

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



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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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

Executive summary

The People's Republic of China (“**China**”) has a very large tax treaty network with over 100 tax treaties. China has an established MAP programme and has significant experience with resolving MAP cases. It has a large MAP inventory, with a modest number of new cases submitted each year and more than 120 cases pending on 31 December 2019. Of these cases, 44% concern allocation/attribution cases. Overall China meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, China worked to address some of them, which has been monitored in stage 2 of the process. In this respect, China solved some of the identified deficiencies.

All of China's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 to 3 of Article 25 of the OECD Model Tax Convention (OECD, 2017). Its treaty network is almost entirely consistent with the requirements of the Action 14 Minimum Standard, except for the fact that approximately 8% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, China needs to amend and update a certain number of its tax treaties. In this respect, China signed the Multilateral Instrument, through which a number of its tax treaties will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, China reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard, thereby giving priority to those jurisdictions that have closer economic ties and substantial pending MAP cases with China. In this respect, for one of these treaties China reported that it finalised negotiations. For the remaining treaties, China indicated that it intends to contact the relevant treaty partners to bring the treaties in line with the requirements under the Action 14 Minimum Standard in accordance with its plan and taking into consideration whether or when those treaty partners sign the Multilateral Instrument.

China 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.

China further meets most of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in eligible cases. It further has in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. China also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice. This guidance, however, does not contain the contact details of China's competent authority.

Concerning the average time needed to close MAP cases, the MAP statistics for China 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	61	70	77	54	34.35
Other cases	28	55	15	68	33.21
Total	89	125	92	122	34.17

*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, China used as (i) the start date: for *attribution/allocation cases*; the date when the two competent authorities start bilateral consultation; and for *other cases*; the date when the first competent authority, which the MAP request is submitted to, sends the first position paper to the other competent authority, and (ii) the end date: the date when the two competent authorities reach an agreement or the date when the two competent authorities agree to end the MAP process or the date when the taxpayer formally applies for terminating the MAP when the case is “withdrawn by taxpayer”, or the date when China receives the official notification of another competent authority that the outcome is “unilateral relief granted”.

The number of cases China closed in the period 2016-19 is 74% of the number of all new cases started in those years. During these years, MAP cases were not closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 34.17 months and which both regards attribution/allocation cases and other cases. In this respect, a number of peers experienced difficulties, in particular in timely obtaining position papers from China’s competent authority or responses to position papers issued by peers as well as earlier and more frequent communication or meetings. Furthermore, China’s MAP inventory increased since 1 January 2016, which only regards other MAP cases. Therefore, while China has taken several steps to resolve cases in a timely manner, such as the addition of resources and pre-negotiation communication, further actions are necessary to ensure that MAP cases are resolved in a timely, efficient and effective manner.

Furthermore, China meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. China’s competent authority operates fully independently from the audit function of the tax authorities and the performance indicators used are appropriate to perform the MAP function.

Lastly, China also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. China monitors the implementation of MAP agreements and no issues have surfaced regarding the implementation throughout the peer review process.

Reference

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

Introduction

Available mechanisms in China to resolve tax treaty-related disputes

The People’s Republic of China (“**China**”) has entered into 107 tax treaties on income (and/or capital), 101 of which are in force.¹ These 107 treaties are being applied to 108 jurisdictions.² All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty.

Under the tax treaties China entered into, the competent authority function to handle mutual agreement procedure (“**MAP**”) cases is assigned to the State Taxation Administration or its authorised representatives, which concern the Commissioner or the Deputy Commissioner of the State Taxation Administration, the Director-General or the Deputy Director-General of the International Taxation Department within the State Taxation Administration. The competent authority of China currently employs 28 persons who handle APA and MAP cases next to other tasks such as treaty negotiations. Out of these 28 employees, 19 are in charge of handling attribution/allocation cases and the remaining nine handle other MAP cases.

China has issued guidance on the governance and administration of the MAP in public notices (“**MAP guidance**”), which are available at:

www.chinatax.gov.cn/n810341/n810755/c2538695/content.html
(Public Notice [2017] No. 6 on transfer pricing cases
in both Chinese and English versions)

www.chinatax.gov.cn/n810341/n810755/c3523242/content.html
(Public Notice [2013] No. 56 on other cases in Chinese version)

Developments in China since 1 January 2019

Developments in relation to the tax treaty network

In the stage 1 peer review report of China, it is reflected that seven of China’s 107 treaties have not entered into force. This concerns the treaty with Angola (2018), Argentina (2018), Botswana (2012), Republic of Congo (2018), Gabon (2018), Kenya (2017) and Uganda (2012). Since then the treaty with Botswana (2012) has entered into force. For the other treaties, the ratification process has not been completed by either China or any of the treaty partners. During stage 1, China also signed a new treaty with Spain (2018), which will replace the existing treaty, once entered into force. This treaty has not entered into force and the ratification process has not been completed by either China or the treaty partner. Since 1 January 2019, China signed new treaties with Italy (2019) and New Zealand (2019), both of which will replace the existing treaty, once entered into force. The treaty with New Zealand has entered into force and thereby replaced the existing treaty of 1986, while the treaty with Italy is pending ratification. Both treaties contain 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), and the treaty with New Zealand also contains Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

Furthermore, on 7 June 2017 China 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. With the signing of the Multilateral Instrument, China also submitted its list of notifications and reservations to that instrument.³ In relation to the Action 14 Minimum Standard, China 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. China indicated that it expects the ratification process of the Multilateral Instrument to be finalised during 2021. In the stage 1 peer review report, it is stated that for those tax treaties that were 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, China intends to update them through bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard, thereby giving priority to the jurisdictions that have closer economic ties and more tax disputes with China. In total, six of China’s treaties need to be bilaterally modified to meet these requirements. For one of these treaties, China already signed a new treaty with a treaty partner that is in line with these requirements. For these treaty partners, China reported during stage 1 that it has already contacted some of them and that for one negotiations were being scheduled in 2019.

In the update report for stage 2 of the peer review process, China reported that negotiations with one were finalised on the replacement of the existing treaty. China also reported that it originally planned to negotiate with another treaty partner to amend the tax treaty in the first half of 2020 and contact a third one for amending the treaty in the second half of 2020. However, due to the COVID-19 pandemic, the negotiations have been postponed. Furthermore, China indicated that it intends to contact the three remaining treaty partners to bring the relevant treaties in line with the requirements under the Action 14 Minimum Standard in accordance with its plan and taking into consideration whether or when those treaty partners sign the Multilateral Instrument.

Other developments

China reported that since 1 January 2019, three additional staff have been added to its MAP function to handle MAP cases next to other tasks such as treaty negotiations.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of China’s implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by China, its peers and taxpayers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, China'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 China 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 China. In this update report, China 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 China 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, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaties with the former Czechoslovak Socialist Republic, the former Socialist Federal Republic of Yugoslavia and the former Federal Republic of Yugoslavia, all of which China continues to apply to the Slovak Republic, Bosnia and Herzegovina and Serbia and Montenegro, respectively. As the treaty with the former Federal Republic of Yugoslavia is applicable to multiple jurisdictions, it is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of China's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process for China was launched on 31 December 2018, with the sending of questionnaires to China and its peers. The FTA MAP Forum has approved the stage 1 peer review report of China in June 2019, with the subsequent approval by the BEPS Inclusive Framework on 9 August 2019. On 9 August 2020, China submitted its update report, which initiated stage 2 of the process.

The period for evaluating China's implementation of the Action 14 Minimum Standard ranges 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 18 peers provided input during stage 1: Australia, Austria, Belgium, Brazil, Canada, Denmark, Germany, India, Israel, Italy, Japan, Korea, the Netherlands, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Out of these 18 peers, 16 had MAP cases with China that started on or after 1 January 2016. These 16 peers represent more than 85% of post-2015 MAP cases in China's inventory that started in 2016-18. Input was also received from a taxpayer. Generally, all peers indicated good and positive relationship and frequent communication with China's competent authority, some of them, however, experienced some procedural impediments to a timely and effective resolution of MAP cases. During stage 2, the same peers provided input, apart from India. In addition,

Indonesia and Singapore provided input during stage 2. For this stage, these peers represent approximately 86% of post-2015 MAP cases in China’s inventory that started in 2016, 2017, 2018 or 2019. Generally, all peers indicated having a good relationship with China’s competent authority with regard to MAP. Specifically with respect to stage 2, most of the peers that provided input reported that the update report of China fully reflects the experiences these peers have had with China since 1 January 2019 and/or that there was no addition to previous input given. Some peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance. This input particularly relates to the resolution of MAP cases, for which some peers mentioned they faced difficulties in resolving MAP cases in terms of, *inter alia*, (i) timely receiving position papers or responses by China’s competent authority to position papers or notification letters and (ii) earlier and more frequent communication or meetings.

Input by China and co-operation throughout the process

During stage 1, China provided extensive answers in its questionnaire, which was submitted on time. China was responsive in the course of the drafting of the peer review report by responding comprehensively to requests for additional information, and provided further clarity where necessary. In addition, China provided the following information:

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

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

Finally, China is a member of the FTA MAP Forum and has shown good co-operation during the peer review process. China provided peer input for a number of assessed jurisdictions.

Overview of MAP caseload in China

The analysis of China’s MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2018. For stage 2 the period ranges from 1 January 2019 to 31 December 2019. Both periods are taken into account in this report for analysing the MAP statistics of China. The analysis of China’s MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2019 (“**Statistics Reporting Period**”). According to the statistics provided by China, 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	61	70	77	54
Other cases	28	55	15	68
Total	89	125	92	122

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁸ Apart from analysing China’s legal framework and its administrative practice, the report also incorporates input from peers and taxpayers and responses to such input by China. Furthermore, the report depicts the changes adopted and plans shared by China 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 has 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 China 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 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 China 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 China has entered into are available at: www.chinatax.gov.cn/n810341/n810770/index.html. The treaties that are signed but have not yet entered into force are with Angola (2018), Argentina (2018), Republic of Congo (2018), Gabon (2018), Kenya (2017) and Uganda (2012). These treaties are taken into account in the analysis. Furthermore, China also signed new treaties with Spain (2018) and Italy (2019), which will replace the existing treaties, once entered into force. Reference is made to Annex A for the overview of China’s tax treaties concerning the mutual agreement procedure.

2. China continues to apply the 1997 treaty with the former Federal Republic of Yugoslavia to both Serbia and Montenegro. China also continues to apply the 1987 treaty with the Czechoslovak Socialist Republic to the Slovak Republic and the 1988 treaty with former Yugoslavia to Bosnia and Herzegovina.
3. Available at: www.oecd.org/tax/treaties/beps-mli-position-china.pdf.
4. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the People’s Republic of China 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/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-china-stage-1-85e69082-en.htm>.
6. Available at www.oecd.org/tax/dispute/China-Dispute-Resolution-Profile.pdf.
7. The MAP statistics of China 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 China's tax treaties

2. All but one of China's 107 tax treaties 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.¹ The remaining treaty does contain a provision that is based on Article 25(3), first sentence, but misses the term "interpretation" and therefore is considered as not being the equivalent thereof.

3. With regard to the treaty identified above that does not contain an equivalent of Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2017a), China reported that its competent authority recently solved a case of general nature on the application or the interpretation of the treaty, regardless of the fact that the equivalent is not contained.

4. Most of the peers that provided input during stage 1 indicated that their treaty with China meets the requirements under element A.1, which is in line with the above analysis. For the treaty identified above that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), the relevant peer reported that such equivalent is indeed not contained, but that it expects that the treaty will be modified by the Multilateral Instrument, which is consistent with the above analysis.

Recent developments

Bilateral modifications

5. China signed new treaties with two treaty partners, which concern the replacement of the existing treaty in force. These treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). One of these two treaties has already entered into force and has replaced the previous treaty with the relevant treaty partner, whereas the other treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

6. China signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected during 2021.

7. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 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.

8. In regard of the tax treaty identified above that is considered as not containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), China listed this treaty as a covered tax agreement under the Multilateral Instrument and it made, pursuant to Article 16(6)(d)(i), a notification that it does not contain a provision described in Article 16(4)(c)(i). The relevant treaty partner, being a signatory to the Multilateral Instrument, listed its treaty with China as a covered tax agreement and made such a notification. Therefore, at this stage, the tax treaty identified above will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

Peer input

9. Of the peers that provided input during stage 2, one provided input in relation to its tax treaty with China. This peer stated that its treaty is in line with the requirements under the Action 14 Minimum Standard.

Anticipated modifications

10. As through the Multilateral Instrument all of China's tax treaties will contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), there is no need for bilateral modifications. In that regard, China reported that it will continue to seek to include Article 25(3), first sentence in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	One out of 107 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). This treaty is expected to be modified by the Multilateral Instrument upon entry into force for the treaty concerned.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.

[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.

11. 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.² 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.

China’s APA programme

12. China reported it has implemented an APA programme in the late 1990s, which was formalised in 2002 and with the first bilateral APA signed in 2005. Under this programme, China is authorised to enter into unilateral, bilateral and multilateral APAs. The basis of this programme is the Public Notice [2016] No. 64 on Matters regarding Enhancing the Administration of Advance Pricing Arrangements, which also prescribes what information taxpayers need to include in an APA request.³ In this respect, China reported it uses six-stage processes for handling APA requests. These are described in Article 2 of the Public Notice: (i) pre-filing meetings, (ii) submission of a letter of intent, (iii) analysis and evaluation, (iv) formal application for an APA, and (v) negotiation and signing, and (vi) implementation and monitoring.

13. Further to the above, Article 3 of the Public Notice specifies that an APA applies for a period of three to five years starting from the year during which a letter of intent for APA is accepted by the tax authority in charge of the APA (the State Taxation Administration in case of bilateral and multilateral APAs). Such APA can according to Article 11 of the Public Notice be renewed if the taxpayer requests within 90 days prior to the expiration date of the APA.

14. In general, taxpayers are, pursuant to Article 4 of the Public Notice, allowed to request for a bilateral APA if the related party transactions exceed an annual amount of RMB 40 million for the three years prior to the year in which the tax authorities send a notification to ask the taxpayer to submit a letter of intent. China does not charge any fees to taxpayers when requesting for APAs.

Roll-back of bilateral APAs

15. China reported that it is possible to grant roll-back of bilateral APAs. Article 3 of the Public Notice [2016] No. 64 prescribes that roll-back is possible if the related party transactions in prior years are the same or similar to those in the years covered by APAs. The maximum period for which roll-back can be granted is ten years.

Recent developments

16. There are no recent developments with respect to element A.2.

*Practical application of roll-back of bilateral APAs**Period 1 January 2016-31 December 2018 (stage 1)*

17. China has published annual reports on its APA programme since 2009, the most recent report concerns calendar year 2018.⁴ These reports contain comprehensive information on China's APA programme, APA statistics and analysis, and contacts and forms for APA applications. The statistics published specify the number of APAs signed, by transaction type, by region and by the time taken to conclude an APA. According to the annual reports, China annually concluded five or six bilateral APAs over the past several years.

18. Further to the above, China reported that due to a change in the way APAs are registered, it can only provide data on the number of APA requests (including a request for a roll-back) as per October 2016. In this respect, it mentioned that since that date it accepted 41 formal applications for a bilateral APA, 31 of which included a request for roll-back. Of these 41 and 31 requests, China reported that 15 APAs were signed of which nine provided a roll-back.

19. Out of the 18 peers that provided input, ten peers reported that in the period 1 January 2016-31 December 2018 they have not had any experience with China in relation to bilateral APAs or the roll-back thereof. One of these peers added that this is because it has no APA programme itself. Furthermore, another peer mentioned that in the period 1 January 2016-31 December 2018 it has received four requests for a bilateral APA concerning China, but these requests do not concern a roll-back.

20. Further to the above, another peer reported that it has concluded several APAs with China that concern either a roll-back of such an APA or the extension thereof. It further provided input on the APA programme of China in general. This peer stressed that a renewal of an existing APA must in China apply the exact same transfer pricing method, profit level indicator and rate as the existing APA to facilitate the renewal process. This peer noted that if this is not the case, the renewal application will be considered to start a whole new APA application process. This peer observed that the same rule also applies in situations where, for example, the rate of remuneration in the existing APA no longer results in an arm's length remuneration for the future period in accordance with an updated comparability analysis. The peer further referred to the update of China's APA regulations, which were issued in 2016, according to which China has formalised an obligation for its taxpayers to have with China's tax administration a pre-filing conference and agreement on the main elements and contents concerning the pricing principles and calculation methods used in the APA, before the APA request is submitted to the other competent authority. This peer reported that it has not yet had any experience with this new formalised procedure during the pending APA negotiations.

21. In a response, China mentioned that a renewal of APAs are not part of the Action 14 Minimum Standard, but nevertheless explained its internal process for such renewal. In this respect, China clarified that where there are no substantial changes in the facts and circumstances of the case and the terms were carried forward from the original APA, then preferential treatment is given to a renewal request. If these conditions are not met, then a request for renewal should go through the normal process for obtaining an APA. Furthermore, China also mentioned that pre-filing meetings are also not part of the Action 14 Minimum Standard, but also for this item China provided a further clarification. In that regard, China stated that it does not oblige taxpayers to change their positions to agree with its tax administration in order to obtain an APA. In fact, pre-filing meetings are the first occasion where the tax administration learns about the facts and circumstances in relation to the APA request. In this process, the tax administration would express preliminary views based on the information provided by the taxpayers and give advice on what could be taken into consideration in the follow-up steps of the process of obtaining an APA. To this China added that the comparability analysis and transfer pricing method are not formally required until the phase of the APA process, which is the letter of intent.

