable principles of international law on the interpretation of treaties. While competent authorities may be bound by decisions of domestic courts for issues that are also under review in the MAP process, removing the possibility to change the original adjustment where there is a Court decision in relation to an unrelated issue in respect of the same assessment for the taxpayer is not in line with the obligations put on the competent authorities. Therefore, this policy is considered to not be in line with this element of the Action 14 minimum standard.

(II) 24-month time limit for MAP discussions

203. Article 5(1) of Indonesia's MAP guidance states that Indonesia's competent authority would conduct MAP negotiations within a period of 24 months from the notification of or being notified by the treaty partner's competent authority of the MAP request. Further, Article 5(5)(b) states that Indonesia's competent authority may on the expiry of its 24-month period close MAP discussions noting that there is a disagreement between the competent authorities where no agreement has been arrived at during this period. Indonesia reported in this regard that this regulation made it legally bound to close a MAP case when the 24-month period has expired, irrespective of the outcome.

204. However, Indonesia reported that it enacted Regulation No. 16/PJ/2020 on 11 August 2020 which enables Indonesia's competent authority to continue the discussion for another 24 months per case if there is initial agreement on the MAP case before six months from expiry of the period or through request made by the treaty partner's competent authority in writing.

205. Six peers provided peer input in relation to this issue. One peer noted that Indonesia's competent authority informed its competent authority of this 24-month time limit and that this has contributed to preventing the resolution of several long-pending MAP cases between Indonesia and the peer in a principled manner. This peer expressed its view that this new rule is in direct contravention of the intent and the spirit of the Action 14 minimum standard. A second peer stated that in the one long-pending case it has with Indonesia, Indonesia's competent authority requested to agree to disagree in order to resolve the case, leading to the taxpayer withdrawing their request and being placed in a situation of double taxation. The peer noted that the decision seemed to be partly justified by the new 24-month time limit in Indonesia's MAP guidance. This peer suggested in this respect that there may be benefit in Indonesia clarifying that this new regulation is not intended to require competent authorities to close cases prematurely, with the possible outcome of taxpayer's being left in a situation of double taxation.

206. A third peer stated that it has a pending pre-2016 case with Indonesia where after several reminders in this particular case, it received a position paper from Indonesia's competent authority citing this regulation in its MAP guidance encouraging the closing of MAP cases older than 24 months on the basis that the result would not be effective any longer. This peer also noted in respect of this time-limit that although Element C.2 of the terms of reference states that jurisdictions should seek to resolve MAP cases within 24 months on average and does not state anything about when cases may be closed, there would be an issue to consider if this is interpreted to mean that if MAP cases are not resolved within 24 months, they will be closed.

207. A fourth peer noted that in April 2020, Indonesia's competent authority notified its competent authority that in accordance with this new regulation, Indonesia's competent authority would discuss MAP cases only within the recommended 24-month time frame, that it would not negotiate or discuss MAP cases after the 24-month period lapses and that it would be obliged to stop discussions and to close a case even if a resolution has not been reached. This peer noted Indonesia's view that this is consistent with the Action 14 minimum standard which recommends that "jurisdictions should seek to resolve MAP cases within an average time frame of 24 months." The peer stated that its competent authority has expressed to Indonesia's competent authority its view that this new practice is inconsistent with the MAP article of the concerned tax treaty. The peer also noted its view that the Action 14 minimum standard envisaging an average time frame recognises that some cases may take longer than 24 months to resolve and that competent authorities should pursue resolution beyond the 24 month period if required. The peer stated that it finds Indonesia's interpretation problematic since cases going beyond the 24-month time limit would then essentially be denied resolution through MAP. The peer also expressed concerns that Indonesia is applying this law retroactively to any open MAP cases that had already exceeded the 24-month time frame.

208. A fifth peer noted that the 24-month time limit along with Indonesia's domestic statute of limitations reduces the effectiveness of MAP substantially.

209. Finally, a sixth peer noted that its competent authority had recently received a request from Indonesia's competent authority to conclude a pending MAP case with no agreement based on the newly enacted 24-month time limit in its domestic law which would lead to the closing of all pending MAP cases that have been in the inventory for beyond 24 months with no agreement. The peer noted that its competent authority requested Indonesia's competent authority to reconsider this decision and were awaiting the outcome of this request. This peer further stated its view that the Action 14 minimum standard requires jurisdictions to seek to resolve MAP cases within an average time period of 24 months and

that the timeline is not hard-coded as an absolute period of 24 months in recognition that for various reasons, some MAP cases may require a longer time period to resolve even as jurisdictions endeavour to resolve MAP cases in a timely, effective and efficient manner. The peer noted that if further endeavours are justified and this could result in a better outcome for the taxpayer, its view is that both competent authorities should continue the discussion despite reaching a time period of 24 months. The peer expressed concerns that a case would be closed without reaching an agreement simply on the basis that negotiations for that case has exceeded 24 months. The peer also noted that although it is aware of an avenue for an extension of this time period, this would be still only be at the discretion of Indonesia's competent authority which is not satisfactory for the peer.

210. Indonesia responded to all these peers in general and stated that the 24-month time limit was designed based on some MAP cases that were pending even after five years resulting in uncertainty for the taxpayers. Indonesia noted its view that extremely lengthy discussions may be caused by lack of regular meetings, communication problems, stalemate discussions or any other technical/non-technical reasons and that its competent authority needed a breakthrough on the resolution of MAP cases. Indonesia further stated that in the spirit to encourage swift resolution through MAP as well as promoting tax certainty, this new regulation was enacted in line with the essence of the Action 14 minimum standard in its view. Indonesia clarified its position that since the regulation authorises Indonesia's competent authority to negotiate and discuss a case for a maximum of 24 months from the initiation of the bilateral phase of MAP, it would induce Indonesia's competent authority to endeavour to resolve MAP cases within the 24-month time limit.

211. However, acknowledging that some circumstances where discussions last for more than 24 months is inevitable and noting that stopping discussions because of this regulation would waste the productive progress in these cases, Indonesia clarified that it has enacted Regulation No. 16/PJ/2020 on 11 August 2020 which enables Indonesia's competent authority to continue the discussion for another 24 months insofar as there is a request from the treaty partner's competent authority to do so. Indonesia also expressed its view that this extension would resolve the issue of retroactive implementation of the 24-month time limit.

212. The fourth peer (referred to in paragraph 207 above) responded to this and expressed its strong opposition to limitations of this nature on taxpayers' ability to pursue MAP and achieve full resolution of their cases in MAP, regardless of the age of the MAP cases. This peer reiterated its view that such limitations are inconsistent with the obligations on competent authorities under the tax treaty. Indonesia agreed with this and contested the claim that the new 24-month regulation would be a limitation on full resolution in MAP. Citing the possibility of an extension as noted above, Indonesia stated its view that swift communications and active discussions between both competent authorities in resolving a MAP case are essential in expediting the resolution of MAP cases not only to achieve a settlement but also to provide tax certainty for the respective taxpayers and that as long as these aspects are promoted and committed among the competent authorities, Indonesia expressed its view that it does not agree that the 24-month time limit creates any issues.

213. The fifth peer (referred to in paragraph 208 above) responded and welcomed the possibility to extend the 24-month time limit, but expressed concerns that this is still not in line with the spirit of the Action 14 minimum standard since the minimum standard only requires jurisdictions to seek to resolve MAP cases within an average time frame of 24 months. This peer expressed its position that ceasing discussions on each case after the expiration of a time-limit is not in line with the obligations placed under the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) Indonesia's tax treaties and is thus, not in line with element C.1.

214. Indonesia responded to this input and noted that element C.1 deals with the inclusion of 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) in tax treaties and that since the treaty with the peer contains this provision, Indonesia is compliant with the same.

215. The sixth peer (referred to in paragraph 209 above) responded to this as well and stated that although it shared Indonesia's view that competent authorities should work together to resolve MAP cases effectively and within 24 months to provide taxpayers with certainty on their tax matters and appreciated the clarification that Indonesia would provide an extension as stated above, it would require a few clarifications. First, the peer requested to understand Indonesia's competent authority's considerations for evaluating a request of an extension from the treaty partner's competent authority and/or the actions that would be needed from the taxpayer, if any. Second, the peer inquired whether the time-limit would apply to all MAP cases irrespective of complexity or the transfer pricing method and noted its view that it may not be realistic to expect that all cases, especially such cases that require detailed fact finding or in-depth discussion on the applicable method, to be resolved within 24 months in the first place. In this regard, this peer noted that such cases may be denied an extension by Indonesia's competent authority per its discretion. Third, the peer stated its understanding that the time extension is to be applied only once for each MAP case and that if this is the case, expressed its view that if the MAP case could not be resolved within the 24-month time extension, MAP discussions being terminated regardless of the considerations as to why the MAP case remains unresolved would mean that taxpayers will not be able to obtain tax certainty on their cases not because there is no avenue for further discussions but because of this time-limit and that this does not appear to be in line with the intention of Action 14.

216. Indonesia further responded to this as follows: first, Indonesia clarified that its competent authority would not terminate a case because of the 24-month time limit and that actively discussed MAP cases are eligible for the extension. Indonesia clarified that the only consideration is whether the extension can potentially lead to a resolution and that no actions are needed from the taxpayer. Second, Indonesia noted that this is applicable to all MAP cases regardless of complexity and that the extension may be granted if a potential resolution is perceivable. Third, Indonesia noted that although it understands that some cases take longer, instead of anticipating the number of extensions for each case, it would focus on making MAP discussions more effective, but also clarified that as long as the MAP case is being actively discussed, an extension shall be granted with the view of reaching a resolution following the extension.

217. In relation to this response, the peer noted that the extension would be a unilateral decision by Indonesia and expressed its view that closing a case without agreement and evaluating the possibility of a resolution may only be achieved where both competent authorities agree that they have exhausted all possibilities to reach a material agreement. It sought more clarity on the body granting extensions in Indonesia including the composition of such body, the criteria used to determine whether an extension can potentially lead to a resolution and whether if the extension is rejected, the basis of such rejection would be shared.

218. Indonesia further responded and noted that there is no such internal approving body and that its competent authority, after taking advice from a committee of high-level officials, would make such decision. Indonesia further noted that there are no fixed criteria for the extension as this varies from case to case. Finally, Indonesia clarified that any decision on the extension would be a decision of its competent authority and that the treaty partner's competent authority would be informed of the decision.

219. Further, in response to the third peer (referred to in paragraph 206 above), Indonesia noted that although its competent authority encouraged this peer to close this case, it was willing to reopen discussions if there were new facts and circumstances. This peer appreciated Indonesia's efforts to continue discussions on this case even though the 24-month time limit had expired.

220. As noted above, Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) clearly stipulates that competent authorities have an obligation to endeavour to resolve MAP cases with a view to resolving taxation that is not in accordance with the provisions of the tax treaty. Indonesia's policy is to place a 24-month time limit from the initiation of the bilateral phase of MAP, subject to only one extension of a further 24-months granted per the discretion of Indonesia's competent authority. Per this rule, as described by the peers above, a case may be closed by Indonesia's competent authority without agreement after 24/48 months if it feels that a possible resolution cannot be perceived, without consultation with the treaty partner's competent authority on whether further endeavours are justified and whether all reasonable possibilities of an agreement have been explored. This is further exacerbated by the fact that long-pending cases have been suggested to be closed owing to this rule as well based on the peer input received. As noted by the peers, accepting that the Action 14 minimum standard requires jurisdictions to seek to resolve all MAP cases on average within a timeframe of 24 months, the rule envisages an average so as to factor in that a few cases may require discussions beyond 24 or even 48 months prior to resolution. Placing unilateral restrictions on possible endeavours by the competent authority to try and resolve taxation not in accordance with the tax treaty is not in line with the obligation placed on competent authorities under the equivalent of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) contained in Indonesia's tax treaties. Therefore, this policy is considered to not be in line with this element of the Action 14 minimum standard.

