

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Note by the Republic of Türkiye

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

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

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

Please cite this publication as:

OECD (2022), *Making Dispute Resolution More Effective – MAP Peer Review Report, Thailand (Stage 2): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris,
<https://doi.org/10.1787/18aa2039-en>.

ISBN 978-92-64-71620-9 (print)

ISBN 978-92-64-34558-4 (pdf)

OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

Photo credits: Cover © ninog-Fotolia.com.

Corrigenda to publications may be found on line at: www.oecd.org/about/publishing/corrigenda.htm.

© OECD 2022

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <https://www.oecd.org/termsandconditions>.

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 25 August 2022 and prepared for publication by the OECD Secretariat.

Acknowledgements

Making Dispute Resolution More Effective – MAP Peer Review Report, Thailand (Stage 2) has been produced by the Organisation for Economic Co-operation and Development (OECD)'s Centre for Tax Policy and Administration (CTPA) under the auspices of the Forum on Tax Administration (FTA)'s Mutual Agreement Procedure (MAP) Forum of the Committee on Fiscal Affairs. The report was prepared by Ms Félicie Bonnet, Mr Jonathan Fraser, Mr Sriram Govind, and Ms Tamami Matsuka, all part of the MAP Unit, under the supervision of Ms Sandra Knaepen, Head of the MAP Unit, and Mr Achim Pross, Head of the International Co-operation and Tax Administration (ICA) division of the CTPA.

The authors would like to thank colleagues in the OECD for their invaluable comments and practical support in finalising the publication, including Ms Sonia Nicolas and Ms Zoe Wellenkamp of the ICA, in addition to the CTPA Communications team. The authors would also like to thank FTA MAP Forum delegates and their colleagues working in national administrations for their input and comments.

Table of contents

Abbreviations and acronyms	9
Executive summary	11
Introduction	13
Reference	17
Part A. Preventing disputes	19
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties	19
[A.2] Provide roll-back of bilateral APAs in appropriate cases	21
References	23
Part B. Availability and access to MAP	25
[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties	25
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process	32
[B.3] Provide access to MAP in transfer pricing cases	34
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions	37
[B.5] Provide access to MAP in cases of audit settlements	38
[B.6] Provide access to MAP if required information is submitted	40
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties	41
[B.8] Publish clear and comprehensive MAP guidance	43
[B.9] Make MAP guidance available and easily accessible and publish MAP profile	46
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP	47
References	48
Part C. Resolution of MAP cases	51
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties	51
[C.2] Seek to resolve MAP cases within a 24-month average timeframe	52
[C.3] Provide adequate resources to the MAP function	56
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty	62
[C.5] Use appropriate performance indicators for the MAP function	63
[C.6] Provide transparency with respect to the position on MAP arbitration	64
References	65

Part D. Implementation of MAP agreements	67
[D.1] Implement all MAP agreements	67
[D.2] Implement all MAP agreements on a timely basis	69
[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)	70
Reference	73
Summary	75
Annex A. Tax treaty network of Thailand	79
Annex B. MAP Statistics Reporting for pre-2017 cases (1 January 2017 to 31 December 2020) ..	83
Annex C. MAP Statistics Reporting for post-2016 cases (1 January 2017 to 31 December 2020) ..	85
Glossary	87
Figures	
Figure C.1 Evolution of Thailand’s MAP caseload	53
Figure C.2 Evolution of Thailand’s MAP inventory – Pre-2017 cases	54
Figure C.3 Evolution of Thailand’s MAP inventory – Post-2016 cases	54
Figure C.4 Average time (in months) to close cases in 2017-20	57

Abbreviations and acronyms

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

Executive summary

Thailand has a relatively large tax treaty network with over 60 tax treaties. Thailand has an established MAP programme and has limited experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 13 cases pending on 31 December 2020, all of which concern other cases. Overall Thailand meets the majority of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Thailand worked to address some of them, which has been monitored in stage 2 of the process. In this respect, Thailand solved some of the identified deficiencies but one new issue was identified in stage 2.

All of Thailand'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 partly consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Approximately 85% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Approximately 15% of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.
- Approximately 15% of its tax treaties do not contain the equivalent of Article 25(1) to the OECD Model Tax Convention (OECD, 2015), whereby the majority of these treaties do not contain the equivalent of Article 25(1), second sentence, as the timeline in these treaties for filing 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, or no filing period for a MAP request is contained but reference is made to the time limit in the domestic law of the Contracting States.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Thailand needs to amend and update a significant number of its tax treaties. In this respect, Thailand signed and ratified the Multilateral Instrument, through which a number of its tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Thailand reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard and that it will design its bilateral renegotiation plan in that regard.

Thailand meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to

request roll-backs of bilateral APAs. In that regard, Thailand reported that it has not received any requests for roll-back.

Thailand meets most of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in almost all eligible cases, although it has since 1 January 2017 not received any MAP request concerning cases where anti-abuse provisions are applied or cases where there has been an audit settlement. However, Thailand does not provide access to MAP in transfer pricing cases where the relevant treaty does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017). In addition, access to MAP is not provided irrespective of domestic remedies as taxpayers need to lodge an appeal with domestic courts against the decision of the Commission of Appeal in order to have full access to MAP. Thailand has in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Lastly, Thailand 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 Thailand 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	0	2	2	0	9.80
Other cases	5	8	0	13	n.a.
Total	5	10	2	13	9.80

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

The number of cases Thailand closed in the period 2017-20 is approximately 20% of the number of all new cases started in those years. During these years, MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 9.80 months which only concerns the resolution of attribution/allocation cases. However, peers experienced some difficulties in resolving MAP cases, in particular in obtaining position papers in due time from Thailand's competent authority as well as responses to position papers issued by peers. Furthermore, the MAP caseload has increased substantially since 1 January 2017. It will be monitored whether the recent and anticipated additional resources will contribute to a resolution of MAP cases in a more timely, effective and efficient manner as well as the more timely issuing of position papers and responses thereto.

Furthermore, Thailand meets most of the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Thailand's competent authority operates fully independently from the audit function of the tax authorities. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. However, matching of MAP statistics was not sought with all of the treaty partners.

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

Introduction

Available mechanisms in Thailand to resolve tax treaty-related disputes

Thailand has entered into 61 tax treaties on income (and/or capital), which are all in force.¹ These 61 treaties are being applied to an equal number of jurisdictions. All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty.

In Thailand, the competent authority to conduct mutual agreement procedure (“**MAP**”) is the Minister of Finance or his duly authorised representative, and is delegated to the Director-General of the Revenue Department of Thailand. In practice the competent authority function is performed by the International Tax Affairs Center of the Revenue Department. The competent authority of Thailand currently employs eight employees. Five of them are responsible for non-transfer pricing MAP cases and three employees work on transfer pricing MAP cases.

Thailand issued guidance on the governance and administration of MAP, titled “Mutual Agreement Procedure Guideline” (“**MAP guidance**”), which was last updated in October 2021 and is available (in English) at:

https://www.rd.go.th/fileadmin/user_upload/porsor/final_MAPmanualEN.pdf

Developments in Thailand since 1 January 2020

Developments in relation to the tax treaty network

The stage 1 peer review report of Thailand noted that Thailand was conducting tax treaty negotiations with some jurisdictions. During stage 2, Thailand reported that this situation remains the same.

Furthermore, on 9 February 2022 Thailand signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. On 31 March 2022, Thailand deposited its instrument of ratification, following which the Multilateral Instrument has for Thailand entered into force on 1 July 2022. With the depositing of the instrument of ratification, Thailand also submitted its list of notifications and reservations to that instrument.² In relation to the Action 14 Minimum Standard, Thailand reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.³ This reservation is in line with the requirements of the Action 14 Minimum Standard.

For those tax treaties that were in the stage 1 peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard, Thailand reported that where treaties will not be modified by the Multilateral Instrument, it strives updating them through future bilateral negotiations. In that regard, it was also noted that Thailand has already contacted some of its treaty partners according to its priority to amend tax treaties based on trade volume and investment relationship analysis, as well as the evidence on treaty abuse, and is in the process of renegotiation with them. For the treaties with other treaty partners, it reported not having in place a specific plan for bilateral negotiations, and after becoming a party to the Multilateral Instrument it will revisit its tax treaty network and will approach the relevant tax treaty partners for such negotiations where the relevant treaties will not be modified by the Multilateral Instrument. During stage 2, Thailand reported that:

- Thailand has finalised renegotiations with two treaty partners on the replacement of the existing treaties to be in line with the Action 14 Minimum Standard.
- For one treaty, Thailand has informed the treaty partner of its expectation that the treaty partner would revise its list of notifications and reservations to the Multilateral Instrument to have the treaty modified by it. If this is seen to not be possible, Thailand would initiate bilateral negotiations.
- For the remaining treaties that will not be modified by the Multilateral Instrument, Thailand will design its bilateral renegotiation plan to bring those treaties to be in line with the Action 14 Minimum Standard.

