

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Foreword

Digitalisation and globalisation have had a profound impact on economies and the lives of people around the world, and this impact has only accelerated in the 21st century. These changes have brought with them challenges to the rules for taxing international business income, which have prevailed for more than a hundred years and created 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.

In 2013, the OECD ramped up efforts to address these challenges in response to growing public and political concerns about tax avoidance by large multinationals. The OECD and G20 countries joined forces and developed an Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions aimed at 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, including those published in an interim form in 2014, were consolidated into a comprehensive package and delivered to G20 Leaders in November 2015. The BEPS package represents the first substantial renovation of the international tax rules in almost a century. As the BEPS measures are implemented, 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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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. As a result, they created 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 its subsidiary bodies. With over 140 members, the Inclusive Framework monitors and peer reviews the implementation of the minimum standards and is completing the work on standard setting to address BEPS issues. In addition to its 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.

Although implementation of the BEPS package is dramatically changing the international tax landscape and improving the fairness of tax systems, one of the key outstanding BEPS issues – to address the tax challenges arising from the digitalisation of the economy – remained unresolved. In a major step forward on 8 October 2021, over 135 Inclusive Framework members, representing more than 95% of global GDP, joined a two-pillar solution to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate and generate profits in today's

digitalised and globalised world economy. The implementation of these new rules is envisaged by 2023.

This report was approved by the Inclusive Framework on 17 March 2022 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

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

Executive summary

Tunisia has a relatively large tax treaty network with more than 50 tax treaties. It has a recently established MAP programme with a small MAP inventory and a small number of new cases submitted each year and ten MAP cases pending on 31 December 2020. Of these cases, only 20% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Tunisia met more than half of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Tunisia has worked to address them, which has been monitored in stage 2 of the process. In this respect, Tunisia has solved some of the identified deficiencies.

All but two of Tunisia's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention (OECD, 2017). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that :

- More than half (54%) 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.
- more than a third (35%) of its tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2017) either because they do not contain the equivalent of Article 25(1), first sentence of the Model of the OECD Tax Convention or because they do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Tunisia signed the Multilateral Instrument. Through this instrument, a number of its tax treaties will be modified to fulfil the requirements under the Action 14 Minimum Standard. Tunisia is in contact with a few treaty partners to strive to include the required provisions via the Multilateral Instrument. Where treaties will not be modified, upon entry into force and entry into effect of the Multilateral Instrument in spite of this, Tunisia reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. Such bilateral negotiations have already been initiated, or are envisaged to be initiated for all of those treaties.

Tunisia does not meet the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme, but this programme does not allow roll-back of bilateral APAs.

Furthermore, Tunisia meets all the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible

cases, although it has since 1 September 2019 not received any MAP request concerning transfer pricing cases or the application of anti-abuse provisions. Furthermore, Tunisia has in place a documented bilateral consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Tunisia has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice under tax treaties.

Concerning the average time needed to close MAP cases, the MAP statistics for Tunisia for the period 2017-20 are as follows:

2017-20	Opening inventory 1/1/2017	Cases started	Cases closed	End inventory 31/12/2020	Average time to close cases (in months)*
Attribution/allocation cases	1	2	1	2	37.71
Other cases	3	5	0	8	n.a.
Total	4	7	1	10	37.71

* The average time taken for resolving MAP cases for both pre-2017 and post-2016 cases follows the MAP Statistics Reporting Framework.

From 2017-20, MAP cases were on average not closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2019), as the average time necessary was 37.71 months. Further, the MAP caseload has increased by 150% since 1 January 2017 and all but one MAP cases, including three pre-2017 cases, still remain pending. Therefore, Tunisia should ensure that the available resources for its competent authority function are adequate to allow the resolution of current pending and future MAP cases in a timely, efficient and effective manner and where needed, it should in particular devote necessary resources to be able to cope with the significant increase in the number of both attribution/allocation and other MAP cases.

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

Lastly, Tunisia meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Tunisia monitors the implementation of such agreements. However, Tunisia should continue to monitor whether the requirements imposed on taxpayers to appear in person or to appoint a representative entail practical obstacles concerning the timely implementation of MAP agreements.

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 Tunisia to resolve tax treaty-related disputes

Tunisia has entered into 52 tax treaties on income (and/or capital), all of which are in force.¹ These 52 treaties are being applied to 55 jurisdictions.² All but two of these treaties provide for a mutual agreement procedure (“**MAP**”) for resolving disputes on the interpretation and application of the provisions of the tax treaty. None of these 52 treaties provides for an arbitration procedure as a final stage to the mutual agreement procedure.

Under Tunisia’s tax treaties, the competent authority function is assigned to the Minister of Finance and is further delegated to the *Direction Générale des Etudes et de la Législation Fiscales* (General Directorate of Tax Studies and Legislation). Tunisia’s competent authority currently employs three staff members who deal with both attribution/allocation and other MAP cases in addition to other non-MAP related duties.

Tunisia issued guidance on the governance and administration of the mutual agreement procedure (“**MAP guidance**”) in September 2019, which is available (in French and Arabic) at:

<https://doc-fiscale.finances.gov.tn/cimf-internet/page/document/fr/preview?path=/Notes%20communes/2019/Note%20Commune%20N%C2%B023.pdf>

Developments in Tunisia since 1 September 2019

Developments in relation to the tax treaty network

The stage 1 peer review report of Tunisia noted that Tunisia had signed new treaties with Germany (2018) and Singapore (2018), which had not yet entered into force. Both of these treaties have now entered into force.

Furthermore, on 24 January 2018 Tunisia 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, Tunisia submitted its list of notifications and reservations to that instrument.³ In relation to the Action 14 Minimum Standard, Tunisia has not made any reservations pursuant to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure). Tunisia reported that it is working on the ratification of the Multilateral Instrument and although there were delays seen owing to the COVID-19 pandemic, Tunisia expects the ratification to be concluded over the course of 2022.

For treaties that are considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument,

Tunisia reported that it intends to update them via bilateral negotiations. In this regard, Tunisia shared the following overview regarding the actions planned to be taken by it in respect of the 25 treaty partners for the 24 treaties that are at present 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:

- *Two treaty partners:* Since two of these treaty partners concern the treaty with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic, bilateral renegotiations are not necessary for this treaty.
- *Six treaty partners:* Tunisia intends to update its list of notifications and reservations to the Multilateral Instrument to include these treaties and expects the treaty partner to sign the Instrument to have the respective treaties modified by it. If this is seen to not be possible, Tunisia would initiate bilateral negotiations.
- *Six treaty partners:* Tunisia intends to update its list of notifications and reservations to the Multilateral Instrument to include these treaties and expects the treaty partner to do the same to have the respective treaties modified by it. If this is seen to not be possible, Tunisia would initiate bilateral negotiations.
- *Six treaty partners:* Tunisia intends to update its list of notifications and reservations to the Multilateral Instrument to have the treaty modified by it.
- *Two treaty partners:* Tunisia has exchanged letters with these treaty partners, reaching an agreement that the treaties require modification and have reached out to them to schedule negotiations, although it has received no further response.
- *Three treaty partners:* Tunisia has sent letters to these treaty partners suggesting the initiation of bilateral negotiations in respect of the Action 14 minimum standard, but has not received any response.

Other developments

Further to the above, Tunisia reported that it has published APA guidance that clarifies the procedure applicable for unilateral, bilateral and multilateral APAs under Tunisia's domestic law and tax treaties.

Basis for the peer review process

The peer review process entails an evaluation of Tunisia's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Tunisia, its peers and taxpayers. The questionnaires for the peer review process were sent to Tunisia and the peers on 30 August 2019.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Tunisia'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 12 May 2020. This report identifies the strengths and shortcomings of Tunisia in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.⁴ Stage 2 is launched within one year upon

the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Tunisia. In this update report, Tunisia 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 Tunisia is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol were taken into account, even if it concerns a modification or a replacement of an existing treaty. The treaty analysis also takes into account the multilateral tax treaty entered into between Algeria, Libya, Morocco, Mauritania and Tunisia (“**Union of the Arab Maghreb (UMA)**”) (1990) and the treaty with the former Czechoslovakia (1990) that Tunisia continues to apply to both the Czech Republic and the Slovak Republic. These treaties are counted as one treaty each, even though they are applicable to multiple jurisdictions. Reference is made to Annex A for the overview of Tunisia’s tax treaties regarding the mutual agreement procedure.

Timing of the process and input received from peers and taxpayers

Stage 1 of the peer review process for Tunisia was launched on 30 August 2019, with the sending of questionnaires to Tunisia and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Tunisia in March 2020, with the subsequent approval by the BEPS Inclusive Framework on 12 May 2020. On 12 May 2021, Tunisia submitted its update report, which initiated stage 2 of the process.

The period for evaluating Tunisia’s implementation of the Action 14 Minimum Standard for stage 1 ranged from 1 January 2017 to 31 August 2019 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 September 2019 and depicts all developments as from that date until 30 April 2021.

In total, eight peers provided input: Belgium, Canada, Denmark, Germany, Serbia, Switzerland, Turkey and the United States. Two of these peers had MAP cases with Tunisia that started in 2017 or 2018. During stage 2, the same peers, except for Germany, provided input. For this stage, these peers represent approximately 43% of post-2016 MAP cases in Tunisia’s MAP inventory that started in 2017, 2018, 2019 or 2020. In general, all peers indicated good communication with Tunisia’s competent authority, most of them emphasising that they had little experience with Tunisia and therefore not much contact. Nevertheless, one peer mentioned possible difficulties related to the implementation of MAP agreements with regard to the refund procedure that the taxpayer must follow. Specifically with respect to stage 2, all peers that provided input reported that the update report of Tunisia fully reflects the experiences these peers have had with Tunisia since 1 September 2019 and/or that there was no addition to previous input given.

Input by Tunisia and co-operation throughout the process

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

- a. MAP profile⁵
- b. MAP statistics⁶ according to the MAP Statistics Reporting Framework (see below).