(III) Expiry of statute of limitations

221. Article 5(5)(d) of Indonesia's MAP guidance also provides that discussions in a MAP case may be closed without agreement among the competent authorities if Indonesia's domestic statute of limitation has expired and there is no agreement on the case as yet.

222. One peer noted that in one case, Indonesia's competent authority initially decided to discontinue discussions owing to this, but decided to resume discussions later although it still refused to make downward adjustments as the result of a MAP. This peer stated that this is not in line with the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) contained in the treaty between the peer and Indonesia. This peer stated that Indonesia's statute of limitations erodes the value of any discussions beyond this period and that this fundamentally harms the effectiveness of MAP.

223. Indonesia responded to this input and accepted that there is a statute of limitation in its domestic law which it applies, but that it actively informs treaty partners in advance to mitigate the issue.

224. This peer responded further and noted that the recommendation in the stage 1 report of Indonesia relates to situations where the concerned treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and that this was in accordance with Indonesia's reporting. The peer also reiterated its view that a conflicting statute of limitation does not alter a competent authority's obligations to endeavour to resolve a case and that this issue should be considered under element C.1

225. Indonesia responded and noted that although the recommendation is applicable in the absence of the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the concerned tax treaty, it expressed its views that the presence of domestic statute of limitations does not affect a competent authority's obligation to endeavour to resolve a MAP case, where it is allowed to not enter into a MAP agreement where it is aware that the agreement cannot be implemented owing to its statute of limitations. Further, Indonesia noted that it has informed the peer in advance of the statutory time limits in all cases to avoid this. Indonesia also clarified that the newly introduced 24-month time limit in its law is also to allow all MAP agreements within its statute of limitations to be implemented.

226. According to Indonesia's MAP guidance and the peer input noted above, a MAP case may be closed by Indonesia's competent authority without further discussions if the domestic limitation period has expired in respect of the issue being discussed, even where the concerned treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). This policy creates the risk that discussions in MAP are terminated without exploring all reasonable possibilities of reaching an agreement, where the treaty provision should allow both competent authorities to implement such agreement irrespective of domestic time-limits. Although it is clear that there is no obligation on competent authorities to reach an agreement for cases where it cannot implement a possible MAP agreement owing to domestic statute of limitations, this cannot be extended to situations where the treaty allows such implementation. This is not in line with the obligation placed on competent authorities under the equivalent of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) contained in Indonesia's tax treaties. Therefore, this policy is considered to not be in line with this element of the Action 14 minimum standard.

227. Indonesia reported that following the expiry of the period under review for stage 2, Indonesia has revised its policy to continue discussions on MAP cases where the statute of limitations has expired in situations where the treaty concerned contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). The peer referred to above (in paragraph 222) also confirmed that discussions on the case referred to above have continued since August 2020.

(IV) Tax Amnesty Programme

228. Article 5(5)(e) of Indonesia's MAP guidance also provides that discussions in a MAP case may be closed without agreement among the competent authorities if an Indonesian resident taxpayer takes part in tax amnesty programme under its domestic law in respect of the issue covered in MAP. Indonesia noted that this amnesty programme allows taxpayers to disclose undisclosed assets from previous years and does not relate to settling matters that are presently under dispute with the tax authorities. Further, in this respect, Indonesia clarified that its competent authority would not be able to deviate from the position taken under this amnesty programme and that if the other competent authority agrees with such position, the case may be closed with agreement.

229. In respect of the possibility to deviate from a tax amnesty programme in a MAP case, further discussion and analysis is required at the FTA MAP Forum on whether such position is in line with the Action 14 Minimum Standard.

(V) Information requests by the other competent authority

230. Article 6(4) of Indonesia’s MAP guidance states that its competent authority would terminate MAP discussions where the taxpayer does not provide information requested for within the specified time-period or if the competent authority of the treaty partner requests for information, evidence or statements not in accordance with Article 6(3) of the guidance. In this regard, Article 6(3) states that the treaty partner’s competent authority may request information, evidence or statements from Indonesia’s competent authority only in accordance with the exchange of information provision in the concerned treaty or through direct requests to the appointed delegates of Indonesia’s competent authority during MAP discussions.

231. In this regard, Indonesia clarified that although Article 6(3) of its MAP guidance may be termed broadly, its competent authority would, in practice, always allow the treaty partner’s competent authority to request information, evidence or statements from any member of Indonesia’s competent authority through any officially recognised means of communication and that MAP discussions would not be terminated on the grounds that the treaty partner’s competent authority has not used the exchange of information provision in the tax treaty or has not directly approached the person responsible for a particular MAP case in its competent authority. This interpretation is clarified in Indonesia’s MAP profile.

(VI) Withdrawal from MAP by Indonesia’s competent authority

232. Article 8 of Indonesia’s MAP guidance deals with withdrawal of a MAP request and in addition to rules governing how a taxpayer may withdraw a filed MAP request, this provision also grants Indonesia’s competent authority the power to withdraw the MAP request during discussions by notifying the concerned taxpayer and the competent authority of the treaty partner.

233. In this regard, Indonesia has clarified that its competent authority would only allow this provision to be applied by competent authorities for MAP cases that are initiated by the competent authority itself, under the equivalent of Article 25(3) of the OECD Model Tax Convention (OECD, 2017) in the concerned tax treaty, and not for MAP cases arising from a taxpayer request. Indonesia has confirmed that all MAP requests initiated by the taxpayer may only be withdrawn by the taxpayer itself. This is clarified in Indonesia’s MAP profile

Recent developments*Bilateral modifications*

234. Indonesia signed a new tax treaty with a treaty partner which concerns the replacement of an existing treaty currently in force. This treaty has not entered into force yet. This treaty contains a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) as was the case in the existing treaty. The effects of this newly signed treaty have been reflected in the analysis above where it has relevance.

Multilateral Instrument

235. Indonesia signed the Multilateral Instrument and has deposited its instrument of ratification on 28 April 2020. The Multilateral Instrument has entered into force for Indonesia on 1 August 2020.

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

237. With regard to the tax treaty identified above that is considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Indonesia listed this treaty as a covered tax agreement under the Multilateral Instrument, but did not make a notification pursuant to Article 16(6)(c)(i) in respect of this treaty. Therefore, at this stage, the treaty identified above will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

238. For the remaining tax treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent, Indonesia intends to update its list of notifications and reservations to the Multilateral Instrument to have the treaty modified by it.

Peer input

239. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Indonesia. Neither of these peers concern treaty partners to treaties that are not line with this element.

Anticipated modifications

240. Indonesia 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]	One out of 72 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, Indonesia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument	As the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) will not be modified via the Multilateral Instrument, Indonesia should continue to work in accordance with its plan to include the required provision via the Multilateral Instrument.

	Areas for improvement	Recommendations
[C.1]	<p>The competent authority does not seek to resolve MAP cases where:</p> <ul style="list-style-type: none"> domestic court decisions are rendered in respect of issues different than those covered in the MAP request involving the same tax assessment for a fiscal year discussions in a MAP case do not result in a bilaterally agreed outcome within 24 months from initiation of the bilateral phase of MAP, allowing the possibility of only one extension of a further 24 months at the unilateral discretion of Indonesia's competent authority, where the treaty partner's competent authority is of the view that further endeavours may be justified for the case at hand the domestic time limit is about to expire in respect of the issue being discussed in a MAP case, in situations where the concerned treaty allows implementation notwithstanding domestic time limits. 	<p>Indonesia should seek to resolve all MAP cases that were accepted into the MAP and that meet the requirements under Article 25(1) and (2) of the OECD Model Tax Convention (OECD, 2017) as incorporated in Indonesia's tax treaties. Specifically, Indonesia should seek to resolve MAP cases in particular in the following situations:</p> <ul style="list-style-type: none"> domestic court decisions are rendered in respect of issues different than those covered in the MAP request involving the same tax assessment for a fiscal year discussions in a MAP case do not result in a bilaterally agreed outcome within Indonesia's internal deadlines, where the treaty partner's competent authority is of the view that further endeavours may be justified for the case at hand. Indonesia should, in good faith, engage with its treaty partner with a view to establishing a common understanding on the merits of continuing such a case beyond Indonesia's internal deadlines the domestic time limit is about to expire in respect of the issue being discussed in a MAP case, in situations where the concerned treaty allows implementation notwithstanding domestic time limits. Indonesia should, in good faith and in a timely manner, engage with its treaty partner with a view to establishing a common understanding on the possibilities and merits of continuing such a case beyond Indonesia's domestic time limits.

[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).

241. 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

242. Statistics regarding all tax treaty related disputes concerning Indonesia are published on the website of the OECD as from 2016.¹ Indonesia also publishes “Directorate of International Taxation APA and MAP Statistics”, which are available at:

www.pajak.go.id/apa-map

243. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Indonesia provided its MAP statistics for the years 2016-19 pursuant to the MAP Statistics Reporting Framework and within the given deadline, including all cases involving Indonesia 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 to understand the MAP caseload of Indonesia.²

244. With respect to post-2015 cases, Indonesia reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Indonesia reported that it could match its post-2015 MAP statistics, but is waiting for a reply from five of its MAP partners.

245. Two peers provided input on the matching of MAP statistics with Indonesia and confirmed that they were able to match their statistics with Indonesia for the years 2016-19.

246. Based on the information provided by Indonesia’s MAP partners, its post-2015 MAP statistics for the years 2016-19 actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

247. Indonesia reported that each MAP case is monitored on a monthly basis as to the progress made to ensure that the MAP process and the target timeframe are effectively managed. Indonesia noted that this monthly evaluation also takes into account the performance of staff handling pending MAP cases based on whether they are on track to meet their objectives. Based on this evaluation, Indonesia clarified that reports are prepared, which are discussed in managerial meetings. Indonesia further noted that in these meetings, next to monitoring of the MAP caseload, new cases and the fair case allocation of cases among staff are discussed as well. Indonesia clarified that each section in the sub-directorate of Internal Taxation Dispute Prevention and Settlement (MAP unit) thereby has to report the progress made in resolving MAP cases.

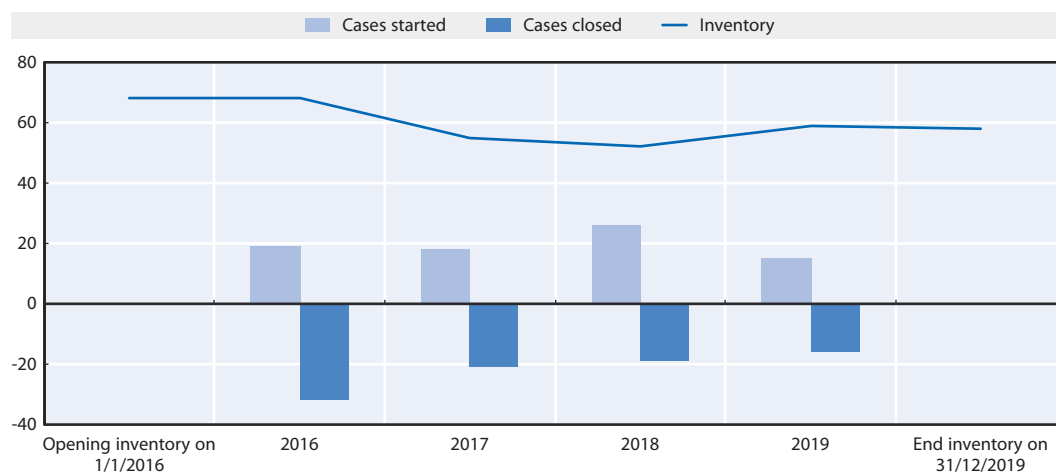
Analysis of Indonesia’s MAP caseload

Global overview

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

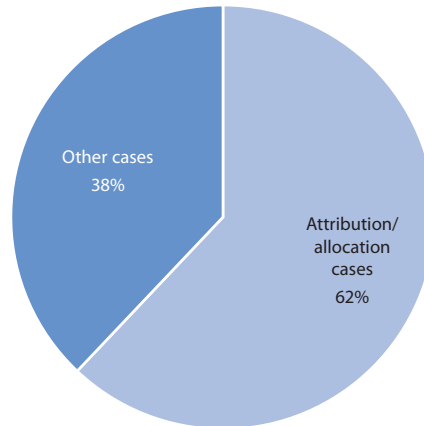
249. Figure C.1 shows the evolution of Indonesia’s MAP caseload over the Statistics Reporting Period³.