Other developments

Thailand reported that the Notification of the Ministry of Finance has come into effect after its publication in the Royal Gazette on 23 August 2021, which stipulates that where a tax refund request is submitted after a three-year period from the filing date and where the relevant tax treaty contains the equivalent to Article 25 (2), second sentence, of the OECD Model Tax Convention (OECD, 2017), the period of a tax refund request in accordance with a MAP agreement is extended for 60 days from the date of receiving a notification regarding the MAP agreement by the competent authority of Thailand.

In addition, Thailand reported that it has amended the Revenue Department's Procedure on Tax Appeal and Tax Appeal Process, which came into effect with the publication in the Royal Gazette on 20 September 2021, with respect to the recommendation made in stage 1 that required Thailand to ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017) can access the MAP irrespective of domestic remedies.

As regards organisational changes, Thailand reported that the Revenue Department has recently restructured its organisation by establishing the International Tax Affairs Center, under which the MAP Unit performs the competent authority function. Along with this restructuring, the number of staff members of the MAP function has been increased from seven to eight and is expected to be further increased by four from 1 October 2022 to 30 September 2023.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Thailand's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic

legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Thailand, its peers and taxpayers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Thailand'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 28 October 2020. This report identifies the strengths and shortcomings of Thailand 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 Thailand. In this update report, Thailand 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 Thailand is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the treaties as modified by a protocol were taken into account, even if it concerned a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of Thailand's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process for Thailand was launched on 20 December 2019, with the sending of questionnaires to Thailand and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Thailand in September 2020, with the subsequent approval by the BEPS Inclusive Framework on 28 October 2020. On 28 October 2021, Thailand submitted its update report, which initiated stage 2 of the process.

The period for evaluating Thailand's implementation of the Action 14 Minimum Standard ranges from 1 January 2017 to 31 December 2019 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2020 and depicts all developments as from that date until 31 October 2021.

In total ten peers provided input during stage 1: Austria, Germany, Japan, Korea, Poland, Singapore, Sweden, Switzerland, Türkiye and the United Kingdom. Out of these ten peers, two had MAP cases with Thailand that started in the period 1 January 2017-31 December 2019. Furthermore, two other peers have experiences with Thailand in handling MAP cases. During stage 2, the same peers provided input. In addition, Australia and Chile provided input. For this stage, the same two peers as in stage 1 had MAP cases with Thailand that started in 2017-20, since no cases started in 2020. Generally, all peers that have MAP experiences with Thailand indicated a good and co-operative relationship with Thailand's competent authority, some of them emphasising the difficulties they encountered to resolve MAP cases in a timely manner with Thailand's competent authority. Specifically with respect to stage 2, most of the peers that provided input reported that the update report of Thailand fully reflects the experiences these peers have had with Thailand since 1 January 2020 and/or

that there was no addition to previous input given. Some peers, however, reflected additional input, which is reflected throughout this document under the elements where it has relevance. This input particularly relates to the resolution of MAP cases, for which some peers mentioned they still face difficulties in resolving MAP cases in terms of communication and timely receiving position papers.

Input by Thailand and co-operation throughout the process

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

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

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

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

Overview of MAP caseload in Thailand

The analysis of Thailand’s MAP caseload for stage 1 relates to the period starting on 1 January 2017 and ending on 31 December 2019. For stage 2 the period ranges from 1 January 2020 to 31 December 2020. Both periods are taken into account in this report for analysing the MAP statistics of Thailand.

The analysis of Thailand’s MAP caseload therefore relates to the period starting on 1 January 2017 and ending on 31 December 2020 (“**Statistics Reporting Period**”). According to the statistics provided by Thailand, 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	0	2	2	0
Other cases	5	8	0	13
Total	5	10	2	13

General outline of the peer review report

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

- Preventing disputes
- Availability and access to MAP
- Resolution of MAP cases
- Implementation of MAP agreements.

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

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

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Thailand should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

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>.

Notes

1. The tax treaties Thailand has entered into are available at: <https://www.rd.go.th/english/766.html>. Reference is made to Annex A for the overview of Thailand's tax treaties.
2. Available at: <https://www.oecd.org/tax/treaties/beps-mli-position-thailand.pdf>.
3. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Thailand reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified”.
4. Available at: <https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-thailand-stage-1-b20477e3-en.htm>.
5. Available at <https://www.oecd.org/ctp/dispute/Thailand-Dispute-Resolution-Profile.pdf>.
6. The MAP statistics of Thailand 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 Thailand’s tax treaties

2. Out of Thailand’s 61 tax treaties, 59 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. Of the remaining two treaties, one does not contain the term “interpretation” and another one does not contain the terms “doubts” and “interpretation”. For this reason, these two treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). In that regard, Thailand indicated that irrespective of whether the applicable treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Thailand is able to enter into general MAP agreements.

3. All peers that provided input during stage 1 indicated that their treaty with Thailand meets the requirements under element A.1, which conforms to the above analysis. For the two treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), the relevant peers did not provide input.

Recent developments

Bilateral modifications

4. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element A.1.

Multilateral Instrument

5. Thailand signed the Multilateral Instrument and has deposited its instrument of ratification on 31 March 2022. The Multilateral Instrument has for Thailand entered into force on 1 July 2022.

6. 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).

7. With respect to the two 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), Thailand listed both of them as a covered tax agreement under the Multilateral Instrument and made for these treaties, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). The two relevant treaty partners are signatories to the Multilateral Instrument, listed their treaty with Thailand as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(i).

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

Peer input

9. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Thailand. None of these peers concerns a treaty partner to one of the two treaties identified above that does not contain Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

Anticipated modifications

10. As the two treaties that are considered not to contain the equivalent of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017a) have been modified via the Multilateral Instrument upon its entry into force for these treaties, there is no need for bilateral modifications of these treaties.

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

Conclusion

	Areas for improvement	Recommendations
[A.1]	-	-

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

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

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

Thailand’s APA programme

13. Thailand is authorised to enter into bilateral APAs and has implemented an APA programme since 2002 according to the Revenue Department Instruction No. Por. 113/2545 and the Notification of the Director-General of the Revenue Department on Income Tax (No. 400) found at:

https://www.rd.go.th/publish/fileadmin/user_upload/kormor/eng/RDO_113.pdf

https://www.rd.go.th/fileadmin/user_upload/kormor/newlaw/dg400.pdf

14. Thailand published guidance on its APA programme. This guidance sets out in detail the purpose and scope of an APA, the APA process and the administering of an APA. This APA guidance can be found at:

<https://www.rd.go.th/publish/fileadmin/download/GUIDANCE-ON-APA-PROCESS-EN.pdf>

15. Regarding the timeline to open the APA, this guidance clarifies that taxpayers shall submit a written document of intent according to the form set out by the Revenue Department, as well as other required documents according to 5.3 to the Director-General of the Revenue Department prior to or within the last day of the first accounting period of the APA submission. It also describes that taxpayers who wish to apply for APA must submit a written document of intent (Pre-filing Meeting) to the Director-General of the Revenue Department at least 6 months prior to the last day of the first accounting period that APA aims to become effective, and that taxpayers must submit important Pre-filing documents according to 5.3 (1)-(6) 15 days prior to Pre-filing Meeting.

16. Typically, bilateral APAs run for a period of three-five years.

Roll-back of bilateral APAs

17. Thailand reported that it allows the request of roll-back of bilateral APAs for cases where the circumstances of the roll-back of APAs period are comparable to the circumstances of the APA period. Thailand further reported that this is clarified in its MAP profile and that it has internal instructions to clarify to taxpayers during the APA pre-filing meeting that Thailand accepts roll-back requests from taxpayers if the relevant facts and circumstances of the roll-back period are the same as those of the APA period.

Recent developments

18. Thailand reported that it started allowing for roll-back of bilateral APAs requested after February 2020 for cases where the circumstances of the roll-back period are comparable to the circumstances of the APA period. While Thailand's APA guidance has not yet been updated in that regard, Thailand's MAP profile clearly states that roll-back of APAs are provided. Further, Thailand reported that its internal document now instructs its staff to clarify to taxpayers during the APA pre-filing meeting that Thailand accepts roll-back requests from taxpayers if the relevant facts and circumstances of the roll-back period are the same as those of the APA period. Therefore, it is considered that the recommendation made in stage 1 has been addressed.