22. The remaining seven peers, all reported having experiences with China concerning bilateral APAs and the roll-back thereof. One of these peers mentioned it received one APA request in 2016 that also concerns a roll-back and which case is still pending. Furthermore, another peer reported it has in the period 1 January 2016-31 December 2018 received 14 requests that concern a roll-back of a bilateral APA. This peer specified that it reached agreements hereon for three of such cases and that it has not found any difficulty in the implementation of roll-back of bilateral APAs. The peer added that China and this peer use APAs positively to avoid tax treaty related disputes. The third peer reported that it received one request for roll-back of a bilateral APA in February 2018 and that both competent authorities agreed to provide roll-back for this request, which is still in progress. The fourth peer reported that in 2016 and 2017 it received APA requests involving roll-back. While the peer mentioned that these requests have not yet been formally accepted by the State Taxation Administration, the peer also noted that the State Taxation Administration already communicated to this peer that it would allow the roll-back in these cases. This peer added that there had been no issues encountered regarding the implementation of roll-back of bilateral APAs in cases prior to 1 January 2016. The fifth peer mentioned that while it has received one request for roll-back of a bilateral APA with China in the period 1 January 2016-31 December 2018, it understands that a corresponding request in China has not yet been officially filed. Regardless, this peer noted that it is to date not aware of any issues that would prevent a roll-back, provided that an agreement on the APA can be reached.

23. The sixth peer reported that China has accepted requests for a roll-back of bilateral APAs and has also agreed hereon. This peer also reported that there were some cases where taxpayers might complain about implementation of APA roll-back in China. This peer further reported that in its experience China often requires taxpayers to voluntarily adjust its profit margin for the roll-back period to the median level of the approved arm's length range, when the profit margin of those periods was under the median, even though the profit margin was within such range. In the peer's view this requirement is against the agreement reached by both competent authorities. This peer further added that China often accepts APA roll-back requests if the taxpayer makes a voluntary upward adjustments of the profit margin for the period of roll-back before the APA requests is submitted. The peer concluded that this practice substantially restricts taxpayers' in obtaining a roll-back of bilateral APAs.

24. China responded by stating that in Article 3 of Public Notice No. 64 the circumstances are described in which the tax administration allows the retrospective application of an APA, provided that taxpayers have requested such roll-back. This process, however, does not equate to a requirement to automatically apply the APA to previous years. In that regard, whether the taxpayer includes these previous years in its APA application, or whether it makes a voluntary adjustment for these years, is not an element that the tax administration considers for accepting or prioritising the roll-back request. This process is in China's view clearly described in Article 6, 8 and 16 of Public Notice No. 64. In this respect, the only caveat is Article 12 of this notice, which states that “upon expiration of the APA, if the calculated weighted average operating price/profit of the enterprise for the APA covered period falls below median of the agreed range and is not adjusted to the median, tax administration(s) will not accept the taxpayer's request for renewing the APA”

25. The peer provided a reaction that it hopes roll-backs of bilateral APAs are possible as a means of resolving disputes in cases where there is double taxation. It further stated that it does not agree with China's strict conditions under its regulations (on attaining profit over a median level) during the period the APA is applicable (including roll-back periods), even when the attained profit is within arm's length range.

26. The last peer also provided its experience with China on bilateral APAs in general. This peer reported that there are several requests for a bilateral APA, whereby this peer would like to start discussions with respect to these cases (also taking into account possible roll-back of such APAs). In the peer's view it seems difficult for taxpayers to gain access to China's APA programme for two reasons. The first reason relates to the amount of resources in China to work on these cases. The peer expressed to have respect for all the work done by China's competent authority in these cases, acknowledging the high number of pending cases. The second reason is that it is not possible to discuss an APA request, when in China the tax authorities started an audit.

27. China also responded to this input and clarified that Article 6 of Public Notice No. 64 states that: “Tax administration(s) may disallow the enterprise to submit the intent for an APA if one or more of the following circumstances is present: (i) The enterprise is under special tax adjustment investigation or other tax investigations”. Furthermore, Article 16 stipulates that: “The tax administration(s) may prioritise APA requests from the enterprise that meets one of the following conditions: (3) The enterprise was once under special tax adjustment investigation and the investigation was closed”. With respect to these articles, China noted that the ongoing special tax adjustment investigation (i.e. the transfer pricing audit) does preclude taxpayer from submitting a request for an APA for the related party transactions under audit. Taxpayers which have gone through audits are, however, considered as taxpayers with lower transfer pricing risks, and hence are provided with prioritised treatment in the APA process.

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

28. China reported that since 1 January 2019 its competent authority received 20 requests for bilateral APAs, 18 of which included a request for roll-back. China noted that of the 20 APA requests, three requests for which a roll-back was requested have been granted and the remaining 17 (15 of which involve roll-back) are in the process of being reviewed.

29. Further to the above, China also reported that three of the 22 roll-back requests that it received in the period 1 October 2016-31 December 2018 have been granted and the remaining 19 requests are still under consideration.

30. All peers that provided input in stage 2 stated that the update report provided by China fully reflects their experience with China since 1 January 2019 and/or there are no additions to the previous input given. Three peers provided additional input as to element A.2. One of them noted that it has no recent APA experience with China. The other two peers mentioned that they were not aware of any issues in relation to APA, and one of them noted that it reached a mutual agreement with China on one APA that included ten roll-back years.

Anticipated modifications

31. China did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. These 107 treaties include the treaty with the former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro, the treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic and the 1988 treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.
2. 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).
3. The Public Notice [2016] No. 64 is available at: www.chinatax.gov.cn/n810214/n810606/c3936703/part/3936741.pdf. This notice replaced an earlier notice issued in 2009.
4. China APA annual report (2018) is available at: www.chinatax.gov.cn/chinatax/n810214/n810606/c4244610/5080963/files/e27ec0785264482aa1ee50ec3e9c755c.pdf.

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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.

32. 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 China's tax treaties

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

33. Out of China's 107 tax treaties, 101 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.¹ In addition, none of China's 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.

34. The remaining six treaties 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 all of those six 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 (four treaties).

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

35. Out of China's 107 tax treaties, 104 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.²

36. The remaining three 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	2
Filing period less than 3 years for a MAP request (1 year)	1

Peer input

37. Most of the peers that provided input during stage 1 indicated that their treaty with China meets the requirements under this element, which is in line with the above analysis.

38. For the treaty identified above that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), the relevant peer reported that it had notified China that once the Multilateral Instrument takes effect, the protocol provision contained in the treaty requiring the taxpayer to initiate domestic available remedies first when submitting a MAP request will become ineffective. This peer added that it will initiate a re-negotiation of the treaty with China in order to bring it in line with the Action 14 Minimum Standard.

39. With regard to the two treaties identified above that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), one peer reported that it made the necessary notification under the Multilateral Instrument to meet the Action 14 Minimum Standard. The relevant treaty will indeed be modified by that instrument to include the second sentence. The other treaty partner provided peer input, but not as regards the second sentence.

Practical application

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

40. As follows from the above analysis, all of China's tax treaties allow a taxpayer to file a MAP request irrespective of domestic remedies. In this respect, China reported that it had not yet experienced that taxpayers submitted a MAP request and at the same time initiated such remedies for the same case. Regardless, China also reported that there is no provision in its domestic law that clearly specifies the relationship between MAP and domestic legal

and administrative remedies. To provide further clarity on this point, China mentioned it is planning to clarify the relationship between MAP and domestic remedies in its domestic law or administrative regulations. As, however, this involves other departments within and outside the State Taxation Administration, there is no timeframe set when such clarification will be published.

41. Two peers provided input on the practice of China to give access to MAP in relation to the requirements under Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017).

42. One of these peers reported that in its experience China's competent authority was not willing to discuss a MAP case related to a self-initiated adjustment by a taxpayer, even though for earlier fiscal years it was the tax authority of the peer that made adjustments and that the taxpayer subsequently filed a MAP request based on these adjustments. The peer noted that China considers that a MAP request can only be validly submitted if following an audit an adjustment has been made in one of the contracting states, which also follows from China's domestic legislation. This peer explained that in its view such a requirement is not in line with the treaty, for which it found supporting argument in paragraph 14 of the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017).

43. China responded and referred to Articles 47 and 52 of Public Notice No. 6 [2017], in which it is stated double taxation resulting from self-initiated adjustments are not allowed access to MAP in China. The case referred to by the peer concerns a case where the taxpayer did not submit a MAP request for the fiscal years under audits, but only submitted such a request for fiscal years that were not audited. Providing access to MAP for self-initiated adjustments is only a best practice and not part of the Action14 Minimum Standard. China further mentioned that it agreed with the peer to close the case.

44. In a reaction, the peer acknowledges that providing access to MAP in the case of self-initiated adjustments is indeed a best practice, but considered that giving input on this aspect of its MAP experiences with China is in the interest of constructive dialogue which the peer considers has benefited both sides understanding of the matter.

45. The second peer pointed to the fact that Article 52 of the Public Notice [2017] No. 6 stipulates that for transfer pricing cases the State Taxation Administration can decline a MAP request submitted by a Chinese taxpayer or when China's competent authority is being notified of a MAP request submitted to the treaty partner, where the relevant special tax adjustment case is not concluded or the enterprise has not paid the tax that resulted from the adjustment. This peer observed that when it worked with China on the matching of their MAP statistics for the year 2016, it found out that there were five mismatches in the number of MAP cases for this year. The peer explained that in these cases taxpayers considered that the action by China would result in taxation not in accordance with the provisions of the tax treaty and for that reason they submitted a MAP request in China. China's competent authority, however, did not accept the request on the ground that China's tax audits had not been completed and the taxpayers had not paid the additional tax accrued from the assessments of those audits. Taking this into consideration, the peer suggests that China should take a necessary step to ensure the availability and accessibility of MAP by reviewing this domestic regulation and practices to bring them in line with the requirements under the Action 14 Minimum Standard.

46. In responding to the peer input described in the above paragraph, China stated that Article 52 of Public Notice [2017] No. 6 is a general description of the situations where access to MAP might be denied. Those situations could be divided into three categories, namely denied access, objection not justified, and deferral of MAP access. For the cases

referred to by the peer, China reported that there is no mismatch in the MAP statistics, because for these cases Chinese subsidiaries were audited and applied for MAP which requests were accepted. However, the associated enterprises also submitted MAP requests for the following years at the level of the peer, but for these years no audits were conducted and no notifications were issued. While the peer's competent authority accepted the MAP requests for these following years, China did not consider these requests as valid MAP requests. China reported that in the spirit of co-operation, the cases were nevertheless discussed with the peer. China further added that closely monitoring of taxpayers that were audited does not automatically lead to an adjustment for future years, but if following this monitoring it turns out that the taxpayer did not comply with the arm's principle, a formal audit may be initiated.

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

47. Concerning those treaties that do not contain a filing period for MAP requests, China reported that under its domestic legislation or administrative practice there are no time limits and taxpayers can submit their MAP requests without any time limit.

48. Further to the above, while the two treaties without a filing period for MAP requests are considered to be in line with element B.1, China added that these treaties are expected to be modified by the Multilateral Instrument and will contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). In this respect, China reported that both treaties will be superseded to include a three-year filing period.

Recent developments

Bilateral modifications

49. China signed new treaties with two treaty partners, which concern the replacement of the existing treaty in force. These treaties contain a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). One of these two treaties has already entered into force and has replaced the previous treaty with the relevant treaty partner, whereas the other treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

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

50. China signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected during 2021.

51. 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.

52. With the signing of the Multilateral Instrument, China reserved, pursuant to Article 16(5)(a), 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.³ In this reservation, China 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.

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

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

54. In regard of the one tax treaty identified in paragraph 36 above that contains a filing period for MAP requests of less than three years, China listed the treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner, being a signatory to the Multilateral Instrument, listed its treaty with China as a covered tax agreement under that instrument and also made such notification. Therefore, at this stage, the tax treaty identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

55. Of the peers that provided input during stage 2, one provided input in relation to its tax treaty with China. This peer stated that its treaty is in line with the requirements under the Action 14 Minimum Standard.

Anticipated modifications

56. As the one treaty that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) will be modified by the Multilateral Instrument, no bilateral modifications are necessary. In addition, China reported it will seek to include the equivalent of Article 25(1) as amended by the Action 14 final report (OECD, 2015b) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	One out of 107 tax treaties does not contain the equivalent to 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. This treaty is expected to be modified by the Multilateral Instrument to include such equivalent upon entry into force for this treaty.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.

[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).

57. 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

58. As discussed under element B.1, none of China's 107 treaties currently contains a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As previously discussed under element B.1, none of these tax treaties will, following

China’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.

59. China reported that it has introduced a documented bilateral consultation or notification process for those situations where its competent authority would consider the objection raised in a MAP request as not being justified.

60. In addition, Article 52 of the Public Notice [2017] No. 6 on transfer pricing cases stipulates that China’s competent authority can decline MAP requests submitted by taxpayers in China, or can refuse to initiate discussions with the treaty partner when a MAP request is being submitted at the level of the competent authority of this treaty partner, in the following circumstances:⁴

- the enterprise or its related party is not a tax resident of either contracting state
- the subject of the MAP request is not related to special tax adjustments
- the MAP request lacks a factual or legal basis
- the MAP request is not in compliance with relevant provisions of the tax treaty, or
- the special tax adjustment case has not been concluded or the enterprise has not yet paid the tax due after the conclusion of the case.

61. In view of these circumstances, China reported that these cover both cases where the outcome would be “access denied” and “objection not justified”. Furthermore, concerning the last circumstance, China explained that this circumstance relates to the case where an audit process is still ongoing in China and where at that moment it cannot be established whether there is, or will be, taxation not in accordance with the convention. China further noted that where such an audit is concluded and the tax due is paid, the taxpayer can rightfully submit a MAP request.

62. Further to the above, China mentioned that for non-transfer pricing cases there is no specific guidance in which circumstances a MAP request may be denied access or where the objection raised should be considered as not being justified. Article 13 of the Public Notice [2013] No. 56 on non-transfer pricing cases describes the circumstances in which China’s competent authority has to accept a MAP request.⁵ These are:

- the applicant is a Chinese resident or national who can present a request to initiate MAP
- the MAP request is submitted within the time frame prescribed in the relevant tax treaty
- the matter for which the MAP request is submitted relates to an action taken or may be taken that violates the provisions of the tax treaty
- the facts and evidences provided by the taxpayer in its MAP request can prove or cannot reasonably exclude the suspicion that the action taken by the other contracting state is not in accordance with the tax treaty
- the matter for which the MAP request is submitted does not cover the situations specified in Article 18⁶ leading to a decision to terminate the MAP.

63. With regard to the above, China added that the competent authority may also accept MAP requests regardless of whether the above conditions are fulfilled, if it considers it necessary to initiate the MAP process because serious double taxation is involved or the taxation rights or interests of China are violated.

Recent developments

64. China reported that it has introduced a documented notification/consultation process for those situations where its competent authority considers an objection raised in a MAP request as being not justified, and briefed all MAP staff that they should follow the process.

65. Furthermore, China reported that it issued an internal note to the local tax offices on follow-up issues relating to cases where a MAP request is considered being not justified. The documentation indicates the situations considered as “objection not justified”. Further, the documentation stresses that the provincial tax authority which makes the decision “objection not justified” shall report the situation within 30 days to the State Taxation Administration, and the State Taxation Administration would inform the relevant competent authority in due time. China noted that the documentation will be served as an internal working instruction for the Provincial Tax Authorities and will be a complement to the Public Notice [2013] No. 56.

Practical application

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

66. China 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 China, however, shows that one MAP case was closed with the outcome “objection not justified”. China reported that this decision was made by the competent authority of its treaty partner.

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

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

68. China reported that since 1 January 2019 its competent authority has for none of the MAP requests it received decided that the objection raised by the taxpayer in its request was not justified. From the 2019 MAP statistics submitted by China, it follows that in one case the outcome reported was an objection not justified. In this respect, China reported that it was the other competent authority that made the decision that the objection raised by the taxpayer in its MAP request was not justified.

69. All peers that provided input in stage 2 stated that the update report provided by China fully reflects their experience with China since 1 January 2019 and/or there are no additions to the previous input given. One of these peers confirmed that it notified to China in the case mentioned above. The other two peers indicated that they are not aware of receiving any notification of a MAP case where China has considered the objection raised as not justified.

Anticipated modifications

70. China did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

71. 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

72. Out of China’s 107 tax treaties, 92 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.⁷ Furthermore, 13 treaties do not contain such equivalent.⁸ The remaining two treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviate from this provision since the granting of corresponding adjustments is only optional as the word “shall” is used instead of “may”.

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

74. The relationship between MAP and transfer pricing is further described in the Public Notice [2017] No. 6. This notice provides comprehensive public guidance on both transfer pricing audits and the mutual agreement procedure.⁹ Article 47(2) of this notice mentions that the mutual agreement procedure is available with respect to special tax adjustments (transfer pricing adjustments) made by one treaty party that may lead to a corresponding adjustment at the level of the other treaty party.

Recent developments

Bilateral modifications

75. China signed new treaties with two treaty partners, which concern the replacement of the existing treaty in force. These treaties contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). One of these two treaties has already entered into force and has replaced the previous treaty with the relevant treaty partner, whereas the other treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

76. China reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, China signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected during 2021.