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

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

Overview of MAP caseload in Tunisia

The analysis of Tunisia’s MAP caseload relates to the period starting on 1 January 2017 and ending on 31 December 2020 (“**Statistics Reporting Period**”). According to the statistics provided by Tunisia, its MAP caseload during this period was as follows:

2017-20	Opening inventory 1/1/2017	Cases started	Cases closed	End inventory 31/12/2020
Attribution/allocation cases	1	2	1	2
Other cases	3	5	0	8
Total	4	7	1	10

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁷ Apart from analysing Tunisia’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Tunisia during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Tunisia to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

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

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Tunisia 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 Tunisia has entered into are available at: <https://doc-fiscale.finances.gov.tn/cimf-internet/page/doc-portal/fr/#path=%2FConventions%20de%20non%20double%20imposition%2F¤tPage=1>. Reference is made to Annex A for the overview of Tunisia’s tax treaties concerning the mutual agreement procedure.
2. Tunisia is a signatory to the Union of the Arab Maghreb (UMA) Convention (1990) that for Tunisia applies to Algeria, Libya, Mauritania and Morocco. Further, Tunisia continues to apply the 1990 treaty entered into with the former Czechoslovakia to both the Czech Republic and the Slovak Republic.
3. Available at: www.oecd.org/tax/treaties/beps-mli-position-tunisia.pdf.
4. Available at: <https://www.oecd.org/tax/making-dispute-resolution-more-effective-map-peer-review-report-tunisia-stage-1-a8e3b149-en.htm>.
5. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.
6. The MAP statistics of Tunisia are included in Annexes B and C of this report.
7. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 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 Tunisia’s tax treaties

2. Out of Tunisia’s 52 tax treaties, 48 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.¹ Of the remaining four treaties, two do not contain a provision that is based on or equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). The remaining two treaties do not include the term “interpretation” and are therefore, considered to not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

3. Tunisia reported that it considers itself able to enter into MAP agreements of a general nature where the applicable treaty contains a provision based on but not equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). Therefore, Tunisia would not be able to enter into such agreements with the two treaty partners where the respective treaties do not contain a provision based on or equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

4. For the four treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), no peer input was provided during stage 1.

Recent developments

Multilateral Instrument

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

6. With regard to the four tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Tunisia listed only one of them as a covered tax agreement under the Multilateral Instrument. However, Tunisia did not make a notification pursuant to Article 16(6)(d)(i) that this treaty does not contain a provision described in Article 16(4)(c)(i). Therefore, at this stage, none of the tax treaties identified above will be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

Other developments

7. For the four tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) and which will not be modified by the Multilateral Instrument to include such equivalent, Tunisia reported that the following actions are being taken or planned:

- For two treaties, it intends to update its list of notifications and reservations to the Multilateral Instrument to have the treaties modified by it.
- For two treaties, it intends to update its list of notifications and reservations to the Multilateral Instrument to include this treaty and expects the treaty partner to sign the Instrument or update its list of notifications and reservations to the Multilateral Instrument to have the treaties modified by it. If this is seen to not be possible, Tunisia would initiate bilateral negotiations.

Peer input

8. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Tunisia.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[A.1]	<p>Four out of 52 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). None of these four treaties will be modified by the Multilateral Instrument to include the required provision. With respect to these four treaties:</p> <ul style="list-style-type: none"> • For two, the relevant treaty partners have been or will be engaged by Tunisia with a view to have the treaty modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. • For two, Tunisia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have them modified by the Multilateral Instrument. 	<p>As the four treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) will at this time not be modified via the Multilateral Instrument, Tunisia should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision.</p>

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

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

10. 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.

Tunisia’s APA Programme

11. Tunisia is authorised to enter into unilateral, bilateral and multilateral APAs. Tunisia reported that the legal basis for the APA programme in Tunisia is Act No. 2018-56 of 27 December 2018 and the Order of the Minister of Finance of 6 August 2019, available (in French or Arabic) at:

<https://doc-fiscale.finances.gov.tn/cimf-internet/page/doc-portal/fr/#path=%2F>

12. Tunisia clarified in this regard that written requests for an APA must be submitted at least six months before the beginning of the first financial year to which the request relates and must include the object of the APA, the applicable transfer pricing method, the proposed duration and relevant assumptions concerning the facts and law concerned, along with relevant supporting documents. Further, Tunisia noted that as a general rule, bilateral APAs have a term of three to five years.

13. In order to clarify the procedure applicable for APAs, Tunisia issued APA guidance in June 2020, which can be found (in French or Arabic) at:

<https://doc-fiscale.finances.gov.tn/cimf-internet/page/document/fr/preview?path=/Notes%20communes/2020/Note%20Commune%20n%C2%B012.pdf>

14. The APA guidance explains the APA process in Tunisia in a simple and accessible manner with details on the definition of an APA in Tunisia including the scope of APAs, how to make an APA request, the documentation to be provided along with a request, the process of examination of a request, requirements during the APA period, review/cancellation/renewal of APAs and confidentiality rules.

Roll-back of bilateral APAs

15. Tunisia reported that its APA programme does not allow the roll-back of bilateral APAs.

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 2017-31 August 2019 (stage 1)

17. Tunisia reported that it had not received any requests for bilateral APAs in the period 1 January 2017-31 August 2019.

18. All peers that provided input indicated that they have not received a request for a roll-back of bilateral APAs concerning Tunisia in the period 1 January 2017-31 August 2019.

Period 1 September 2019-30 April 2021 (stage 2)

19. Tunisia reported that it had also not received any requests for bilateral APAs since 1 September 2019.

20. All but one peer that provided input during stage 1 provided input during stage 2 as well. These peers noted that the update report provided by Tunisia fully reflects their experience with Tunisia since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

21. Tunisia indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	Roll-back of bilateral APAs is not provided for in appropriate cases.	Tunisia should, without further delay, introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.

Notes

1. These 48 treaties include the treaty entered into with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic and the UMA Convention that for Tunisia applies to the Algeria, Libya, Mauritania and Morocco.
2. This description of an APA is based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).

References

- OECD (2017a), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.
- OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, <https://dx.doi.org/10.1787/tpg-2017-en>.

Part B

Availability and access to MAP

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

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

22. 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 Tunisia’s tax treaties

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

23. None of Tunisia’s 52 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. Furthermore, 27 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.¹

24. The remaining 25 tax treaties can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are a resident.	17*
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are a national.	4
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1
A treaty where a provision based on Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2017) imposes the requirement to submit a MAP request to both competent authorities	1
No MAP provision	2

* These 17 treaties includes the UMA Convention that for Tunisia applies to the Algeria, Libya, Mauritania and Morocco.

25. The 17 treaties in the first row are considered not to contain 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 15 out of these 17 treaties are considered to be in line with this part of element B.1:

- The relevant treaty does not contain a non-discrimination provision and only applies to residents of one of the states (one treaty).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to allow only for the submission of MAP requests to the state of which the taxpayer is a resident (14 treaties).

26. For the remaining two treaties, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2017) and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b) is therefore not clarified by the absence of or a limited scope of the non-discrimination provision. In addition, one of these treaties only allows a MAP request where the actions of one or both of the contracting states “will result” in taxation not in accordance with the treaty and not where this is already the result. Therefore, both of these treaties are considered not to be in line with this part of element B.1.

27. The four treaties in the second row of the table are also considered not to contain 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 their state of residence, but only in their state of nationality.

28. With respect to the treaty mentioned in the third row of the table above, the provision incorporated in the protocol to this treaty reads:

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

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

30. With respect to the treaty mentioned in the four row of the table above, the first sentence of paragraph 1 of the MAP provision in that treaty stipulates that a taxpayer should submit a MAP request in its state of residence. The second sentence, however, requires that taxpayers should submit the request within a period of four years from the first notification of action resulting in taxation not in accordance with the provisions of the particular tax treaty and to the other competent authority concerned. Since this treaty imposes a requirement to file a MAP request before both competent authorities concerned, the treaty is, therefore, considered not to be in line with this part of element B.1.

31. Finally, the two treaties mentioned in the last row of the table do not contain a provision based on Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b) that allows taxpayers to file a MAP request and thus, these treaties are considered not to be in line with this part of element B.1.

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

32. Out of Tunisia’s 52 tax treaties, 33 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

33. The remaining 19 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No provision for a filing period for a MAP request	11
Filing period less than 3 years for a MAP request (two years)	5
Filing period more than 3 years for a MAP request (five years)	1
Filing period of four years, but with the requirement to submit a MAP request to both competent authorities	1
No filing period for a MAP request but reference is made to the time limits in the domestic laws of the treaty partners	1

34. With respect to the treaty in the fourth row of the table above, the first sentence of paragraph 1 of the MAP provision in that treaty stipulates that a taxpayer should submit a MAP request in its state of residence. The second sentence, however, requires that taxpayers should submit the request within a period of four years from the first notification of action resulting in taxation not in accordance with the provisions of the particular tax treaty and to the other competent authority concerned. While the filing period for a MAP request is longer than three years, the requirement to file a MAP request to both competent authorities concerned puts a more restrictive obligation on taxpayers and for that reason the treaty is not considered to be in line with this part of element B.1.

35. In addition, the treaty in the last row of the table provides for a deadline based on to the rules of domestic law of the treaty partners for the submission of the MAP request, which may in practice be shorter than three years and thus, the treaty is not considered to be in line with this part of element B.1.

Peer input

36. For the 16 treaties identified that do not contain the equivalent of Article 25 (1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), the relevant peers did not provide input during stage 1. Three peers mentioned that their tax treaty with Tunisia contains 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), which is in line with the analysis above.

Practical application

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

37. As indicated in paragraphs 23-31 above, all but three of Tunisia’s tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. In this respect, Tunisia indicated that nothing in its domestic law, policy or practice prevents a taxpayer from requesting MAP assistance where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of Tunisia. Further, Tunisia reported that it would grant access to MAP even in cases where there is a pending administrative or judicial proceeding or if an administrative or court decision has been issued regarding the same subject matter. However, Tunisia noted that its competent authority cannot derogate from a court decision in MAP and therefore it will only seek to resolve the MAP case by having the treaty partner provide for correlative relief in line with the decision of its court. This is confirmed in section X of Tunisia’s MAP guidance as well.

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

38. For those tax treaties mentioned in paragraph 33 above that do not contain a filing period for MAP requests, Tunisia reported that its domestic time-limits would be applicable, which would in effect be: (i) for a draft assessment order, any time till an official assessment order is shared finalising such draft order and (ii) for an official assessment order, a period of five years from the date of notification of the taxpayer of such order. Tunisia noted that for such treaties, only MAP requests that are filed within this time-period would be accepted. This is confirmed in section VI of Tunisia’s MAP guidance. For withholding taxes, Tunisia noted that MAP requests filed within three years of when the tax was withheld by the

taxpayer would in any case be accepted. Since the filing period for MAP requests would be more than three years from the first notification of the action resulting in taxation not in accordance with the treaty in such cases, this is considered to be in line with the Action 14 minimum standard.

Recent developments

Multilateral Instrument

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

39. Tunisia signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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.

40. With the signing of the Multilateral Instrument, Tunisia opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Tunisia's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which a resident, Tunisia opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state.

41. In this respect, Tunisia listed 28 of its 52 treaties as a covered tax agreement under the Multilateral Instrument and made a notification, on the basis of Article 16(6)(a), that they 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).

42. All of the 28 relevant treaty partners are signatories to the Multilateral Instrument. However, one treaty partner did not list its treaty with Tunisia as a covered tax agreement under that instrument whereas ten treaty partners reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to their existing tax treaties, with a view to allowing taxpayers to submit a MAP request to the competent authority of either contracting state. All remaining 17 partners listed their treaty with Tunisia as having a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). Therefore, at this stage, the Multilateral Instrument will, upon entry

into force for the treaties concerned, modify these 17 treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).