Practical application of roll-back of bilateral APAs

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

19. Thailand reported having received 32 requests for bilateral APAs in the period 1 January 2017-31 December 2019, of which 28 have been granted and the others are under consideration. Thailand reported that in the period 1 January 2017-31 December 2019 it received 5 requests for roll-back of bilateral APAs, however for such requests the roll-back period was not considered due to the statute of limitation in domestic law and the APAs were only granted for the years covered in the APA requests.

20. Three peers have provided input on this element. One peer stated that in the period 1 January 2017-31 December 2019 it has received 23 requests from taxpayers asking for a roll-back of a bilateral APA between its jurisdiction and Thailand: 8 in 2017, 5 in 2018 and 10 in 2019 respectively, and the number of such inventory on 31 December 2019 is 27. The peer reported that roll-back is not permitted in Thailand and it has not provided any roll-back of APAs in the period 1 January 2017-31 December 2019. Another peer reported it has received requests for APAs but Thailand does not include any roll-back. The third peer reported in the period 1 January 2017-31 December 2019, it has received one APA request in 2018 and the case is being discussed, but the request did not include a request for roll-back.

Period 1 January 2020-31 October 2021 (stage 2)

21. Thailand reported that since 1 January 2020 it has received nine requests for bilateral APAs without roll-back request. Thailand also reported that it did not receive any requests for roll-back in that period.

22. All peers that provided input during stage 2 stated that the update report provided by Thailand fully reflects their experience with Thailand since 1 January 2020 and/or there are no additions to the previous input given. One of these peers that provided input in stage 1, provided additional input during stage 2 and mentioned that it had no competent authority meetings with Thailand regarding APA cases requested after Thailand started to grant roll-backs of bilateral APAs, and therefore is not in a position to evaluate in that regard. This peer noted that it expects Thailand to provide roll-back of bilateral APAs in a positive manner in the future and that it encourages Thailand to consider providing roll-back for APA cases requested before February 2020.

Anticipated modifications

23. Thailand reported that it is currently in the process of updating the APA guidance, including the allowance of a roll-back of bilateral APAs, and it intends to publicise it in the second quarter of 2022.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

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>.

Note

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).

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.

24. 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 Thailand's tax treaties

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

25. Out of Thailand's 61 tax treaties, none of Thailand's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state 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. In addition, 25 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.

26. The remaining 36 treaties are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not

allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 34 of those 36 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the states (two treaties).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to allow only for the submission of MAP requests to the state of which the taxpayer is a resident (32 treaties).

27. For the remaining two treaties, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2015a) 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) is therefore not clarified by the absence of or a limited scope of the non-discrimination provision, following which these two treaties are not in line with this part of element B.1.

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

28. Out of Thailand's 61 tax treaties, 48 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.

29. Thailand reserves their position on the second sentence of Article 25(1).

30. The remaining 13 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	7
Filing period less than 3 years for a MAP request (2 years)	4
Filing period less than 3 years for a MAP request and with a different commencement date for filing a MAP request (2 years)	1
No filing period for a MAP request but reference is made to the time limit in the domestic law of the Contracting States	1

31. Thailand reported that it has under its domestic legislation and/or administrative practice no rules in place on the filing period for MAP requests, which would apply when a treaty does not include a filing deadline.

32. In the treaty mentioned in the third row in the above table, the period for filing a MAP request is two years and starts either from the date of the assessment or of the withholding of tax at the source whichever is the later. This filing period is shorter than three years and the start date for this period is different from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Therefore, this treaty is considered not to contain the full equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

33. Of the peers that provided input during stage 1, one peer provided input that for the lack of the second sentence of Article 25(1), it made the relevant notifications under Article 16 of the Multilateral Instrument and the relevant treaty would be modified once the Multilateral Instrument is signed and ratified by Thailand.

34. For the eight treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), one of the relevant peers provided input that in order to meet the Minimum Standard it made all necessary notifications under Article 16 of the Multilateral Instrument. Other peers provided no specific input in relation to element B.1.

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

35. In all of Thailand's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Thailand's MAP guidance, in section 5 and 11, confirms that taxpayers can seek for MAP assistance irrespective of legal remedies available in Thailand. Section 11 of this guidance further clarifies that the submission of a MAP request does not preclude the opportunity for the person to benefit from domestic legal remedies (e.g. appeal against acts and actions of the tax administrations) of the contracting states to the treaty concerned. For Thailand this would concern administrative appeals that were initiated against acts and actions of the Revenue Department. In Thailand court decisions are binding and thus prevent its competent authority to reach an agreement in MAP that would deviate from this decision, even in situations where the MAP agreement would lead to taxation that is more favourable to the taxpayer. However, the fact that a court has rendered a decision for a case for which also a MAP request is submitted, that from itself does not prevent the initiation of the MAP process, but causes that Thailand's competent authority is unable to deviate in MAP from the court decision.

36. Under the Thai Revenue Code, when taxpayers intend to object to a tax assessment, they first need to lodge an appeal with the Commission of Appeal. This commission is an independent panel established under the Thai Revenue Code, which process taxpayers need to run through before being able to present their case to the tax court. In this respect, the following three situations are possible in Thailand when the case under review follows from an adjustment made by its Revenue Department:

- a. The taxpayer does not lodge an appeal with the Commission of Appeal, after which the tax assessment becomes final.
- b. The taxpayer lodges an appeal with the Commission of Appeal, but after a decision by that commission decides not to proceed with the case to the tax court.
- c. The taxpayer lodges an appeal with the Commission of Appeal and after the decision by that commission proceeds with the case to the tax court.

37. In situation a), access to MAP would be granted and there would not be any restrictions for Thailand's competent authority to handle and resolve the case in MAP. In situation b) and c), the decision of the Commission of Appeal or that of the tax court becomes binding. While the MAP process can continue until such decision is taken, Thailand's competent authority would in both situations be restricted in deviating from such a decision in MAP. For situation b), the decision of the Commission of Appeal does not constitute a decision by a court. Thus in the situation that no further appeal is lodged with the tax court after this commission

rendered a decision would restrict the resolution of a case in MAP. While in this situation formally access to MAP would be granted, Thailand's competent authority would not seek to resolve the case due to the fact it considers itself to be bound by that decision. It is only when a further appeal is lodged with the tax court that Thailand's competent authority would be able to deviate from the commission's decision in MAP, if a MAP agreement can be reached before the tax court has rendered its decision. Such practice does not allow taxpayers to make a MAP request irrespective of the domestic remedies.

38. In light of the above, a recommendation was made in the stage 1 report that required Thailand to ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017) can access the MAP irrespective of domestic remedies, since it was identified that taxpayers need to lodge an appeal with domestic courts against the decision of the Commission of Appeal in order to have full access to MAP. It was also noted that Thailand should follow its stated intention to amend its legislation and internal procedures that aim to prevent conflicts between the appeal decision and the MAP agreement so that taxpayers have the choice to opt for MAP irrespective of domestic remedies.

39. With respect to this recommendation, Thailand reported during stage 2 that it has amended the Revenue Department's Procedure on Tax Appeal and Tax Appeal Process, which came into effect with the publication in the Royal Gazette on 20 September 2021. The updated Revenue Department's Procedure on Tax Appeal and Tax Appeal Process stipulates that for cases where the period from the date the taxpayer receives the tax assessment to the date its MAP request is accepted by the competent authority concerned is not more than five years, the official of the Tax Appeals Division seeks for internal approval to suspend the appeal process before the Commission of Appeal until an agreement is reached in MAP. If such suspension is allowed, the taxpayer can continue the MAP process and once an agreement is reached in MAP, choose whether s/he accepts the agreement and, if so, withdraws the appeal request within 30 days from the date of acknowledgement of the MAP agreement. On the other hand, if the suspension is not allowed by the Tax Appeals Division or if the period from the date the taxpayer receives the tax assessment to the date its MAP request is accepted by the competent authority concerned is more than five years, the Commission of Appeal continues or starts the appeal process simultaneously with the MAP process.