77. 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)).

78. China has, pursuant to Article 17(3), not reserved the right not to apply Article 17(2) 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). In regard of the 15 tax treaties identified in paragraph 72 above that are considered not to contain this equivalent, China listed all of these treaties as a covered tax agreement under the Multilateral Instrument, but for none of them made, a notification on the basis of Article 17(4).

79. With regard to those 15 treaties, two treaty partners are not a signatory to the Multilateral Instrument, whereas all remaining 13 treaty partners listed their treaty with China as a covered tax agreement.¹⁰ Of these 13 treaty partners, one has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) on the basis that it shall accept a provision equivalent to Article 9(2) in its bilateral treaty negotiations. Therefore, at this stage, 12 tax treaties will be superseded by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Application of legal and administrative framework in practice

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

80. China 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.

81. All peers that provided input indicated not being aware of a denial of access to MAP by China 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)

82. China reported that since 1 January 2019 it received 18 transfer pricing MAP requests, and that access to MAP was granted in all these cases.

83. All peers that provided input in stage 2 stated that the update report provided by China fully reflects their experience with China since 1 January 2019 and/or there are no additions to the previous input given. Two peers provided additional input and mentioned that they are not aware of any MAP requests concerning transfer pricing for which access to MAP was denied by China.

Anticipated modifications

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

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.

85. 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

86. None of China's 107 tax treaties allows 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 China 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.

87. China reported that it will provide access to MAP in cases relating to the application of a treaty anti-abuse provision or for cases concerning the question whether the application of the domestic anti-abuse provision comes into conflict with the provision of a tax treaty. China's guidance on the MAP process, however, does not clarify that MAP is available in cases concerning the application of anti-abuse provisions.

Recent developments

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

Practical application

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

89. China reported that in the period 1 January 2016-31 December 2018 it has not denied access to MAP in any cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, since that date no requests in relation hereto were received by its competent authority.

90. All peers that provided input indicated not being aware of cases that have been denied access to MAP in China 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)

91. China 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.

92. All peers that provided input in stage 2 stated that the update report provided by China fully reflects their experience with China since 1 January 2019 and/or there are no additions to the previous input given. Two of them stated that they are not aware of any MAP requests for which access to MAP was denied by China in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

93. China did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

94. 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

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

Administrative or statutory dispute settlement/resolution process

96. China 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

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

Practical application

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

98. In view of the fact that it is in China not possible that the taxpayer and the tax administration enter into audit settlements, China 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.

99. All peers that provided input indicated not being aware of a denial of access to MAP in China 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 China.

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

100. China 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. However, no such cases in relation hereto were received since that date.

101. All peers that provided input in stage 2 stated that the update report provided by China fully reflects their experience with China since 1 January 2019 and/or there are no additions to the previous input given. Two of them stated that they are not aware of any MAP requests for which access to MAP was denied by China in cases where there was an audit settlement between the taxpayer and the tax administration.

Anticipated modifications

102. China did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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

Legal framework on access to MAP and information to be submitted

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

105. China reported that when the taxpayer did not provide information or documentation required for its MAP request, its competent authority will specifically request the taxpayer to provide additional information and documentation. China also reported that there is no specific timeframe for the provision of such additional information and documentation and that such a time limit is not set in practice, either.

106. The process to be applied when taxpayers have not included all required information and documentation in their MAP request deviates between transfer pricing cases and other cases. These processes are:

- *Transfer pricing cases:* Article 48 of the Public Notice [2017] No. 6 stipulates that a taxpayer shall submit a MAP request on the basis of a specific form and other relevant information that relates to a special tax adjustment within the time specified

in the applicable tax treaty.¹¹ It is in that Article also stated that if the information presented in the MAP request is considered to be insufficient, China’s competent authority can request additional information. Article 51 also allows the competent authority to request such additional information during the MAP process, whereby such information should be submitted within the specified time period. There, however, are no further rules prescribed when the taxpayer does not provide the relevant information. In this respect, China clarified that the case would nevertheless be accepted into the MAP process, but that it may not be possible to resolve the case until the relevant information is submitted by the taxpayer.

- *Other cases:* Article 15 of the Public Notice [2013] No. 56 contains a provision stating that where taxpayers did not provide in their MAP request sufficient information and documentation, China’s Provincial Tax Authorities may request the applicants to supplement relevant information and documentation.¹² Where the documentation supplemented by the applicants still does not meet the requirements to initiate the MAP process, the Provincial Tax Authorities may refuse to accept the MAP request, and inform the applicants in a written form accordingly. Article 15 continues by stating that in such a situation the taxpayer may raise objections to the Provincial Tax Authorities or the State Taxation Administration within 15 working days. It should for this purpose use a specific form (“Application Form for Objection to the Decision of Provincial Tax Authorities on Mutual Agreement Procedures under Tax Treaty”), which is attached to Public Notice [2013] No. 56. The Provisional Tax Authorities shall then submit the taxpayer’s information and documentation to the State Taxation Administration along with its opinion and the basis of the refusal. Concerning the further process, Article 16 of the Public Notice specifies that the State Taxation Administration shall, within 20 working days, take a decision on the case. Such a decision can be:
 - a. to initiate the MAP process
 - b. not to initiate the MAP process
 - c. to request the Provincial Tax Authorities to request the taxpayer to submit additional information, after which a decision will be made on whether or not to accept the request.

107. Further to the above, and concerning other MAP cases, China’s internal note stipulates that where the provincial tax authorities consider a MAP request to be “objection not justified”, they shall report the situation to the headquarters of the State Taxation Administration.

Recent developments

108. As described under element B.2, China has issued an internal note to the local tax offices on follow-up issues relating to cases where a MAP request is being rejected because the objection is not justified. According to the internal note, the provincial tax authority concerned shall bring the situation for such MAP request to the Treaty Division of the State Taxation Administration.

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

109. China reported that it provides access to MAP in all cases where taxpayers have complied with the information and documentation requirements as set out in its MAP guidance. It further reported that in the period 1 January 2016-31 December 2018 it has not denied access to MAP for cases where the taxpayer had not provided the required information and documentation.

110. All peers that provided input indicated not being aware of a limitation of access to MAP by China 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)

111. China reported that since 1 January 2019 it has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

112. All peers that provided input in stage 2 stated that the update report provided by China fully reflects their experience with China since 1 January 2019 and/or there are no additions to the previous input given. Two of them stated that they are not aware of any MAP requests for which access to MAP was denied by China in situations where taxpayers complied with information and documentation requirements.

Anticipated modifications

113. China did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

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

Current situation of China's tax treaties

115. Out of China's 107 tax treaties, 104 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.¹³ The remaining three 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).

116. Most of the peers that provided input during stage 1 indicated that their treaty with China meets the requirements under element B.7, which is in line with the above analysis.

117. For the four treaties identified above 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 reported that they expect their treaty with China will be modified by the Multilateral Instrument to include such equivalent, which is in line with the above analysis.

Recent developments

Bilateral modifications

118. China signed new treaties with two treaty partners, which concern the replacement of the existing treaty in force. These treaties contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). One of these two treaties has already entered into force and has replaced the previous treaty with the relevant treaty partner, whereas the other treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

119. China signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected during 2021.

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

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

Peer input

122. Of the peers that provided input during stage 2, one provided input in relation to its tax treaty with China. This peer stated that its treaty is in line with the requirements under the Action 14 Minimum Standard.

Anticipated modifications

123. As through the Multilateral Instrument all of China’s tax treaties will contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) there is no need for bilateral modifications. In addition, China 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]	Three out of 107 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). These three treaties are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.

[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.

124. 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.

China’s MAP guidance

125. China has published rules, guidelines and procedures on MAP in two public notices. Public Notice [2017] No. 6 on Issuing the “Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure” relates to transfer pricing cases and Public Notice [2013] No. 56 on Releasing the “Implementation Measures of Mutual Agreement Procedure for Tax Treaty Related Issues” relates to other MAP cases.

126. These notices are available at:

www.chinatax.gov.cn/n810341/n810755/c2538695/content.html
(Public Notice [2017] No. 6 on transfer pricing cases
in both Chinese and English versions)

www.chinatax.gov.cn/n810341/n810755/c3523242/content.html
(Public Notice [2013] No. 56 on other cases in Chinese version)

127. Public Notice [2017] No. 6 was issued on 17 March 2017 and relates to the audit process in China and includes in Articles 47-61 specific information on the MAP process. In more detail, this concerns:

- examples of cases for which a MAP request can be submitted
- the manner and form in which the taxpayer should submit its MAP request
- circumstances in which China can decide not to initiate the MAP process, suspend or terminate the process
- an outline of the MAP process and how China applies the process in practice, including the relationship with the Provincial Tax Authorities and local tax offices
- the process for implementing MAP agreements, once reached.

128. Public Notice [2013] No. 56 was issued on 24 September 2013 and includes information on the MAP process in China. It is divided into six chapters, and which relates to: (i) general provisions on the MAP process, (ii) the MAP process when a MAP request is submitted in China, (iii) the MAP process when a MAP request is submitted at the level of the treaty partner, (iv) the MAP process when initiated by China's competent authority, (v) implementation of MAP agreements and (vi) supplementary provisions. In more detail, the public notice covers the following subjects:

- general outline of the MAP process in China
- definition of the competent authority, the role of the State Taxation Administration, the Provincial Tax Authorities and the local tax offices during the MAP process
- examples of situations for which a taxpayer can submit a MAP request, when a MAP request can be accepted and examples of situations in which a MAP case can be terminated
- the manner and form in which the taxpayer should submit its MAP request, including information to which authority taxpayers should submit a MAP request
- the specific information and documentation that should be included in a MAP request (see also below)
- a description of the process when the MAP request is not accepted
- how the MAP functions in terms of timing and the role of the competent authorities
- implementation of MAP agreements.

129. The above-described MAP guidance in the form of public notes includes detailed information on the availability and the use of MAP in China and how its competent authority conducts the procedure in practice. This guidance partially includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns the manner and form in which the taxpayer should submit its MAP request, but it does not contain the contact details of the competent authority or of the office in charge of MAP cases.¹⁴ In this respect, China clarified that the regulations such as the above-mentioned Public Notices would not be revised frequently or incorporate information which needs constant change and update, and therefore the contact information is made publicly available on the website of China's State Taxation Administration and annual APA report.

130. Further to the above, although the information included in China's MAP guidance is detailed and comprehensive, some subjects are not specifically discussed. 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
- the consideration of interest and penalties in MAP.

Taxpayer input

131. One taxpayer provided input with regard to the clarity and availability of MAP guidance in China and specified that the local regulation provides for clear guidance.

Information and documentation to be included in a MAP request

132. China has specified in the public notices on the MAP process what information taxpayers should include in their MAP request. There is a deviation made as per type of MAP case, and which is further specified below.

Transfer pricing cases

133. Article 48 of Public Notice [2017] No. 6 stipulates that when a taxpayer submits a MAP request for a transfer pricing case, it should use the form “Application for Initiating Mutual Agreement Procedures concerning Special Tax Adjustments” for this purpose, alongside with other relevant information. Attachment 8 of Public Notice [2017] No. 6 includes this form.

134. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.¹⁵ This agreed guidance is shown below and for China’s Public Notice [2017] No. 6 checked in the following list:

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

135. Further to the above, Article 59 of Public Notice [2017] No. 6 stipulates that for transfer pricing cases taxpayers should submit the MAP request and accompanying documents in both the Chinese and English language.

Other cases

136. Article 11 of Public Notice [2013] No. 56 stipulates that when a taxpayer submits a MAP request for other cases, it should use a specific form “Application for Initiating Tax Treaty Mutual Agreement Procedures concerning Special Tax Adjustments” for this purpose, alongside with other relevant information. Attachment I of Public Notice [2013] No. 56 includes this form.

137. The agreed guidance by the FTA MAP Forum is shown below and for China’s Public Notice [2013] No. 56 checked in the following list:

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

138. Further to the above, Article 37 of Public Notice [2013] No. 56 stipulates that for other cases taxpayers should submit the MAP request and accompanying documents in the Chinese language.

Recent developments

139. There are no recent developments with respect to element B.8.

Anticipated modifications

140. China did not indicate that it anticipates any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	Contact details of the competent authority are not included in the MAP guidance, which concerns both Public Notice [2013] No. 56 and Public Notice [2017] No. 6.	China should without further delay update its MAP guidance to include the contact information of its competent authority.

[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.

141. 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.¹⁶

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

142. As mentioned under element B.8, the MAP guidance of China is published in the form of public notices and relates to transfer pricing cases and other cases. These are available in Chinese and can be found at:

www.chinatax.gov.cn/n810341/n810755/c2538695/content.html
(Public Notice [2017] No. 6 on transfer pricing cases
in both Chinese and English versions)

www.chinatax.gov.cn/n810341/n810755/c3523242/content.html
(Public Notice [2013] No. 56 on other cases in Chinese version)

143. In view of both documents, China’s MAP guidance can easily be found on the website of China’s State Taxation Administration, such by e.g. searching the term “mutual agreement procedure” in Chinese.

MAP profile

144. The MAP profile of China is published on the website of the OECD and was last updated in January 2019. This MAP profile is complete and often with detailed information. This profile includes external links that provide extra information and guidance where appropriate.

Recent developments

145. China reported that its MAP profile has been updated in January 2019.

Anticipated modifications

146. China did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

147. 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

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

149. Peers raised no issues with respect to this element concerning audit settlements.

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

150. As previously discussed under element B.5, China 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. In this regard, there is no need to address the effects of such process with respect to MAP in China's MAP guidance.

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

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

152. As China does not have an administrative or statutory dispute settlement/resolution process that may limit access to MAP, there is no need for notifying its treaty partners of such process.

Recent developments

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

Anticipated modifications

154. China did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These 101 treaties include the treaty with former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro and the treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic.
2. These 104 treaties include the treaty with former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro, the treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic and the treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.
3. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the People’s Republic of China 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 China’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-china.pdf.
4. These circumstances are also listed in Article 52 of the Public Notice [2017] No. 6 which is available at: www.chinatax.gov.cn/n810341/n810755/c3523242/content.html.
5. The Public Notice [2017] No. 6 is available at: www.chinatax.gov.cn/n810341/n810755/c3523242/content.html.
6. The circumstances in Article 18 upon which a MAP process can be terminated are:
 - a. the taxpayer intentionally conceals important facts or provides false information
 - b. the taxpayer refuses to provide necessary information and documentation relating to the cases as required by the tax authorities
 - c. the facts of the cases and the position of the applicants cannot be proved and the MAP cannot proceed because both of the taxpayer and the tax authorities are not able to obtain necessary evidences for various reasons
 - d. the competent authorities of other Contracting Parties unilaterally refuse or terminate MAP
 - e. other circumstances that make the MAP unable to proceed or achieve expected goals.
7. These 92 treaties include the treaty with former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro. The treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic.
8. These 13 treaties include the treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.
9. The Public Notice [2017] No. 6 is available at: www.chinatax.gov.cn/n810341/n810755/c2538695/content.html.
10. These 13 treaties include the treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.

11. The Public Notice [2017] No. 6 is available at: www.chinatax.gov.cn/n810341/n810755/c2538695/content.html.
12. The Public Notice [2013] No. 56 is available at: www.chinatax.gov.cn/n810341/n810755/c3523242/content.html.
13. These 104 treaties include the treaty with the former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro, the treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic and the treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.
14. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
15. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
16. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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

155. 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 China’s tax treaties

156. All but one of China’s 107 tax treaties contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.¹

157. The remaining treaty contains a provision that is based on Article 25(2), first sentence, but also additional language that sets a condition for the provision to apply. This condition consists of a notification from the competent authority that received the MAP request within a time limit of four and a half years from the due date or the date of filing the return in the other jurisdiction, whichever is later. Such an obligation may prevent that cases are effectively dealt with in MAP. This treaty is therefore considered as not having the full equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

158. Most of the peers that provided input during stage 1 indicated that their treaty with China meets the requirements under element C.1, which is in line with the above analysis. For the treaty identified 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

159. Two peers provided input regarding the granting of downward adjustments in China. One of these peers reported that it had not been able to reach an agreement with China that required China to refund paid taxes, except for one provisional agreement made recently. This peer views that China's competent authority has some hurdles in deciding tax refunds and has less flexibility in resolving MAP cases, although it appreciates China's constructive efforts to improve this situation. The second peer reported similar instances, where China's competent authority had been consistently stating that a decrease in the amount of tax assessment is impossible in China due to a lack of relevant regulations allowing downward adjustments in transfer pricing cases when the taxpayer's profit margin is over the arm's length range that is used in the transfer pricing assessment. This peer therefore suggested the introduction of legislative measures in China, as the absence of such measures impedes the resolution of cases of double taxation. This peer further noted that it is its understanding that a prompt resolution of MAP cases will be possible during negotiations if China has flexibility for MAP cases where China's tax administration made the adjustment under review. In this respect, the peer specified that China has been consistently claiming that a decrease of the tax assessment is impossible in China, because it is the result of considering all the circumstances. In the peer's view, it makes it difficult to accomplish the aim of relief of double taxation through the MAP process. Flexible and rational approaches, instead of adherence to original tax assessments, are therefore needed for the expeditious resolution of MAP cases.