43. In view of the above and in relation to the ten treaties identified in paragraphs 23-31 that are considered not to contain the equivalent of Article 25(1), first sentence, of the Model Tax Convention, as it read prior to the adoption of the Action 14 final report (OECD, 2015b), two will be modified by the Multilateral Instrument.

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

44. 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).

45. With regard to the five tax treaties identified in paragraph 33 above that contain a filing period for MAP requests of less than three years, Tunisia listed two of these five treaties as a covered tax agreement under the Multilateral Instrument and a made for both a notification, pursuant to Article 16(6)(b)(i), that they do not contain a provision described in Article 16(4)(a)(ii). The two relevant treaty partners are a signatory to the Multilateral Instrument, listed their tax treaty with Tunisia as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, modify two of the five tax treaties identified above will be modified to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

46. With respect to the two treaties that are considered not to be in line with element B.1, due to the fact that in one treaty there is a filing period of four years, but with the requirement to submit a MAP request to both competent authorities and in the other treaty the filing period for a MAP request refers to the domestic laws of the treaty partners, Tunisia listed both treaties as a covered tax agreement under the Multilateral Instrument but for one of them, it made, pursuant to Article 16(6)(b)(ii), a notification that it contains a provision described in Article 16(4)(a)(ii). The remaining treaty partner also listed its treaty with Tunisia under the Multilateral Instrument and also did not make a notification on the basis of either Article 16(6)(b)(i) or Article 16(6)(b)(ii). In this situation, Article 16(6)(b)(i) of the Multilateral Instrument stipulates that the second sentence of Article 16(1) – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will supersede the provision of the covered tax agreement to the extent it is incompatible with that second sentence. Since the treaty concerned refers to the domestic law of the contracting states to determine the filing period of a MAP request, and given the fact that in the case of Tunisia such filing period may in some cases be less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, the provision of the covered tax agreement is considered to be incompatible with the second sentence of Article 16(1). Therefore, at this stage, one of the two tax treaties identified above will, upon entry into force for the treaty concerned, be

superseded by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

47. For the remaining eight tax treaties that do not contain the equivalent of 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b) and which will not be modified by the Multilateral Instrument, Tunisia reported that the following actions are being taken or planned:

- For four treaties, it intends to update its list of notifications and reservations to the Multilateral Instrument to have the treaties modified by it.
- For three treaties, it intends to update its list of notifications and reservations to the Multilateral Instrument to include this treaty and expects the treaty partner to update its list of notifications and reservations to the Multilateral Instrument to have the treaties modified by it. If this is seen to not be possible, Tunisia would initiate bilateral negotiations.
- For one treaty, it has sent a proposal for bilateral negotiations and is awaiting a response.

48. For the remaining four tax treaties that do not contain the equivalent of 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument, Tunisia reported that the following actions are being taken or planned:

- For one treaty, it intends to update its list of notifications and reservations to the Multilateral Instrument to have the treaties modified by it.
- For two treaties, it intends to update its list of notifications and reservations to the Multilateral Instrument to include this treaty and expects the treaty partner to sign the Instrument to have the treaties modified by it. If this is seen to not be possible, Tunisia would initiate bilateral negotiations.
- For one treaty, it has sent a proposal for bilateral negotiations and is awaiting a response.

Peer input

49. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Tunisia.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Nine out of 52 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b). Two of these treaties will be modified by the Multilateral Instrument to include the required provision. With respect to the remaining seven treaties:</p> <p>For three, the relevant treaty partners have been or will be engaged by Tunisia with a view to have the treaties modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations.</p> <ul style="list-style-type: none"> · For three, Tunisia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have them modified by the Multilateral Instrument · For one, the relevant treaty partner has been approached to initiate discussions on the amendment of the treaty with a view to including the required provision. 	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument, in order to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining seven treaties that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) and will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), Tunisia should :</p> <ul style="list-style-type: none"> • for six treaties, continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision • for one treaty, upon receipt of a response from the treaty partner agreeing to include the required provision, work towards updating this treaty to include this provision. <p>This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) either:</p> <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	<p>Six of Tunisia's 52 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), either (i) because 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, (ii) there is a requirement to submit a MAP request to both competent authorities or (ii) because of the timeline for submitting a MAP request follows the rules under domestic law of the treaty partners. Three of these treaties are expected to be modified or superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to the remaining three treaties:</p> <ul style="list-style-type: none"> • For two, the relevant treaty partners have been or will be engaged by Tunisia with a view to have the treaties modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. • For one, the relevant treaty partner has been approached to initiate discussions on the amendment of the treaty with a view to including the required provision. 	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument, in order to include the equivalent of Article 25(1), 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.</p> <p>For the remaining three treaties that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument to include such equivalent, Tunisia should :</p> <ul style="list-style-type: none"> • for two treaties, continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision • for one treaty, upon receipt of a response from the treaty partner agreeing to include the required provision, work towards updating this treaty to include this provision.

	Areas for improvement	Recommendations
[B.1]	<p>One of Tunisia's 52 tax treaties contains a provision based on Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2017) which is restricted by a condition to file MAP requests before both competent authorities, which results in the treaty not containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), or as amended by that final report (OECD, 2017) or Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty will not be modified or superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to this treaty, Tunisia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument.</p>	<p>For this treaty that does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), or as amended by that final report (OECD, 2017) or Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument, Tunisia should continue to work in accordance with its stated intention to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in this treaty via the Multilateral Instrument.</p>

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

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

51. 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

52. As discussed under element B.1, none of Tunisia's 52 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), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. However, as was also discussed under element B.1, 17 of these 52 treaties will be modified by the Multilateral Instrument, upon its entry into force for the treaties concerned, to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

53. Tunisia reported that it has introduced a bilateral notification process that allows the other competent authority concerned to provide its views on the case when Tunisia's competent authority considers the objection raised in the MAP request not to be justified. Tunisia reported that when Tunisia's competent authority considers that the objection raised by a taxpayer in a MAP request is not justified, it will consult the competent authority of the treaty partner and not take a unilateral decision. This is noted in section VII of Tunisia's MAP guidance as well. Tunisia clarified that the procedure as well as the template for the same has been documented in its internal procedure and that the staff in its competent authority have been briefed on this process.

Recent developments

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

Practical application

Period 1 January 2017-31 August 2019 (stage 1)

55. Tunisia reported that in the period 1 January 2017-31 August 2019 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 2017 and 2018 MAP statistics submitted by Tunisia also show that none of its MAP cases was closed with the outcome "objection not justified".

56. All peers that provided input indicated not being aware of any cases for which Tunisia's competent authority denied access to MAP in the period 1 January 2017-31 August 2019. They also reported not having been consulted/notified of a case where Tunisia's competent authority considered the objection raised in a MAP request as not justified since that date, which can be clarified by the fact that no such instances have occurred in Tunisia during this period.

Period 1 September 2019-30 April 2021 (stage 2)

57. Tunisia reported that since 1 September 2019 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 2019 and 2020 MAP statistics submitted by Tunisia also show that none of its MAP cases was closed with the outcome "objection not justified".

58. All but one peer that provided input during stage 1 provided input during stage 2 as well. These peers indicated that since 1 September 2019 they are not aware of any cases for which Tunisia's competent authority considered an objection in a MAP request not justified. They also reported not having been consulted/notified in such cases, which can be clarified by the fact that no such instances have occurred in Tunisia since that date.

Anticipated modifications

59. Tunisia indicated that it does not anticipate any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

60. 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

61. Out of Tunisia's 52 tax treaties, 23 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a corresponding adjustment in case a transfer pricing adjustment is imposed by the treaty partner.³ Furthermore, 20 treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017).⁴ The remaining nine treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but for the following reasons are not considered being equivalent thereof:

- Five treaties do not contain the last part of the second sentence that allows competent authorities to consult each other where necessary.
- Three treaties stipulate that corresponding adjustments can only be made as a result of a mutual agreement procedure, with one treaty only allowing such consultation within time limits under the applicable laws.
- One treaty makes corresponding adjustments optional, as the phrase "...shall make an appropriate adjustment" is replaced by "may make an appropriate adjustment".

62. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Tunisia'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, Tunisia 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. This is confirmed in section III of Tunisia's MAP guidance.

Recent developments

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

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

64. With regard to the 29 tax treaties identified in paragraph 61 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), Tunisia listed 13 of them as a covered tax agreement under the Multilateral Instrument, but only for six of these treaties did it make a notification on the basis of Article 17(4). All relevant six treaty partners are signatories to the Multilateral Instrument, listed their tax treaty with Tunisia as a covered tax agreement under that instrument, but only three of them also made a notification on the basis of Article 17(4). The remaining three treaty partners have, pursuant to Article 17(3), the right not to apply Article 17(2), as they considered that their treaty with Tunisia already contained the equivalent of Article 9(2). Therefore, at this stage, the Multilateral Instrument will, upon entry force for the treaties concerned, replace the provisions in these three treaties to include Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

65. In addition, for the remaining seven of the 13 tax treaties that Tunisia has listed as a covered tax agreement under the Multilateral Instrument and for which it has not made a notification on the basis of Article 17(4), all seven treaty partners are signatories to the Multilateral Instrument and have listed their treaty with Tunisia as a covered tax agreement. With regard to these seven treaties, one partner reserved the right under Article 17(3) not to apply Article 17(2), as it considered that its treaty with Tunisia already contained the equivalent of Article 9(2). Therefore, at this stage, the Multilateral Instrument upon its entry into force will supersede the remaining six treaties insofar as the provisions of these treaties relating to corresponding adjustments are incompatible with Article 17(1).

Application of legal and administrative framework in practice

Period 1 January 2017-31 August 2019 (stage 1)

66. Tunisia reported that in the period 1 January 2017-31 August 2019 it has not denied access to MAP on the basis that the case concerned a transfer pricing case. However, no such cases were received during this period

67. All peers that provided input reported that they were not aware of any cases for which the competent authority of Tunisia had refused access to MAP on the basis that the case concerned a transfer pricing case in the period 1 January 2017-31 August 2019. One peer mentioned that there is only one case on record with Tunisia and that there has never been a transfer pricing case.

Period 1 September 2019-30 April 2021 (stage 2)

68. Tunisia reported that also since 1 September 2019 it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

69. All but one peer that provided input during stage 1 provided input during stage 2 as well. These peers noted that the update report provided by Tunisia fully reflects their experience with Tunisia since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

70. Tunisia reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include Article 9(2) in all of its future tax treaties. Other than this, Tunisia also indicated that it intends to update its list of notifications and reservations to the Multilateral Instrument to have all the remaining treaties modified by it.