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



250. At the beginning of the Statistics Reporting Period Indonesia had 68 pending MAP cases, of which 23 were attribution/allocation cases and 45 other MAP cases.⁴ At the end of the Statistics Reporting Period, Indonesia had 58 MAP cases in its inventory, of which 36 are attribution/allocation cases and 22 are other MAP cases. Indonesia's MAP caseload has decreased by 15% during the Statistics Reporting Period. This concerns a decrease of 51% in the number of other MAP cases and an increase of 57% in the number of attribution/allocation cases. The breakdown of the end inventory can be shown as in Figure C.2.

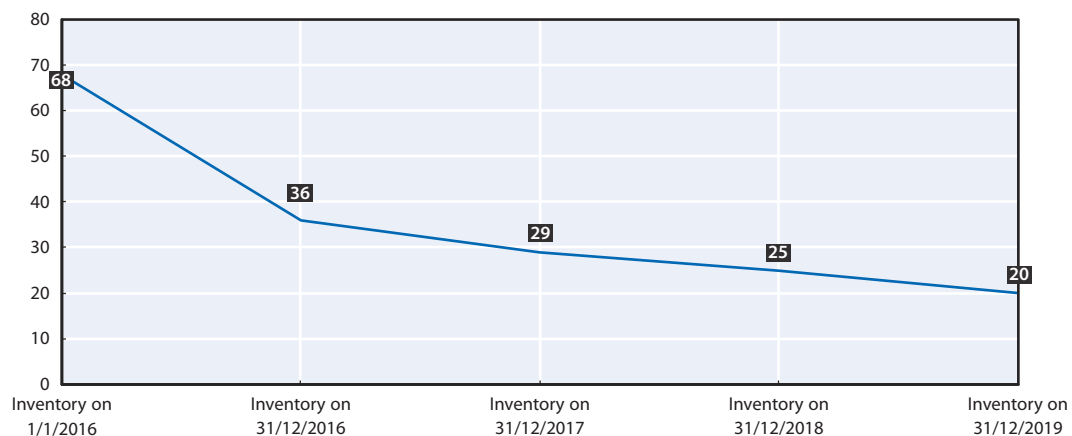
Figure C.2. End inventory on 31 December 2019 (58 cases)



Pre-2016 cases

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

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



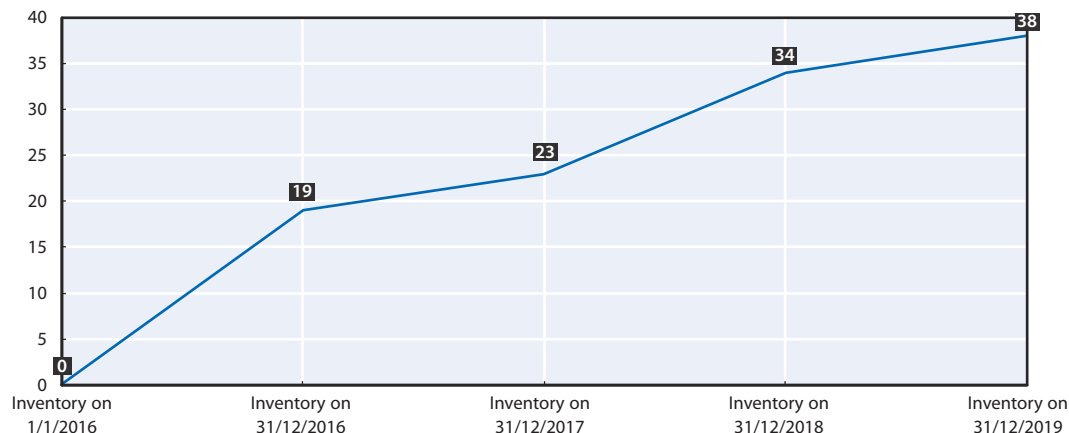
252. At the beginning of the Statistics Reporting Period, Indonesia’s MAP inventory of pre-2016 MAP cases consisted of 68 cases, of which 23 were attribution/allocation cases and 45 were other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 20 cases, consisting of seven attribution/allocation cases and 13 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	Evolution of total MAP caseload in 2019	Cumulative evolution of total MAP caseload over the three years (2016-19)
Attribution/allocation cases	-22%	-22%	-29%	-30%	-70%
Other cases	-60%	-17%	(no case closed)	-13%	-71%

Post-2015 cases

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

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



254. In total, 78 MAP cases started during the Statistics Reporting Period, 49 of which concerned attribution/allocation cases and 29 concerned other cases. At the end of this period the total number of post-2015 cases in the inventory was 38 cases, consisting of 29 attribution/allocation cases and nine other cases. Accordingly, Indonesia closed 40 post-2015 cases during the Statistics Reporting Period, 20 of them being attribution/allocation cases and 20 of them being other cases. The total number of closed cases represents 51 % of the total number of post-2015 cases that started during the Statistics Reporting Period.

255. 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.

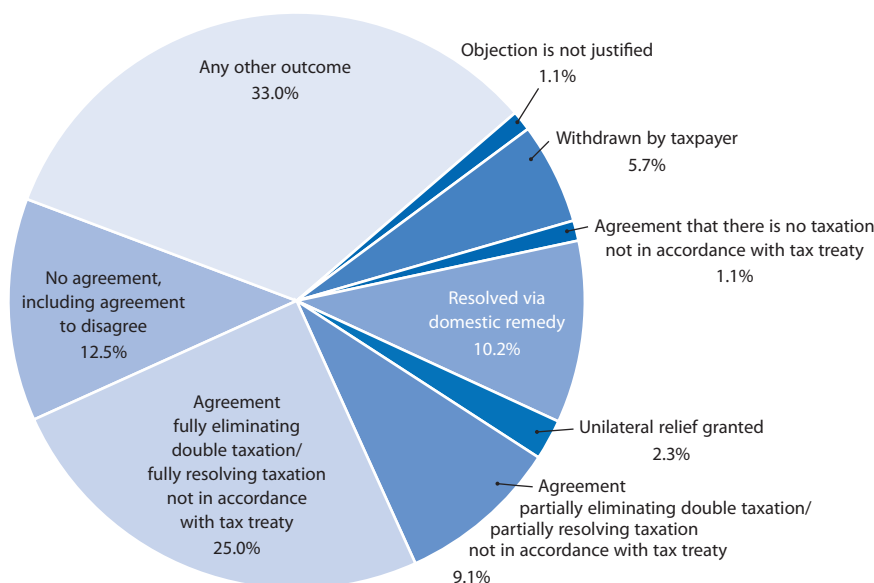
Post-2015 cases	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	% of cases closed in 2019 compared to cases started in 2019	Cumulative evolution of total MAP caseload over the four years (2016-19)
Attribution/allocation cases	0%	23%	56%	78%	41%
Other cases	0%	220%	63%	67%	69%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

256. During the Statistics Reporting Period Indonesia in total closed 88 MAP cases for which the outcomes shown in Figure C.5 were reported.⁵

Figure C.5. Cases closed in 2016, 2017, 2018 or 2019 (88 cases)



257. Figure C.5 shows that during the Statistics Reporting Period, 22 out of 88 cases (25%) were closed with the outcome “agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty” and 29 (33%) were closed with the outcome “any other outcome”.

Reported outcomes for attribution/allocation cases

258. In total, 36 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/taxation not in accordance with the tax treaty (42%)
- resolved via domestic remedy (19%)
- withdrawn by taxpayer (14%)
- no agreement including agreement to disagree (14%).

Reported outcomes for other cases

259. In total, 52 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- any other outcome (56%)
- agreement fully eliminating double taxation/taxation not in accordance with the tax treaty (13%)
- no agreement including agreement to disagree (12%).

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

260. The average time needed to close MAP cases during the Statistics Reporting Period was 25.12 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	36	28.16
Other cases	52	23.02
All cases	88	25.12

Pre-2016 cases

261. For pre-2016 cases Indonesia reported that on average it needed 47.08 months to close 16 attribution/allocation cases and 32.47 months to close 32 other cases. This resulted in an average time needed of 37.33 months to close 48 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Indonesia reported that it uses the following dates:

- Start date: one week from the date of notification by the competent authority that receives the MAP request from the taxpayer or five weeks from the receipt of the taxpayer's MAP request, whichever is the earlier date.
- End date: the date of an official communication from the competent authority to inform the taxpayer of the outcome of its MAP request.

Post-2015 cases

262. For post-2015 cases Indonesia reported that on average it needed 13.04 months to close 20 attribution/allocation cases and 7.91 months to close 20 other cases. This resulted in an average time needed of 10.47 months to close 40 post-2015 cases.

Peer input

263. The peer input in relation to resolving MAP cases will be discussed under element C.3. Specifically concerning the timely resolution of MAP cases, some peers reported that while Indonesia's competent authority is responsive and easy to contact, it also takes a long time before position papers are being issued and that this causes delay in the timely resolution of MAP cases.

Recent developments

264. Indonesia was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 54% of the post-2015 cases pending on 31 December 2018 (34 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

265. With respect to this recommendation, Indonesia reported that since 1 January 2019 it has performed several internal steps to improve the MAP process. This in particular concerns the following steps:

- providing position papers in advance of MAP meetings
- maintaining communication with treaty partners in as effective a way as possible through any channels including physical mail, e-mail or fax
- arranging virtual meetings for MAP discussions
- updating standard operating procedures in the light of new MAP and APA regulations to create internal milestones to expedite the handling of MAP and APA cases.

266. In view of these steps and the statistics discussed above, it follows that Indonesia was able to reduce its MAP inventory by 15%, whereby the number of other MAP cases was reduced by 51%. However, the statistics also show that Indonesia has in the period 2016-19 not closed its MAP cases within the pursued average of 24 months. For these years, the number of post-2015 cases closed as compared to the cases that started in these years was 51%. Element C.3 will further consider these numbers in light of the adequacy of resources.

267. Almost all peers that provided input during stage 1 confirmed that this input holds equal relevance for the period starting on 1 January 2019. However, several peers have commented on their experience with Indonesia concerning the resolution of MAP cases since that date. This input is further discussed under element C.3.

Anticipated modifications

268. Indonesia 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.

269. 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 Indonesia’s competent authority

270. Under Indonesia’s tax treaties the competent authority function is assigned to the Minister of Finance or its authorised representative. In this respect, Indonesia has delegated, pursuant to Article 57(1) of Regulation No. 74 (2011) to the Director General of Taxes. Until April 2016 the competent authority function was in practice performed by the Director of Tax Regulation II, a sub-directorate of the Director General of Taxes. Indonesia clarified that in April 2016, the Director General of Taxes has established a specialised unit for dispute resolution under the Directorate of International Taxation, which is the sub-directorate of International Tax Dispute Prevention and Resolution (“**MAP unit**” or “**competent authority**”). This unit started with 19 staff members, one of which is the head of the unit and who is authorised to exercise the competent authority function. The number of the staff members has increased to 40 by the end of 2020 comprising 35 MAP analysts, four section chiefs and one deputy director.

271. With regard to the training of staff, Indonesia reported that most of the staff is trained and has experiences in dealing with international tax issues. In that regard it specified that its Director General of Taxes ensures that staff in charge of MAP cases has sufficient experience and education in these issues and for that reason they are regularly participate in training and capacity building programmes (e.g. on transfer pricing) to improve their work performance. Indonesia reported that its competent authority staff members have attended several external trainings as well including those organised by the OECD.

272. Further to the above, Indonesia also reported that there is adequate funding and sufficient resources for being able to handle MAP cases and conduct face-to-face meetings. This funding enables its competent authority to hold face-to-face meetings for three to four times per year with treaty partners. Given this number of possible meetings, Indonesia added that in order to avoid a late issuing of position papers, its MAP unit is adopting electronic modes of communications.