160. China responded to the input given and stated that this input regard MAP results that are not part of the Action 14 Minimum Standard. In China's understanding, this minimum standard only deals with access to MAP and obstacles for the competent authorities to reach certain results via the MAP process. The outcome of this process could in China's view vary depending on the specific facts and circumstances of each case, as well as discussion and negotiations between the two competent authorities which could have different interpretations and positions on cases. Furthermore, China reported that its competent authority has been working with all the relevant treaty partners, in order to resolve MAP cases in an effective and efficient manner. China added that the specific situation described by the second peer is not true, since in fact downward adjustments could be the result of MAP cases. There is in this respect no rule in its domestic law or administrative guidance that would prohibit China's competent authority to agree on downward adjustments in the MAP process.

161. In a reaction, the second peer noted that in its understanding, this could be a factor of preventing the implementation of MAP result for the relief of double taxation if China has regulations that make downward adjustments impossible even when the competent authorities agree on arm's length range during MAP discussion.

Recent developments

Bilateral modifications

162. China signed new treaties with two treaty partners, which concern the replacement of the existing treaty in force. These treaties contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). One of these two treaties has already entered into force and has replaced the previous treaty with the relevant treaty partner, whereas the other treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

163. China signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected during 2021.

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

165. In regard of 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), China listed this treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner, being a signatory to the Multilateral Instrument, listed its treaty with China as a covered tax agreement and made such notification. Therefore, at this stage, this treaty identified above will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

166. Of the peers that provided input during stage 2, one provided input in relation to its tax treaty with China. This peer stated that its treaty is in line with the requirements under the Action 14 Minimum Standard.

Anticipated modifications

167. As through the Multilateral Instrument all of China’s tax treaties will contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) there is no need for bilateral modifications. In addition, China 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 107 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 is expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.

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

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

168. As double taxation creates uncertainties and leads to costs for both taxpayers and jurisdictions, and as the resolution of MAP cases may also avoid (potential) similar issues for future years concerning the same taxpayers, it is important that MAP cases are resolved swiftly. A period of 24 months is considered as an appropriate time period to resolve MAP cases on average.

Reporting of MAP statistics

169. Statistics regarding all tax treaty related disputes concerning China are published on the website of the OECD as from 2013.²

170. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 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. China provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving China and of which its competent authority was aware.³ 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 respectively⁴ and should be considered jointly to understand the MAP caseload of China.

171. With respect to post-2015 cases, China reported having reached out to all of the related MAP partners with a view to have their MAP statistics matching. In that regard, China reported that it could match its post-2015 MAP statistics with almost all of its MAP partners. For four cases with two treaty partners. China noted that it has been waiting a response from these two treaty partners.

172. Four peers provided input in relation to statistics matching. One of them provided input during stage 1 and mentioned that it completed matching of its 2018 MAP statistics with China by the end of April. While initially, the statistics did not match (in most cases probably due to lost notification letters), by using encrypted e-mails all pending cases could be matched in a timely manner. As regard the process, this peer mentioned that it went very smooth and uncomplicated, following a very co-operative approach. During stage 2, the other three peers provided input. One peer that is one of the two peers for which China has been waiting for a response on statistics matching, stated that it has no concerns in matching MAP statistics with China. Another peer mentioned that it was able to match its statistics with China for the years 2016-19, noting that the competent authorities had fruitful discussions with respect to the matching and were able to align their data. The last peer that only provided input during stage 2, noted that it had no MAP experiences with China for the years 2016-19.

Monitoring of MAP statistics

173. China reported that its competent authority has designed and put in place a MAP recording system that is based on the template used for the reporting of MAP statistics under the MAP Statistics Reporting Framework. China further clarified that this system is updated each time progress is made in MAP cases and that staff in charge of MAP cases regularly monitor the system to ensure the statistics relating to cases assigned to them are accurate.

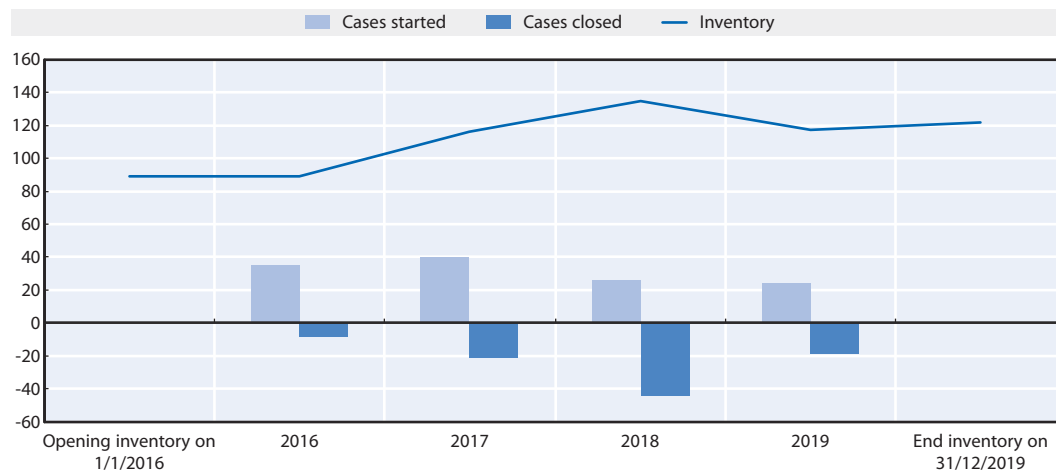
Furthermore, China indicated that for the purpose of reporting MAP statistics, both the Anti-avoidance Division II and Tax Treaty Division of the International Taxation Department of the State Taxation Administration have designated a tax official to tally and match the relevant statistics for transfer pricing and non-transfer pricing MAP issues respectively.

Analysis of China's MAP caseload

174. The analysis of China's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2019.

175. Figure C.1 shows the evolution of China's MAP caseload over the Statistics Reporting Period.

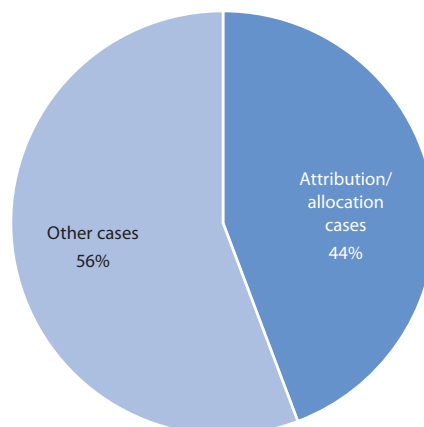
Figure C.1. Evolution of China's MAP caseload



176. At the beginning of the Statistics Reporting Period China had 89 pending MAP cases, of which 61 were attribution/allocation cases and 28 other MAP cases.⁵ At the end of the Statistics Reporting Period, China had 122 MAP cases in its inventory, of which 54 are attribution/allocation cases and 68 are other MAP cases. China's MAP caseload has increased by 37% during the Statistics Reporting Period, whereby other cases have more than doubled during the same period.

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

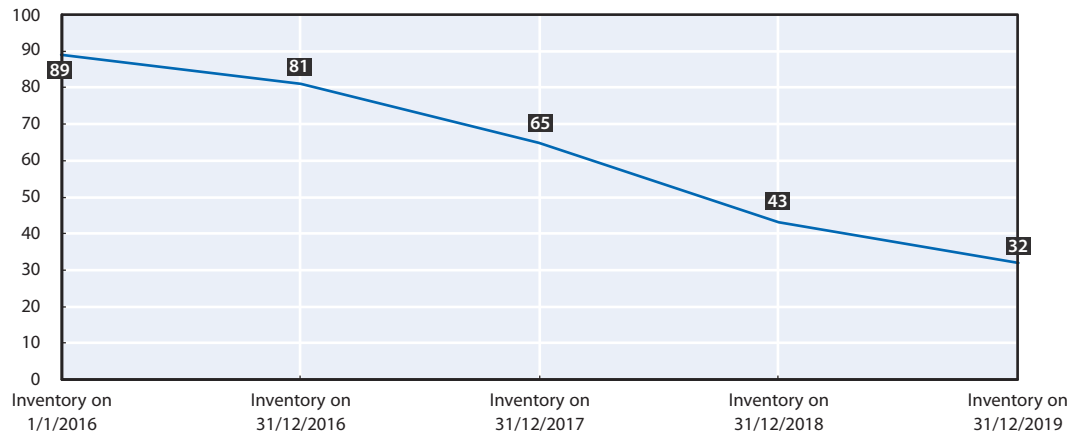
Figure C.2. End inventory on 31 December 2019 (122 cases)



Pre-2016 cases

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

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



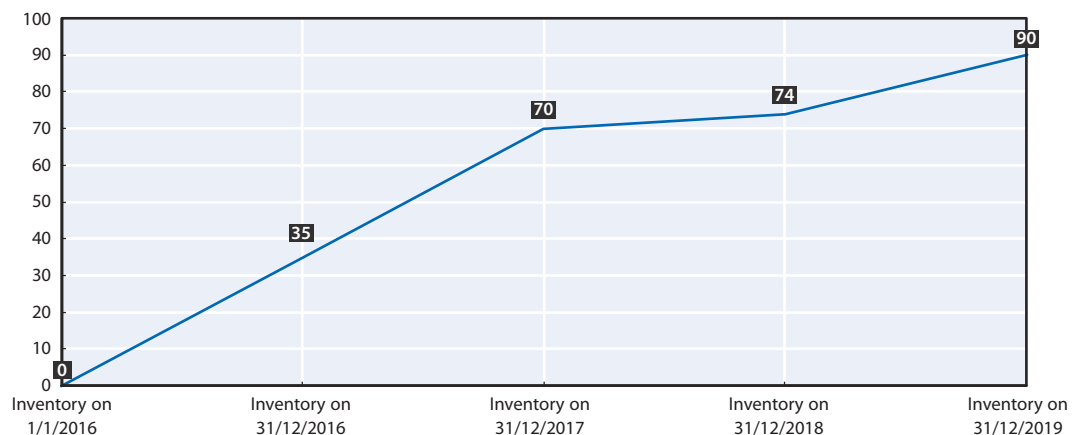
179. At the beginning of the Statistics Reporting Period, China’s MAP inventory of pre-2016 MAP cases consisted of 89 cases, of which were 61 attribution/allocation cases and 28 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 32 cases, consisting of 12 attribution/allocation cases and 20 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Evolution of total MAP caseload in 2019	Cumulative evolution of total MAP caseload over the four years (2016-19)
Attribution/allocation cases	-11%	-26%	-48%	-43%	-80%
Other cases	-4%	-7%	-12%	-9%	-29%

Post-2015 cases

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

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



181. In total, 125 MAP cases started during the Statistics Reporting Period, 70 of which concerned attribution/allocation cases and 55 other cases. At the end of this period the total number of post-2015 cases in the inventory was 90 cases, consisting of 42 attribution/allocation cases and 48 other cases. Conclusively, China closed 35 post-2015 cases during the Statistics Reporting Period, 28 of them being attribution/allocation cases and seven of them being other cases. The total number of closed cases represents 28% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

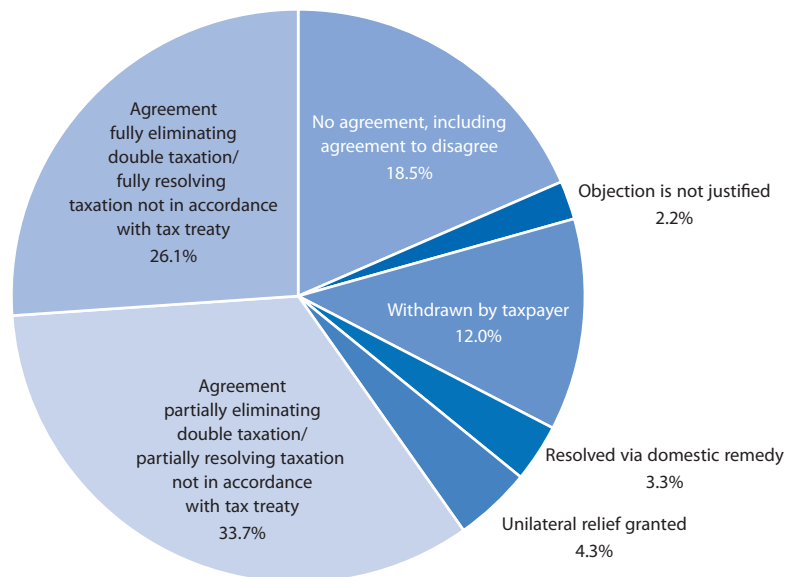
	% of cases closed compared to cases started in 2016	% of cases closed compared to cases started in 2017	% of cases closed compared to cases started in 2018	% of cases closed compared to cases started in 2019	Cumulative percentage of cases closed compared to cases started over the four years (2016-19)
Attribution/allocation cases	0%	14%	127%	60%	40%
Other cases	0%	11%	27%	14%	13%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

183. During the Statistics Reporting Period China in total closed 92 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed in 2016, 2017, 2018 or 2019 (92 cases)



184. Figure C.5 shows that during the Statistics Reporting Period, 24 out of 92 cases were closed through an agreement that fully eliminated double taxation/fully resolved taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

185. In total, 77 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement that partially eliminated double taxation/partially resolved taxation not in accordance with the tax treaty (40%)
- agreement that fully eliminated double taxation/fully resolved taxation not in accordance with the tax treaty (25%)
- no agreement including agreement to disagree (19%).

Reported outcomes for other cases

186. In total, 15 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement that fully eliminated double taxation/fully resolved taxation not in accordance with the tax treaty (33%)
- withdrawn by taxpayer (20%).

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

187. The average time needed to close MAP cases during the Statistics Reporting Period was 34.17 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	77	34.35
Other cases	15	33.21
All cases	92	34.17

Pre-2016 cases

188. For pre-2016 cases China reported that on average it needed 43.51 months to close 49 attribution/allocation cases and 54.82 months to close eight other cases. This resulted in an average time needed of 45.09 months to close 57 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, China reported that it uses the following dates:

- *Start date:*
 - for attribution/allocation cases; the date when the two competent authorities start bilateral consultations
 - for other cases; the date when the first competent authority, which the MAP request is submitted to, sends the first position paper to the other competent authority.
- *End date:* the date when the two competent authorities reach an agreement or the date when the two competent authorities agree to stop the MAP process, or the date when the taxpayer formally request to terminate the MAP when the case is “withdrawn by taxpayer”, or the date when China receives the official notification of another competent authority in cases where “unilateral relief” is granted.

Post-2015 cases

189. For post-2015 cases China reported that on average it needed 18.33 months to close 28 attribution/allocation cases and 8.52 months to close seven other cases. This resulted in an average time needed of 16.37 months to close 35 post-2015 cases.

Peer input

190. Several peers provided input during stage 1 in relation to their experience with China in view of whether it seeks to resolve MAP cases within the pursued average of 24 months. Two peers reported positive experiences in the timeliness of the resolution of MAP cases with China's competent authority. One of these peers pointed out the fact that the resolution of the case was timely. The other peer reported positive experience in resolving MAP cases with China since 1 January 2016 and that it did not observe any impediments to timeliness of resolution of MAP cases.

191. One peer, however, voiced a different experience. It commented that although its competent authority was not aware of any denial of access to MAP by China's competent authority since 1 January 2016, it has concerns regarding cases where its competent authority attempted to commence MAP discussions with China for cases relating to China's Circular 698/Bulletin [2015] No. 7 on indirect asset transfers by non-resident enterprises. This peer noted that it initiated these cases before 1 January 2016 and has not had the opportunity to discuss some of these cases with China's competent authority. The peer further explained that taxpayers stated that the relevant local tax offices in China had proceeded to finalise the Circular 698/Bulletin No. 7 assessments and collect the taxes due. In one case, following discussions regarding the case, the peer's competent authority received a notification by China's competent authority to close the case, under the argument that the tax was in accordance with the treaty. In one of the other cases, the peer received a position paper explaining that the local tax office's assessment was proper. For the remainder of the cases, the peer's competent authority has not received position papers from China's competent authority nor any indication that China's competent authority would engage in bilateral consultation. The peer noted that it has maintained the cases in its MAP inventory and holds the opinion that these cases are pertinent to the period of review.

192. China responded to this input and explained that Circular 698/Public Notice [2015] No. 7 concerns an anti-avoidance rule for indirect equity/asset transfer transactions cases, and that the investigation and verification on those cases usually takes long time due to the complexity of this kind of cases. China further explained that as a result, if the taxpayer applies for MAP at the early stage of the investigation, the case may be pending for a long time before the final assessment is issued. China therefore tends to discuss this kind of cases after the assessment is finalised, when the information collected is sufficient and the whereabouts of the case are clear enough. China further stated that there are with this peer three cases concerning indirect equity/asset transfer transactions. One of them was closed by the peer after discussions in a face-to-face meeting. For the second case, China mentioned it replied with a detailed position paper soon after the investigation was finalised. For the third case, China noted that it is waiting for the decision of a commercial arbitration in relation to this case. Furthermore, China mentioned that it has made a plan to discuss them with the peer in a face-to-face meeting in the second half of 2019.

193. Further to the above, one peer mentioned that it has a good working relationship with China's competent authority, as there is frequent email contact and several face-to-face meetings were scheduled in the past. The peer also mentioned that it would like to discuss cases at an earlier stage where there is (a likelihood of) double taxation. The peer expressed

its opinion that it appears that audits in China take a relatively long time to be completed, following which it may be difficult for China’s competent authority to resolve MAP cases as early as possible.