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.

71. 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

72. None of Tunisia's 52 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of Tunisia 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 are in conflict with the provisions of a tax treaty. As discussed under element B.8, this is not expressly stated in Tunisia's MAP guidance.

Recent developments

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

Practical application

Period 1 January 2017-31 August 2019 (stage 1)

74. Tunisia reported that in the period 1 January 2017-31 August 2019 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, no such cases received during this period.

75. All peers who provided input reported that they were not aware of any cases in which the competent authority of Tunisia had refused access to MAP in the period 1 January 2017-31 August 2019 with regard to the application of a treaty anti-abuse provision or a domestic law anti-abuse provision.

Period 1 September 2019-30 April 2021 (stage 2)

76. Tunisia reported that since 1 September 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 either.

77. All but one peer that provided input during stage 1 provided input during stage 2 as well. These peers noted that the update report provided by Tunisia fully reflects their experience with Tunisia since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

78. Tunisia indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

79. 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

80. Under Tunisia’s domestic law it is possible that taxpayers and the tax administration enter into an audit settlement before the notification of an official assessment order, after such notification within 60 days or pending appeal before the court of first instance or court of appeal. Tunisia reported that in any case, entering into an audit settlement does not prevent the taxpayer from submitting a MAP request. The relationship between audit settlements and MAP is described in Tunisia’s MAP profile and in section X of Tunisia’s MAP guidance, as discussed under element B.10.

Administrative or statutory dispute settlement/resolution process

81. Tunisia reported it has an administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer. Tunisia noted in this regard that for disputes subject to scrutiny by the tax administration, the taxpayer could before the establishment of the assessment order, present his case before the national or regional commission of conciliation. Tunisia clarified that the request to present such a case before the said commission may be made at the initiative of the tax authorities or at the written and reasoned request submitted by the taxpayer to the competent department of the tax authorities.

82. Tunisia noted that this commission is made up of the tax ombudsman, a representative of the the tax administration and two representatives of the taxpayer proposed by the most representative professional bodies. However, Tunisia also clarified that the member of the tax administration would be independent of the audit and examination function at all times.

83. Tunisia reported that the conciliation commission must decide on a case presented before it on the basis of the documents submitted to it by the tax administration department in charge of the case, any supporting documents provided and the arguments provided by both parties. Tunisia noted that the competent department of the tax administration may, on the basis of the opinion of the conciliation commission and the supporting documents submitted by the taxpayer, revise the assessment.

84. Tunisia clarified that the taxpayer has the possibility of requesting the requesting for MAP whether cases are pending before or have already been decided under this process and that Tunisia’s competent authority can deviate from any decision taken in such process.

Recent developments

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

Practical application

Period 1 January 2017-31 August 2019 (stage 1)

86. Tunisia reported that in the period 1 January 2017-31 August 2019 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. In this respect, Tunisia reported that it did not receive any MAP case of this kind from a taxpayer during the period under review.

87. All the peers who provided input reported that they were not aware of any cases in which the competent authority of Tunisia had refused access to MAP 1 January 2017-31 August 2019 in cases where an audit settlement between the taxpayer and the tax administration had been concluded.

Period 1 September 2019-30 April 2021 (stage 2)

88. Tunisia reported that since 1 September 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.

89. All but one peer that provided input during stage 1 provided input during stage 2 as well. These peers noted that the update report provided by Tunisia fully reflects their experience with Tunisia since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

90. Tunisia indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

91. 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

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

93. Tunisia reported that after an initial analysis of the MAP request, its competent authority will notify the taxpayer if additional information or documentation needs to be submitted and will request the taxpayer to provide such missing information within the time limit specified in the request. Tunisia noted that this request must be made within 30 days from the date of receipt of the MAP request or earlier requested additional information.

Recent developments

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

Practical application***Period 1 January 2017-31 August 2019 (stage 1)***

95. Tunisia reported that in the period 1 January 2017-31 August 2019 it has not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

96. All peers that provided input indicated not being aware of a limitation of access to MAP by Tunisia in the period 1 January 2017-31 August 2019 in situations where taxpayers complied with information and documentation requirements.

Period 1 September 2019-30 April 2021 (stage 2)

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

98. All but one peer that provided input during stage 1 provided input during stage 2 as well. These peers noted that the update report provided by Tunisia fully reflects their experience with Tunisia since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

99. Tunisia indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

100. 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 Tunisia's tax treaties

101. Out of Tunisia's 52 tax treaties, 44 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.⁵ Of the remaining eight treaties, seven 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).⁶ The remaining treaty contains a provision that is based on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), but is considered not to be equivalent thereof as the consultations have to take place within the time limits prescribed in the first sentence of the MAP provision.

102. Further to the above, Tunisia has placed a non-member position on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the Commentary to Article 25 of the OECD Model Tax Convention (OECD, 2017), which reads as follows:

Tunisia reserves its position on the second sentence of Paragraph 3 on the basis that it has no authority, under domestic law, to eliminate double taxation in cases not provided for in the treaty.

103. Tunisia noted that it intends to withdraw the position on Article 25(3) second sentence, as included in the non-OECD economies' positions on the OECD Model Tax Convention (OECD, 2017).

104. For the eight treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peers did not provide input during stage 1.

Recent developments

Multilateral Instrument

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

106. With regard to the nine treaty partners concerning the eight treaties identified above that do not contain the equivalent of the second sentence of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Tunisia has listed five of them as a covered tax agreement under the Multilateral Instrument and has made, pursuant to Article 16(6)(d)(ii), for four of these treaties a notification that they do not contain a provision described in Article 16(4)(c)(ii). The four relevant treaty partners are signatories to the Multilateral Instrument, but only three have listed their treaty with Tunisia as a covered tax agreement under that instrument. All three relevant treaty partners have also made a notification on the basis of Article 16(6)(d)(ii). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, modify three of the eight tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

107. As one of the remaining five treaties concerns the 1990 treaty entered into with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic, renegotiations are not necessary for this treaty.

108. For the four remaining treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent, Tunisia reported that the following actions are being taken or planned:

- For two treaties, it intends to update its list of notifications and reservations to the Multilateral Instrument to have the treaties modified by it.
- For two treaties, it intends to update its list of notifications and reservations to the Multilateral Instrument to include this treaty and expects the treaty partner to update its list of notifications and reservations to the Multilateral Instrument to have the treaties modified by it. If this is seen to not be possible, Tunisia would initiate bilateral negotiations.

Peer input

109. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Tunisia.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>Eight out of the 52 tax treaties do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Of these eight treaties, three will be modified by the Multilateral Instrument to include the required provision. With respect to the remaining five treaties:</p> <ul style="list-style-type: none"> • For one, bilateral negotiations are not necessary. • For two, the relevant treaty partners have been or will be engaged by Tunisia with a view to have the treaties modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. • For two, Tunisia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have them modified by the Multilateral Instrument. 	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument in order to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the three treaties that do not currently contain this equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the relevant treaties.</p> <p>As one of the five treaties that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument is the 1990 treaty with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic, Tunisia should ensure that, once it enters into negotiations with these treaty partners, it includes the required provision.</p> <p>For the remaining four treaties that do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument to include such equivalent, Tunisia should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision.</p>

[B.8] Publish clear and comprehensive MAP guidance

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

111. 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.

Tunisia's MAP guidance

112. Tunisia issued guidance on the governance and administration of the mutual agreement procedure ("**MAP guidance**") in September 2019, which is available (in French and Arabic) at:

<https://doc-fiscale.finances.gov.tn/cimf-internet/page/document/fr/preview?path=/Notes%20communes/2019/Note%20Commune%20N%C2%B023.pdf>

113. Tunisia's MAP guidance is divided into ten sections dealing, *inter alia*, with:

- general framework of MAP
- eligible taxpayers for MAP
- taxes and issues covered by MAP
- the details and role of the competent authorities
- how to file a MAP request
- time-limits for filing a MAP request
- conduct of MAP
- the MAP agreement
- arbitration
- relationship with domestic remedies.

114. These sections contain information on:

- a. contact information of the competent authority or the office in charge of MAP cases
- b. the manner and form in which the taxpayer should submit its MAP request
- c. the specific information and documentation that should be included in a MAP request (see also below)
- d. how the MAP functions in terms of timing and the role of the competent authorities
- e. information on availability of arbitration
- f. access to MAP in transfer pricing cases
- g. relationship with domestic remedies

- h. implementation of MAP agreements
- i. rights and role of taxpayers in the process
- j. suspension of tax collection
- k. interest charges, refunds and penalties.

115. The above-described MAP guidance includes detailed information on the availability and the use of MAP and the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.⁷

116. Although the information included in Tunisia's MAP guidance is detailed and comprehensive, various subjects are not specifically discussed, including:

- whether MAP is available for multilateral cases, for cases concerning the discussion of anti-abuse provisions, and for cases concerning bona fide foreign-initiated self-adjustments
- whether the multi-year resolution of recurring issues is possible
- the timing of the steps of the process for the implementation of MAP agreements, including any actions to be taken by taxpayers.

Information and documentation to be included in a MAP request

117. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.⁸ This agreed guidance is shown below. Tunisia's MAP guidance enumerating which items must be included in a request for MAP assistance are checked in the following list:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case
- analysis of the issue(s) requested to be resolved via MAP
- Whether the MAP request was also submitted to the competent authority of the other treaty partner
- whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
- whether the issue(s) involved were dealt with previously, and
- 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.

118. Tunisia also requests additional information on:
- copies of documents proving that the taxpayer has actually incurred tax, and
 - details of any administrative appeals lodged and any judicial decisions concerning the case.

Recent developments

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

Anticipated modifications

120. Tunisia indicated that it does not anticipate any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

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

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

121. 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.⁹

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

122. The MAP guidance of Tunisia is published and can be found (in French and Arabic) at:

<https://doc-fiscale.finances.gov.tn/cimf-internet/page/document/fr/preview?path=/Notes%20communes/2019/Note%20Commune%20N%C2%B023.pdf>

123. This guidance was published in September 2019. As regards its accessibility, Tunisia’s MAP guidance can easily be found (in French) on the tax administration website by clicking on the tab “ressources documentaires”, then on “documentation fiscale” or by using a search engine.

MAP Profile

124. The MAP profile of Tunisia is published on the website of the OECD and was last updated in September 2019. This MAP profile is complete with some detailed information. This profile includes external links that provide extra information and guidance where appropriate.

Recent developments

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

Anticipated modifications

126. Tunisia indicated that it does not anticipate any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

127. 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

128. As previously mentioned under B.5, audit settlements are available in Tunisia. Tunisia reported that entering into an audit settlement does not prevent the taxpayer from having access to MAP. This is confirmed in section X of Tunisia's MAP guidance.