273. Indonesia further commented that its competent authority has been facing challenges such as: (i) case complexity, (ii) difficulty in fact finding, (iii) lack of data/transparency from taxpayer, (iv) large time gap of communication with treaty partners, and (v) limited number of face-to-face meetings with other competent authorities. To tackle these challenges, Indonesia reported that it has taken the following measures:

- providing regular transfer pricing and tax treaty trainings for MAP analysts
- cross-checking with internal data, third party data, customs data, or data obtained from exchange of information
- including a domestic policy provision to provide that treaty-related disputes will be resolved within a certain timeframe
- providing better regulation for the taxpayer and the tax administration in conducting MAP process efficiently
- adapting electronic modes of communication with treaty partners
- holding monthly meetings to discuss outstanding cases, including milestones and difficulties in the attempt of resolving those cases
- scheduling consultations with treaty partners concerning outstanding cases at the beginning of the year.

Monitoring mechanism

274. Indonesia reported that each year its competent authority prepares a progress report, which includes a workload analysis. Based on this report, the Director General of Taxes decides on whether there should be any changes in the number of staff in charge of MAP cases.

Recent developments

275. In the stage 1 report, Indonesia was recommended to ensure that resources available for the competent authority function are adequately used in order to resolve MAP cases in a timely, efficient and effective manner. In this respect, in light of peer input received (discussed in paragraphs 286-307 below), Indonesia was recommended particularly to ensure that such adequate use enables its competent authority to:

- hold face-to-face meetings more frequently
- issue position papers in due time and include in those papers substantial information on the case and an analysis and explanation of the Indonesia's position
- respond to position papers issued by competent authorities of the treaty partners and respond to communications on pending MAP cases with these partners in a timely manner.

276. Furthermore, Indonesia was recommended to consider devoting current available resources to attribution/allocation cases in order to accelerate their resolution.

277. As discussed under element C.2, Indonesia has taken several steps in lieu of following up on this recommendation. In order to ensure that resources available to the competent authority are adequately used, Indonesia reported that it has taken the following steps:

- ensuring more frequent face-to-face meetings through several measures, including but not limited to:
 - actively reaching out to their counterparts to schedule face-to-face meetings regularly
 - ensuring the availability of budget, including a travel budget
 - conducting meetings along the margins of meetings of international fora
 - conducting virtual meetings and conferences where possible and appropriate.
- issuing comprehensive position papers in due time and responding to position papers issued by treaty partners in a timely manner through several measures, including but not limited to:
 - making sure that each MAP case has been assigned to a specific MAP analyst or analyst team
 - actively monitoring the progress of each case
 - ensuring the capacity of each MAP Analyst through regular training
 - making MAP resolution a key performance indicator for competent authority staff members
 - co-operating closely with regional and district tax offices as well as with taxpayers to obtain all relevant and essential information related to MAP cases.

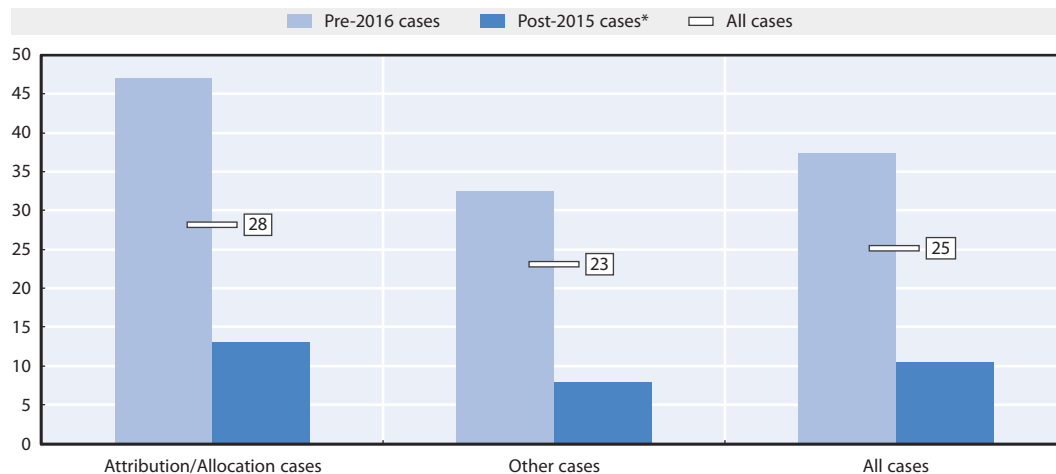
278. Indonesia further clarified that its competent authority has taken all measures possible to have more frequent face-to-face meetings for the discussion of MAP cases although this was slowed down in 2020 owing to COVID-19 related restrictions. Indonesia noted that although some meetings were postponed, others were conducted virtually leading to progress on cases.

Practical application

MAP statistics

279. As discussed under element C.2, Indonesia has not closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average, as it needed 25.12 months to close MAP cases. This concerns attribution/allocation cases where the time needed was 28.16 months, where the time needed to resolve other MAP cases was 23.02 months. The average time to resolve MAP cases in 2016, 2017, 2018 and 2019 can be illustrated by Figure C.6.

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



*Note that post-2015 cases only concern cases started and closed during 2016, 2017, 2018 or 2019.

280. The stage 1 peer review report of Indonesia analysed the 2016-18 MAP statistics and showed an average of 24.00 months to resolve 72 MAP cases, which concerned 27.25 months for 26 attribution/allocation cases and 22.18 months for 46 other MAP cases that were closed. Although the average time was in line with the pursued average of 24 months, based on the peer input received, Indonesia was recommended to ensure that resources available for the competent authority function are adequately used in order to resolve MAP cases in a timely, efficient and effective manner.

281. For stage 2, the 2019 MAP statistics are also taken into account. The average times to close MAP cases for this year are as follows:

	2019
Attribution/Allocation cases	30.55
Other cases	29.49
All cases	30.15

282. The 2019 statistics of Indonesia show that the average completion time of MAP cases increased from 24 months (2016-18) to 30.15 months (2019). Indonesia clarified that this is owing to the time taken to resolve five pre-2016 cases in 2019 and that it believes that its available resources including funding is adequate. Indonesia further noted that it was able to resolve post-2015 cases in 14.68 months in 2019 which is within the pursued average time.

283. As discussed in element C.2, the MAP inventory of Indonesia has decreased by 15% since 1 January 2016. This can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2019	Increase in %
Attribution/allocation cases	23	49	36	36	57%
Other cases	45	29	52	22	-51%
Total	68	78	88	58	-15%

284. These numbers show that there was a significant increase of 57% in attribution/allocation MAP cases during this period although there was a significant decrease by 51% of other MAP cases.

285. However, the figures in the above table also show that the number of closed cases is larger than the number of all cases started in the period 2016-19. Further, Indonesia was able to close 51% of all cases that started in this period and close 71% of its pre-2016 inventory. These numbers show that Indonesia's competent authority has taken efforts since the stage 1 report to ensure that pending and future MAP cases were resolved in a timely, efficient and effective manner.

Peer input – Period 1 January 2016-31 December 2018 (stage 1)

Relationship and contacts with Indonesia's competent authority

286. Out of the eleven peers that provided input, half of them mentioned there are not many MAP cases pending with Indonesia and thus that they have limited experiences in that regard. Six of the remaining peers considered Indonesia to be an important MAP partner, with a substantial number of MAP cases pending as compared to their inventory.

287. Concerning the first group of peers, one peer mentioned that communications between its competent authority and that of Indonesia only started recently, for which it looked forward to a mutually beneficial and respectful relationship. Another peer noted that while it has only one MAP case with Indonesia, in its experience Indonesia's competent authority is easy to contact and answers promptly. Furthermore, one peer mentioned that due to its limited number of MAP cases with Indonesia, it has no robust working relationship concerning the handling and resolving of MAP cases and also that no face-to-face meetings have been held since 2014.

288. Concerning the second group of peers, they all noted having a good, co-operative, or excellent working relationship with Indonesia's competent authority. With regard to communications with Indonesia's competent authority, these peers commented that they could contact it with ease or without any difficulty. One peer noted it has not encountered any barriers to communications with Indonesia's competent authority and that for all MAP cases that were initiated since 1 January 2016, Indonesia's competent authority provided prompt acknowledgement of receipt. Another peer mentioned that it values its ongoing

co-operation with Indonesia and that its engagement with Indonesia’s competent authority is positive and constructive with regular contact by phone and email. This peer also observed that Indonesia’s competent authority is generally positive to case developments and information sharing with the peer’s competent authority. The peer in particular highlighted that as a result of more frequent meetings, there has been an increase in rapport and trust with both competent authorities comfortable to express opinions and share information.

289. Further to the above, three peers added to their input that they hold face-to-face meetings with Indonesia once or twice a year. Another peer noted that it had held one face-to-face meeting with Indonesia since January 2016, but that it is sometimes difficult to schedule a face-to-face meeting in a timely manner with a view to resolve cases in a satisfactory way. It pointed to the example that even after a meeting was scheduled, Indonesia’s competent authority asked a postponement.

Handling and resolving MAP cases – peers with limited experience with Indonesia

290. Three of the peers that have little experiences with Indonesia provided input as regards the handling and resolving of MAP cases.

291. One of these peers reported that it has concerns regarding Indonesia’s timeliness of responses to competent authority communications. It presented the example of a case that has taken over four years to obtain a position paper. This peer therefore suggested that Indonesia’s competent authority could prepare its position paper when an adjustment is made by Indonesia, and believes that improved communication lines could remedy this concern and would make it able to resolve MAP cases in a timelier fashion.

292. Indonesia responded to this input and mentioned that it has a limited number of MAP cases with this peer. For the particular case being referred to by the peer, Indonesia mentioned it has provided a position paper in May 2018, but so far has not received a response from the peer’s competent authority. In a reaction, the peer stressed that it indeed received the position paper, after four years. The reason that its competent authority, however, has not yet responded to the paper is that it did not contain sufficient and substantive information that would enable its competent authority to conduct a proper analysis and prepare an adequate response to Indonesia’s competent authority. To obtain this information, the peer stressed its competent authority reached out to the taxpayer and upon receipt of this information it will respond to Indonesia’s competent authority. As a final response, Indonesia mentioned it could definitively understand the peer’s concerns, but reminded that a dedicated MAP unit was not established until 2016 and since then improvements to the MAP process were made to make it more effective. In that regard, Indonesia mentioned that for future years it is committed to provide the peer with position papers on a timely basis and also contain sufficient information.

293. The second peer reported that it experienced no impediments to the timeliness of the resolution of MAP cases on the side of Indonesia’s competent authority. While it experienced a delay in one case, this was because the taxpayer did not provide information on time. This latter was confirmed by Indonesia.

294. Lastly, the third peer reported that some attribution/allocation cases were difficult to resolve due to lack of responsiveness by Indonesia’s competent authority. In addition, this peer noted that in several non-attribution/allocation cases, the competent authorities had fundamentally different views on the interaction between Indonesia’s domestic law and provisions of the treaty (for example, in determining what kind of payment constitutes a royalty). These differences created in the peer’s view significant challenges in resolving MAP cases in a principled manner and within a 24-month period. The peer further

mentioned that although the competent authorities sometimes communicate informally, the peer also has concerns with Indonesia competent authority's ability to respond in a timely manner. In that regard, it stressed it has experienced difficulties in communications with Indonesia's competent authority, some of which appear to have arisen when there have been turnovers in staff.

295. Indonesia also responded to the particular input by this third peer. It noted that it acknowledges the situation raised by the peer on the issuing of and responding to position papers. It, however, has to same concern, since the peer's competent authority did not respond to position papers issued by Indonesia's competent authority. Specifically relating to the remark on the fundamentally different views on the interaction between Indonesia's domestic law and provisions of the treaty, Indonesia mentioned that it is of the view that the differences of view will not create significant challenges in resolving MAP cases in a timely manner.