Recent developments

194. China was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 75% of its post-2015 MAP cases that were pending on 31 December 2018 within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

195. With respect to this recommendation, China reported that it has taken several actions to resolve MAP cases more efficiently and effectively. Firstly, it has added three staff members to its MAP function since 1 January 2019. Secondly, it made efforts to communicate with some treaty partners online for some cases during the period of COVID-19 outbreak. Thirdly, it continued to resolve MAP cases with several MAP teams, taking into consideration the number of caseloads with specific treaty partners, to foster expertise and efficiency.

196. Furthermore, China reported that for the purpose of reporting MAP statistics, both the Anti-avoidance Division II and the Tax Treaty Division of the International Taxation Department of the State Taxation Administration have designated a tax official to tally and match the relevant statistics for transfer pricing and non-transfer pricing MAP issues respectively.

197. From the statistics discussed above, it follows that China 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 28%. Furthermore, its MAP inventory has increased by 37% since 1 January 2016. Element C.3 will further consider these numbers in light of the adequacy of resources.

198. Of the peers that provided input during stage 2, ten provided input in relation to their experience with China as to handling and resolving MAP cases. Their input is further discussed under element C.3.

Anticipated modifications

199. China 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.

200. 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 China’s competent authority

Organisation of the competent authority function

201. Under China’s tax treaties the competent authority function is assigned to the State Taxation Administration or its authorised representative. Within the State Taxation Administration the authorised representatives include the Commissioner, the Deputy Commissioners in charge of international taxation issues, and the Director-General and the Deputy Directors-General of the International Taxation Department. In practice, the competent authority function is performed by the following divisions within the State Taxation Administration:

- transfer pricing cases: the Anti-tax Avoidance Division of the International Taxation Department
- other cases: the Treaty Division of the International Taxation Department.

202. With respect to transfer pricing cases, China reported that in 2015 it divided the Anti-tax Avoidance Division into two separate divisions. Division I is responsible for enforcing the domestic regulations and guidance in transfer pricing area. Division II handles bilateral APAs and transfer pricing MAP cases. Furthermore, in 2016 a third division was established (Division III), which provides support to Divisions I and II. In order to effectively and efficiently resolve APA and MAP cases, the State Taxation Administration organises five teams across three divisions, whereby each team is responsible for certain treaty partners, taking into account the caseload with these jurisdictions.

203. With respect to other cases, China reported that the Treaty Division is in charge of those MAP cases, and is also responsible for treaty negotiations, the interpretation and implementation of China’s tax treaties. For that reason China decided to assign the handling of non-transfer pricing MAP cases to this division.

204. Concerning the number of staff in charge of MAP cases, China reported that in 2016 nine additional persons were allocated to this function, six for handling transfer pricing cases and three for other cases. China has also added three staff members since 1 January 2019, two for transfer pricing cases and one for other cases. Currently, there are in total 28 persons responsible for handling MAP cases at the headquarters of the State Taxation Administration. This concerns 20 persons involved in handling transfer pricing cases and eight for other cases. In this respect, China reported that three of these 28 persons are experienced officials who have been working on MAP cases for more than ten years, and five for more than five years.

205. Further to the above, China reported that the International Tax Department of the State Taxation Administration is also responsible for making policy regarding tax treaty and MAP processes.

Budget and training for staff in charge of MAP cases

206. With regard to resources available to its competent authority function, China reported that it sets at the beginning of each year a budget plan for the MAP function, which includes an overseas travelling budget. China clarified that this budget has always been sufficient to conduct face-to-face negotiations with treaty partners. For example, in 2018, the competent authority conducted 167 bilateral negotiations (including MAP and bilateral APA cases) with 11 treaty partners, which resulted in 52 cases being concluded.

207. In respect of training of staff in charge of MAP, China reported that annually there are more than five training programmes, which relate to both tax treaties and transfer pricing issues and also include OECD programmes. China further reported that since 1 January 2019 it has organised and participated in several training courses in China and abroad, including online training by the OECD, with more than 300 participants in total.

208. China further reported that in order to resolve MAP cases more efficiently and effectively, the State Taxation Administration has taken several measures. Firstly, more staff to the MAP function was added, as mentioned above. Secondly, it has established regular negotiations mechanisms with jurisdictions with which China has a high number of pending MAP cases, as well as close communications by way of telephone, email and fax, etc., prior to face-to-face meetings. Thirdly, it has established several dedicated MAP teams, taking into consideration the number of cases with specific treaty partners, to foster expertise and efficiency.

Monitoring mechanism

209. As described in paragraph 173, China has in place a system to record and monitor the progress of the MAP process. Where cases are about to exceed 24 months, China specified that the case manager would analyse the reasons of the delay. If it turns out that a delay was caused by insufficient resources, additional resources would be applied for.

Recent developments

210. As discussed under element C.2, China has added three staff members to its MAP function since 1 January 2019, two of which are for transfer pricing cases and one of which is for other cases.

211. China reported that since 1 January 2019 it has organised and participated in various MAP-related training courses at home and abroad, online and offline through co-operation with the OECD. China noted that total participants including both Chinese and foreign officials amount to more than 300.

212. With respect to the peer input regarding resources in the stage 1 report, China indicated that it continued to co-ordinate and integrate resources for its MAP function, such as increasing MAP staff, organising and participating in MAP trainings, establishing regular negotiation mechanisms with some treaty partners, and handling MAP cases by work groups.

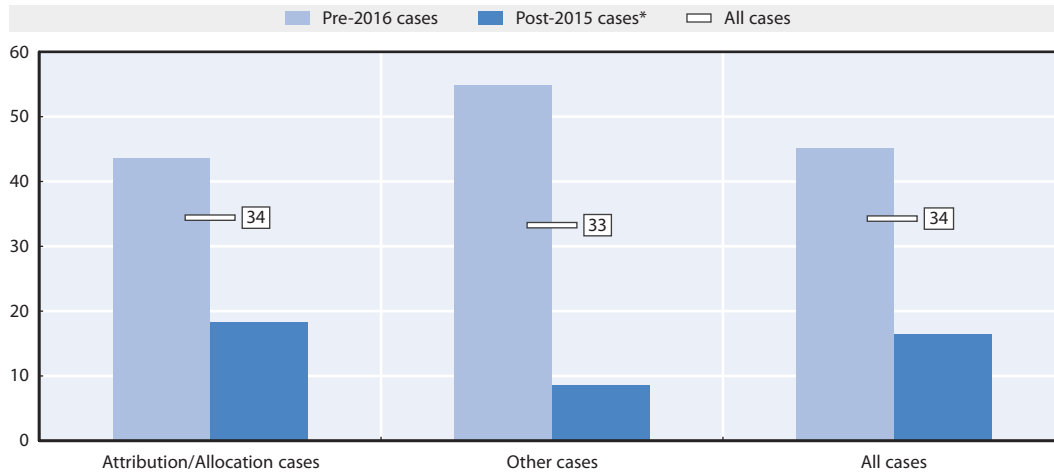
Practical application – MAP statistics

213. As discussed under element C.2, China did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average. This can be illustrated by Figure C.6.

214. Based on these figures, it follows that on average it took China 34.17 months to close MAP cases during the Statistics Reporting Period, which is above the pursued average of 24 months. It took China 34.35 months to resolve attribution/allocation cases, and 33.21 months for other cases.

215. The stage 1 peer review report of China analysed the 2016-18 statistics and showed an average of 31.11 months, which is above the pursued average of 24 months to close MAP cases. This both regards attribution/allocation cases (31.66 months) and other cases (28.09 months). In addition, Most of the peers that provided input reported positive

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 2016-19.

experience in handling and resolving MAP cases with China, in particular the good working relationship with China's competent authority. Some peers, however, reported difficulties in resolving MAP cases, which in particular concerns obtaining positions papers in due time and receiving responses to position papers issued by peers, or the long time it sometimes takes before domestic proceedings in China are finalised before a case can be discussed. In this respect, some peers provided suggestions for improvement to resolve MAP cases in a reasonable timeframe, which inter alia concern: (i) ensure that sufficient time is scheduled for negotiations during face-to-face meetings, (ii) more frequent or speedier exchange of position papers and more frequent formal and informal communication between the competent authorities, (iii) increase the number of staff in charge of MAP cases and strengthen its organisational capacity, and (iv) enhance independency from the local tax administrations and improve co-ordination between China's competent authority and the local tax offices to ensure more complete and timely information sharing.

216. Taking the above into account, China was recommended to closely monitor whether the additional resources envisaged to be provided in 2019 to its competent authority will contribute to the resolution of MAP cases in a timely, effective and efficient manner. It was also noted that such addition of resources should in particular enable China to issue position papers in due time and respond to position papers issued by competent authorities of the treaty partners.

217. For stage 2, the 2019 MAP statistics are also taken into account. The average time to close MAP cases for this year are:

	2019
Attribution/Allocation cases	47.38
Other cases	47.30
All cases	47.36

218. The 2019 statistics of China show that the average completion time of MAP cases increased from 31.11 months to 47.36 months. This concerns an increase from 31.66 months to 47.38 months for attribution/allocation cases, and for other cases from 28.09 months to 47.30 months.

219. Furthermore – as analysed in element C.2 – the MAP inventory of China has increased 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	61	70	77	54	-11%
Other cases	28	55	15	68	143%
Total	89	125	92	122	37%

Practical application – Peer input

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

220. With regard to the relationship with China’s competent authority, out of 18 peers that provided input, five peers reported that China is a major MAP partner and/or that they have substantial experience with China in handling and resolving MAP cases. The remaining 13 reported having limited experience in handling and resolving MAP cases with China, as the number of pending or resolved MAP cases is little. For these peers China is not an important MAP partner.

Relationship and communications with China’s competent authority

Major MAP partners

221. Of the five peers for which the MAP relationship is being considered important, one mentioned that it has a good relationship in handling and resolving APA and MAP cases with China. It specifically mentioned that its tax authority signed a memorandum of understanding with China for co-operation and to promote and enhance communication and collaboration. It further mentioned that China’s competent authority is co-operative and willing to negotiate. In addition, another peer mentioned it has a long-time MAP relationship with China, which it values, as also that it considers the relationship to be constructive and positive. It further noted that in its view there is a good communication between the respective competent authorities and that China’s competent authority is constructive and proactively and positive engages in a dialogue to resolve MAP cases in a timely manner.

222. The third peer mentioned China is one of the most important MAP partners, with a majority of APA cases being pending as compared to the number of MAP cases. Concerning its contacts with China’s competent authority, this peer mentioned that they contact each other without any difficulty and that face-to-face meetings are held twice or three times annually to discuss and resolve MAP cases. In more detail, in 2016 and 2017 two meetings were held each year, with three meetings in 2018. The total number of meeting days was thereby seven, eight and 18 respectively. In that regard, the peer reported it appreciates China’s understanding and co-operation towards the improvement of their mutual MAP process.

223. Further to the above, similar input was given by other peers, one of which mentioned that the competent authorities hold at least three face-to-face meetings per year to resolve pending MAP cases and also that they closely keep in touch through email and telephone correspondence. This peer further mentioned that communications on pending MAP and APA cases have been cordial and frequent.

224. The fifth peer, whose input has been also included in element C.2, mentioned it has an active, co-operative and productive working relationship with China's competent authority as regards transfer pricing cases. For these cases the peer's and China's competent authority typically meet twice per year, whereby formal and informal communications occur at regular occasions outside of such meetings. This peer further noted that its inventory of transfer pricing cases with China has become increasingly predominated by APAs, which it applauds as a demonstration of China's commitment to prevent MAP cases and provide taxpayers with certainty. Concerning non-transfer pricing cases, the peer reported that there is a less robust working relationship. In this respect, it noted that formal and informal communication was successful in limited instances but marked by lack of responsiveness in a number of other instances. This peer expressed its understanding that delays can occur in receiving requested information when China's competent authority must contact its local tax authorities to obtain such information.

225. China responded to this input and stated that it is comforting to learn that the peer is satisfied with working on transfer pricing cases. Apart from that, China mentioned that it has to admit that its competent authority does face certain resource constraints, but they keep improving in this respect (e.g. increasing the number of personnel in recent years).

226. Lastly, one peer reported that China's competent authority has not been officially replying to this peer for the request of initiation of a transfer pricing case initiated by this peer. It has caused an undue delay and taxpayers faced uncertainty for the resolution of double taxation through MAP. In the peer's view proactive efforts are needed by China to effectively resolve these cases.

227. China responded to the input described in the above paragraph that its competent authority only received a very brief notification on the case from this peer in November 2018. As a follow-up, its competent authority asked the local tax offices to communicate with the taxpayer in order to understand more about the request. It turned out that the taxpayer in China was not aware of the MAP request. Despite the difficulties encountered in understanding the facts and the circumstance of the case caused by insufficient information, China reported that its competent authority replied to the peer at the end of 2018, to acknowledge the receipt of the request, and to ask for more information on the case as well as the peer's position paper. China added that the peer has not replied yet, but it recognises that better communication is needed to facilitate better understandings between the competent authorities.

Other MAP partners

228. Concerning the second group of peers, all pointed to their good or co-operative working relationship with China's competent authority. One of these peers, whose input was also discussed in paragraph 172, mentioned that it has a good relationship with China's competent authority in resolving MAP cases and that they are in regular contact with each other. For post-2015 cases this peer noted that communications are now via email. For this type of communication the peer reported that it agreed with China on a password list to encrypt emails to further enhance electronic exchanges and more swiftly resolve MAP cases. In the peer's view this new way of communicating, makes such communication swifter and easier. This is contrastive to previous experiences, where responses were not given quickly and, due to postal difficulties, such responses were not always received by the competent authority concerned.

229. Further to the above, another peer mentioned that its MAP relationship with China is still improving, but that this relationship is positive and constructive. A third peer

mentioned that due to the fact that it has a limited number of MAP cases with China, there were not any face-to-face meetings and that communication takes place by written correspondence. The peer further noted that there is a good co-operation with China's competent authority, whereby it is for the peer easy to contact with China's competent authority, as also that the exchanges of positions were usually done in a timely manner. In that regard, the peer concluded that there have not been any impediments to the resolution of MAP cases.

230. Other peers also voiced positive experience in their contacts with China's competent authority. One of these peers mentioned that its overall experience with China has been positive and that the communication is fluent and effective. It further noted that one MAP case was timely resolved with China. Another peer mentioned that contacts were generally easy and took place via traditional letters and via email. This peer also reported that there were face-to-face meetings to discuss transfer pricing cases alongside APA cases. The third peer also noted that it considered that in one MAP case with China, China's competent authority was easy to contact, co-operative and accessible. Lastly, one of these peers also mentioned that while no particular problems have arisen to contact China's competent authority, the contact information included in China's MAP profile appears to be specifically addressed towards Chinese taxpayers.

Issuing of position papers

231. Several peers provided input on the provision of position papers or responses to such position papers by China's competent authority.

232. Concerning those peers that view their MAP relationship with China to be important, one peer reported that in the period 1 January 2016-31 December 2018, it had not received position papers for MAP cases initiated by China's tax authority despite the requests hereto by this peer. While China verbally explained its position during a face-to-face meeting, the peer considered that it was necessary that China's competent authority sent official explanations and positions in writing for a clear understanding of China's position and for an expeditious resolution of MAP cases.

233. In responding to the above input, China stressed that position papers for several MAP cases have been sent to the peer's competent authority since 2016. Furthermore, China noticed that for several cases the peer's competent authority had to provide position papers, but they were not received. China continued by stating that it understands the importance of position papers in facilitating the MAP process, but emphasised that the preparation thereof can be time-consuming and resource-intensive which sometimes is not the most realistic option. As an alternative, China therefore decided to explain the audit that gave rise to the MAP case and clarify its position in face-to-face meetings, because in China's view this can sometimes be a better venue to avoid misunderstandings that could be caused by the translation of position papers. Lastly, China mentioned that it intends to send position papers in a timely manner in the future.

234. The second peer reported that it had experienced delays in receiving position papers from China's competent authority. It referred to two instances where position papers had not been provided by China's competent authority. These cases concern:

- *Attribution/allocation case*: this case started in November 2017, for which the peer is yet to receive a position paper, albeit that China's competent authority has committed to provide a position paper in advance of a scheduled face-to-face meeting.

- *Other case:* although the peer provided its position paper in June 2017, China’s competent authority only replied in May 2018 that it could not trace the position paper sent by this peer. China’s competent authority subsequently acknowledged the re-issued position paper sent in the same month, but there were no further contacts on the case.

235. With regard to the case mentioned in the second bullet above, China confirmed that it did not receive the first position paper sent by the peer in June 2017, but only became aware of this case after receiving an enquiry letter. Upon the receipt of that letter, China reported that its competent authority informed the peer’s competent authority that it had not received their position paper. After receiving the reissued position paper, China mentioned that it had started the domestic verification process immediately, which was finished late March 2019 and for which a position paper is currently being prepared.

236. Concerning those peers that have a relatively modest MAP caseload with China, one peer reported it has 15 pending MAP cases (including seven post-2015 cases) with China. It further reported that for a large majority of cases, this peer is waiting for a response to its position papers from China. For example, this peer is waiting for a response to a case initiated by this peer by a letter dated August 2015 and for which it sent a reminder in August 2016.