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

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

130. As previously mentioned under element B.5, Tunisia reported that it has an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer. Tunisia reported that the taxpayer has the possibility of requesting the requesting for MAP whether cases are pending before or have already been decided under these administrative dispute settlement processes and that Tunisia's competent authority can deviate from any decision taken in such processes.

131. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Tunisia.

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

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

Recent developments

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

Anticipated modifications

134. Tunisia indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These 27 treaties include the treaty entered into with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic.
2. These 33 treaties include the tax treaty with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic and the UMA Convention that for Tunisia applies to the Algeria, Libya, Mauritania and Morocco.
3. These 23 treaties include the treaty entered into with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic.
4. These 20 treaties include the UMA Convention that for Tunisia applies to the Algeria, Libya, Mauritania and Morocco.
5. These 44 treaties include the UMA Convention that for Tunisia applies to the Algeria, Libya, Mauritania and Morocco.
6. These seven treaties include the treaty entered into with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic.
7. See: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
8. See: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
9. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

References

- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-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.

135. 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 Tunisia’s tax treaties

136. Out of Tunisia’s 52 tax treaties, 50 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.¹ The remaining two treaties do not contain a provision that is based on or equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

137. For the two treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peers did not provide input during stage 1.

Recent developments

Multilateral Instrument

138. Tunisia signed the Multilateral Instrument. 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).

139. With regard to the two tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Tunisia listed neither of them as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, the Multilateral Instrument will not modify these two treaties to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

140. For the two treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent, Tunisia reported that the following actions are being taken or planned:

- For one treaty, it intends to update its list of notifications and reservations to the Multilateral Instrument to have the treaties modified by it.
- For one treaty, it intends to update its list of notifications and reservations to the Multilateral Instrument to include this treaty and expects the treaty partner to update its list of notifications and reservations to the Multilateral Instrument to have the treaties modified by it. If this is seen to not be possible, Tunisia would initiate bilateral negotiations.

Peer input

141. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Tunisia.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.1]	<p>Two out of Tunisia's 52 tax treaties do not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). These treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties:</p> <ul style="list-style-type: none"> • For one, the relevant treaty partner will be engaged by Tunisia with a view to have the treaty modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. • For one, Tunisia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument. 	<p>For the two treaties that do not contain the equivalent of Article 25(2), first sentence of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument to include such equivalent, Tunisia should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision.</p>

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

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

143. 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

144. 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 of the year in which the jurisdiction joins the Inclusive Framework, in the case of Tunisia, 2017 (“**post-2016 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2017 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Tunisia provided its MAP statistics for the years 2017-20 pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Tunisia of which its competent authority was aware. The statistics discussed below include both pre-2017 and post-2016 cases and the full statistics are attached to this report as Annex B and Annex C respectively and should be considered jointly to understand Tunisia’s MAP caseload.²

145. With respect to post-2016 cases, Tunisia reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Tunisia reported that it could match its post-2016 MAP statistics with all but one of its treaty partners.

146. No peer input was received on the matching of MAP statistics with Tunisia for the years 2017-20.

147. In that regard, based on the information provided by Tunisia’s MAP partners, its post-2016 MAP statistics actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

148. Tunisia has put a system in place with its treaty partners that communicates, monitors and manages the MAP caseload. Tunisia noted that in order to follow up on pending MAP cases, these cases are listed in a matrix that is monitored and updated according to the progress of the processing of the file with the taxpayer and the competent authority of the other jurisdiction. Tunisia clarified that in this matrix, all the steps of the case are recorded, from the request to open the MAP until the notification to the taxpayer of its results, including the type of agreement reached between the two competent authorities and possible obstacles to its implementation.

149. Tunisia also noted that the competent authority in Tunisia does not use a specific monitoring criteria or indicators related to the MAP, rather monitoring and evaluation form part of the evaluation of the various tasks entrusted to the structure in charge of MAP. To this end, the competent authority of Tunisia claims to adopt a qualitative rather than quantitative approach in the evaluation and monitoring of the processing of files. This qualitative approach is based on a correct and uniform application of the provisions of tax treaties so as to avoid differences in the application of tax treaties, domestic law and administrative doctrine.

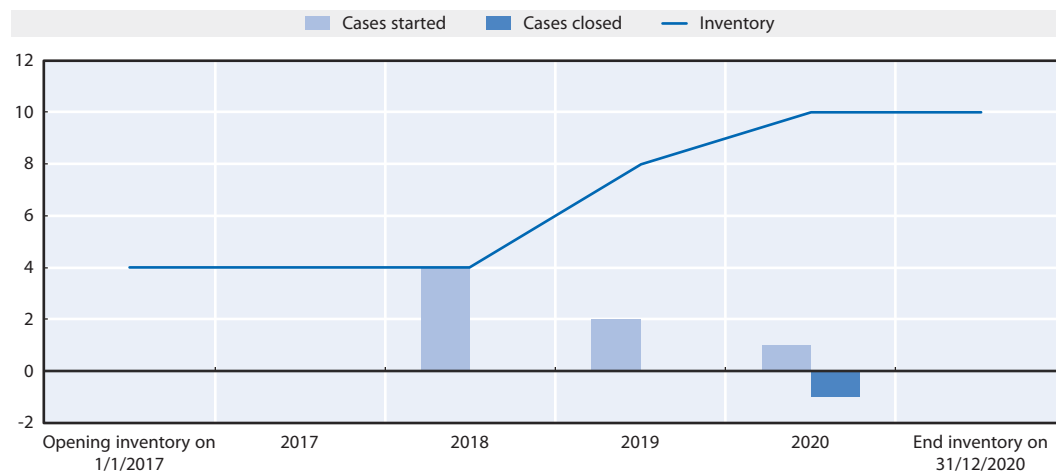
Analysis of Tunisia's MAP statistics

Global overview

150. The analysis of Tunisia's MAP caseload relates to the period starting on 1 January 2017 and ending on 31 December 2020.

151. Figure C.1 shows the evolution of Tunisia's MAP caseload over the Statistics Reporting Period.³

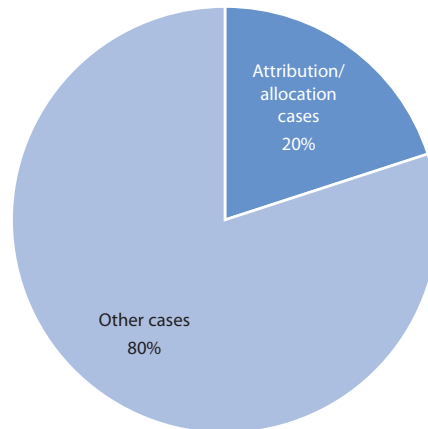
Figure C.1. Evolution of Tunisia's MAP caseload



152. At the start of the Statistics Reporting Period, there were four MAP cases pending in Tunisia, of which one was an attribution/allocation case and three were other cases.⁴ At the end of the Statistics Reporting Period, ten MAP cases were pending, two of which are attribution/allocation case and eight of which are other cases. Tunisia's MAP caseload

has increased by 150% during the Statistics Reporting Period. This concerns an increase of 167% in the number of other MAP cases and an increase of 100% in the number of attribution/allocation cases. The breakdown of the end inventory can be shown as in Figure C.2.

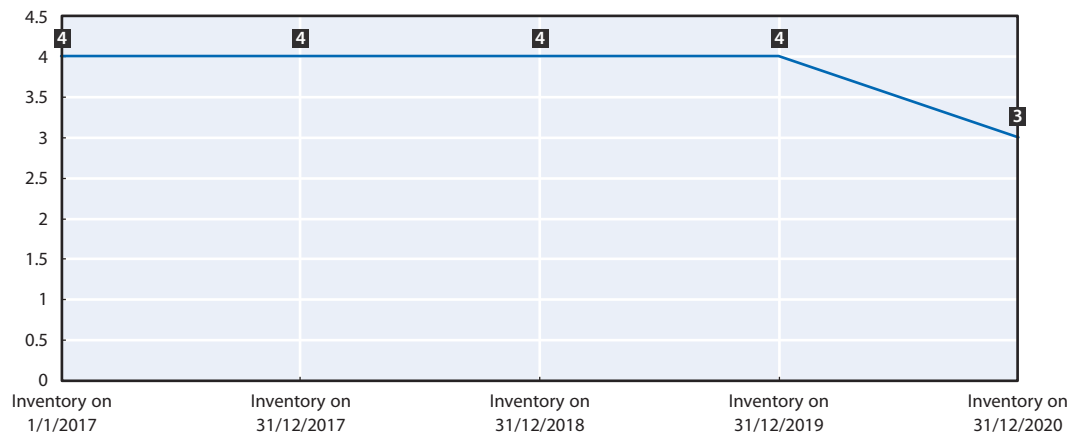
Figure C.2. End inventory on 31 December 2020 (Ten cases)



Pre-2017 cases

153. Figure C.3 shows the evolution of Tunisia's pre-2017 MAP caseload over the Statistics Reporting Period.

Figure C.3. Evolution of Tunisia's MAP inventory – Pre-2017 cases



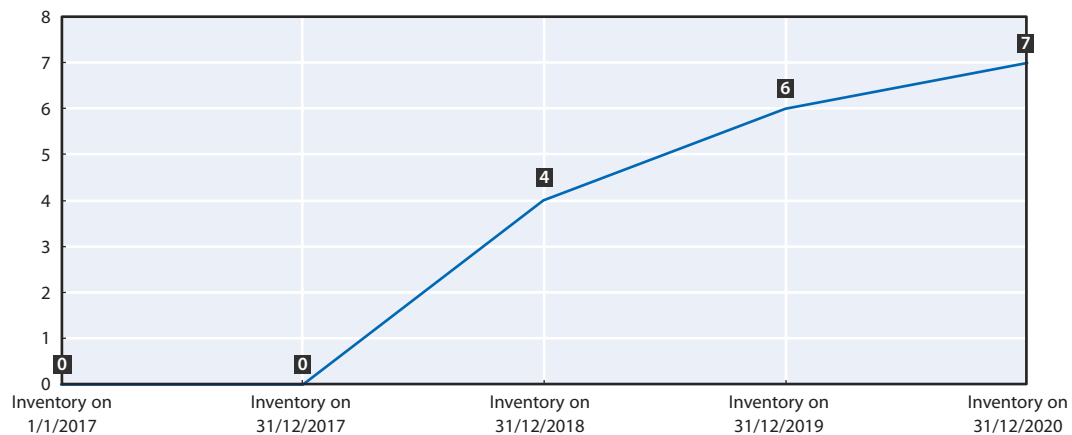
154. At the start of the Statistics Reporting Period, there were four pre-2017 MAP cases pending in Tunisia, of which one was an attribution/allocation case and three were other cases. At the end of the Statistics Reporting Period, the total inventory of pre-2017 cases had decreased to three cases, all of them being other cases. Therefore, one pre-2017 attribution/allocation case was closed during the Statistics Reporting Period. The decrease in the number of pre-2017 MAP cases is shown in the table below.