296. The peer provided for a reaction and gave an additional clarification as to its remark on the non-timely response of Indonesia's competent authority. It thereby referred to three attribution/allocation cases that could serve as an example. These are:

- In one case Indonesia's competent authority issued a position paper in 2014 involving multiple years. However, since for some of these years court cases were pending in Indonesia, the peer's competent authority asked to postpone the closing of these years until the court had rendered a decision on the case, to which Indonesia's competent authority agreed. The taxpayer subsequently submitted a MAP request for additional years pertaining to the same case, for which Indonesia issued a position paper in December 2018, and to which the peer's competent authority is currently preparing a response.
- In the second case the peer's competent authority requested Indonesia in 2015 to provide a position paper, which was not issued until August 2018. The peer is currently preparing a response.
- In the third case, the peer mentioned that Indonesia's competent agreed after a face-to-face meeting that was held in 2014 to provide a written explanation addressing how its domestic law interacts with treaties and Indonesia's obligations arising from these treaties. This explanation was not received until early 2019, for which the peer is currently preparing a response.

297. The peer further noted that it is unaware of any cases in which its competent authority has committed to provide a response to Indonesia's position papers and has not done so either. In the peer's opinion, these differences in views underscores that communication is an area in which both competent authorities could work better to improve the resolution of MAP cases.

298. As a last reaction, Indonesia expressed that it shares the same views as the peer that their competent authorities should improve the communication in order to reach a resolution of their mutual MAP cases. It also understands that it has been a long time since their competent authorities conducted a face-to-face meeting, for which it hopes such a meeting can be scheduled in the foreseeable future. With respect to the cases being referred to by the peer, Indonesia mentioned that it already sent two emails to the peer's competent authority in December 2018 and April 2019, in which it clearly explained the pending MAP inventory and follow up on its position set out in the position papers that were distributed previously. In Indonesia's view, the peer's competent authority could respond to those emails to clarify the matter if there are any difference of views as to the substance of the case. Apart from this issue, Indonesia mentioned it looks forward to a better and productive co-operation between their competent authorities.

Handling and resolving MAP cases – peers with more experience with Indonesia

299. For those peers that have more experience in handling and resolving MAP cases with Indonesia, one peer mentioned that it had until 2016 not resolved MAP cases with Indonesia, but that since then there was an improvement, especially due to more personal contact through face-to-face meetings. Current experiences lead for this peer to the conclusion that treaty obligations related to the MAP process are fully implemented in good faith and MAP cases are resolved in a timely manner.

300. Another peer reported that it understood that cases are processed by regional offices in Indonesia, which often prioritise cases by revenue, not by age. In this peer's view it can delay the resolution of cases. A third peer also mentioned that it experienced some delays in the MAP process with Indonesia.

301. Further to the above, one peer also noted reported that it is usual that Indonesia's competent authority did not present written position papers on Indonesian-initiated adjustments, but explained the position verbally during the face-to-face. This peer regards preparations and exchanges of position papers in a timely manner as the most important elements for the timely and effective resolution of MAP cases, as without such papers the treaty partner would face difficulties in identifying the issues of the case under review and presenting resolution for cases, which causes difficulties to the MAP process. The peer therefore expects that both competent authorities make every effort to proceed discussions in a constructive and productive way by mutually presenting and explaining their own positions and supporting facts and circumstances of the pending MAP cases. The peer concluded by stating that it would appreciate if Indonesia could share the same understanding and make every efforts at improving the situation for the timely and effective resolution of MAP cases in line with the minimum standard of BEPS Action 14.

302. Concerning the input from the peer reflected in the previous paragraph and with respect to the statement that position papers were not presented in written form, Indonesia responded and mentioned that this issue has not occurred anymore within the last two years.

303. The relevant peer provided a reaction and stated that it cannot understand the rationale behind Indonesia's explanation. It pointed to the period 2016-18, in which its competent authority and that of Indonesia discussed nine new MAP attribution/allocation cases and four APA cases via face-to-face meetings. Apart from one case, the peer's competent authority did not receive any position paper from Indonesia's competent authority for these APA cases before these meetings. Furthermore, the peer mentioned that for the one case where a position paper was presented, its content was insufficient as it did not include essential information on the case and Indonesia's position. As regards the MAP cases, the peer also mentioned that it only received position papers for two cases before the first face-to-face meeting in which the case was to be discussed. Also these position papers lacked important information. In addition, the peer reiterated its earlier input in that its competent authority rarely receives position papers from Indonesia before the first face-to-face meeting of each case, and even when position papers were presented before these meetings, substantial information for resolving the case was never included. In fact, according to the peer, during these meetings Indonesia's competent authority held the position that they would present this information only if the peer's competent authority accepted Indonesia's transfer pricing method beforehand. The peer concluded by stating that practice in Indonesia is positively changing, as Indonesia's competent authority strives at improving the situation by endeavouring to present written position papers in advance of face-to-face meetings. Although the peer still recognised that improvement could be made as regards the content of the position papers, it highly values such positive sign. It further

mentioned it would appreciate if Indonesia's competent authority continues its endeavours to present their position papers with sufficient information in a timely manner in order to ensure timely resolution of their mutual MAP cases.

304. Indonesia provided a final response to this reaction. It mentioned that for the case where the peer stated that it would have required upfront approval as to the used transfer pricing method, it was due to some missing information that its competent authority it could not provide their position in full as to which transfer pricing method should be applied and the rationale behind it. Furthermore, it also referred to one case that was discussed during a face-to-face meeting where the adjustment under review was made by the peer, following which it concluded that the peer's competent authority should provide the position paper and not that of Indonesia, which it also communicated through a notification letter to the peer. The peer's competent authority, however, held the opposite view. In addition, Indonesia mentioned that in some MAP cases, the peer's competent authority also presented its position very briefly, thereby usually confirming the taxpayer's proposal on how to resolve the case and without supporting arguments why this proposal was adopted. Nevertheless, Indonesia agreed in a general sense with the peer's input regarding the (timely) issuing of position papers. It added that it will endeavour to present these with sufficient information and in due time prior to face-to-face meetings, such with a view to ensure a timely resolution of MAP cases.

Suggestions for improvement

305. In addition to the input presented above, five peers made suggestions for improvement. One of these peers suggested that Indonesia's competent authority holds regular meetings with other jurisdictions to ensure that there is a consistent progress on MAP cases. The second peer, which suggestion was also partially reflected in paragraph 291 above, suggested that where the case under review concerns an adjustment made by Indonesia, it could prepare a position paper in due time to explain the basis for its adjustments, including: (i) the factors considered in the application of the arm's length principle, (ii) an economic analysis that discusses comparability and comparables, and (iii) the rationale for the selection of the most appropriate transfer pricing methodology and the profit level indicator. A third peer mentioned that improved communication between both competent authorities could improve the resolution of MAP cases on a principle basis.

306. Further to the above, one of the four peers, which input is reflected in paragraph 291 above, added that it would appreciate if Indonesia could improve the situation of issuing of position papers in a timely manner. The last peer mentioned it would welcome the opportunity to increase the frequency of communication through face-to-face meetings and email to facilitate timely resolution of cases. It further encourages timely notification of staffing changes within the competent authority offices and recommends that Indonesia's competent authority improves transitions when staffing changes occur so that new staff can be brought up to speed on the status of MAP cases, which will facilitate timely resolution of cases in a principled manner. Lastly, the peer mentioned that requests that Indonesia submits its position paper in a timely manner.

307. In a general sense, Indonesia responded to the input given and mentioned that its competent authority conducts regular face-to-face meetings with its main MAP counterparts to ensure the timely resolution of MAP cases and that it will endeavour to provide a position paper within sufficient information and analysis on a timely basis.

Peer input – Period 1 January 2019-31 July 2020 (stage 2)

308. Most peers that provided input during stage 1 stated in stage 2 that the update report provided by Indonesia fully reflects their experience with Indonesia since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by one peer that only provided input during stage 2. Five of these peers and one peer who provided input only during stage 2 provided additional input in this regard.

309. One peer noted that during this period, it has seen an increased level of engagement from Indonesia's competent authority and that it appreciates the positive efforts on Indonesia's part to seek to resolve cases. Another peer, that provided input only during stage 2, reported a positive experience with Indonesia from the discussion of one attribution/allocation case and noted that the case has been actively discussed at regular intervals and that the competent authorities have formed a clear path for further discussion and next actions. This peer noted that these discussions have significantly helped progress the case and that the competent authorities continue to endeavour to reach resolution.

310. A third peer stated that during this period, its competent authority has had two face-to-face meetings with Indonesia's competent authority for discussing MAP cases and noted that for both meetings, Indonesia could provide a written position paper in advance of the meeting for all cases. This peer explained that this facilitated sharing the same understanding between both competent authorities at an earlier stage. However, this peer also noted that following COVID-19 restrictions, scheduling further meetings through other channels (such as telephone conference) has not been possible and expressed concerns about the resolution of outstanding cases within the pursued 24 month average timeframe.

311. Indonesia responded to this input and noted that its intention to expedite the resolution of outstanding MAP cases is reflected in its proposal to have a virtual video conference instead of a telephone conference, which in its view, would be more effective in light of COVID-19 restrictions and so as to utilise supporting tools such as flipcharts to clarify any confusion caused due to language barriers based on its experience with the peer's competent authorities.

312. A fourth peer noted some issues in its MAP relationship with Indonesia over many years. This peer reported that over a five year period from 2013 to 2018, its competent authority sent ten letters and sent six e-mails to Indonesia's competent authority to determine the appropriate contact for multiple attribution/allocation cases where Indonesia had initiated audits in 2004, 2006, 2010, 2011 and 2012 and to request a position paper to get further clarity on the rationale for such adjustments. This peer noted that it received a position paper in May 2018, which provided only background information and no rationale for the adjustments. This peer stated that it had to contact the taxpayer to obtain more details on these adjustments which resulted in further delays (as mentioned in paragraph 292).

313. This peer further reported that in January 2020, Indonesia's competent authority sent an email to its competent authority proposing to close all of these pending cases since the 24-month period mentioned in Indonesia's MAP guidance has now expired and it was obliged to stop discussions and to close these cases. This peer also noted that some of these issues in earlier taxation years were subject to litigation in Indonesia's courts which caused Indonesia's competent authority to not negotiate such cases. (this input is also addressed in paragraph 196 under element C.1). As a result, the peer explained that Indonesia's competent authority effectively denied benefits allowed under its tax treaty with Indonesia and that these impediments have prevented the resolution of its MAP cases with Indonesia.

314. This peer concluded its input in relation to these cases by stating that Indonesia continues to initiate transfer pricing adjustments for the same taxpayer for 2014, 2015 and 2016 and that the taxpayer has expressed concerns to it since absent competent authority negotiations, the taxpayer may be subject to continuing double taxation.

315. In addition, the peer also provided general inputs on its communications with Indonesia's competent authority. It noted that communications by Indonesia's competent authority have been confusing and inconsistent and noted an example in relation to the above cases where it was indicated to this peer that following the time-limit is obligatory whereas the taxpayer was informed that there is flexibility around the time-limit and where at point, the taxpayer was incorrectly informed that the case was resolved by the competent authorities.

316. To conclude, this peer also expressed its view that the feedback given in stage 1 of the peer review report of Indonesia has not resulted in any meaningful change in the MAP process or the resolution of MAP cases between its competent authority and Indonesia's competent authority.

317. Indonesia responded to this input and noted that some delays were seen early on since the dedicated MAP Unit in Indonesia was established only in April 2016, following which Indonesia's competent authority has, in its view, endeavoured to improve the handling and resolution of MAP cases. Indonesia explained that in 2018, a dedicated team was set up for the resolution of MAP cases with this peer and that the first position paper in 2018 was the first milestone to resolve the pending cases. Indonesia explained that a second MAP request letter was received by it in December 2018 after this position paper. Following this, Indonesia clarified that it received a response to its position paper in June 2019, which Indonesia responded to in October 2019. In November 2019, Indonesia noted that it requested confirmation of receipt from the peer's competent authority, which was acknowledged within the same week by the peer's competent authority. Indonesia clarified that it has not received a further response from this peer in relation to this MAP request. In relation to the second MAP request mentioned above, Indonesia noted that it explained to the peer's competent authority in November 2019 that it would provide a position paper for this request by December 2019, which was duly acknowledged. Indonesia further clarified that this position paper was sent in January 2020 to which it did not receive a response following a reminder. Indonesia noted that since no response was received for several months, in June 2020, Indonesia's competent authority informed the peer's competent authority of the 24-month time limit as well as the existence of a court decision for the case.