237. With respect to this input, China mentioned that for five of these pending cases it encountered the problem of lost notification letters and it did not receive the peer’s position papers for four of the pending cases until the end of 2018. To this China added that in order to better resolve MAP cases, its competent authority plans to contact the peer to see whether it is possible to arrange a face-to-face meeting in a short notice. In a reaction, the peer, whose input was also discussed in paragraph 172, mentioned that it started the use of encrypted emails with China, which helped the speed-up of the process and proved to be an efficient way to exchange documents during the MAP process. It further mentioned that it feels confident that its future communications via encrypted emails will foster a quicker and more effective resolution of MAP cases. As regards, the scheduling a face-to-face meeting, the peer noted that it was contacted by China’s competent authority that it will elaborate the next necessary steps.

238. A second peer mentioned it experienced delays in the resolution of a MAP case. For example, this peer mentioned that, as a result of a misunderstanding, it took a year from notification of a case for action to be taken by China’s competent authority. The peer stressed that better communications with China’s competent authority would have helped this misunderstanding sooner. The peer further noted that once China’s competent authority began actioning the matter, it was efficient and professional.

239. China also responded to this input and mentioned that they had only one case with this peer. Because of a misunderstanding, China was not aware of this MAP case until one year after receiving the first letter from the peer. To better resolve this case, China mentioned that it revised its domestic regulation and finally the double taxation was fully eliminated. China also mentioned that it would improve communication with peers by, for example, confirming the receiving of a MAP request promptly and informing the peer about the person in charge of specific cases.

240. In addition, another peer also mentioned that while it has a good working relationship with China’s competent authority, it had in some cases experienced difficulties/delays in receiving position papers from China’s competent authority or to receive a response to a position paper issued by the peer’s competent authority.

Adequacy of resources

241. Three peers specifically commented on the adequacy of resources available for China's competent authority. One of these peers reported that in its view there are two causes for delays of the MAP process in China. Firstly, this peer had not been able to reach an agreement with China's competent authority that required China to refund paid taxes, except for one provisional agreement recently made. It therefore considers that China's competent authority has some hurdles in deciding tax refunds and has less flexibility in resolving MAP cases. Secondly, this peer assumes that China's competent authority is consulting with the local tax administration before submitting China's positions or responses to position papers issued by this peer. From the viewpoint of this peer, this internal process is one of the main reasons for the delay in the process and the increase in the number of pending MAP cases with China. This peer therefore noted that it is indispensable for China to continue its efforts on increasing the number of personnel in charge of MAP and strengthening its organisational capacity for dealing with the increasing number of MAP cases with this peer.

242. The second peer, whose input is also reflected under element C.2, reported it had mixed success in resolving MAP cases with China in the period 1 January 2016-31 December 2018. The peer expressed that it maintains faith that China's competent authority shares its commitment to the principles of the MAP provision in their tax treaty and the goal of continuous improvement that underlies the Action 14 Minimum Standard. While the peer reported being aware that China's competent authority operates under considerable resource constraints, it noted that this can impact the timing of certain stages of the MAP process. This peer nevertheless is confident that a consistent and open dialogue with China's competent authority on these and other substantive issues will further enhance co-operation, common understanding and an atmosphere of resolving cases in a principled manner. In addition, this peer believes that more frequent formal and informal communication could improve the timeliness of resolving non-attribution/allocation cases and it particularly holds true with respect to cases covered by the Bulletin [2015] No. 7 on indirect asset transfer by non-resident enterprises. It further suggests more complete and timely information sharing between the State Taxation Administration and local tax bureaus.

243. China responded to this particular input and stated that it has to admit that its competent authority does face some resource constraints, although it keeps improving, *inter alia*, by adding more personnel. It furthermore mentioned that it does not agree that there is a co-ordination problem between its competent authority and its local tax offices. The slow progress of the cases relating to Circular 698/Public Notice [2015] is mainly caused by the complexity of the cases and difficulties of investigation.

244. The third peer that experienced delays in position papers recognises the resource pressure which faces the competent authority function.

Suggestions for improvement

245. Several peers made suggestions for improvement. One peer suggested that face-to-face meetings are planned in a way to ensure enough time for negotiations between the competent authorities, since interpretations occupy much of the time. Two other peers mentioned that a more frequent exchange of position papers would be helpful, in order to be able to resolve MAP cases in a more frequent manner. A similar suggestion was made by another peer, who mentioned that it recognises the resources pressure within China's competent authority, but it believes that a speedier providing of position papers would greatly assist competent authorities in working towards the resolution of MAP cases and providing certainty to taxpayers.

246. Another peer reported that it reached agreements on a significantly larger number of MAP cases in 2018 than in the previous years, and therefore appreciated China's competent authority's efforts in this regard. This peer, however, still has a large inventory and for some cases it experienced that the first MAP meeting has not been initiated for an extended period of time or subsequent meetings had not been held for an extended period of time after the initial meetings. This peer noted that it is a pressing challenge for China to build a method to resolve MAP cases in a timely and efficient manner, and that it is indispensable that China continues its efforts to increase the number of staff in charge of MAP cases and to strengthen its organisational capacity for dealing with an increasing number of MAP cases with this peer. It would also appreciate if China would continue its efforts on providing sufficient staffing and enhanced independency from the local tax administrations, with a view to ensure an effective and efficient MAP process in line with the Action 14 Minimum Standard. Lastly, the peer also mentioned it is important to make mutual efforts to remove such obstacles as its domestic procedures that requires consultation with the local tax authorities and the practice to stick to the position of the tax administration and not to refund paid taxes in China.

247. Further to the above, another peer, whose input was also discussed in element C.2, mentioned that as regards non-attribution/allocations cases, it was generally not successful in resolving them. In that regard, this peer stressed that it believes that more frequent formal and informal communication between both competent authorities could improve the timeliness of resolving such cases. In this respect, the peer also recommends improved co-ordination between China's competent authority and the local tax offices to ensure more complete and timely information sharing. The peer further suggested that the competent authorities should commit to dedicate additional time and resources to resolve these non-attribution/allocation cases, including through face-to-face meetings, especially given the fact that there has been little interaction between their competent authorities in the past.

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

248. Most of the peers that provided input during stage 1, stated in stage 2 that the update report provided by China fully reflects their experience with China since 1 January 2019 and/or there are no additions to the previous input given. Of the peers that provided input, 11 provided input in relation to their experience in resolving MAP cases since 1 January 2019. Most of the 11 peers provided input on, *inter alia*, (i) timely receiving position papers or responses by China's competent authority to position papers or notification letters and (ii) earlier and more frequent communication or meetings.

249. One peer that has only two recent MAP cases with China which are in the early stages of the process mentioned that it has not received acknowledgments of notification letters which have been issued to China. This peer noted that although this will not necessarily impact the time taken to resolve MAP cases, it considers that prompt acknowledging correspondence ensures good communication between competent authorities, which can help avoid errors and delays in the future. China responded to this input and mentioned that it has always tried to confirm the receipt of notification from the treaty partners at the earliest possible time. Furthermore, China clarified that it has two pending transfer pricing cases and one closed other case with this peer. China further clarified that for the pending transfer pricing cases, the notification letters were sent at the end of May 2020, and China acknowledged the receipt in June. For the closed other MAP case, it is a pre-2016 case and was closed in 2017. In response, this peer noted that it was referring to a non-transfer pricing case, for which it issued an initial letter on 29 May 2020 and reissued the correspondence on 6 June 2020. In this respect, China responded that it had not been aware of the MAP case

the peer referred to, until it reached out to the peer for the details of the case and received the notification and position paper of the case sent from the peer after that.

250. Another peer mentioned that while it has been communicating with China before and after 1 January 2019 with respect to a MAP matter with a start date of July 2017, it has not received China's position or date of when a position will be provided. In this respect, this peer expressed a concern about the adequacy of resources allocated to MAP cases. China responded that of the two other MAP cases with this peer, for one, the peer asked for further information from China and information collection took time. China noted that it has been working on the case and replied to the peer recently. China also clarified that for the other case, it has received the notification and is expecting to receive the position paper. With respect to resources, China indicated that it would continue to employ more resources and efforts to expedite the MAP process with its treaty partners in order to issue positions and give responses more timely in the future.

251. The third peer that provided input only during stage 2 raised two issues: (i) delays in providing position papers and (ii) a lack of co-ordination of the different divisions of China's MAP function. With respect to the first input on delays in providing position papers, this peer stated that although China often notifies MAP requests to the peer with China's position already, which is a very good way to expedite the MAP process, China sometimes took a long time to respond to the position paper submitted by the peer. In this respect, this peer welcomed China's efforts mentioned in the update report provided by China, and it suggested that China continues to make efforts to expedite the exchange of position in order to resolve MAP cases more effectively.

252. China responded to this input and clarified the situation to discuss the one case China assumes the peer referred to, which is a transfer pricing adjustment by the peer to a subsidiary of a Chinese company. The taxpayer submitted its MAP application in July 2018, and China received the peer's position paper in July 2019 explaining the transfer pricing adjustment. In order to understand the rationale of the peer's position correctly, and express China's position correspondingly, China sought to arrange face-to-face competent authority meetings for two times after the Hangzhou SGATAR meeting in November 2018 and the Jakarta SGATAR meeting in September 2019. However, due to some reasons, both proposals were denied by the peer. Then because of the COVID-19 pandemic, staff in China were required to work from home and were unable to deal with MAP cases for some time. As soon as they could return back to work, China expressed its willingness to continue to discuss the case in July 2020, provided its position in August and has been waiting for the response until now. China noted that in its understanding, the case is under the court proceeding in the peer's jurisdiction, and is about to be given a court decision. Furthermore, China stated that in its view there is little room for MAP between the two competent authorities since most cases have been forced to close when such cases had been rapidly delivered with court decisions in the peer's jurisdiction. As a result, in China's view the taxpayers having those disputes in the other jurisdiction suffered from a severe level of double taxation and with little chance of getting a possible relief from MAP. In that regard, China noted that it strongly expects that both competent authorities work together and work even harder to expedite the resolution of MAP in order to outrun the domestic procedures, making MAP more efficient and effective.

253. With respect to the second input by the same peer on co-ordination of the different divisions of China's MAP function, the peer mentioned that although in China transfer pricing and non-transfer pricing MAP cases are handled separately by two divisions within the International Taxation Department, in the peer's view it would be more efficient if the two divisions could discuss both type of cases in one face-to-face meeting. This peer added that it has to communicate separately to each division in order to plan a face-to-face

meeting with both divisions. The peer expects that in order to expedite the MAP settlement process, China could improve the co-ordination between the two divisions, especially to ensure to hold a face-to-face meeting together.

254. China responded to this second input and clarified the situation this peer referred to. For one transfer pricing case and one non-transfer pricing case requested in 2018 by the same taxpayer, this peer proposed to have one meeting with two divisions in one day to discuss the cases. As there were five other cases with this peer, China was concerned that half a day would not be sufficient to have a full discussion on all other cases. Therefore, China considered that prolonging one meeting or cutting the discussion into separate meetings would be largely helpful for different types of MAP cases. China noted that the two divisions co-ordinate to a great extent to communicate with the peer. China further noted that in order to enhance the efficiency of resolving the cases in stock, the two divisions repetitively proposed to the peer to hold a meeting, for which the two divisions would attend jointly, but the proposals were all denied by the peer. Furthermore, China stated that it always finds it difficult to schedule a face-to-face meeting with this peer, since the peer insists on arranging the two different divisions to work together while being reluctant to spare sufficient meeting time, which would be not good for a full discussion on all the cases concerned and the efficient resolution of MAP cases.

255. The fourth peer provided input on three issues: (i) a lack of adequate resources, (ii) more frequent written communication and (iii) difficulty of timely resolution of specific MAP cases. First, with respect to resources, this peer clarified that the number of MAP and APA cases was over 80 at the end of 2019 and approximately 15 MAP/APA new requests have been submitted annually. The peer mentioned that although the opportunities for face-to-face meetings have recently increased, it considers that given the said large number of inventory with China, more opportunities to efficiently discuss outstanding cases are necessary. In this respect, this peer indicated that a lack of adequate resources of China's MAP function is considered to be an impediment to discuss more cases at each competent authority meeting to efficiently resolve cases. On the second issue regarding communication, this peer believes that more frequent written communication before competent authority meetings is beneficial for more efficient and effective competent authority meetings, noting that there is room for improvement in terms of timeliness and quality of responses by China. The peer noted that under the COVID-19 pandemic, importance of such communications has been increasing to be well prepared for the teleconference, which was recently introduced between the two competent authorities. Lastly, on the third issue, this peer clarified that there are cases where China's tax authority makes adjustments despite the fact that the actual profit is within the arm's length range, while no such adjustment should be made under international rule. The peer expressed a concern that in such cases, discrepancies in the positions between the two competent authorities could be a cause of lengthy discussion.

256. China responded to this input. On the first point, China mentioned that it has continued to employ more resources and trained more transfer pricing experts to expedite the MAP process. China considers that with good co-operation between the two competent authorities and enhancement of efficiency and effectiveness on MAP work, more and more taxpayers come to apply for MAP in order to better obtain tax certainty, and therefore the inventory keeps increasing. China noted that it would continue to strengthen co-operation with treaty partners in the future. On the second point, China mentioned that during the COVID-19 pandemic, the two competent authorities had active communications with each other to push the MAP process forward, for which China appreciates the efforts made by this peer. In order to further improve efficiency on remote negotiation, China suggested to schedule meetings via other channels such as video conference. Lastly, on the third point,

China responded that although it recognises the issue raised by the peer, adjustment and negotiation is on a case-by-case basis. China noted that it would apply the arm's length principle to all cases and negotiate in the spirit of co-operation.

257. The fifth peer also expressed a concern that it has been experiencing difficulties in obtaining China's official acceptance letter for the request of initiation of transfer pricing cases initiated by the peer in due time. This peer noted that such situation has caused an unduly delay and taxpayers faced uncertainty for the resolution of double taxation through MAP. In response to this input, China mentioned that it has good co-operation with the peer and both sides keep close communications. China noted that it would always confirm the receipt of notification with treaty partners at its earliest possible time and it does not believe it would make taxpayers face uncertainty as cases are all well dealt with.

258. The sixth peer provided input and mentioned that it would like to discuss with China at an earlier stage cases where there will be (likely) double taxation. In this respect, this peer found that taxpayers prefer to have certainty in a bilateral APA process, it prefers to start discussions for the cases concerned, taking into account possible roll back solutions. However, this peer sees that in China it is difficult for taxpayers to gain access to the APA programme for two reasons. One of the reasons is resource constrains due to a huge workload of China's MAP function. Another reason is that it is not possible to discuss a case when the tax authorities started an audit in China, which takes a relatively long time and could be a reason why it is difficult for competent authorities to solve double taxation as early as possible.

259. China responded to this input and mentioned that China's domestic guidance has set out several criteria which the taxpayers need to meet in order for their APA application to be accepted. For the pending APA mentioned by the peer, they recognise that substantial discussion was not able to be carried out and would like to offer the following reasons to clarify the situation. The taxpayer was under a general audit (not a TP audit) which led to the suspension of the case at first. After the general audit was concluded, a TP audit was initiated for the associated companies of the taxpayer which requested for the APA. This again has become a cause of concern for China and contributed to the continued delay of the discussion.

260. The seventh peer that only provided input during stage 2 stated that for one transfer pricing case with China, although it sent China a notification of receipt of MAP application on 7 January 2020 and informed of the start date of the case, it has not received any response from China. China responded that it is not aware of the case mentioned by the peer, no notification has been received either by mail or email. China then suggested the peer to contact China's MAP contact point in the MAP Forum's list. After this communication, China updated the situation that it could receive a notification email from the peer.

261. The eighth peer provided an update of the input this peer provided in China's stage 1 report concerning delays in receiving China's position papers for one allocation/attribution case and one other MAP case. It clarified that subsequent to providing the input, it received detailed position papers explaining China's position on both matters and progress has been made. In response, China explained the situations of those two cases. For the attribution/allocation case, China is waiting for the peer's response after fruitful discussion during the competent authority meeting. For the other MAP case, China has been working on the case and is expecting the peer's response on the enquiry made by China regarding the case.

262. The ninth peer also provided an update of its pending MAP cases referred to in paragraphs 236-237 and mentioned that the face-to-face meeting to discuss those cases was conducted in mid-2019 but no cases were resolved at this meeting. This peer stated that the vast majority of MAP cases with China is still pending for several years without having substantive discussions on the questions in dispute, which is also due to the non-timely

submission of position papers. In this regard, this peer explained the situation of one MAP case that although China agreed to contact its local tax authorities to gain more information on the fact pattern in the case and subsequently send its position paper to the peer, the peer has not received it even though it sent several reminders to China. In response, China clarified that although due to COVID-19 there was delay in providing a positions paper, it has already tried to catch up with the work and has co-ordinated several internal discussions on certain categories of the cases with the concerned departments and local tax offices.

263. Further to the above, some peers provided positive input. One peer that has very limited number of cases with China mentioned that the correspondence between the competent authorities has been efficient and timely. Another peer stated that since 1 January 2019 although one allocation MAP case was closed without a negotiated resolution alleviating double taxation, it has had positive experiences discussing and negotiating other attribution/allocation MAP cases with China. This peer noted that it considers that China shares the peer's commitment to the principles of the mutual agreement article and the goal of continuous improvement underlying Action 14 and that the two competent authorities are mindful of their need to co-ordinate with each other to uphold their commitments to taxpayers by sustaining and fostering, consistent, direct communications at the analyst and management level to further increase the efficiency with which cases are resolved. This peer added that it concurs with the statement in the update report provided by China regarding communication since the COVID-19 outbreak, noting that both competent authorities have exchanged emails to resolve issues and both competent authorities remain committed to finding ways to resolve cases virtually despite the limitations with holding face-to-face meetings during the pandemic. This peer lastly noted that it recognises the additional staff dedicated to the MAP function and it is appreciative of the good relationship between the two competent authorities.