40. The recommendation made in stage 1 concerned (i) a MAP case that is already in the MAP process simultaneously with the appeal process before the Commission of Appeal and that the competent authority will be bound by the decision of the Commission of Appeal if that decision is before an agreement is reached in MAP and (ii) a fresh MAP request in respect of a case that was already decided by the Commission of Appeal where the competent authority would be bound by such decision in MAP. With respect to (i), the update on appeal process makes it possible that for some cases the appeal process will be suspended until the MAP agreement is reached, thereby allowing the competent authority to discuss and resolve the case fully in MAP without being affected by any decision in the appeal process. However, there would still be cases where the suspension of the appeal process is not allowed, where the Commission of Appeal would make a decision before an agreement is reached in MAP. In summary, with respect to MAP cases where an issue is simultaneously pending before the Commission of Appeal, staying appeals by this update would help prioritising MAP over appeals in several cases, but it would not be the case for all such pending MAP cases. Further, as regards (ii), the update on the appeal process does not address situations where the taxpayer would file a fresh MAP request for a case that was already decided by the Commission of Appeal.

41. Given this analysis, the concerns in stage 1 remain for cases that were decided by the Commission of Appeal, as its competent authority is bound by the decision of the Commission of Appeal in MAP unless an appeal is lodged with domestic courts. Thus, the recommendation made in stage 1 has not been addressed.

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

42. Thailand reported that when the relevant treaty does not include a filing deadline, taxpayers have no time limit in submitting their MAP requests in Thailand, while they may be bound by the tax treaty partner's rules under its domestic legislation and/or administrative practice on the filing period for the MAP requests.

Recent developments

Bilateral modifications

43. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element B.1.

Multilateral Instrument

44. Thailand signed the Multilateral Instrument and has deposited its instrument of ratification on 31 March 2022. The Multilateral Instrument has for Thailand entered into force on 1 July 2022.

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

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

46. With the depositing of the instrument of ratification, Thailand reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.¹ In this reservation, Thailand noted that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of

the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b). It subsequently declared to implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction and application of such process will be further discussed under element B.2.

47. In view of the above, following the reservation made by Thailand, those two tax treaties identified above that are considered not containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

48. 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).

49. In regard of the four tax treaties identified in the second row of the table of paragraph 30 above that contain a filing period for MAP requests of less than three years, Thailand listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). All four treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Thailand as a covered tax agreement and also made a notification on the basis of Article 16(6)(b)(i). As all the four tax treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, it has entered into force for the treaty between Thailand and these treaty partners. Therefore, at this stage the Multilateral Instrument has modified these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

50. With regard to the remaining two tax treaties identified in the last two rows of the table of paragraph 30 above that contain a provision that is considered not the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as it contains a filing period for MAP requests of less than three years with a different commencement date or refers to domestic laws of the contracting state for the filing period of MAP requests, Thailand listed both of them as covered tax agreements under the Multilateral Instrument, but only for one of them did it make, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its treaty with Thailand as a covered tax agreement and also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, one of these two treaties will be modified by the Multilateral Instrument, upon entry into force for the treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

51. For the remaining treaty partner for which Thailand did not make a notification on the basis of Article 16(6)(b)(i), Thailand did not make a notification on the basis of Article 16(6)(b)(ii) that this treaty contains a provision described in Article 16(4)(a)(ii). This treaty partner is a signatory to the Multilateral Instrument, listed its treaty with Thailand 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 refer 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 Thailand such filing period may in some cases be less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, the provisions in the covered tax agreement are considered to be incompatible with the second sentence of Article 16(1). Therefore, at this stage, the tax treaty identified above will be superseded by the Multilateral Instrument upon its entry into force for the treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

52. With respect to one of the two tax treaties that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) and that will not be modified by the Multilateral Instrument, Thailand reported that it has finalised renegotiations with the treaty partner on the replacement of the existing treaty to be in line with the Action 14 Minimum Standard.

Peer input

53. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Thailand. None of these peers concerns a treaty partner to one of the eight treaties identified above that does not contain the equivalent to Article 25(1), first or second sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to or as amended by the adoption of the Action 14 final report (OECD, 2015b). One peer noted that its treaty with Thailand which includes no filing period for a MAP request is expected to include the second sentence of the OECD Model Tax Convention (OECD, 2017) via the Multilateral Instrument once Thailand signs and ratifies that instrument, since it made the necessary notifications under that instrument.

Anticipated modifications

54. Thailand reported that for the remaining tax treaty that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) and that will not be modified upon entry into force of the Multilateral Instrument, it will design its bilateral renegotiation plan to bring the treaty to be in line with the Action 14 Minimum Standard.

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

56. In addition, Thailand reported that it is seeking internal approval to withdraw its position on Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) and that upon approval it intends to proceed with the withdrawal accordingly.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Two out of 61 tax treaties do not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a). None of these treaties are expected to be modified by the Multilateral Instrument to include the required provision. With respect to these two treaties:</p> <ul style="list-style-type: none"> • For one renegotiations on the replacement of the existing treaty have been finalised. • For one no actions have been taken but Thailand intends to modify it via bilateral negotiations. 	<p>Thailand should sign the newly negotiated treaty as soon as possible with the treaty partner for which negotiations have been finalised to include the required provision via bilateral negotiations.</p> <p>In addition, Thailand should for the other treaty partner, without further delay, request the inclusion of the required provision via bilateral negotiations.</p> <p>For both treaties, 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>Access to MAP is not provided irrespective of domestic remedies as taxpayers need to lodge an appeal with domestic courts against the decision of the Commission of Appeal in order to have full access to MAP.</p>	<p>Thailand should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017) can access the MAP irrespective of domestic remedies. In that regard, Thailand should follow its stated intention to amend its legislation and internal procedures that aim to prevent conflicts between the appeal decision and the MAP agreement so that taxpayers have the choice to opt for MAP irrespective of domestic remedies.</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).

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

- of either treaty partner; or, in the absence of such provision,
- where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases,

jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

Domestic bilateral consultation or notification process in place

58. As discussed under element B.1, out of Thailand’s 61 treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, none of these tax treaties will, following Thailand’s reservation according to Article 16(5)(a) of the Multilateral Instrument, be modified by that instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

59. Thailand reported that it has introduced a bilateral consultation or notification process that allows the other competent authority concerned to provide its views on the case when Thailand’s competent authority considers the objection raised in the MAP request not to be justified. Thailand’s internal instruction, which is documented in the MAP Unit’s Staff Manual, describes that the MAP unit sets up a meeting to discuss eligibility of MAP requests within ten days from the date it received the MAP requests, and that the Revenue Department will send a letter to the other treaty partner within one month to request for its opinion on the taxpayer’s objection if Thailand’s competent authority has considered the objection not justified.

Recent developments

60. Thailand reported that in October 2021 it has introduced a documented bilateral consultation or notification process for those situations where its competent authority would consider the objection raised in a MAP request as not being justified, and briefed all MAP staff that they should follow the process.

Practical application

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

61. Thailand reported that in the period 1 January 2017-31 December 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, 2018 and 2019 MAP statistics submitted by Thailand also show that none of its MAP cases was closed with the outcome “objection not justified”.

62. All peers that provided input indicated not being aware of any cases for which Thailand’s competent authority denied access to MAP. This can be explained by the fact that Thailand did not consider that an objection raised in a MAP request was not justified in the period 1 January 2017-31 December 2019.

Period 1 January 2020-31 October 2021 (stage 2)

63. Thailand reported that since 1 January 2020 its competent authority has also for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified.

64. All peers that provided input during stage 2 stated that the update report provided by Thailand fully reflects their experience with Thailand since 1 January 2020 and/or there are no additions to the previous input given.

Anticipated modifications

65. Thailand did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

66. 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

67. Out of Thailand's 61 tax treaties, 25 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, 26 do not contain such equivalent. The remaining ten treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviate from this provision for the following reasons:

- Five treaties contain a provision, but the granting of a corresponding adjustment could be read as only optional as the word "shall" is replaced by "may".
- In two treaties, the sentence "and the competent authorities of the contracting states shall, if necessary, consult each other" is not contained.
- In one treaty, the sentence "and the competent authorities of the contracting states shall, if necessary, consult each other" is not contained and corresponding adjustments can only be made through MAP.
- In two treaties, additional wording "(due regard shall be had to the other provisions of this Agreement) and the domestic taxation laws of the respective Contracting State" is included.

68. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Thailand'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, Thailand indicated that it will provide access to MAP for transfer pricing cases and is willing to make

corresponding adjustments when the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties.

Recent developments

Bilateral modifications

69. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element B.3.

Multilateral Instrument

70. Thailand reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, Thailand signed the Multilateral Instrument and has deposited its instrument of ratification on 31 March 2022. The Multilateral Instrument has for Thailand entered into force on 1 July 2022.

71. 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 for a tax treaty not take effect if one or both of the treaty partners to the tax treaty 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 make a notification 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)).