318. Based on this chronology of events, Indonesia stated that it has tried to discuss the substance of these cases with the peer's competent authority since 2018 and that apart from one position paper received in response, the substance of these cases has not been discussed by the peer's competent authority. Irrespective of this, Indonesia clarified that its competent authority is willing to continue discussions on these cases and looks forward to resolving the cases following the next response from the peer's competent authority.

319. Lastly, Indonesia also clarified that it has not informed the taxpayer that the case was resolved and that it is flexible to granting an extension to the 24-month time limit and actively discussing the pending cases with this peer. Indonesia hoped that it would acknowledge the efforts taken by Indonesia to improve MAP since the stage 1 report after active discussions on these cases.

320. A fifth peer noted that since 1 January 2019, its competent authority has closed three attribution/allocation MAP cases with Indonesia's competent authorities within the targeted average time frame of 24 months. This peer further explained that there was one other

MAP case closed in 2019 which took an average time of over 40 months since Indonesia did not respond to its position paper sent in May 2016 till November 2018, which was followed up by two face-to-face meetings in December 2018 and May 2019. Irrespective of the delay mentioned, the peer noted that engagements with Indonesia’s competent authority in 2018 and after were positive.

321. Finally, a sixth peer noted that it has a pre-2016 case pending with Indonesia which was proposed to be closed by Indonesia owing to the 24-month time-limit, the details in respect of which is explained in paragraph 206 under element C.1.

Anticipated modifications

322. Indonesia indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	MAP cases were closed in 25.12 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This particularly concerns attribution/allocation cases, as the average time needed for such cases is 28.16 months while for other cases the average is within the pursued 24-month average (23.02 months). Further, peers have noted some difficulties in discussing and arriving at a resolution in respect of long-pending cases with Indonesia. Therefore, there is a risk that post-2015 cases are not resolved within the average timeframe of 24 months.	While Indonesia has made efforts to resolve MAP cases, resulting in more cases being closed and a reduction of its inventory in 2019, further actions should be taken to ensure a timely resolution of MAP cases, which concerns both attribution/allocation cases and other cases. Accordingly, Indonesia should ensure that resources are made available for the competent authority function in a way that allows an adequate use of such resources for the resolution of MAP cases in a timely, efficient and effective manner. Where necessary, additional resources should be added to the competent authority, in particular to ensure timely and principled resolution of long-pending 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.

323. 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

324. Indonesia reported that upon receipt of a MAP request, it is being assigned to staff within the competent authority, which further handles the case. To this Indonesia added that MAP analysts may hold discussions and receive recommendations from related units within the Directorate General of Tax, if necessary. For example, Indonesia has a Quality Assurance Team, which provides consultation and assures the quality of position papers exchanged during MAP. Furthermore, Indonesia clarified that once its MAP team enters

into face-to-face meetings with other competent authorities, it has full authority to make decisions related to MAP.

325. Further to the above, Indonesia reported that when its competent authority reaches an agreement with the other competent authority concerned, such MAP agreement is final and no further approval is necessary outside the competent authority. In this respect and concerning the independent functioning of staff in charge of MAP from the audit department, Indonesia stated that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval and/or direction by the auditor who made the adjustment at issue or other external sources. Indonesia clarified that the audit function is performed at the level of local and regional tax offices, which report to a different directorate, namely the Directorate of Audit and Collection, which is a sub-directorate of the Directorate General of Taxes.

326. Further to the above, Indonesia reported that the resolution of MAP cases is not influenced by any policy considerations. It is also independent from treaty negotiation function.

Recent developments

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

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

328. Peers that provided input generally reported no impediments in Indonesia 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 2016-31 December 2018. Two peers, however, reported such impediments.

329. One of these peers reported that in its view staff in charge of MAP in Indonesia is required to obtain an approval for MAP outcomes at a very senior level, which serves as a bottle neck in the process and which can contribute to delays. This peer further mentioned it believes that such decision makers include representatives of the audit functions and that this may affect the independence of Indonesia's competent authority function. This peer therefore suggested that Indonesia's competent authority should be given independence to make its decisions without requiring approvals at a higher level in the organisation. This in particular concerns no longer requiring approval from representatives of the audit function for outcome of MAP discussions. Indonesia responded to the input given and mentioned that it the decision in MAP is fully taken by the competent authority, which is located in the head office of the Director General of Taxes. Input from the Quality Assurance Team, described in paragraph 324 above, could be taken into account, but Indonesia stressed that the input from this team is not binding in nature. Indonesia also noted that its audit function may convey their inputs on the case, but in all circumstances the decision on a MAP case is solely to be made by the competent authority. The peer reacted to this response and mentioned that local tax offices often hold records and information that are required by the competent authority. The obtaining of this information could in the peer's view delay the resolution of MAP cases. Furthermore, the peer mentioned that the Directorate General of Taxes obtains input and advice on MAP cases from a panel of senior tax officials, which include representatives of the audit function. In the peer's view this may result in

a bottleneck in the process and which can cause delays. Indonesia, in turn, mentioned it could understand the peer’s concern about the bottleneck issue and appreciate the input given. It further mentioned that it will endeavour to resolve the issue in the future.

330. The second peer noted that during a MAP meeting in 2016, Indonesian auditors were present, to present facts related to the case (the case concerned the attribution of profits to a permanent establishment). In the peer’s view the auditors took a very aggressive position and were also very insistent on their position. As a result hereof, the peer was not able to reach a solution for the case under review, which left the taxpayer with a severe level of double taxation.

331. Indonesia also responded to this input and mentioned that during face-to-face meetings with this particular peer, Indonesia has never involved officers from local tax offices. In one meeting, however, Indonesia clarified that its competent authority invited personnel from the audit department, but these persons were not auditors and were only invited to respond to the situation where the peer brought auditors to the face-to-face meeting. In a more general sense, Indonesia stressed that its competent authority has done its best endeavours to be independent and to resolve the case fairly.

332. The peer provided a reaction to Indonesia’s response and mentioned that it was not fully aware of the status of the personnel that as present at a face-to-face meeting. It further explained that as all of its pending MAP cases with Indonesia concern Indonesian-based adjustments, the peer’s competent authority did not bring auditors to such face-to-face meetings. The peer also explained that in one meeting a local tax officer attended the meeting, who was familiar with the taxpayer, but this was only for fact-finding and training purposes. To this the peer added, that its initial input was to reflect that Indonesia takes very aggressive positions, whereby it was also not possible to resolve cases due to decisions of domestic courts. Taking this altogether, the peer is of the view that there is no possibility for taxpayers to have their cases of double taxation resolved. If MAP cases would be dealt with more quickly, it would be possible to actually reach an agreement before the court has rendered its decision, by which Indonesia’s competent authority would no longer be in a position to enter into an agreement that deviates from this position.

Period 1 January 2019-31 July 2020 (stage 2)

333. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Indonesia fully reflects their experience with Indonesia since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

334. Indonesia indicated that it does not anticipate 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.

335. 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 Indonesia

336. Indonesia reported that the Directorate General of Taxes has implemented key performance indicators, which include the number of resolved MAP cases and time taken to resolve a MAP case. These indicators are evaluated on an annual basis. Indonesia further reported that its competent authority also evaluates each MAP cases as to their progress, such to ensure that the MAP process and the target timeframe are being effectively managed. This monthly evaluation also takes into account the performance of staff handling the pending MAP cases on whether they are on track in meeting their objectives. Based on this evaluation, reports are prepared, which are discussed in managerial meetings.

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

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

338. Further to the above, Indonesia 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

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

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

340. All peers that provided input indicated not being aware that Indonesia used performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue in the period 1 January 2016-31 December 2018.

Period 1 January 2019-31 July 2020 (stage 2)

341. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Indonesia fully reflects their experience with Indonesia since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

342. Indonesia indicated that it does not anticipate 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.

343. 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

344. Indonesia reported that it has no domestic mechanism for applying arbitration procedures in relation to the MAP process, other than for the one treaty that contains a provision hereto (see below). Indonesia further specified that its treaty policy is not to include a mandatory and binding arbitration provision in its bilateral tax treaties. In this respect, in the Commentary of non-members to the 2017 OECD Model Tax Convention (OECD, 2017), Indonesia reserved the right not to include paragraph 5 of Article 25 in its tax treaties.

345. Indonesia's position on MAP arbitration is reflected in its MAP profile where its non-member position to the OECD Model Tax Convention is referred to. Further, Indonesia has updated its webpage providing information on MAP to include a section on MAP arbitration which clearly confirms the above mentioned position.

Recent developments

346. The stage 1 report noted that there was no correct specification in Indonesia's MAP profile on whether there are any legal limitations in its domestic law to include MAP arbitration in tax treaties. As mentioned above, Indonesia's MAP profile and MAP guidance have been updated to state this information. Therefore, the recommendation made in the stage 1 report has been addressed.

Practical application

347. To date, Indonesia has incorporated one arbitration clause in one of its tax treaties as a final stage to the MAP, which provides for a voluntary arbitration procedure.

Anticipated modifications

348. Indonesia indicated that it does not anticipate 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 2017/2019.
2. For post-2015 cases, if the number of MAP cases in Indonesia’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, Indonesia 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. Indonesia’s 2016 and 2017 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016 and 2017. See further explanations in Annex B and Annex C.
4. For pre-2016 and post-2015 Indonesia 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”.
5. 26 out of 29 cases closed with the outcome of “any other outcome” relate to the application of branch profit tax of permanent establishment where the competent authorities could not reach an agreement as to whether these cases fall into the scope of the treaty and were closed without any agreement.

References

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

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

349. 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

350. Indonesia reported that has a domestic statute of limitation for both upward and downward adjustments regarding the implementation of MAP agreements. This statute of limitation is five years as from the end of the taxable year. Indonesia reported that based on its legal framework, implementation of MAP agreements can only be made within its domestic statute of limitation even when the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017), both for upward and downward adjustments that would result from a MAP agreement.

351. Article 5(6), (7) and (8) of Indonesia’s MAP guidance note that once MAP discussions are concluded, the result has to be communicated in the prescribed format to the concerned taxpayer within one month of the closing letters between the competent authorities confirming that the agreement reached can be implemented.

352. The process of implementation of MAP agreements in Indonesia is described in Article 9 of its MAP guidance. This provision states that if the MAP agreement is entered into prior to a notice of tax assessment, the taxpayer is required to amend its tax return in accordance with the result of the MAP discussions and if this is not done within three months, a tax assessment is issued on the basis of the MAP agreement. If the MAP agreement has been reached following a tax assessment but there are no pending domestic proceedings or if there is a domestic objection or revision request that is pending or finalised, Indonesia’s competent authority would issue a decision per these remedies or correct the adjustment or the decision per these remedies in accordance with the MAP agreement, based on its domestic law. This provision also notes that non-resident taxpayers may request for a refund for overpaid taxes in pursuance of the mutual agreement.

353. As to the monitoring of the implementation of MAP agreements, Indonesia reported that the Directorate General of Taxes ensures that the local tax offices will take the necessary measures to implement the agreements. In this regard, local tax offices have to report back to the competent authority once the MAP agreement has been implemented.

Recent developments

354. There are no recent developments with respect to element D.1, except for changes to the implementation process as noted above stemming from Indonesia's revised MAP guidance.

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

355. Indonesia reported that all MAP agreements that were reached during the period 1 January 2016-31 December 2018, once accepted by taxpayer, have been (or will be) implemented.