Pre-2017 cases	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Evolution of total MAP caseload in 2019	Evolution of total MAP caseload in 2020	Cumulative evolution of total MAP caseload over the three years (2017-20)
Attribution/allocation cases	(no case closed)	(no case closed)	(no case closed)	-100%	-100%
Other cases	(no case closed)	(no case closed)	(no case closed)	(no case closed)	(no case closed)

Post-2016 cases

155. Figure C.4 shows the evolution of Tunisia’s post-2016 MAP caseload over the Statistics Reporting Period.

Figure C.4. Evolution of Tunisia’s MAP inventory – Post-2016 cases



156. A total of seven MAP cases were started during the Statistics Reporting Period, of which two are attribution/allocation cases and five are other cases. At the end of the Statistics Reporting Period, the total number of post-2016 cases awaiting resolution was still seven as no post-2016 cases were closed during this period.

Overview of cases closed during the Statistics Reporting Period

157. During the Statistics Reporting Period, Tunisia closed only one pre-2017 attribution/allocation case which was closed with the outcome “unilateral relief granted”.

Average timeframe needed to resolve MAP cases

158. During the Statistics Reporting Period, Tunisia closed only one pre-2017 attribution/allocation case which was closed in 37.71 months.

Peer input

159. The peer input in relation to resolving MAP cases will be discussed under element C.3.

Recent developments

160. Tunisia was in the stage 1 peer review report under element C.2 recommended to seek to resolve all of its post-2016 cases pending on 31 December 2018 (four cases) within a timeframe that results in an average timeframe of 24 months for all post-2016 cases.

161. With respect to this recommendation, Tunisia reported that since 1 September 2019 it has taken efforts to resolve its pending MAP cases by giving the task priority. However, Tunisia noted that owing to extraneous factors such as the time taken for the taxpayer to provide the information and documentation required for the study of the case, the time taken for the other competent authority to respond and even the availability of the taxpayer concerned, its post-2016 cases have remained pending.

162. In view of the statistics discussed above, it follows that Tunisia’s MAP inventory has increased by 150% and that Tunisia has not been able to resolve any of its pending post-2016 cases. The statistics also show that Tunisia has in the period 2017-20 not closed the one pre-2017 MAP case it closed within 24 months. Element C.3 will further consider these numbers in light of the adequacy of resources.

163. All but one peer that provided input during stage 1 provided input during stage 2 as well. These peers confirmed that this input holds equal relevance for the period starting 1 September 2019.

Anticipated modifications

164. Tunisia indicated that it did not anticipate 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.

165. 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 Tunisia’s competent authority

166. Under Tunisia’s tax treaties, the competent authority function is assigned to the Minister of Finance, which is further delegated to the *Direction Générale des Etudes et de la Législation Fiscales* (General Directorate of Tax Studies and Legislation), where three staff members deal partly with MAP cases along with other tasks in relation to the negotiation and general interpretation of tax treaties. This is further discussed under element C.4.

167. Tunisia further reported that any necessary adjustments to the level of resources available in its competent authority and specific training of staff will be discussed when necessary. In addition, Tunisia noted that a modification of the organisation chart of the General Directorate of Tax Studies and Legislation was envisaged with a view to reorganising the various structures so as to assign the tasks of reviewing MAP cases would

be assigned to a department dedicated to this purpose. However, Tunisia reported that the regulatory text made for this purpose did not obtain the approval of the administrative court because of the project of reorganisation of the Ministry of Finance which is in progress, and it was asked to modify the organisation of the General Directorate of Tax Studies and Legislation within the framework of this same project.

Monitoring mechanism

168. Tunisia commented that, so far, it considers the resources provided to its competent authority to be sufficient.

Recent developments

169. In the stage 1 report, Tunisia was recommended to make sure that the resources available for the competent authority function remain adequate in order to resolve future MAP cases in a timely, efficient and effective manner.

170. In this respect, Tunisia noted that it has been acting urgently, but has not been able to close most of its pending MAP cases owing to several reasons as follows:

- For two pre-2017 cases, a tentative agreement was reached between competent authorities and letters were sent to the other competent authorities to contact the taxpayer concerned to request them to contact the Directorate General of Taxes in Tunisia to initiate procedures for refund of the amount of withholding tax unduly paid in Tunisia. However, no official communications has been received from the treaty partners or the taxpayers in respect of these cases.
- For the other pending pre-2017 case, Tunisia has shared a position paper, and following its request, has provided all necessary documentation and information on the taxpayer concerned. However, Tunisia has not received a response from the treaty partner concerned.
- For several of the pending post-2016 cases, Tunisia is waiting for communication from the treaty partners as to whether they would be able to provide unilateral relief or would request Tunisia's position on the case.

Practical application

MAP statistics

171. As discussed under element C.2, Tunisia closed only one pre-2017 attribution/allocation case during the Statistics Reporting Period while it has three pre-2017 MAP cases and seven post-2016 MAP cases pending. The one MAP case was closed in 37.71 months.

172. Further – as analysed in element C.2 – the MAP inventory of Tunisia increased substantially since 1 January 2017, with a 150% increase in cases which concerns both type of cases. This can be shown as follows:

	Opening inventory on 1/1/2017	Cases started	Cases closed	End inventory on 31/12/2020	Increase in %
Attribution/allocation cases	1	2	1	2	100%
Other cases	3	5	0	8	167%
Total	4	7	1	10	150%

173. The figures in the above table show that even though the total inventory remains modest, the number of closed cases is less than 15% of all cases started in the period 2017-20.

Peer input

Period 1 January 2017-31 August 2019 (stage 1)

174. One peer noted that Tunisia had reacted quickly to its position paper; the peer noted that the case is still open because of their own difficulties in processing the case. Another peer mentioned that they had sent position papers on two cases and that Tunisia had acknowledged receipt in one case. This peer noted that it is too early to express an opinion as they have not yet established contact with Tunisia's competent authority. Tunisia responded that it usually acknowledges receipt of all cases as soon as it receives a case. A third peer noted that due to the limited number of cases, they are unable to determine whether the time frame applied is reasonable.

Period 1 September 2019-30 April 2021 (stage 2)

175. All but one peer that provided input during stage 1 provided input during stage 2 as well. These peers noted that the update report provided by Tunisia fully reflects their experience with Tunisia since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

176. Tunisia indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	MAP cases were closed in 37.71 months on average, which is above the 24-month average (the pursued average for resolving MAP cases received on or after 1 January 2017). Further, the MAP caseload has increased by 150% since 1 January 2017 and all but one MAP cases, including three pre-2017 cases, still remain pending. This might indicate that additional resources may need to be devoted by Tunisia's competent authority to ensure that MAP cases are closed in a timely, effective and efficient manner and to cope with this increase.	Tunisia should ensure that the available resources for its competent authority function are adequate to allow the resolution of current pending and future MAP cases in a timely, efficient and effective manner. Where needed, it should in particular devote necessary resources to be able to cope with the significant increase in the number of both attribution/allocation and other MAP cases.

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

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

177. 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

178. As mentioned under element C.3, the competent authority function in Tunisia is performed by the *Direction Générale des Etudes et de la Législation Fiscales* (General Directorate of Tax Studies and Legislation). Tunisia clarified that its competent authority is also responsible for treaty negotiation, general interpretation of tax treaties and policy work. Tunisia reported that when its competent authority handles a MAP request, it would act fully independently because the competent authority is within the Ministry of Finance, whereas the audit function is separately located within the Tax Administration.

179. With regard to the above, Tunisia reported that staff in charge of MAP operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment. Tunisia further affirmed that the process for negotiating MAP agreements is not influenced by policy considerations that Tunisia would like to see reflected in future amendments to the treaty.

Recent developments

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

Practical application

Period 1 January 2017-31 August 2019 (stage 1)

181. Peers generally reported no impediments in Tunisia to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy in the period 1 January 2017-31 August 2019.

Period 1 September 2019-30 April 2021 (stage 2)

182. All but one peer that provided input during stage 1 provided input during stage 2 as well. These peers noted that the update report provided by Tunisia fully reflects their experience with Tunisia since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

183. Tunisia indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

184. 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 Tunisia

185. Tunisia stated that the staff in its competent authority function is not evaluated using specific performance indicators. Tunisia indicated that it endeavours to apply the provisions of the tax treaties correctly in all MAP cases, as well as comply with the relevant administrative regulations to ensure consistency between the solutions adopted in cases involving the same facts and similarly-situated taxpayers.

186. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below and checked when they are used by Tunisia:

- 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).

187. Further to the above, Tunisia 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 would not be evaluated on the basis of the material outcome of MAP discussion.

Recent developments

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

Practical application

Period 1 January 2017-31 August 2019 (stage 1)

189. All peers that provided input indicated not being aware that Tunisia used performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue in the period 1 January 2017-31 August 2019.

Period 1 September 2019-30 April 2021 (stage 2)

190. All but one peer that provided input during stage 1 provided input during stage 2 as well. These peers noted that the update report provided by Tunisia fully reflects their experience with Tunisia since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

191. Tunisia indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

192. 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

193. Tunisia's MAP profile indicates that it has not opted for arbitration as a mechanism for resolving tax treaty disputes in any of its tax treaties. Further, section IX of Tunisia's MAP guidance provides that the tax treaties signed by Tunisia do not allow for arbitration.

Recent developments

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

Practical application

195. To date, Tunisia has not incorporated an arbitration provision in any of its treaties as a final stage to the MAP.

Anticipated modifications

196. Tunisia indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 50 treaties include the treaty entered into with Czechoslovakia that Tunisia continues to apply to the Czech Republic and to the Slovak Republic and the UMA Convention that for Tunisia applies to Algeria, Libya, Mauritania and Morocco.
2. For post-2016 cases, if the number of MAP cases in Tunisia’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, Tunisia reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
3. Tunisia’s MAP statistics for 2018, 2019 and 2020 were corrected during its peer review and differ from the published statistics for these years. See further explanations in Annexes B and C.
4. For pre-2017 and post-2016 cases, Tunisia follows the definition provided by the MAP Statistics Reporting Framework to distinguish between attribution/allocation cases and other cases. Annex D of the MAP Statistics Reporting Framework states that: “An attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.

References

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

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

197. 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

198. Tunisia indicated that all MAP agreements will be implemented notwithstanding the time limits in its domestic law regardless of whether the solution resulted in an upward or downward tax adjustment, even in the absence of the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) in the relevant tax treaty. Although a request for refund of undue tax must be made within a maximum of three years from the date on which the tax became refundable in ordinary situations, Tunisia clarified that no such time limit applies for the refund of taxes following a MAP agreement and therefore, the implementation of MAP agreements is not affected by domestic time limits in any situation.