72. Thailand has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). In regard of the 36 treaties identified above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), Thailand listed 34 of the 36 treaties as a covered tax agreement under the Multilateral Instrument, and included five of them in the list of treaties for which Thailand has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Furthermore, Thailand did not make a notification on the basis of Article 17(4) for the remaining 29 treaties.

73. Of the relevant 29 treaty partners, four are not a signatory to the Multilateral Instrument, whereas four have not listed their treaty with Thailand under that instrument.

Of the remaining 21 treaty partners, two have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Thailand already contains the equivalent of Article 9(2).

74. Of these 19 treaty partners, 17 have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Thailand and these treaty partners. Therefore, at this stage the Multilateral Instrument has superseded the relevant treaty provisions to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1). The provisions in the other two treaties will, upon its entry into force of the Multilateral Instrument for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Application of legal and administrative framework in practice

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

75. Thailand reported that in the period 1 January 2017-31 December 2019, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

76. All peers that provided input indicated not being aware of a denial of access to MAP by Thailand in the period 1 January 2017-31 December 2019 on the basis that the case concerned was a transfer pricing case. One of the peers stated that it suggested to amend its tax treaty with Thailand in October 2018 to include the aforementioned sentence, the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), however it did not receive an answer yet.

Period 1 January 2020-31 October 2021 (stage 2)

77. Thailand reported that since 1 January 2020, it has also not received MAP requests concerning a transfer pricing case and therefore has not denied access to MAP in transfer pricing cases.

78. All peers that provided input during stage 2 stated that the update report provided by Thailand fully reflects their experience with Thailand since 1 January 2020 and/or there are no additions to the previous input given. One of these peers mentioned that it has not started any new MAP cases with Thailand in that period.

Anticipated modifications

79. Thailand 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 in updating its tax treaties it will include Article 9(2) in its tax treaties. It further reported that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.3]	Access to MAP in transfer pricing cases will not be granted for jurisdictions where Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is not contained in the tax treaty with such jurisdictions.	Thailand should change its domestic policy to ensure that for those cases where the treaty does not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2017), access to MAP will always be granted for eligible cases.

[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.

80. 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

81. None of Thailand's 61 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Thailand 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.

Recent developments

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

Practical application

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

83. Thailand reported that in the period 1 January 2017-31 December 2019 it has not received a MAP request 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.

84. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Thailand in the period 1 January 2017-31 December 2019 in relation to the application of treaty and/or domestic anti-abuse provisions.

Period 1 January 2020-31 October 2021 (stage 2)

85. Thailand reported that since 1 January 2020 it has also not received any MAP requests for cases concerning the application of anti-abuse provisions and therefore 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.

86. All peers that provided input during stage 2 stated that the update report provided by Thailand fully reflects their experience with Thailand since 1 January 2020 and/or there are no additions to the previous input given. One of these peers mentioned that it has not started any new MAP cases with Thailand in that period.

Anticipated modifications

87. Thailand did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

88. 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

89. Thailand reported that under its domestic law it is not possible for the taxpayer and the tax administration to enter into a settlement agreement during the course or after ending of an audit.

Administrative or statutory dispute settlement/resolution process

90. Thailand reported it does not have an administrative dispute settlement process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Recent developments

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

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

92. Thailand reported that in the period 1 January 2017-31 December 2019 it has not received any MAP requests for cases where the issue presented by the taxpayer had already been resolved through an audit settlement between the taxpayer and the tax administration since audit settlements are not available in Thailand.

93. All peers indicated not being aware of a denial of access to MAP in Thailand in the period 1 January 2017-31 December 2019 in cases where there was an audit settlement between the taxpayer and the tax administration, which can be explained by the fact that such settlements are not possible in Thailand.

Period 1 January 2020-31 October 2021 (stage 2)

94. Thailand reported that since 1 January 2020 it has also not received any MAP requests for cases where the issue presented by the taxpayer had already been resolved through an audit settlement between the taxpayer and the tax administration since audit settlements are still not available in Thailand.

95. All peers that provided input during stage 2 stated that the update report provided by Thailand fully reflects their experience with Thailand since 1 January 2020 and/or there are no additions to the previous input given. One of these peers mentioned that it has not started any new MAP cases with Thailand in that period.

Anticipated modifications

96. Thailand did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

97. 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

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

99. Thailand's internal instruction, which is documented in the MAP Unit's Staff Manual, describes that when a taxpayer submits a MAP request to the Revenue Department, officers of the MAP unit verify the eligibility of the request, and if they need more information, they request information from the taxpayer within two months from the date the MAP unit received the MAP request. In that regard, Thailand reported that for non co-operative taxpayers, their MAP request/objection shall be considered as not justified.

Recent developments

100. Thailand reported that its MAP office has issued internal instruction regarding bilateral consultation or notification process in October 2021, which also clarifies the timeframe given to the taxpayer to provide the requested information or documentation.

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

101. Thailand reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that in the period 1 January 2017-31 December 2019 it has not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

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

Period 1 January 2020-31 October 2021 (stage 2)

103. Thailand reported that since 1 January 2020 it has not received any MAP requests and therefore has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

104. All peers that provided input during stage 2 stated that the update report provided by Thailand fully reflects their experience with Thailand since 1 January 2020 and/or there

are no additions to the previous input given. One of these peers mentioned that it has not started any new MAP cases with Thailand in that period.

Anticipated modifications

105. Thailand did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

106. 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 Thailand's tax treaties

107. Out of Thailand's 61 tax treaties, 53 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining eight tax treaties do not contain a provision that is based on or the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

108. Thailand reserves their position on the second sentence of Article 25(3) on the grounds that it has no authority under its respective laws to eliminate double taxation in cases not provided for in the Convention.

109. 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

Bilateral modifications

110. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element B.7.

Multilateral Instrument

111. Thailand signed the Multilateral Instrument and has deposited its instrument of ratification on 31 March 2022. The Multilateral Instrument has for Thailand entered into force on 1 July 2022.

112. 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).

113. In regard of the eight tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Thailand listed all as a covered tax agreement under the Multilateral Instrument and for all made a notification, pursuant to Article 16(6)(d)(ii), that they do not contain a provision described in Article 16(4)(c)(ii). Seven of the eight treaty partners are a signatory to the Multilateral Instrument. All seven treaty partners listed their treaty with Thailand as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(ii). As all these seven tax treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, it has entered into force for the treaty between Thailand and these treaty partners. Therefore, at this stage the Multilateral Instrument has modified these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

114. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Thailand. Two of these peers concern a treaty partner to the treaty identified above that does not contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). One peer mentioned that it encourages Thailand to sign the Multilateral Instrument to be compliant with the Action 14 Minimum Standard. The other peer noted that its treaty with Thailand will be modified by the Multilateral Instrument if Thailand still intends becoming a party to the Multilateral Instrument as informed during stage 1. In that regard, this peer clarified that it contacted Thailand in 2021 to check their intention to sign the instrument and that timing, and that it received a response from Thailand that Thailand intends to sign the instrument in early 2022.

Anticipated modifications

115. For the remaining treaty that does not contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) that will not be modified upon entry into force of the Multilateral Instrument, Thailand indicated that it will design its bilateral renegotiation plan to bring the treaty to be in line with the Action 14 Minimum Standard.

116. In addition, Thailand reported that 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.

117. Thailand further reported that it is seeking internal approval to withdraw its position on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and that upon approval it intends to proceed with the withdrawal accordingly.

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>Eight out of 61 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these eight treaties:</p> <ul style="list-style-type: none"> • Seven have been modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One will not be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, no actions have been taken but Thailand intends to modify it via bilateral negotiations. 	<p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Thailand should without further delay request the inclusion of the required provision via a bilateral negotiation.</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.

118. 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.

Thailand's MAP guidance

119. Thailand's rules, guidelines and procedures are included in the "Mutual Agreement Procedure Guideline" and are available (in English) at:

https://www.rd.go.th/fileadmin/user_upload/porsor/final_MAPmanualEN.pdf

120. The MAP guidance consists of 13 sections and sets out in detail how taxpayers can access the mutual agreement procedure and what rules apply during that procedure under tax treaties Thailand entered into. More specifically, it contains information on:

1. Mutual Agreement Procedure
2. Objective of MAP
3. Persons eligible to request the initiation of a MAP
4. Competent authority

5. Initiating a MAP
6. Form and content of the taxpayer's request
7. Place and time limit for submitting the request
8. Eligibility of the request to initiate a MAP
9. Processing a MAP
10. Implementation of the agreement reached under a MAP
11. A MAP and domestic remedies
12. Contact point
13. The importance of co-operation from taxpayer

121. This contains 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. relationship with domestic available remedies
- f. access to MAP in transfer pricing cases
- g. implementation of MAP agreements (including the steps of the process and the timing of such steps for the implementation of MAP agreements, and any actions to be taken by taxpayers)
- h. rights and role of taxpayers in the process
- i. interest charges and penalties.