356. All but one peers that provided input indicated that they were not aware of any MAP agreement reached during the period 1 January 2016-31 December 2018 that was not implemented by Indonesia. One of these peers mentioned that it has not reached any MAP agreement with Indonesia, while another peer stated that it has reached two MAP agreements with Indonesia during the period 1 January 2016-31 December 2018, but that these agreements did not require an implementation in Indonesia, following which the peer concluded that it cannot make comments whether Indonesia has implemented MAP agreements in a timely and appropriate manner.

357. The remaining peer mentioned that while its treaty with Indonesia contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), it has encountered challenges with the implementation of MAP agreements by Indonesia due to domestic time limits. This peer mentioned that in Indonesia a domestic time limit of five years applies, starting from the taxable year in which an adjustment was made. The peer further mentioned that this statute of limitation is being applied differently, such depending on whether the MAP case relates to an adjustment made by Indonesia or its treaty partner. To clarify the matter, this peer presented an example of a MAP case that was initiated by the peer's competent authority in 2013 and which related to an adjustment made by the peer's tax administration. In January 2018, both competent authorities agreed to start discussions on the case. However, Indonesia's domestic statute of limitation of five years expired on 31 December 2018, following which there was insufficient time for the competent authorities to discuss and resolve the case. On the contrary, according to this peer, cases that concern an adjustment made by Indonesia are not subject to such five-year time limit, following which a case that was initiated in 2008 is still under discussion. This peer therefore considered that the time limit is being unfairly applied to adjustments made by treaty partners and that it may limit a sufficient and in-depth discussions for resolving such cases. Furthermore, the peer noted that it is deeply concerned that this time limit may preclude taxpayers' access to MAP when a treaty partner makes an adjustment in the taxable year which is already beyond Indonesia's five-year limit. This peer believes that this limitation is contrary to the treaty obligation and the Action 14 Minimum Standard, especially since its treaty with Indonesia contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

358. Indonesia responded to the input given by the second peer and mentioned that Article 25(2), second sentence, does not oblige jurisdictions to disregard its domestic statutory time limits, but requires jurisdictions to implement MAP agreements reached. It further mentioned that the issue does not relate to access to MAP, since Indonesia will grant such access even if the five-year statute of limitation has passed.

Period 1 January 2019-31 July 2020 (stage 2)

359. Indonesia reported that all MAP agreements that were reached on or after 1 January 2019 also have been implemented.

360. All but one peer that provided input during stage 1 stated in stage 2 that the update report provided by Indonesia fully reflects their experience with Indonesia since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

361. The remaining peer is the peer that provided peer input in respect of this element in stage 1 as well (noted in paragraph 357 above). This input has been considered and discussed more in detail in paragraphs 222-225 under element C.1.

Anticipated modifications

362. Indonesia indicated that following the expiry of the period under review for stage 2, Indonesia has revised its interpretation of its domestic legal framework to now allow implementation of MAP agreements irrespective of domestic time-limits where the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017).

Conclusion

	Areas for improvement	Recommendations
	Implementation of MAP agreements is subject to Indonesia's domestic statute of limitation of five years, even when the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017).	When the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017), Indonesia should ensure that all MAP agreements entered into are implemented.
[D.1]	As will be discussed under element D.3 not all of Indonesia'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 Indonesia's relevant tax treaty, prevent the implementation of a MAP agreement, Indonesia 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, Indonesia 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.

363. 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

364. As noted under element D.1, Article 5(6) of Indonesia’s MAP guidance provide that the MAP agreement would be decreed by its competent authority for implementation no later than a month from the date the of: (i) the acceptance of a written notification from the other competent authority stating that the MAP agreement can be implemented; and (ii) Indonesia’s notification to the other competent authority stating the same.

Recent developments

365. There are no recent developments with respect to element D.2, except for timelines being added for implementation as noted above stemming from Indonesia’s revised MAP guidance.

Practical application

Period 1 January 2016-31 December 2018 (stage 1)

366. Indonesia reported that all MAP agreements that were reached in the period 1 January 2016-31 December 2018, once accepted by taxpayers, have been (or will be) implemented and that no cases of noticeable delays have occurred.

367. All but one peer that provided input have not indicated experiencing any problems with regard to timeliness of the implementation of MAP agreements reached in the period 1 January 2016-31 December 2018. The remaining peer mentioned that in 2017 it entered for some cases into MAP agreements with Indonesia, but for which Indonesia’s competent authority indicated that the outcome could not yet be implemented due to the fact that certain tax declaration forms first have to be adjusted.

368. To this input Indonesia responded that it has found the best solution to settle these issues, such by applying a new additional form specifically dedicated to implement the MAP agreement. This solution was communicated to the peer’s competent authority and the relevant taxpayers.

Period 1 January 2019-31 July 2020 (stage 2)

369. Indonesia reported that all MAP agreements that were reached on or after 1 January 2019 also have been implemented. Indonesia further noted that the MAP agreement referred to above which was pending implementation is still pending implementation owing to administrative issues and that both competent authorities are working together to find a solution.

370. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Indonesia fully reflects their experience with Indonesia since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2. In addition, the peer concerning the case above confirmed that these agreements were still pending implementation although it expressed confidence that these agreements would be implemented soon. However, it is noted that the agreement that was pending implementation was a process change that was required as part of an agreement under the equivalent of Article 25(3) of OECD Model Tax Convention (OECD, 2017) contained in the concerned treaty.

Anticipated modifications

371. Indonesia indicated that it does not anticipate 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.

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

Legal framework and current situation of Indonesia’s tax treaties

373. As discussed under element D.1, Indonesia has a statute of limitation for implementing MAP agreements, which is five years and regards both upward and downward adjustments.

374. Out of Indonesia’s 72 tax treaties, 17 contain a provision that 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. Furthermore, three tax treaties contain the alternative provisions in Article 9(1) and Article 7(2) or in the MAP provision, setting a time limit for making adjustments.

375. The remaining 52 treaties can be categorised as follows:

- 47 treaties neither contain a provision that is based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor either of the alternative provisions for Article 9(1) and 7(2) setting a time limits for making transfer pricing adjustments.
- 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).
- Two treaties contain a provision setting a time limit for the implementation of MAP agreements as provided in the domestic law of the contracting states. For this reason both treaties are 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 setting a specific time limit for the implementation of MAP agreements, which is five years from the date of the MAP agreement or ten years from the end of the taxable year in which the action that led to the MAP agreement has arisen. For this reason both treaties are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

376. Almost all peers that provided input during stage 1 indicated that their treaty with Indonesia meets the requirement under element D.3, which is in line with the above analysis. For the 52 treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or both alternatives, three of the relevant peers provided input. Of these three, two confirmed that their treaty with Indonesia does not contain the equivalent of Article 25(2), second sentence, but that it will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned, which is in line with the above analysis. The third peer also confirmed that its treaty with Indonesia does not contain the equivalent of Article 25(2), second sentence, but reported that it is willing to accept the alternative provisions setting time limits for making adjustments and that it already proposed negotiations in view of a revision of the treaty with Indonesia.

Recent developments

Bilateral modifications

377. Indonesia signed a new tax treaty with a treaty partner which concerns the replacement of an existing treaty currently in force. This treaty has not entered into force yet. This treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) as was the case in the existing treaty. The effects of this newly signed treaty have been reflected in the analysis above where it has relevance.

Multilateral Instrument

378. Indonesia signed the Multilateral Instrument and has deposited its instrument of ratification on 28 April 2020. The Multilateral Instrument has entered into force for Indonesia on 1 August 2020.

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

accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

380. With regard to the 52 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternative provisions for Articles 9(1) and 7(2), Indonesia listed 30 treaties as covered tax agreements under the Multilateral Instrument, but only for 29 of them did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 29 treaty partners, three are not a signatory to the Multilateral Instrument, two did not list their treaty with Indonesia as a covered tax agreement, one made a reservation on the basis of Article 16(5)(a) and one did not make a notification on the basis of Article 16(6)(c)(ii). All of the remaining 22 treaty partners also made a notification on the basis of Article 16(6)(c)(ii).

381. Of the 22 treaty partners mentioned above, 14 have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Indonesia and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these 13 treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining eight treaties, the instrument will, upon entry into force for the treaties concerned, modify them to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

382. Indonesia reported that for one of the 30 remaining treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant treaty partner has informed Indonesia 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).

383. Further, Indonesia reported that for the remaining 29 treaties the following actions are being taken or planned:

- For two treaties, negotiations are pending for an amending protocol.
- For four treaties, it intends to update its list of notifications and reservations to the Multilateral Instrument to have these treaties modified by it.
- For three treaties, it expects the treaty partners to sign the Multilateral Instrument or revise their list of notifications and reservations to the Instrument to have the respective treaties modified by it. If this is seen to not be possible, Indonesia would initiate bilateral negotiations.
- For three treaties, it expects intends to update its list of notifications and reservations to the Multilateral Instrument to include these treaties and expects the treaty partner to do the same to have the respective treaties modified by it. If this is seen to not be possible, Indonesia would initiate bilateral negotiations.
- For 17 treaties, it intends to update its list of notifications and reservations to the Multilateral Instrument to include this treaty and expects the treaty partner to sign the Instrument to have the treaty modified by it. If this is seen to not be possible, Indonesia would initiate bilateral negotiations.

Peer input

384. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Indonesia. Neither of these peers concern treaty partners to treaties that are not line with this element.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>52 out of 72 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Of these 52 treaties:</p> <ul style="list-style-type: none"> • 14 have been modified by the Multilateral Instrument to include the required provision. • Eight are expected to be modified by the Multilateral Instrument to include the required provision. • 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. • 29 will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - for two, negotiations are envisaged, scheduled or pending - for four, Indonesia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument - for 23, the relevant treaty partners have been or will be engaged by Indonesia with a view to have the treaty modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. 	<p>For the remaining 29 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), Indonesia should:</p> <ul style="list-style-type: none"> • for two treaties, continue negotiations with the treaty partner with a view to including the required provision or be willing to accept both alternatives • for four treaties, continue to work in accordance with its plan to include the required provision via the Multilateral Instrument • for 23 treaties, continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision or be willing to accept both alternative provisions.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	<p>Three out of 72 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). Out of these three treaties:</p> <ul style="list-style-type: none"> • two have been modified by the Multilateral Instrument to include the required provision • one will not be modified by that 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>For the remaining treaty that has not been and will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), Indonesia should, without further delay, request via bilateral negotiations the inclusion of the required provision.</p>
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	<p>Two out of 72 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention and the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties:</p> <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) but not as regards the first sentence. • One will not be modified by the Multilateral Instrument to include the required provision. • With respect to these treaties: <ul style="list-style-type: none"> - for one, negotiations are pending - for one, no actions have been taken nor are any actions planned to be taken. 	<p>For the two treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017), Indonesia should:</p> <ul style="list-style-type: none"> • For one treaty, continue negotiations with the treaty partner with a view to including the required provision • For one treaty, request, without further delay, via bilateral negotiations the inclusion of the required provision. <p>This concerns a provision that is equivalent to Article 25(1), first and second 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 the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.1]	<p>31 out of 72 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these 31 treaties:</p> <ul style="list-style-type: none"> • Ten have been modified by the Multilateral Instrument to include the required provision. • Seven are expected to be modified by the Multilateral Instrument to include the required provision. • 14 will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - for two, negotiations are pending - for 12, the relevant treaty partners have been or will be engaged by Indonesia with a view to have the treaty modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. 	<p>For the remaining 14 treaties that currently do not contain such equivalent and that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Indonesia should:</p> <ul style="list-style-type: none"> • for two treaties, continue negotiations with the treaty partners with a view to including the required provision • for the remaining 12 treaties, continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	-	-
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	<p>One out of 72 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, Indonesia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument</p>	<p>As the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) will not be modified via the Multilateral Instrument, Indonesia should continue to work in accordance with its plan to include the required provision via the Multilateral Instrument.</p>