199. Tunisia further reported that when a MAP agreement is reached, its competent authority will inform the taxpayer, who is required to reply in writing whether or not the solution reached is acceptable. Tunisia indicated that no specific time limit applies for this notification, although Tunisia confirms that the taxpayer will be notified as quickly as possible. If the taxpayer accepts the agreement, Tunisia noted that they are called upon to present themselves in person or appoint another person to carry out the practical refund procedures in person and physically in Tunisia, in particular filing the request for the refund of amounts unduly collected by the Tax Directorate. Tunisia's competent authority is also in charge of monitoring to ensure effective implementation, through monitoring the tax refund by the Tax Directorate. This is confirmed in section VIII of Tunisia's MAP guidance.

Recent developments

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

Practical application

Period 1 January 2017-31 August 2019 (stage 1)

201. Tunisia indicated that it had signed two MAP agreements in the period 1 January 2017-31 August 2019 that need to be implemented. Tunisia specified that in one case, the taxpayer did not present himself to file a request for refund of tax unduly paid in Tunisia, and that in the other case the agreement must be implemented by the other competent authority.

202. One peer noted that implementation in Tunisia appears to present difficulties with regard to the refund procedure that the taxpayer must follow. According to this peer, the fact that taxpayers must appear in person in Tunisia or mandate a representative as a prerequisite for the implementation of MAP agreements has caused delays in terms of implementation. The agreements in question are not yet implemented and according to the peer this is because of these administrative requirements.

203. Tunisia noted that the implementation of MAP agreements depend on the completion of the restitution procedures by the taxpayer himself or his agent before the competent services of the Directorate General of Taxes. Tunisia confirmed that the competent authority as well as the Tax Legislation and the General Directorate of Taxes have made the necessary efforts to contact the taxpayers concerned, explaining the required procedures to be followed. However, according to Tunisia, the concerned taxpayers have neither appeared nor mandated another person to complete these steps, which has prevented the closure of certain files for which an MAP agreement has been reached in favour of the taxpayer. For these special cases, correspondence has also been sent to the other competent authority concerned to notify the taxpayers concerned of the results of the MAP agreement and to encourage them to contact the competent services of the Directorate General of Taxes in order to be reimbursed. Tunisia also confirmed that meetings with representatives of the embassies of the country concerned have been held within the DGELF for the preparation of files not yet closed and thus to encourage the residents of the relevant countries to present themselves or to mandate someone and to receive the reimbursement. Tunisia has also stated that it is ready to provide the concerned competent authority with a list of resolved cases under which MAP agreements with the other competent authority have been drawn up, but which are not implemented for the mentioned reasons.

204. The peer in question noted that the implementation difficulties in question seem to remain and do not appear easy to overcome for taxpayers who are not resident in Tunisia.

205. Tunisia further specified that it provided all the necessary details, it has also organised meetings with country representatives on the subject, in order to overcome eventual obstacles and to facilitate the implementation of these agreements.

Period 1 September 2019-30 April 2021 (stage 2)

206. Tunisia reported that no MAP agreements requiring implementation in Tunisia were reached since 1 September 2019. Tunisia further noted that for the case concerning the input provided by the peer mentioned in paragraph 202 above, the taxpayer concerned has not responded, even by electronic means, confirming that he has been informed of the MAP agreement and has any difficulties or problem with the implementation process in Tunisia and thus, Tunisia does not believe that this process constitutes an obstacle to implementation. However, since no agreement requiring implementation in Tunisia were reached during the period under review for stage 2, Tunisia was not able to practically verify whether such requirement constitutes an obstacle to the implementation of MAP agreements in general.

207. All but one peer that provided input during stage 1 provided input during stage 2 as well. These peers noted that the update report provided by Tunisia fully reflects their experience with Tunisia since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

208. Tunisia indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	Tunisia should continue to monitor whether the requirements imposed on taxpayers to appear in person or to appoint a representative entail practical obstacles concerning the implementation of MAP agreements.

[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.

209. 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

210. As discussed under element D.1, Tunisia does not have a specific timeframe for informing the taxpayer of the outcome of a MAP agreement, but it implements MAP agreements as quickly as possible.

Recent developments

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

Practical application

Period 1 January 2017-31 August 2019 (stage 1)

212. As discussed under element D.1, Tunisia reached MAP agreements in the period 1 January 2017-31 August 2019, but for the reasons explained above, these agreements have not yet been implemented.

213. Apart from the peer input discussed under element D.1, all peers that provided input reported not being aware of any impediments to the implementation of MAP agreements in Tunisia on a timely basis in the period 1 January 2017-31 August 2019.

Period 1 September 2019-30 April 2021 (stage 2)

214. Tunisia reported that no MAP agreements requiring implementation in Tunisia were reached since 1 September 2019. Since no agreement requiring implementation in Tunisia was reached during the period under review for stage 2, Tunisia was not able to practically verify whether such requirement constitutes an obstacle to the timely implementation of MAP agreements in general. All but one peer that provided input during stage 1 provided input during stage 2 as well. These peers noted that the update report provided by Tunisia fully reflects their experience with Tunisia since 1 September 2019 and/or there are no additions to the previous input given.

Anticipated modifications

215. Tunisia indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]		Tunisia should continue to monitor whether the requirements imposed on taxpayers to appear in person or to appoint a representative entail practical obstacles concerning the timely implementation of MAP agreements.

[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.

216. 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 Tunisia's tax treaties

217. As discussed under element D.1, Tunisia indicated that in practice, all MAP cases will be implemented notwithstanding any time limits in its domestic laws even in the absence of a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the relevant tax treaty. Tunisia has confirmed that the solution adopted within the MAP agreement is enforceable regardless of any time limits provided for by domestic law, which is clarified in section VIII of Tunisia's MAP guidance.

218. Out of Tunisia's 52 tax treaties, 24 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) requiring that any

mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.¹ In addition, one treaty contains in the MAP article an alternative provision that limits the time during which a contracting state can make a primary adjustment. This provision is considered equivalent to the alternative treaty provisions for Article 9(1) and Article 7(2) setting a time limit the time during which a contracting party can make a primary adjustment. This treaty also includes the alternative provision for Article 9(1).

219. The remaining 27 treaties do not contain a provision that is based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), nor contain alternative provisions in Article 9(1) and Article 7(2) setting a time limit for making transfer pricing adjustments.

220. One of the relevant peers mentioned during stage 1 that the provision in their tax treaty is not compliant, but they are willing to accept the alternative provisions. The peer has submitted a draft amendment protocol to Tunisia, with a view to adapt the tax treaty to meet the Action 14 Minimum Standard.

Recent developments

Multilateral Instrument

221. Tunisia signed the Multilateral Instrument. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), 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.

222. With regard to the 27 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) nor the alternative provisions for Article 9(1) and Article 7(2), Tunisia listed 13 as a covered tax agreement under the Multilateral Instrument and made for all a notification, pursuant to Article 16(6)(c)(ii), that they do not contain the provision described in Article 16(4)(b)(ii). All of the relevant 13 treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Tunisia as a covered tax agreement under that instrument, but only 12 made a notification on the basis of Article 16(6)(c)(ii). Therefore, at this stage, the Multilateral Instrument will, upon its entry into force for the treaties concerned, modify 12 of the 27 tax treaties identified above, to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

223. For the remaining 15 tax treaties that do not contain the equivalent of 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument, Tunisia reported that the following actions are being taken or planned:

- For four treaties, it intends to update its list of notifications and reservations to the Multilateral Instrument to have the treaties modified by it.
- For six treaties, it intends to update its list of notifications and reservations to the Multilateral Instrument to include this treaty and expects the treaty partner to sign the Instrument to have the treaties modified by it. If this is seen to not be possible, Tunisia would initiate bilateral negotiations.
- For three treaties, it has sent a proposal for bilateral negotiations and is awaiting a response.
- For two treaties, bilateral negotiations are being scheduled.

Peer input

224. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Tunisia.

Anticipated modifications

225. Tunisia reported that it will continue to 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>27 out of 52 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). 12 of these 27 treaties will be modified by the Multilateral Instrument to include the required provision. With respect to the remaining 15 treaties:</p> <ul style="list-style-type: none"> • For six, the relevant treaty partners have been or will be engaged by Tunisia with a view to have the treaties modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. • For four, Tunisia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have them modified by the Multilateral Instrument. • For three, the relevant treaty partner has been approached to initiate discussions on the amendment of the treaty with a view to including the required provision. • For two, negotiations are envisaged and being scheduled. 	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument in order to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) into the 12 treaties that do not currently contain this equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the relevant treaties.</p> <p>For the remaining 15 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), Tunisia should:</p> <ul style="list-style-type: none"> • for ten treaties, continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision or be willing to accept both alternatives • for three treaties, upon receipt of a response from the treaty partners concerned agreeing to include the required provision or both alternatives, work towards updating these treaties to include this provision or be willing to accept both alternatives • for two treaties, continue (the initiation of) negotiations with a view to including the required provision or be willing to accept both alternatives.

Note

1. These 24 treaties include the treaty entered into with Czechoslovakia that Tunisia continues to apply to the Czech Republic and to the Slovak Republic and the UMA Convention that for Tunisia applies to the Algeria, Libya, Mauritania and Morocco.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	<p>Four out of 52 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). None of these four treaties will be modified by the Multilateral Instrument to include the required provision. With respect to these four treaties:</p> <ul style="list-style-type: none"> · For two, the relevant treaty partners have been or will be engaged by Tunisia with a view to have the treaty modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. · For two, Tunisia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have them modified by the Multilateral Instrument. 	<p>As the four treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) will at this time not be modified via the Multilateral Instrument, Tunisia should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision.</p>
[A.2]	<p>Roll-back of bilateral APAs is not provided for in appropriate cases.</p>	<p>Tunisia should, without further delay, introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.</p>

	Areas for improvement	Recommendations
Part B: Availability and access to MAP		
[B.1]	<p>Nine out of 52 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b). Two of these treaties will be modified by the Multilateral Instrument to include the required provision. With respect to the remaining seven treaties:</p> <ul style="list-style-type: none"> · For three, the relevant treaty partners have been or will be engaged by Tunisia with a view to have the treaties modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. · For three, Tunisia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have them modified by the Multilateral Instrument · For one, the relevant treaty partner has been approached to initiate discussions on the amendment of the treaty with a view to including the required provision. 	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument, in order to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining seven treaties that do not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) and will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), Tunisia should :</p> <ul style="list-style-type: none"> • for six treaties, continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision • for one treaty, upon receipt of a response from the treaty partner agreeing to include the required provision, work towards updating this treaty to include this provision <p>This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) either:</p> <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	<p>Six of Tunisia's 52 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), either (i) because 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, (ii) there is a requirement to submit a MAP request to both competent authorities or (ii) because of the timeline for submitting a MAP request follows the rules under domestic law of the treaty partners. Three of these treaties are expected to be modified or superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to the remaining three treaties:</p> <ul style="list-style-type: none"> • For two, the relevant treaty partners have been or will be engaged by Tunisia with a view to have the treaties modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. • For one, the relevant treaty partner has been approached to initiate discussions on the amendment of the treaty with a view to including the required provision. 	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument, in order to include the equivalent of Article 25(1), 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.</p> <p>For the remaining three treaties that do not contain the equivalent of Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument to include such equivalent, Tunisia should :</p> <ul style="list-style-type: none"> • for two treaties, continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision • for one treaty, upon receipt of a response from the treaty partner agreeing to include the required provision, work towards updating this treaty to include this provision.