Anticipated modifications

264. China did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	<p>MAP cases were not closed within 24 months on average, as the average was 34.17 months, which both regards attribution/allocation cases (34.35 months) and other cases (33.21 months). This state of play indicates that the competent authority is not adequately resourced to ensure that post-2015 cases are resolved within the average of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016). In this respect, some peers indicated that they experienced some difficulties in resolving MAP cases, which in particular concerns:</p> <ul style="list-style-type: none"> • obtaining positions papers in due time and receiving responses to position papers issued by peers • earlier and more frequent communication or meetings. <p>Furthermore, the MAP inventory increased since 1 January 2016, which only regards other MAP cases. This may also indicate that the competent authority is not adequately resourced to cope with this increase.</p>	<p>While China has taken several steps to resolve cases in a timely manner, such as the addition of resources and pre-negotiation communication, further actions should be taken to ensure a timely resolution of MAP cases, which both regards attribution/allocation cases and other cases.</p> <p>In that regard, China should devote additional resources to its competent authority to handle MAP cases and also to be able to cope with the increase in the number of other MAP cases, such to be able to resolve MAP cases in a timely, efficient and effective manner. Such addition of resources should enable China to:</p> <ul style="list-style-type: none"> • submit positions papers in due time and respond to position papers issued by peers • have earlier and more frequent communication or meetings.

[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.

265. 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

266. As discussed under element C.3, in China MAP cases are handled by two divisions within the State Taxation Department. Attribution/allocation cases are handled by the Anti-tax Avoidance Division of the International Tax Department and other cases by the Treaty Division of the International Tax Department. Both divisions have a different way for handling and resolving MAP cases, which are further discussed below.

Attribution/allocation cases

267. Article 47 of Public Notice [2017] No. 6 stipulates that it is the State Taxation Administration that handles attribution/allocation cases.⁶ In this respect, China reported that once the teams in the Anti-tax Avoidance Division receive a MAP request, it will discuss the request with both taxpayers and local auditors. Where the case is accepted into the MAP process, the staff in charge of the MAP case will inform the Provincial Tax Authorities in charge of the taxpayer on the initiation of the MAP process and ask to provide relevant information on the case. After receiving this information and after examining the facts and circumstances of each case, the official in charge of the MAP case will independently prepare a position on the case. This includes a functional and risk analysis, value chain analysis and comparability analysis. Based on that a negotiation plan for the bilateral phase of the MAP will be prepared. After obtaining a mandate from the Commissioner or the Deputy Commissioner of the State Taxation Administration, the staff in charge of the MAP case will enter into discussions with the other competent authority concerned.

268. Where China's competent authority reaches a tentative agreement with the other competent authority concerned, it is sent for an approval to the Commissioner or the Deputy Commissioner of the State Tax Administration. Upon the approval of the tentative agreement reached, the competent authority will formally enter into a MAP agreement, which then will be implemented.

Other cases

269. For other cases a different process is followed. MAP requests for these cases are not submitted with China's State Taxation Administration, but at the level of the Provincial Tax Authorities that are in charge of the taxpayer. Article 4 of Public Notice [2013] No. 56 defines that the International Tax Department within the State Taxation Administration is responsible for handling other MAP cases.⁷ It subsequently states that provincial and local tax offices are responsible for assisting the State Taxation Administration in processing MAP cases.

270. Article 7 of this notice further specifies that taxpayers may submit a MAP request to the Provincial Tax Authorities. Furthermore, Articles 11-12 of Public Notice [2013] No. 56 stipulates that taxpayers shall in writing submit a MAP request to the relevant Provincial Tax Authority. It is this authority that determines whether the conditions for accepting the MAP request have been met, albeit that in practice the Provincial Tax Authorities will discuss with and get verbal comments and guidance from the State Taxation Administration when handling MAP requests.

271. China clarified that it has chosen to structure the MAP process in this way, given the fact that it is a country with a large territory and a large population. It is therefore easier for taxpayers to directly approach the Provisional Tax Authorities, and the officials within these authorities are well-trained to interpret the treaty provisions and to assist taxpayers to submit a MAP request. The Provincial Tax Authorities thereby function as an intermediary between the State Taxation Administration and the taxpayer, as well as between the local tax offices and the State Taxation Administration. China added that because the Provincial Tax Authorities are independent from and superior to the local tax offices, they can support the State Taxation Administration (e.g. collecting information, fact checking and performing investigations) in a fair and objective manner. These Provincial Tax Authorities are nevertheless under the direct supervision and guidance of the State Taxation Administration and only provide assistance and support throughout the MAP process.

272. China further reported that once the MAP request is accepted, the Provincial Tax Authority shall, pursuant to Article 14 of Public Notice [2013] No. 56, within 15 working days, notify the State Taxation Administration hereof, as well as the taxpayer and the local tax office in charge of the taxpayer. As was discussed under element B.6, where the Provincial Tax Authority denies access to MAP in a specific case, taxpayers can file an objection with the State Taxation Administration, which will ultimately decide on whether the MAP process should be opened for the case under review.

273. Further to the above, China also reported that where a MAP request is accepted into the process, it is the Treaty Division within the State Taxation Administration that will prepare a position on the case and conduct negotiations with the other competent authority concerned. In this respect, the staff in charge of the MAP case will ask the Provincial Tax Authority in charge of the taxpayer to provide relevant information on the case. In this respect, China clarified that the role of this authority is to collect information and evidence such as taxpayer's fiscal position, shareholder information, etc. This process is outlined in Articles 17-18 and 27-30 of Public Notice [2013] No. 56.

274. Where an agreement with the other competent authority concerned is reached, the same approval process applies as for transfer pricing cases.

275. If the MAP case relates to a tax policy question such as the application of domestic general anti-abuse rules, the MAP team will consult the relevant office in charge of such policy. China clarified that the opinions provided by the above-mentioned offices will only serve as technical support or factual basis, and they will not affect the final decision by the competent authority.

Other

276. As to the difference of the roles of local tax offices between attribution/allocation cases and other cases, China reported that attribution/allocation cases are generally more difficult and take longer to resolve and for that reason the State Taxation Administration decided to streamline the MAP process by accepting MAP requests concerning these cases directly from taxpayers.

277. In addition, China reported that although the International Taxation Department is in charge of policy making concerning tax treaties and MAP procedures, the staff in charge of MAP process will not be influenced by policy considerations that China would like to see reflected in future amendments to the treaty or MAP guidance.

Recent developments

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

Practical application

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

279. Most of the peers that provided input reported no impediments in China 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. One peer specifically stated that it is not aware that China's competent authority staff would be formally dependent on the approval or direction of the tax administration personnel who made the adjustment at issue.

280. One peer provided input on its different experiences with China regarding the independent position of China's competent authority to handle and resolve MAP cases. This peer recognises that China's competent authority is making efforts to ensure its independency from the local tax administrations' personnel that is directly involved in the adjustments at issue. It observed that China's competent authority has in practice allowed the local tax administration personnel to attend face-to-face meetings, not only to explain the facts and circumstances of the cases, but also to assert China's position in these cases. The peer further noted it appears that China's competent authority is consulting with the local tax administration before submitting China's positions or its response to the questions by this peer. In that regard, while the peer appreciates that China's competent authority continues to make efforts to ensure the independency for the local tax administrations, it believes that such personnel is substantially participating in the MAP process. For the timely, effective and efficient resolution of MAP cases, the peer pointed out that it is very important that China makes efforts to eliminate the obstacles in its domestic regulations to consult with local tax administrations.

281. China responded to this input and stated that in general its competent authority is independent in making decisions in relation to MAP cases in particular concerning face-to-face meetings. While staff from local tax offices may be present at such meetings this is to support the competent authority by providing facts of the case and calculations connected therewith. Specifically to the input given by the peer, China mentioned that in cases where the adjustment is initiated by China's tax administration, it trusted that the local audit staff is in the best position to provide the facts and the circumstances of the case. Separate from the audit decision, China reported that its competent authority forms its own position on MAP cases, albeit that the position could either be maintaining the adjustments made or deviation from the adjustment.

282. In this respect, China explained that its competent authority would allow personnel from the local tax administration to be present at competent authority meetings. China believes their presence is beneficial in three aspects, namely: (i) helpful to clarify the facts of the case or calculations, (ii) to facilitate future implementation of agreements and (iii) obtaining insight in how competent authority proceedings are conducted in practice. When going abroad, China explained it would send names and titles of the personnel from

the local tax administration to the treaty partner. When inviting treaty partners come to China, China would introduce personnel from the local tax administration in the room to the treaty partners. Furthermore, a competent authority may request that tax administration personnel who made the adjustment at issue leave the meeting and such a request will be honoured, by which it will be then only the competent authorities that would decide on the conclusion of a MAP case.

283. For future purposes, in order to avoid misunderstandings, China mentioned that it will strive a better explaining of the role of the local staff at the face-to-face meeting.

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

284. Almost all peers that provided input in stage 2 stated that the update report provided by China fully reflects their experience with China since 1 January 2019 and/or there are no additions to the previous input given. One peer provided input and mentioned that it does not have knowledge of the authority of China’s competent authority to resolve cases as it has not received a position. China responded that it believes it has nothing to do with authority to resolve MAP cases.

Anticipated modifications

285. China did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

286. 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 China

287. China reported that it applies one specific indicator to evaluate performance of each office in charge of MAP cases. For the MAP office in charge of transfer pricing cases, it is to conduct MAP negotiations with at least two treaty partners for at least five cases semi-annually. For the MAP office in charge of other cases, the performance indicator is to conduct MAP negotiations for at least two MAP cases every half year.

288. With regard to the evaluation of staff in charge of the MAP process, China reported that the target is to resolve tax disputes effectively and eliminate double taxation for the taxpayer. This evaluation is performed by the direct superior on a quarterly basis, taking into

account the workload and working process. A summary of quarterly evaluations is made annually. China clarified that the evaluation will not take into consideration the amount of taxes subject of the relevant MAP cases.

289. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below and China does not use any of these:

- 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).

290. Further to the above, China also reported that it does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue. In other words, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions.

Recent developments

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

Practical application

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

292. Almost all peers provided no specific input relating to this element of the Action 14 Minimum Standard. One peer specifically mentioned that it is not aware of the use of performance indicators by China that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

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

293. All peers that provided input in stage 2 stated that the update report provided by China fully reflects their experience with China since 1 January 2019 and/or there are no additions to the previous input given.

Anticipated modifications

294. China did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

295. 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

296. China reported that its policy is not to accept an arbitration provision in its tax treaties as a final stage to the MAP process. It added that there is no publicly available information on legal or policy aspects with regard to MAP arbitration, but China has expressed its position on Article 25(5) of the OECD Model Tax Convention (OECD, 2017) in the Commentary to that convention, which is that it reserves the right not to include paragraph 5 in its tax treaties.

Recent developments

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

Practical application

298. Up to date, China has not incorporated an arbitration clause in its tax treaties.

Anticipated modifications

299. China did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 106 treaties include the treaty with former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro, the treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic and the treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include year 2019.

3. China's 2016-19 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016-19. See further explanations in Annex B and Annex C.
4. For post-2015 cases, if the number of MAP cases in China'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, China reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. For pre-2016 and post-2015 cases, China follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that "an attribution/allocation MAP case is a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case".
6. The Public Notice [2017] No. 6 is available at: www.chinatax.gov.cn/n810341/n810755/c2538695/content.html.
7. The Public Notice [2013] No. 56 is available at: www.chinatax.gov.cn/n810341/n810755/c3523242/content.html.

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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.

300. 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

301. China reported that its domestic law does not include any regulations on the limitation of the implementation of MAP agreements and for that reason all MAP agreements will be implemented in China notwithstanding any domestic time limits.

302. Concerning the process for implementing MAP agreements, China has in place different rules for transfer pricing and non-transfer pricing cases. These are:

- *Transfer pricing cases:* Article 56 of Public Notice [2017] No. 6 defines the process for the implementation of MAP agreements.¹ After signing an agreement, the State Taxation Administration has to notify the Provincial Tax Authorities in writing of the MAP agreement reached, which should subsequently deliver the notification of the agreement to the local tax office. Within 15 working days as from the date of receipt of this notice, the local tax office should deliver a so-called Notice of Tax Related Issues and a copy of the MAP agreement to the taxpayer. If the MAP agreement entails a payment or refund in China, then the local tax office in charge of the case should attach a notification of tax payment or refund, and monitor the execution thereof.
- *Other cases:* Article 20 of the Public Notice [2013] No. 56 stipulates that the State Taxation Administration should inform in writing the Provisional Tax Authorities of the MAP agreement, which in turn should inform the taxpayer.² Article 34 of the Notice further prescribes that the relevant Provisional Tax Authorities shall fulfil the enforcement of tax refunds or other dispositions that result from the MAP agreement within three months from the date on which the notice on a MAP agreement is received. If the implementation process is completed it has to report back to the State Taxation Administration.

303. Further to the above, China reported that although there is no specific provision in its regulations to require the consent of the taxpayer before reaching a MAP agreement, the taxpayer is allowed to withdraw, suspend or terminate the MAP during the whole process before an agreement is reached. As a matter of practice for attribution/allocation

cases, when the taxpayer contacts the State Taxation Administration for status or result of MAP, the State Taxation Administration is willing to share with the taxpayer of the tentative MAP agreement reached. The taxpayer has then the opportunity to withdraw its MAP request, following which the agreement would not be implemented. For other cases, Article 19 of Public Notice [2013] No. 56 stipulates that taxpayers can withdraw their MAP requests in writing before a MAP agreement is reached.

Recent developments

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

Practical application

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

305. China reported that in the period 1 January 2016-31 December 2018 its competent authority concluded 48 MAP agreements with the outcome “agreement fully (or partially) eliminating double taxation/fully (or partially) resolving taxation not in accordance with the treaty”. 20 of these cases concern post-2015 cases. Of these 20 cases, 18 required an implementation in China. For these cases, China reported that 12 MAP agreements were implemented and six are pending implementation, for five due to the fact that the agreements were only reached in December 2018 and for the sixth case the implementation process is still under discussion between the competent authorities. For this case China specified that the plan is to implement the agreement once a MAP agreement is reached for other fiscal years that are not covered in the initial MAP request of the taxpayer.

306. Most of the peers that provided input indicated that they were not aware of any MAP agreement reached in the period 1 January 2016-31 December 2018 that was not implemented by China. For a few of these peers this follows from the fact that no MAP agreements have been reached with China since that date, or where the MAP agreement did not require an implementation in China.

307. Two peers provided further input regarding their experience with China on the implementation of MAP agreements. One of these peers noted that for one MAP case where an agreement was reached, China’s competent authority assisted the taxpayer in obtaining a refund through domestic processes. The other peer specifically mentioned that in the period 1 January 2016-31 December 2018 it reached MAP agreements with China in 23 transfer pricing cases, 22 of which were reached in 2018. Except for one case where a provisional agreement was reached in November 2018, all MAP agreements required this peer to accept China’s adjustments and to make appropriate adjustments. Since this peer had not reached an agreement that requires China to make an appropriate adjustment and to refund paid tax, this peer therefore stated that it cannot make a comment on whether China implemented MAP agreements appropriately.

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

308. China reported that all of the six MAP agreements that were pending implementation on 31 December 2018 have been implemented.

309. In addition, China reported that since 1 January 2019 all the MAP agreements reached by its competent authority that required implementation by China have been implemented.

310. All peers that provided input in stage 2 stated that the update report provided by China fully reflects their experience with China since 1 January 2019 and/or there are no

additions to the previous input given. One peer provided additional input and mentioned that it is not aware of any MAP agreement reached since 1 January 2019 that has not been or will not be implemented by China.

Anticipated modifications

311. China did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

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

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

312. 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

313. As discussed under element D.1, once MAP agreements are reached by China's competent authority, they are implemented by the local tax office in charge of case, and the result of the implementation is reported to the State Taxation Administration.

314. With respect of the time-frame for implementing MAP agreements, a deviation is made between transfer pricing cases and other cases. The timing of the implementation of MAP agreements is for both type of cases as follows:

- *Transfer pricing cases:* Article 56 of Public Notice [2017] No. 6 includes a 15 working day time-limit for local tax office in charge of the case to notify a MAP agreement to the taxpayer. There are no further timelines for the implementation of MAP agreements.
- *Other cases:* Article 34 of Public Notice [2013] No. 56 sets a time limit of three months for local tax office in charge of the case to implement MAP agreements.

Recent developments

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

Practical application

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

316. As described under element D.1, 18 post-2015 cases for which MAP agreements were reached in the period 1 January 2016-31 December 2018 required an implementation in China, of which 12 were already implemented. The average duration of the implementation of these cases were 101 days respectively. China further commented that for one case it took 152 days

to implement the agreement due to the difficulty in contacting the taxpayer who had left China by the time the MAP agreement was reached. The remaining six MAP agreements are pending implementation, whereby five of them were recently concluded in December 2018.