122. The above-described MAP guidance of Thailand includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.²

123. Although the information included in Thailand's MAP guidance is detailed and comprehensive, various subjects are not specifically discussed in Thailand's MAP guidance. This concerns information on:

- information on availability of arbitration
- whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments
- the possibility of suspension of tax collection during the course of a MAP.

Information and documentation to be included in a MAP request

124. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.³ This agreed guidance is shown below. Thailand’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
- a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

Recent developments

125. Thailand reported that it has updated in October 2021 its MAP guidance and included some of the suggested items in the stage 1 report. This concerns:

- access to MAP is available in transfer pricing cases when the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties
- a statement that multi-year resolution of recurring issues may be possible through MAP subject to the given conditions
- the legislative framework of interest and penalties during the course of a MAP.

126. Thailand further reported that a statement on taxpayers’ involvement in the MAP process has been added to the MAP guidance under the new section titled “The importance of co-operation from taxpayer” in order to highlight that the success of the MAP process also depends on co-operation from taxpayers.

Anticipated modifications

127. Thailand did not indicate that it anticipates any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

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

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

128. 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.⁴

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

129. The MAP guidance of Thailand is published and can be found at:

https://www.rd.go.th/fileadmin/user_upload/porsor/final_MAPmanualEN.pdf

130. This guidance was last updated in October 2021. As regards its accessibility, Thailand's MAP guidance can easily be found on the top page of the English site of the website of the Revenue Department of Thailand.

MAP profile

131. The MAP profile of Thailand is published on the website of the OECD and was last updated in April 2022. This MAP profile is complete and often with detailed information. This profile includes external links that provide extra information and guidance where appropriate.

Recent developments

132. In the stage 1 peer review report, Thailand was recommended to clarify the actual state of play in Thailand in its MAP profile that it grants access to MAP where the issue under dispute has already been decided via the judicial and administrative remedies provided by its domestic law. In that regard, Thailand reported that it has updated its response to Question 12 of the MAP Profile to clarify that actual state of play in Thailand. Therefore, the recommendation made in stage 1 has been addressed.

133. In addition, Thailand has updated its MAP profile in April 2022 to reflect the update of its MAP guidance and to add detailed contact information.

Anticipated modifications

134. Thailand did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

135. 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

136. As previously discussed under B.5, audit settlements are not possible in Thailand. In that regard, there is no need for Thailand to address in its MAP guidance whether taxpayers can have access to MAP in such circumstances.

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

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

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

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

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

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

141. Peers reported being not informed of the existence of this process and its effect on MAP. Peers indicated no issues in relation to administrative or statutory dispute settlement or resolution processes.

Recent developments

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

Anticipated modifications

143. Thailand did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

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

Notes

1. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Thailand reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the

Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified". An overview of Thailand's positions on the Multilateral Instrument is available at: <https://www.oecd.org/tax/treaties/beps-mli-position-thailand.pdf>.

2. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
3. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
4. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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.

144. 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 Thailand's tax treaties

145. All of Thailand's 61 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

146. All peers that provided input during stage 1 indicated that their treaty with Thailand meets the Action 14 Minimum Standard for this element.

Recent developments

Bilateral modifications

147. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element C.1.

Peer input

148. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Thailand, but this input holds no relevance for element C.1.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.1]	-	-

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

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

150. 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

151. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Thailand joined in the Inclusive Framework in 2017. For this reason the statistics referred to are pre-2017 cases for cases that were pending on 31 December 2016, and post-2016 cases for cases that started on or after 1 January 2017. Thailand provided its MAP statistics for 2017-20 pursuant to the MAP Statistics Reporting Framework within the given deadline. 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 respectively¹ and should be considered jointly to understand the MAP caseload of Thailand.

152. With respect to post-2016 cases, Thailand reported having reached out to its MAP partners with whom it has new or closed cases during the relevant statistics reporting period with a view to have their MAP statistics matching and that it could match its post-2016 MAP statistics with those MAP partners.

153. Three peers provided input on the matching of MAP statistics with Thailand. One of these peers confirmed that it was able to match the statistics. Another peer mentioned that it had no communication with Thailand on the statistics matching due to the de-minimis nature of its MAP inventory. Further, the last peer reported that it reached out to Thailand to match the statistics for 2020, but did not receive a response.

154. In response to the second peer above, Thailand mentioned that after it matched the MAP statistics with the peer in 2019, there has been no change in the status of the MAP case, and therefore it considered its 2020 MAP statistics were matched with the peer. In this regard, Thailand noted that it will contact the peer to match MAP statistics for the 2021 MAP statistics and going forward. Further, Thailand responded to the third peer in the above paragraph that it acknowledges the contact from the peer and that it intends to improve the frequency of communication between the competent authorities.

Monitoring of MAP statistics

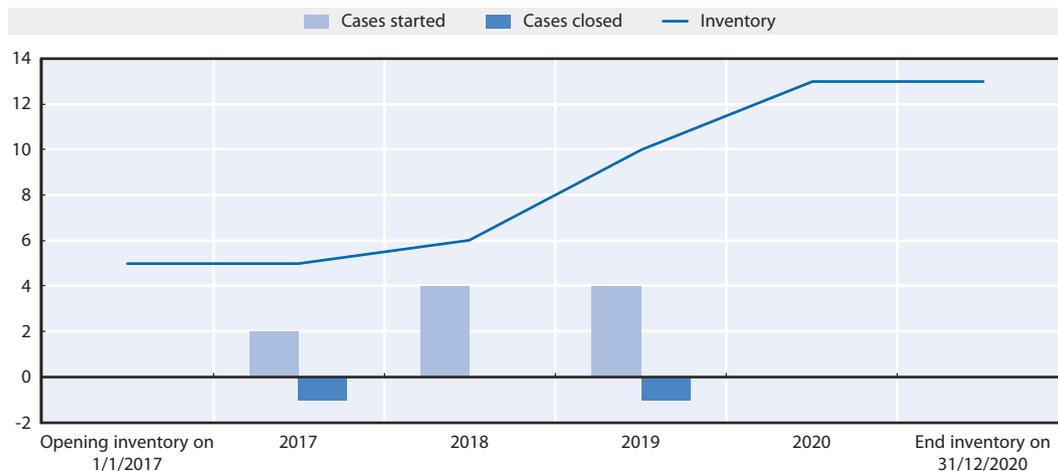
155. Thailand does not have a system in place with its treaty partners that communicates, monitors and manages the MAP caseload. It however reported that it records the following information of all cases in the spreadsheet recording: description, type and latest status of MAP case and date it has received MAP request. It further reported that it monitors its MAP caseload with its internal tool and that the MAP inventory and progress status have been reported quarterly within the Revenue Department.

Analysis of Thailand's MAP caseload

156. The analysis of Thailand's MAP caseload relates to the period starting on 1 January 2017 and ending on 31 December 2020.²

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

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

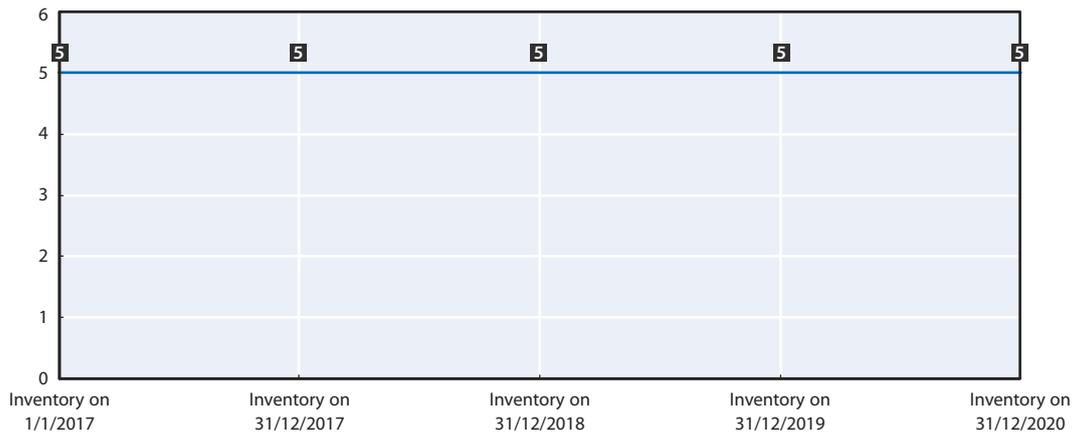


158. At the beginning of the Statistics Reporting Period Thailand had five pending MAP cases, all of which were other MAP cases.³ At the end of the Statistics Reporting Period, Thailand had 13 MAP cases in its inventory, all of which are other MAP cases. Accordingly, Thailand's MAP caseload has increased by 160% during the Statistics Reporting Period.