	Areas for improvement	Recommendations
[C.1]	<p>The competent authority does not seek to resolve MAP cases where:</p> <ul style="list-style-type: none"> domestic court decisions are rendered in respect of issues different than those covered in the MAP request involving the same tax assessment for a fiscal year discussions in a MAP case do not result in a bilaterally agreed outcome within 24 months from initiation of the bilateral phase of MAP, allowing the possibility of only one extension of a further 24 months at the unilateral discretion of Indonesia's competent authority, where the treaty partner's competent authority is of the view that further endeavours may be justified for the case at hand the domestic time limit is about to expire in respect of the issue being discussed in a MAP case, in situations where the concerned treaty allows implementation notwithstanding domestic time limits. 	<p>Indonesia should seek to resolve all MAP cases that were accepted into the MAP and that meet the requirements under Article 25(1) and (2) of the OECD Model Tax Convention (OECD, 2017) as incorporated in Indonesia's tax treaties. Specifically, Indonesia should seek to resolve MAP cases in particular in the following situations:</p> <ul style="list-style-type: none"> domestic court decisions are rendered in respect of issues different than those covered in the MAP request involving the same tax assessment for a fiscal year discussions in a MAP case do not result in a bilaterally agreed outcome within Indonesia's internal deadlines, where the treaty partner's competent authority is of the view that further endeavours may be justified for the case at hand. Indonesia should, in good faith, engage with its treaty partner with a view to establishing a common understanding on the merits of continuing such a case beyond Indonesia's internal deadlines the domestic time limit is about to expire in respect of the issue being discussed in a MAP case, in situations where the concerned treaty allows implementation notwithstanding domestic time limits. Indonesia should, in good faith and in a timely manner, engage with its treaty partner with a view to establishing a common understanding on the possibilities and merits of continuing such a case beyond Indonesia's domestic time limits.
[C.2]	-	-
[C.3]	<p>MAP cases were closed in 25.12 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This particularly concerns attribution/allocation cases, as the average time needed for such cases is 28.16 months while for other cases the average is within the pursued 24-month average (23.02 months). Further, peers have noted some difficulties in discussing and arriving at a resolution in respect of long-pending cases with Indonesia. Therefore, there is a risk that post-2015 cases are not resolved within the average timeframe of 24 months.</p>	<p>While Indonesia has made efforts to resolve MAP cases, resulting in more cases being closed and a reduction of its inventory in 2019, further actions should be taken to ensure a timely resolution of MAP cases, which concerns both attribution/allocation cases and other cases. Accordingly, Indonesia should ensure that resources are made available for the competent authority function in a way that allows an adequate use of such resources for the resolution of MAP cases in a timely, efficient and effective manner. Where necessary, additional resources should be added to the competent authority, in particular to ensure timely and principled resolution of long-pending cases.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	<p>Implementation of MAP agreements is subject to Indonesia's domestic statute of limitation of five years, even when the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017).</p>	<p>When the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017), Indonesia should ensure that all MAP agreements entered into are implemented.</p>

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Indonesia'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 Indonesia's relevant tax treaty, prevent the implementation of a MAP agreement, Indonesia 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, Indonesia should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	-	-
[D.3]	<p>52 out of 72 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Of these 52 treaties:</p> <ul style="list-style-type: none"> • 14 have been modified by the Multilateral Instrument to include the required provision. • Eight are expected to be modified by the Multilateral Instrument to include the required provision. • 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. • 29 will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - for two, negotiations are envisaged, scheduled or pending - for four, Indonesia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument - for 23, the relevant treaty partners have been or will be engaged by Indonesia with a view to have the treaty modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. 	<p>For the remaining 29 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), Indonesia should:</p> <ul style="list-style-type: none"> • for two treaties, continue negotiations with the treaty partner with a view to including the required provision or be willing to accept both alternatives • for four treaties, continue to work in accordance with its plan to include the required provision via the Multilateral Instrument • for 23 treaties, continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision or be willing to accept both alternative provisions.

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.1	Article 9(2) of the OECD MTC	B.4	Article 25(2) of the OECD MTC	C.1	D.3	A.1	B.7	C.6	Arbitration							
Belgium	Y	N/A	O	Y	N/A	i	i***	Y	Y*	Y	Y*	Y	Y*	Y	Y*	Y	Y*	Y	Y	N
Brunei	Y	N/A	O	Y	N/A	i	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Bulgaria	Y	N/A	O	ii*	2-years	i	i	Y	N*	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	N
Cambodia	Y	N/A	O	Y	N/A	i	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Canada	Y	N/A	O	Y*	N/A	i	i	Y	iii	Y	iii	Y	Y	Y	Y*	Y	Y*	Y	Y	N
China (People's Republic of)	Y	N/A	O	Y	N/A	Y	Y	Y	N*	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	N
Croatia	Y	N/A	O	Y	N/A	i	Y	Y	Y*	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	N
Czech Republic	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Denmark	Y	N/A	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y*	Y	Y	N
Egypt	Y	N/A	O	ii*	2-years	Y	Y	Y	iii	Y	iii	Y	Y	Y	Y	Y	Y	Y	Y	N
Finland	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
France	Y	N/A	O	Y	N/A	Y	i***	Y	Y*	Y	Y*	Y	Y*	Y	Y*	Y	Y	Y	Y	N
Germany	Y	N/A	O	ii	2-years	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hong Kong (China)	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hungary	Y	N/A	O	ii*	2-years	i**	i**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
India	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Iran	Y	N/A	O	ii	2-years	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Italy	Y	N/A	N	ii*	2-years	i**	i**	Y	N*	Y	N*	Y	Y	Y	Y	Y	N*	Y	N*	N
Japan	Y	N/A	O	Y	N/A	Y	i***	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Jordan	Y	N/A	O	ii	2-years	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 25(1) of the OECD 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.1	B.1	B.3	B.4	B.4	B.4	C.1	D.3	A.1	B.7	C.6							
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)											
Korea	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea (Democratic People's Republic of)	Y	O	ii	2-years	i	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kuwait	Y	O	Y	N/A	i	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Laos	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Luxembourg	Y	O	Y*	N/A	i	Y	Y*	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Malaysia	Y	O	Y	N/A	i	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Mexico	Y	O	i	N/A	i	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Mongolia	Y	O	Y	N/A	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Morocco	Y	O	Y	N/A	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Myanmar	N	O	Y	N/A	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Netherlands	Y	O	Y	N/A	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
New Zealand	Y	O	Y*	N/A	i	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Norway	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Pakistan	Y	O	Y*	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Papua New Guinea	Y	O	Y	N/A	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Philippines	Y	O	ii	2-years	i	Y	iii	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Poland	Y	O	Y*	N/A	i	Y	Y*	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Portugal	Y	O	Y*	N/A	i	Y	Y*	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11				
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.1	Article 9(2) of the OECD MTC	B.3	B.4	C.1	D.3	A.1	B.7	C.6	Article 25(2) of the OECD MTC	A.1	B.7	C.6	Article 25(3) of the OECD MTC	A.1	B.7	C.6			
Qatar	Y	N/A	O	Y*	N/A	Y	i	Y	Y*	Y	Y	Inclusion Art. 25(2) second sentence? (Note 4)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Inclusion arbitration provision?	N
Romania	Y	N/A	O	ii*	2-years	i**	i	i**	N*	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	N
Russia	Y	N/A	O	Y*	N/A	i***	i	i***	Y*	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y*	Y*	Y	Y	Y	Y	Y	Y	Y	Y	N
Serbia	Y	N/A	O	Y*	N/A	Y	i	Y	Y*	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y*	Y*	Y	Y	Y	Y	Y	Y	Y	Y	N
Seychelles	Y	N/A	O	ii*	2-years	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N*	N*	Y	Y	Y	Y	Y	Y	Y	Y	N
Singapore	N	2/4/2020	O	Y	N/A	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovak Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
South Africa	Y	N/A	O	ii*	2-years	i*	i	i*	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Spain	Y	N/A	O	ii*	2-years	i**	i	i**	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N*	N*	Y	Y	Y	Y	Y	Y	Y	Y	N
Sri Lanka	Y	N/A	O	ii	2-years	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Sudan	Y	N/A	O	ii	2-years	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Suriname	Y	N/A	O	ii	2-years	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Sweden	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Switzerland	Y	N/A	O	ii	2-years	i	i	i	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Syrian Arab Republic	Y	N/A	O	ii	2-years	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Chinese Taipei	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Tajikistan	Y	N/A	O	ii	2-years	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Thailand	Y	N/A	O	ii	2-years	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Tunisia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Turkey	Y	N/A	O	i	N/A	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N*	N*	Y	Y	Y	Y	Y	Y	Y	Y	N
Ukraine	Y	N/A	O	ii	2-years	Y	i	Y	Y	Y	Y	Inclusion Art. 25(2) first sentence? (Note 3)	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6											
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 Art. 25(3) third sentence? (Note 6)										
United Arab Emirates	Y	N/A	O	Y*	N/A	Y	i	Y	Y*	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	N
United Kingdom	Y	N/A	O	i	N/A	Y*	i	Y*	Y*	Y	Y*	Y	Y	Y	Y*	Y*	Y*	Y*	Y*	N
United States	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
Uzbekistan	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Venezuela	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Viet Nam	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Zimbabwe	N	5/30/2001	O	Y	N/A	Y	i	Y	N	Y	N	Y	Y	Y	Y	Y	Y	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.
- 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*/i1*/iv*/N*

The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.

i**/iv**/N**

The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

i***

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 only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B

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

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
		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 13	Column 14
Attribution/Allocation	23	0	0	0	0	2	2	1	0	0	0	18	39.98
Others	45	0	0	0	1	0	0	0	0	0	26	18	27.9
Total	68	0	0	0	1	2	2	1	0	0	26	36	29.78

Notes: The numbers of cases in the inventory are different from those in Indonesia's published MAP statistics. This results from the reclassification of cases and late notification of cases from other treaty partners.

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
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	Column 13	Column 14
Attribution/Allocation	18	0	0	0	0	2	1	0	0	1	0	14	42.21
Others	18	0	0	0	0	0	2	0	0	1	0	15	51.36
Total	36	0	0	0	0	2	3	0	0	2	0	29	46.13

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
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Attribution/Allocation	14	0	0	0	0	0	4	0	0	0	0	10	48.78
Others	15	0	0	0	0	0	0	0	0	0	0	15	0
Total	29	0	0	0	0	0	4	0	0	0	0	25	48.78

2019 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2019	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Attribution/Allocation	10	0	0	2	0	1	0	0	0	0	0	7	63.12
Others	15	0	1	0	0	0	0	0	0	1	0	13	65.77
Total	25	0	1	2	0	1	0	0	0	1	0	20	64.18

Annex C

MAP Statistics Reporting for the 2016, 2017, 2018 and 2019 Reporting Periods
(1 January 2016 to 31 December 2019) for post-2015 cases

2016 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	0	9	0	0	0	0	0	0	0	0	0	0	0	9	N/A
Others	0	10	0	0	0	0	0	0	0	0	0	0	0	10	N/A
Total	0	19	0	0	0	0	0	0	0	0	0	0	0	19	N/A

2017 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	9	13	0	0	1	0	0	2	0	0	0	0	0	19	16.14
Others	10	5	0	0	0	0	0	0	4	1	2	2	2	4	9.38
Total	19	18	0	0	1	0	2	2	4	1	2	2	2	23	10.83

Notes: The numbers of cases in the inventory are different from those in Indonesia's published MAP statistics. This results from the reclassification of cases and late notification of cases from other treaty partners.

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			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
	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	19	18	0	0	2	0	1	4	0	0	3	0	27	9.62
Others	4	8	0	0	0	1	0	4	0	0	0	0	7	1.91
Total	23	26	0	0	2	1	1	8	0	0	3	0	34	7.05

2019 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2019	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
	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	27	9	0	0	0	0	1	2	3	0	1	0	29	16.59
Others	7	6	0	0	0	0	0	1	0	0	2	1	9	11.35
Total	34	15	0	0	0	0	1	3	3	0	3	1	38	14.68

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Guidance	Minister of Finance Regulation No. 49/PMK.03/2019
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2019
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Indonesia (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 Indonesia.



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