	Areas for improvement	Recommendations
[B.1]	<p>One of Tunisia's 52 tax treaties contains a provision based on Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2017) which is restricted by a condition to file MAP requests before both competent authorities, which results in the treaty not containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), or as amended by that final report or Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty will not be modified or superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to this treaty, Tunisia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument.</p>	<p>For this treaty that does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), or as amended by that final report (OECD, 2017) or Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument, Tunisia should continue to work in accordance with its stated intention to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in this treaty via the Multilateral Instrument.</p>
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	<p>Eight out of the 52 tax treaties do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Of these eight treaties, three will be modified by the Multilateral Instrument to include the required provision. With respect to the remaining five treaties:</p> <ul style="list-style-type: none"> • For one, bilateral negotiations are not necessary • For two, the relevant treaty partners have been or will be engaged by Tunisia with a view to have the treaties modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. • For two, Tunisia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have them modified by the Multilateral Instrument. 	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument in order to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the three treaties that do not currently contain this equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the relevant treaties.</p> <p>As one of the five treaties that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument is the 1990 treaty with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic, Tunisia should ensure that, once it enters into negotiations with these treaty partners, it includes the required provision.</p> <p>For the remaining four treaties that do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument to include such equivalent, Tunisia should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision.</p>
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-

	Areas for improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	<p>Two out of Tunisia's 52 tax treaties do not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). These treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties:</p> <ul style="list-style-type: none"> • For one, the relevant treaty partner will be engaged by Tunisia with a view to have the treaty modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations • For one, Tunisia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument. 	<p>For the two treaties that do not contain the equivalent of Article 25(2), first sentence of the OECD Model Tax Convention (OECD, 2017) and will not be modified by the Multilateral Instrument to include such equivalent, Tunisia should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision.</p>
[C.2]	-	-
[C.3]	<p>MAP cases were closed in 37.71 months on average, which is above the 24-month average (the pursued average for resolving MAP cases received on or after 1 January 2017). Further, the MAP caseload has increased by 125% since 1 January 2017 and all but one MAP cases, including three pre-2017 cases, still remain pending. This might indicate that additional resources may need to be devoted by Tunisia's competent authority to ensure that MAP cases are closed in a timely, effective and efficient manner and to cope with this increase.</p>	<p>Tunisia should ensure that the available resources for its competent authority function are adequate to allow the resolution of current pending and future MAP cases in a timely, efficient and effective manner. Where needed, it should in particular devote necessary resources to be able to cope with the significant increase in the number of both attribution/allocation and other MAP cases.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	<p>Tunisia should continue to monitor whether the requirements imposed on taxpayers to appear in person or to appoint a representative entail practical obstacles concerning the implementation of MAP agreements.</p>
[D.2]	-	<p>Tunisia should continue to monitor whether the requirements imposed on taxpayers to appear in person or to appoint a representative entail practical obstacles concerning the timely implementation of MAP agreements.</p>

	Areas for improvement	Recommendations
[D.3]	<p>27 out of 52 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). 12 of these 27 treaties will be modified by the Multilateral Instrument to include the required provision. With respect to the remaining 15 treaties:</p> <ul style="list-style-type: none"> • For six, the relevant treaty partners have been or will be engaged by Tunisia with a view to have the treaties modified by the Multilateral Instrument. Where this is not possible, it would initiate bilateral negotiations. • For four, Tunisia will revise its list of notifications and reservations to the Multilateral Instrument with a view to have them modified by the Multilateral Instrument • For three, the relevant treaty partner has been approached to initiate discussions on the amendment of the treaty with a view to including the required provision • For two, negotiations are envisaged and being scheduled. 	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument in order to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) into the 12 treaties that do not currently contain this equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the relevant treaties.</p> <p>For the remaining 15 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), Tunisia should:</p> <ul style="list-style-type: none"> • for ten treaties, continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision or be willing to accept both alternatives • for three treaties, upon receipt of a response from the treaty partners concerned agreeing to include the required provision or both alternatives, work towards updating these treaties to include this provision or be willing to accept both alternatives • for two treaties, continue (the initiation of) negotiations with a view to including the required provision or be willing to accept both alternatives.

Annex A

Tax treaty network of Tunisia

		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 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11		
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?		
	Y = yes N = signed pending ratification	If N, date of signing	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, others reasons	if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art 7 equivalent ii = no, but have Art 9 equivalent iii = no, but have both Art 7 & 9 equivalent N = no and no equivalent of Art 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no
Algeria	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Austria	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N
Belgium	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	N*	N
Burkina Faso	Y	N/A	O*	Y	N/A	Y	i	Y	N*	Y	N*	N
Cameroon	Y	N/A	O*	i	N/A	Y	i	Y	N	Y	Y	N
Canada	Y	N/A	O	ii*	2-years	i	i	Y	iii	Y	Y	N

			Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)					
China (People’s Republic of)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Côte d’Ivoire	Y	N/A	N	Y	N/A	Y	i	Y	N	Y	Y	N
Czech Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N	N
Denmark	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Egypt	Y	N/A	O*	ii	5-years	i	i	Y	N*	Y	Y	N
Ethiopia	Y	N/A	O	ii	2-years	i	i	Y	N	Y	Y	N
France	Y	N/A	O*	i	N/A	i**	i	Y	N*	N	Y	N
Germany	Y	N/A	O	i	N/A	Y	i	Y	Y	Y	Y	N
Greece	Y	N/A	N*	Y	N/A	Y	i	Y	Y	Y	Y	N
Hungary	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Indonesia	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N
Iran	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N
Italy	Y	N/A	N	Y	N/A	i**	i	Y	Y	Y	Y	N
Jordan	Y	N/A	N	i	N/A	i	i	N	N	N	N	N
Korea	Y	N/A	O*	Y	N/A	i**	i	Y	Y	Y	Y	N
Kuwait	Y	N/A	O*	Y	N/A	i*	i	Y	Y	Y	Y	N
Lebanon	Y	N/A	O	ii	2-years	i	i	Y	Y	Y	Y	N
Libya	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O*	Y	N/A	Y	i	Y	N*	Y	Y	N
Mali	Y	N/A	N	Y	N/A	i	i	Y	N	Y	Y	N
Malta	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N

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

		Article 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.1	B.3		B.4		C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?		Inclusion Art. 25(1) 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) second sentence? (Note 4)	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)					
Syrian Arab Republic	Y	N/A	O	ii	2-years	Y	i	Y	Y	Y	Y	N
Turkey	Y	N/A	O*	iv**	domestic law	Y	i	Y	Y	Y	Y	N
United Arab Emirates	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N
United Kingdom	Y	N/A	O*	i	N/A	i*	i	Y	N*	Y	N*	N
United States	Y	N/A	O	i	N/A	Y	i	Y	Y	Y	Y	N
Viet Nam	Y	N/A	O	Y	N/A	i	i	Y	Y	N	Y	N
Yemen	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N

Legend

- E* The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
- E** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
- O* The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
- 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*/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 modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
- i**/iv**/N** The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
- i*** The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B

**MAP Statistics Reporting for the 2017, 2018, 2019 and 2020 Reporting Periods
(1 January 2017 to 31 December 2020) for pre-2017 cases**

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

2018 MAP Statistics													
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2018	Number of pre-2017 cases closed during the reporting period by outcome										No. of pre-2017 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2017 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	3	0	0	0	0	0	0	0	0	0	0	3	n.a.
Total	4	0	0	0	0	0	0	0	0	0	0	4	n.a.

2019 MAP Statistics													
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2019	Number of pre-2017 cases closed during the reporting period by outcome										No. of pre-2017 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing pre-2017 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	3	0	0	0	0	0	0	0	0	0	0	3	n.a.
Total	4	0	0	0	0	0	0	0	0	0	0	4	n.a.

Notes: Tunisia's pre-2017 case reporting differs from the published statistics in 2019 owing to the correction of errors made while reporting.

2020 MAP Statistics													
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2020	Number of pre-2017 cases closed during the reporting period by outcome										No. of pre-2017 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing pre-2017 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	1	0	0	0	1	0	0	0	0	0	0	0	37.71
Others	3	0	0	0	0	0	0	0	0	0	0	3	n.a.
Total	4	0	0	0	0	0	0	0	0	0	0	3	37.71

Annex C

MAP Statistics Reporting for the 2017, 2018, 2019 and 2020 Reporting Periods (1 January 2017 to 31 December 2020) for post-2016 cases

2017 MAP Statistics														
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2017	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome										No. of post-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-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	Column 15
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.

2018 MAP Statistics														
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2018	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome										No. of post-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-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	Column 15
Attribution/ Allocation	0	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	0	3	0	0	0	0	0	0	0	0	0	0	3	n.a.
Total	0	4	0	0	0	0	0	0	0	0	0	0	4	n.a.

Notes: Tunisia's post-2016 case reporting differs from the published statistics in 2018 and onwards owing to the correction of errors made while reporting.

2019 MAP Statistics														
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2019	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome										No. of post-2016 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-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	Column 15
Attribution/ Allocation	1	1	0	0	0	0	0	0	0	0	0	0	2	n.a.
Others	3	1	0	0	0	0	0	0	0	0	0	0	4	n.a.
Total	4	2	0	0	0	0	0	0	0	0	0	0	6	n.a.

2020 MAP Statistics														
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2020	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome										No. of post-2016 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing post-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	Column 15
Attribution/ Allocation	2	0	0	0	0	0	0	0	0	0	0	0	2	n.a.
Others	4	1	0	0	0	0	0	0	0	0	0	0	5	n.a.
Total	6	1	0	0	0	0	0	0	0	0	0	0	7	n.a.

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 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-2017 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2016
Post-2016 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2017
Statistical Reporting Period	Period for reporting MAP statistics that started on 1 January 2017 and ended on 31 December 2020
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, Tunisia (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under BEPS Action 14, members of the OECD/G20 Inclusive Framework on BEPS 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 BEPS 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 BEPS Action 14 Minimum Standard by Tunisia.



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