Pre-2017 cases

159. Figure C.2 shows the evolution of Thailand's pre-2017 MAP cases over the Statistics Reporting Period.

Figure C.2. Evolution of Thailand's MAP inventory – Pre-2017 cases

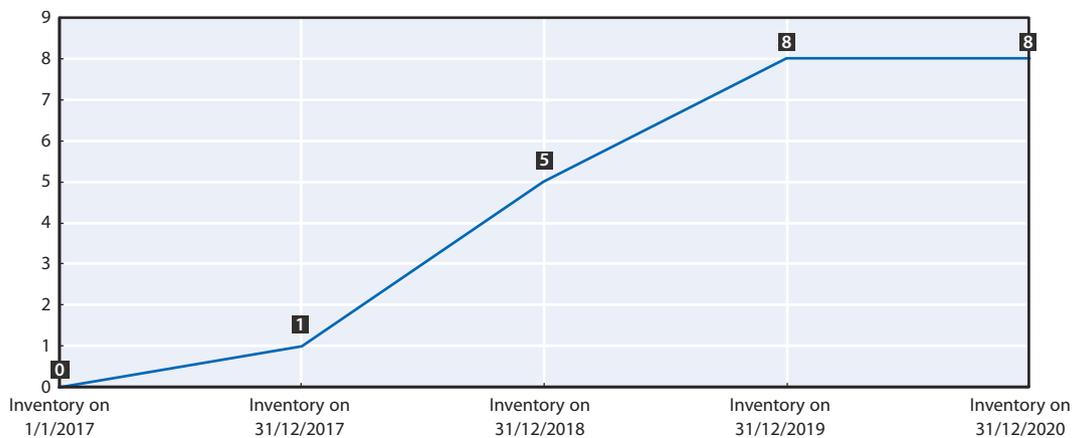


160. At the beginning of the Statistics Reporting Period, Thailand's MAP inventory of pre-2017 MAP cases consisted of five cases, all of which were other cases. At the end of the Statistics Reporting Period the total inventory of pre-2017 cases was five, just same as the inventory at the beginning, since no cases were closed during that period.

Post-2016 cases

161. Figure C.3 shows the evolution of Thailand's post-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Thailand's MAP inventory – Post-2016 cases



162. In total, ten MAP cases started during the Statistics Reporting Period, two of which concerned attribution/allocation cases and eight other cases. At the end of this period the total number of post-2016 cases in the inventory was eight cases, all of which are other cases. Conclusively, Thailand closed two post-2016 case during the Statistics Reporting Period, both of which are attribution/allocation cases. The total number of closed cases represents 20 % of the total number of post-2016 cases that started during the Statistics Reporting Period.

163. The number of post-2016 cases closed as compared to the number of post-2016 cases started during the Statistics Reporting Period is shown in the table below.

	% of cases closed compared to cases started in 2017	% of cases closed compared to cases started in 2018	% of cases closed compared to cases started in 2019	% of cases closed compared to cases started in 2020	Cumulative percentage of cases closed compared to cases started over the four years (2017-20)
Attribution/allocation cases	100%	0%	(no case started)	(no case started)	100%
Other cases	0%	0%	0%	(no case started)	0%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

164. During the Statistics Reporting Period Thailand in total closed two MAP cases with the outcomes “Withdrawn by taxpayer” and “Unilateral relief granted”.

Reported outcomes for attribution/allocation cases

165. In total, two attribution/allocation cases were closed during the Statistics Reporting Period. The reported outcomes for these cases are “Withdrawn by taxpayer” and “Unilateral relief granted”.

Reported outcomes for other cases

166. There were no other cases that were closed during the Statistics Reporting Period.

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

167. The average time needed to close MAP cases during the Statistics Reporting Period was 9.80 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	2	9.80
Other cases	0	n.a.
All cases	2	9.80

Pre-2017 cases

168. For pre-2017 cases there were no cases that were closed during the Statistics Reporting Period.

Post-2016 cases

169. For post-2016 cases Thailand reported that on average it needed 9.80 months to close two attribution/allocation cases.

Peer input

170. Peer input relating to the resolution of MAP cases is discussed under element C.3.

Recent developments

171. Thailand was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 78% of its post-2016 MAP cases that were pending on 31 December 2019 within a timeframe that results in an average timeframe of 24 months for all post-2016 cases.

172. With respect to this recommendation, Thailand reported that the Revenue Department has restructured its organisation by establishing the International Tax Affairs Center on 13 November 2020 and that the MAP Unit performs the competent authority function within the center. Thailand also reported that the number of staff of the MAP Unit has been increased from seven to eight and is expected to be further increased by four from 1 October 2022 to 30 September 2023.

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

Anticipated modifications

174. Thailand indicated that it is improving its internal tool to monitor and manage the MAP caseload. Thailand also indicated that it will ensure to match MAP statistics with all treaty partners from 2021 MAP Statistics onwards.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Matching of MAP statistics was not sought with all of the treaty partners.	Thailand should endeavour matching its MAP statistics with all of its treaty partners.

[C.3] Provide adequate resources to the MAP function

Jurisdictions should ensure that adequate resources are provided to the MAP function.

175. 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 Thailand's competent authority

176. Under Thailand's tax treaties, the competent authority function is assigned to the Minister of Finance or his duly authorised representative. This has been delegated to the Director-General of the Revenue Department of Thailand. In practice the competent authority function is performed by the MAP Unit under the International Tax Affairs Center of the Revenue Department. Thailand's competent authority consists of eight people, who deal exclusively with MAP cases. Five of them are responsible for non-transfer pricing MAP cases and three employees work on transfer pricing MAP cases.

177. Experience of the staff in charge of MAP varies from a couple of years to more than ten years. Such staff participates in international seminars hosted by foreign tax authorities/international organisations as well as technical assistance through international organisations.

178. Thailand reported that due to the complexity of transfer pricing cases and lack of human resources the Revenue Department has set up the Committee. It is a mechanism to gather expertise from various bodies within the Revenue Department in order to provide consultation to the officers in charge of MAP concerning transfer pricing cases. The Committee comprises of the Director-General as a chairperson, industrial analysts, transfer pricing analysts and tax economists, and the personnel who were involved in the adjustments do not join the discussion of the Committee.

Monitoring mechanism

179. Thailand reported that it monitors workloads and the MAP cases in its inventory every quarter in order to check whether such resources are adequate.

Recent development

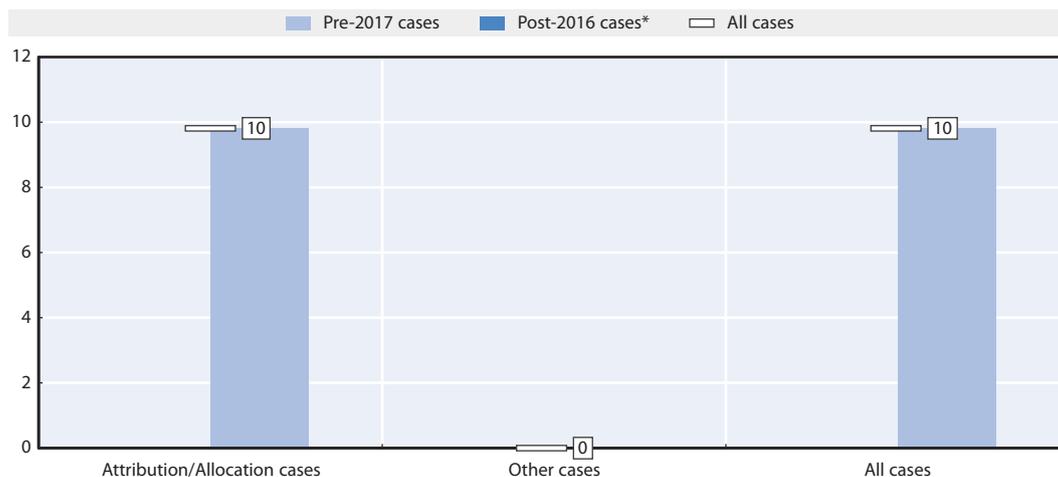
180. As discussed under element C.2, Thailand reported that the Revenue Department has restructured its organisation by establishing the International Tax Affairs Center on 13 November 2020 and that the MAP Unit performs the competent authority function within the Center. Thailand also reported that the number of staff of the MAP Unit has been increased from seven to eight and is expected to be further increased by four from 1 October 2022 to 30 September 2023.