317. All peers that provided input indicated that they have not experienced any problems with China regarding the implementation of MAP agreements reached on a timely basis. As discussed under element D.1, one peer specifically mentioned that in the period 1 January 2016-31 December 2018 it reached MAP agreements with China in 23 transfer pricing cases, none of which required an implementation in China. Since this peer had not reached an agreement that requires China to make an appropriate adjustment and to refund paid tax, this peer therefore stated that it cannot make a comment on whether China implemented MAP agreements appropriately and timely. This peer further expressed that it would appreciate if China could timely implement an agreement for the refund of paid tax in China once both competent authorities reached an agreement that required China to refund paid taxes.

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

318. As discussed under element D.1, the six MAP agreements that were pending implementation on 31 December 2018 have been implemented.

319. In addition, as also discussed under element D.1, since 1 January 2019 all the MAP agreements reached by its competent authority that required implementation by China have been implemented.

320. All peers that provided input in stage 2 stated that the update report provided by China fully reflects their experience with China since 1 January 2019 and/or there are no additions to the previous input given. Three peers provided additional input. One peer mentioned that for one individual MAP case, while a taxpayer experienced some delays in obtaining the refund of tax paid in China, China's competent authority assisted the taxpayer in contacting the appropriate official to assist with their request. Another peer noted that since 1 January 2019 it has not reached MAP agreements with China. The last peer mentioned that it is not aware of any MAP agreement reached since 1 January 2019 that has not been or will not be implemented by China.

Anticipated modifications

321. China did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

322. 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 China's tax treaties

323. As discussed under element D.1, the domestic law of China does not have any regulations on the limitation of the implementation of MAP agreements.

324. Out of China's 107 tax treaties, 98 contain a provision that is 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.³

325. The remaining nine treaties can be categorised as follows:

- Seven treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor any of the alternative provisions for Article 9(1) and 7(2) setting a time limits for making transfer pricing adjustments.
- One treaty contains a provision stipulating that any MAP agreement shall be implemented within one year and that the taxpayer shall enjoy an exemption or a reduction of its taxes within a maximum period of one year as of the notification of this decision on tax exemption or reduction. As pursuant to this provision there is a risk that not all MAP agreements can be implemented notwithstanding domestic time limits, it is considered not being equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).
- One treaty contains a provision stipulating that any MAP agreement shall be implemented within ten years from the due date or the date of filing of the return in that other State, whichever is later, or a longer period if permitted by the domestic law of that other State. As pursuant to this provision there is also a risk that not all MAP agreements can be implemented notwithstanding domestic time limits, it is considered not being equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

326. Most of the peers that provided input during stage 1 indicated that their treaty with China meets the requirements under this element D.3, which is in line with the above analysis. For the ten 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, five of the relevant ten peers provided input. Two of such peers indicated that they expect that their treaty with China will be modified by the Multilateral Instrument to include such an equivalent, which is in line with the above analysis.

327. Out of the remaining three peers, one confirmed that its China does not meet the requirements under element D.3, but also reported that it is willing to accept the alternative provisions setting time limits for making adjustments. It has sent a draft amending protocol to China in June 2017, which was confirmed by China. The second peer reported that it contacted all of its treaty partners for bilateral negotiations in order to meet the requirement of the BEPS Minimum Standards, which was also confirmed by China. The remaining

peer reported it has not contacted China with regard to amending the treaty provision in order to be compliant with the Action 14 Minimum Standard.

Recent developments

Bilateral modifications

328. China signed new treaties with two treaty partners, which concern the replacement of the existing treaty in force. These treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). One of these two treaties has already entered into force and has replaced the previous treaty with the relevant treaty partner, whereas the other treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

329. China signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected during 2021.

330. 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.

331. In regard of the nine 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), China listed all of them as a covered tax agreement under the Multilateral Instrument and for all made, 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 nine treaty partners, three are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with China as a covered tax agreement and two made a reservation on the basis of Article 16(5)(c). The remaining three treaty partners made a notification under Article 16(6)(c)(ii). Therefore, at this stage, three of the nine tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

332. China reported that for those six tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument, one treaty partner has informed China 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).

Peer input

333. Of the peers that provided input during stage 2, one provided input in relation to its tax treaty with China. This peer stated that its treaty is in line with the requirements under the Action 14 Minimum Standard.

Anticipated modifications

334. China also reported that with respect to the remaining five tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument, it intends to negotiate with two treaty partners to amend the tax treaties for which negotiations were postponed due to the COVID-19. Furthermore, China indicated that it intends to contact the remaining three treaty partners to bring the relevant treaties in line with the requirements under the Action 14 Minimum Standard in accordance with its plan and taking into consideration whether or when those treaty partners sign the Multilateral Instrument.

335. Regardless, China 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>Nine out of 107 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 nine treaties:</p> <ul style="list-style-type: none"> • Three are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned. • One is expected to be modified by the Multilateral Instrument to include the required provision once the treaty partner has amended its notifications. • Five will not be modified by the Multilateral Instrument to include the required provision. With respect to these five treaties: <ul style="list-style-type: none"> - for two negotiations are envisaged - for three no actions have been taken, but are included in the plan for renegotiations. 	<p>China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the three treaties concerned and upon amendment of the notifications by one of the treaty partners.</p> <p>For the remaining five 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), China should:</p> <ul style="list-style-type: none"> • for two continue with the process to request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions • for the remaining three request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations or be willing to accept the inclusion of both of alternative provisions.

Notes

1. The Public Notice [2017] No. 6 is available at: www.chinatax.gov.cn/n810341/n810755/c2538695/content.html.
2. The Public Notice [2013] No. 56 is available at: www.chinatax.gov.cn/n810341/n810755/c3523242/content.html.
3. These 97 treaties include the treaty with the former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro, the treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic and the treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.

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]	One out of 107 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty is expected to be modified by the Multilateral Instrument upon entry into force for the treaty concerned.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	One out of 107 tax treaties does not contain the equivalent to 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. This treaty is expected to be modified by the Multilateral Instrument to include such equivalent upon entry into force for this treaty.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	Three out of 107 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). These three treaties are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.
[B.8]	Contact details of the competent authority are not included in the MAP guidance, which concerns both Public Notice [2013] No. 56 and Public Notice [2017] No. 6.	China should without further delay update its MAP guidance to include the contact information of its competent authority.
[B.9]	-	-
[B.10]	-	-

	Areas for improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	One out of 107 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 is expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.
[C.2]	-	-
[C.3]	<p>MAP cases were not closed within 24 months on average, as the average was 34.17 months, which both regards attribution/allocation cases (34.35 months) and other cases (33.21 months). This state of play indicates that the competent authority is not adequately resourced to ensure that post-2015 cases are resolved within the average of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016). In this respect, some peers indicated that they experienced some difficulties in resolving MAP cases, which in particular concerns:</p> <ul style="list-style-type: none"> • obtaining positions papers in due time and receiving responses to position papers issued by peers • earlier and more frequent communication or meetings. <p>Furthermore, the MAP inventory increased since 1 January 2016, which only regards other MAP cases. This may also indicate that the competent authority is not adequately resourced to cope with this increase.</p>	<p>While China has taken several steps to resolve cases in a timely manner, such as the addition of resources and pre-negotiation communication, further actions should be taken to ensure a timely resolution of MAP cases, which both regards attribution/allocation cases and other cases.</p> <p>In that regard, China should devote additional resources to its competent authority to handle MAP cases and also to be able to cope with the increase in the number of other MAP cases, such to be able to resolve MAP cases in a timely, efficient and effective manner. Such addition of resources should enable China to:</p> <ul style="list-style-type: none"> • submit positions papers in due time and respond to position papers issued by peers • have earlier and more frequent communication or meetings.
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-
[D.3]	<p>Nine out of 107 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 nine treaties:</p> <ul style="list-style-type: none"> • Three are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned. • One is expected to be modified by the Multilateral Instrument to include the required provision once the treaty partner has amended its notifications. • Five will not be modified by the Multilateral Instrument to include the required provision. With respect to these five treaties: <ul style="list-style-type: none"> - for two negotiations are envisaged - for three no actions have been taken, but are included in the plan for renegotiations. 	<p>China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the three treaties concerned and upon amendment of the notifications by one of the treaty partners.</p> <p>For the remaining five 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), China should:</p> <ul style="list-style-type: none"> • for two continue with the process to request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions • for the remaining three request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations or be willing to accept the inclusion of both of alternative provisions.

Annex A
Tax treaty network of China (People’s Republic of)

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Arbitration	
	Y = yes N = signed pending ratification	If N, date of signing	Article 25(1) of the OECD Model Tax Convention (“MTC”)	Article 25(1) of the OECD MTC (“MTC”)	Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC		Article 25(2) of the OECD MTC
			B.1	B.1	B.3	B.4	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	
			Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11			
			Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(2) first sentence? (Note 7)	Inclusion Art. 25(2) second sentence? (Note 8)	Inclusion Art. 25(3) first sentence? (Note 9)	Inclusion Art. 25(3) second sentence? (Note 10)	Inclusion Art. 25(2) first sentence? (Note 11)	Inclusion Art. 25(2) second sentence? (Note 12)	Inclusion Art. 25(3) first sentence? (Note 13)	Inclusion Art. 25(3) second sentence? (Note 14)	Inclusion Art. 25(2) first sentence? (Note 15)	
Albania	Y	N/A	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	
Algeria	Y	N/A	O	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Armenia	Y	N/A	O	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Angola	N	10/9/2018	O	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Argentina	N	12/2/2018	O	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Australia	Y	N/A	O	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	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
Austria	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Azerbaijan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Bahrain	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Bagladesh	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Barbados	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Belarus	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Belgium	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	N
Bosnia and Herzegovina	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Botswana	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Brazil	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Brunei	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Bulgaria	Y	N/A	O	Y	N/A	Y	i**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Cambodia	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Canada	Y	N/A	O	i	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Chile	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Congo (Republic of)	N	9/5/2018	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Croatia	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Cuba	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Cyprus ^a	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Czech Republic	Y	N/A	O	Y	N/A	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		
	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												
Denmark	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Ecuador	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Egypt	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Estonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ethiopia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Finland	Y	N/A	O	Y	N/A	Y	i	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	Y	N
Gabon	N	9/1/2018	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Georgia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Germany	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Greece	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hungary	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Iceland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
India	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Indonesia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Iran	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ireland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Israel	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Italy	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Jamaica	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Japan	Y	N/A	O	Y	N/A	Y	i	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		
	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		Article 25(3) of the OECD MTC		Arbitration		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	A.1	B.7	C.6	A.1	B.7	C.6	A.1	B.7	C.6	A.1	B.7	C.6
Kazakhstan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kenya	N	9/21/2017	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kuwait	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kyrgyzstan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Laos	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Lithuania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Malaysia	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Malta	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Mauritius	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Mexico	Y	N/A	O	Y	N/A	i**	i	Y	Y	N*	N	Y	Y	Y	Y	Y	N*	Y	Y	Y	N
Moldova	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Mongolia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Montenegro	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Morocco	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Nepal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Netherlands	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
New Zealand	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Nigeria	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		Article 25(3) of the OECD MTC		Arbitration					
	B.1	B.1	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) first sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)									
North Macedonia	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Norway	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Oman	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Pakistan	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Papua New Guinea	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Philippines	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Poland	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Portugal	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Qatar	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Romania	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Russia	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Saudi Arabia	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Serbia	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Seychelles	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Singapore	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovak Republic	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovenia	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
South Africa	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Spain	Y	O	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Sri Lanka	Y	O	N/A	Y	Y	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 25(1) of the OECD MTC	B.3	B.4	C.1	C.1	C.1	D.3	A.1	A.1	B.7	C.6	Article 25(3) of the OECD MTC	A.1	B.7	C.6	Arbitration
Sudan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Sweden	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Switzerland	Y	N/A	O	Y	N/A	Y	i	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Syrian Arab Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Tajikistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Thailand	Y	N/A	O	Y	N/A	Y	i	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Trinidad and Tobago	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Tunisia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Turkey	Y	N/A	O	i*	1 year	Y	i	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Turkmenistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Uganda	N	1/11/2012	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ukraine	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
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	Y	Y	Y	Y	Y	Y	Y	N
Uzbekistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Venezuela	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Viet Nam	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Zambia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Treaty partner	Article 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration				
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6				
Column 1	Column 3		Column 4		Column 5		Column 6		Column 7	Column 8	Column 9	Column 10	Column 11
Zimbabwe	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N
			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)		

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

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Legend

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

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

O* The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.

O**/E*** The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be or has been superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

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

Y** The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.

Y*** The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty.

i*/ii*/iv*/N*

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

i**/iv**/N**

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

i***/ii***

The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B

MAP Statistics Reporting for the 2016, 2017, 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
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	61	0	0	1	0	0	3	1	0	2	0	54	36.70
Others	28	0	0	0	0	0	1	0	0	0	0	27	33.00
Total	89	0	0	1	0	0	4	1	0	2	0	81	36.24

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

- The reported number of MAP cases pending on 31 December 2016 was 53, which consists of 53 attribution/allocation cases and 24 other cases.
- The reported number of MAP cases pending on 1 January 2017 was 81, which consists of 54 attribution/allocation cases and 27 other cases (these figures were in the published 2017 MAP statistics 77, 53 and 24 respectively).

In order to have matching numbers for 31 December 2016 and 1 January 2017 and with China's correction as to the coverage of cases, the number of pre-2016 cases pending on 1 January 2016 was corrected.

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		
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	54	0	0	1	1	0	5	7	0	0	0	40	31.86
Others	27	0	0	0	0	0	2	0	0	0	0	25	40.70
Total	81	0	0	1	1	0	7	7	0	0	0	65	32.97

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

- The reported number of MAP cases pending on 31 December 2017 was 60, which consists of 39 attribution/allocation cases and 21 other cases.
- The reported number of MAP cases pending on 1 January 2018 was 65, which consists of 40 attribution/allocation cases and 25 other cases (these figures were in the published 2018 MAP statistics 61, 41 and 20 respectively).

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

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		
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	40	0	0	4	0	0	5	2	0	8	0	21	46.89
Others	25	0	0	1	0	0	2	0	0	0	0	22	56.00
Total	65	0	0	5	0	0	7	2	0	8	0	43	48.13

Notes: There is a discrepancy between the number of pre-2016 MAP cases in China's inventory on 31 December 2018 and 1 January 2019.

- The reported number of MAP cases pending on 31 December 2018 was 39, which consists of 22 attribution/allocation cases and 17 other cases.
 - The reported number of MAP cases pending on 1 January 2019 was 43, which consists of 21 attribution/allocation cases and 22 other cases.
- In order to have matching numbers for 31 December 2018 and 1 January 2019, the number of pre-2016 cases pending on 1 January 2018 was corrected.

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	21	0	0	1	0	0	2	4	0	2	0	12	59.78
Others	22	0	0	0	0	0	0	0	0	2	0	20	78.06
Total	43	0	0	1	0	0	2	4	0	4	0	32	63.10

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	23	0	0	0	0	0	0	0	0	0	0	0	23	
Others	0	12	0	0	0	0	0	0	0	0	0	0	0	12	
Total	0	35	0	0	0	0	0	0	0	0	0	0	0	35	

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

- The reported number of MAP cases pending on 31 December 2016 was 31, which consists of 21 attribution/allocation cases and 10 other cases.
 - The reported number of MAP cases pending on 1 January 2017 was 35, which consists of 23 attribution/allocation cases and 12 other cases.
- In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of post-2015 cases started during the reporting period was corrected.

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	23	22	0	0	0	2	0	0	1	0	0	0	42	2.93
Others	12	18	0	0	1	1	0	0	0	0	0	0	28	3.71
Total	35	40	0	0	1	3	0	0	1	0	0	0	70	3.24

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

- The reported number of MAP cases pending on 31 December 2017 was 68, which consists of 23 attribution/allocation cases and 45 other cases.
- The reported number of MAP cases pending on 1 January 2018 was 70, which consists of 42 attribution/allocation cases and 28 other cases (these figures were in the published 2018 MAP statistics 71, 44 and 27 respectively).

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

2018 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	42	15	0	0	0	0	0	3	14	0	2	0	38	17.46
Others	28	11	0	1	0	0	2	0	0	0	0	0	36	6.39
Total	70	26	0	1	0	0	2	3	14	0	2	0	74	15.95

Notes: There is a discrepancy between the number of post-2015 MAP cases in China's inventory on 31 December 2018 and 1 January 2019.

- The reported number of MAP cases pending on 31 December 2018 was 72, which consists of 57 attribution/allocation cases and 35 other cases.
 - The reported number of MAP cases pending on 1 January 2019 was 74, which consists of 38 attribution/allocation cases and 36 other cases.
- In order to have matching numbers for 31 December 2018 and 1 January 2019, the number of post-2015 cases started during the reporting period was corrected.

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	38	10	0	0	1	0	1	1	2	0	1	0	42	28.78
Others	36	14	0	1	1	0	0	0	0	0	0	0	48	16.54
Total	74	24	0	1	2	0	1	1	2	0	1	0	90	25.72

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	Public Notice [2017] No. 6 of the State Taxation Administration on Issuing the “Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure” and Public Notice [2013] No. 56 of the State Taxation Administration on Releasing the “Implementation Measures of Mutual Agreement Procedure for Tax Treaty Related Issues”
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, People’s Republic of China (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 the People’s Republic of China.



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