Practical application

MAP statistics

181. As discussed under element C.2 Thailand closed two attribution/allocation cases during the Statistics Reporting Period within the pursued 24-month average, and all pre-2017 cases are pending. This can be illustrated as in Figure C.4.

Figure C.4. Average time (in months) to close cases in 2017-20



*Note that post-2016 cases only concern cases started and closed during 2017-20.

182. Based on these figures it took Thailand 9.80 months on average to close MAP cases during the Statistics Reporting Period, which only concern attribution/allocation cases.

183. The stage 1 peer review report of Thailand analysed the 2017, 2018 and 2019 statistics and showed an average of 9.80 months, which is within the pursued average of 24 months. However, Thailand's MAP caseload has increased significantly in the period 1 January 2017-31 December 2019. In addition, some peers indicated that they experienced some difficulties in resolving MAP cases, which concern obtaining positions papers in due time and receiving responses to position papers issued by peers. Therefore, it was concluded that this may indicate that the competent authority may not be adequately resourced. On that basis, Thailand was recommended to ensure that adequate resources are made available for the competent authority function in order to resolve MAP cases in a timely, efficient and effective manner. In this respect, it was noted that Thailand should closely monitor whether the anticipated addition of resources will enable the timely issuing of position papers and responses to such papers issued by the treaty partner on new and pending MAP cases.

184. For stage 2, the 2020 MAP statistics are also taken into account. In that regard, Thailand closed no cases in 2020 and therefore the average time to close MAP cases remains that same.

185. Furthermore – as analysed in element C.2 – the MAP inventory of Thailand significantly increased since 1 January 2017. 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	0	2	2	0	(no cases in start inventory)
Other cases	5	8	0	13	160%
Total	5	10	2	13	160%

Clarifications by Thailand

186. During stage 1 Thailand provided the following clarification for why it did not succeed in closing more MAP cases in the period 1 January 2017-31 December 2019:

- There are cases where its tax treaty partner only sent an acceptance letter on a MAP request to it without providing sufficient information. In some of those cases, its treaty partner did not request the taxpayer to provide information within the time specified under the MAP standard, and therefore, the MAP process already started despite the inadequate information.
- Lack of human resources.
- With respect to transfer pricing MAP cases which are relatively more complicated compared to non-transfer pricing cases, the Revenue Department has set up a Committee which comprises of specialists in various areas such as tax treaties, transfer pricing, and industrial analysis. The operation in the form of the Committee takes time to resolve transfer pricing MAP cases.
- Language barrier: Since Thai is an official language and field officers may not be familiar with the language, translation may take time and slow down the MAP process.

187. In that regard, Thailand reported the following measures that the Revenue Department has already taken to solve the addressed four issues:

- improving channels and tracking process of formal communications with the CAs of their tax treaty partners to ensure the timeliness response in providing the additional information to proceed the MAP request
- investing in analysis tools such as TP Catalyst and IBFD Database to streamline and increase productivity of the MAP process
- sending staff in charge of the MAP process to attend the relevant MAP training
- recruiting more staff with English proficiency.

188. Further to the above, during stage 2, Thailand reported that in order to resolve MAP cases in a timely, efficient and effective manner, it has increased the number of staff of the MAP Unit from seven to eight and intends to further increase by four from 1 October 2022 to 30 September 2023. Thailand also indicated that it intends to enhance the existing system to monitor and manage the MAP caseload.

Peer input

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

189. In total, five provided input on their communications with Thailand's competent authority in general and their experience as regards the resolution of MAP cases. Most peers that provided input noted that their MAP caseload with Thailand is low.

190. One peer that has a pre-2017 case under discussion provided input that communication between the competent authorities of the contracting states should be improved with regard to the frequency of responses, and it suggested to communicate via encrypted e-mail to ensure efficient and frequent communication in the future. The peer noted that it has not received a position paper from Thailand since the initiation of the MAP in 2012, despite the fact that the peer has already sent Thailand seven letters requesting a position paper. It further noted that the MAP procedures should cover the years from 2011 to 2017. The peer concluded that due to the high amounts of money at stake and the already very long duration of the MAP, the frequency of communication, especially with respect to the issuance of position papers, should be improved.

191. Another peer that initiated one MAP case with Thailand in the period 1 January 2017-31 December 2019 reported that while Thailand's competent authority provided prompt acknowledgment of receipt of the MAP case and the peer's position paper was sent to Thailand in November 2018, the peer is still awaiting Thailand's position paper on the case.

192. A third peer reported that it is aware of one instance where a MAP request was originally submitted on 11 February 2013. Thailand's position paper was sent on 12 September 2016. The peer provided its response on 6 January 2017 setting out its position (which did not accord with that of Thailand). To date, the peer has not received a response from Thailand despite the peer attempts to engage. In that regard, the peer considers there is scope to improve lines of communication.

193. A fourth peer reported that the peer has been late in sending a position paper due to not having all information necessary, and there have been no impediments on the side of Thailand's Competent Authority.

194. Further to the above, a fifth peer provided input that it holds face-to-face meetings (five days) with Thailand for a couple of times per year to resolve MAP cases. It reported that it has experienced delays of the MAP process for some APA cases while the number of the pending cases has been increasing. The peer therefore sees that Thailand's competent authority operates under resource constraints and suggests to ensure enough resources for resolving MAP cases in a timely and efficient manner.

195. The last peer reported enough resources seem to be employed to the MAP function in Thailand. It also reported that both competent authorities contact each other via e-mail or telephone without any difficulties and hold face-to-face meetings (normally once a year) to resolve MAP cases.

196. In response to these peer input, Thailand mentioned that it values the input given and is truly grateful for peers' appreciation on all efforts made by Thailand to make its MAP programme becoming more efficient and effective. With respect to communications between Thailand and peers, Thailand reported that it has improved the communication channels by having the specific email address for its MAP team and also using the encrypted emails to communicate with its tax treaty partners. Thailand noted that it intends to improve the frequency of communication of the MAP team with its tax treaty partners. In addition, as regards delays in issuing position papers, Thailand indicated that it will ensure to resolve MAP cases on a timely basis.

Period 1 January 2020-31 December 2020 (stage 2)

197. Most of the peers that provided input during stage 2 stated that the update report provided by Thailand fully reflects their experience with Thailand since 1 January 2020 and/or there are no additions to the previous input given. Of the peers that provided input, five provided input in relation to their experience in resolving MAP cases since 1 January 2020, all of which are peers that provided input during stage 1.

198. Three of the five peers reported there was no substantive developments on the cases concerned since 1 January 2020 due to no or little communication from Thailand. One peer that has a pre-2017 case mentioned that since 1 January 2020 the situation remains the same and that it has not received any comments on the case from the competent authority of Thailand except for the letter in November 2017 stating that Thailand started an investigation of the case. This peer further mentioned that it repeatedly informed Thailand, mostly recently in August 2021, that the MAP period was extended. The peer noted that the fact pattern of the case has unchanged throughout the whole MAP period, which is currently the years from 2011 to 2019. Another peer reported that it is still awaiting the position paper from Thailand for one MAP case, which was initiated in September 2018 and for which the peer provided its position paper with Thailand in November 2018. It noted that it sent reminders to Thailand five times since 1 January 2020. The third peer that reported during stage 1 difficulty in communication to resolve a longstanding MAP case which started in 2013, mentioned that since 1 January 2020 there was still no substantive response to the peer's position paper despite the fact that the peer has reached out to another named official within Thailand's tax administration.

199. Thailand mentioned that it acknowledges all notifications from these three peers. Thailand noted that for the first peer it intends to send its views on the MAP case concerned in early 2022. It further noted that it has communicated with the second peer on the MAP case concerned and intends to send its views on the case by February 2022. With respect to the input by the third peer, Thailand clarified that MAP cases have been

redistributed to officers due to the change of staff, and that it intends to improve the frequency of communication with its MAP partners.

200. Further, two other peers provided input in relation to difficulties in receiving position papers or responses to position papers issued by peers in due time. One of these peers reported that since 1 January 2020 it has not solved any MAP cases with Thailand and that it experienced difficulties in receiving responses to position papers in due time. This peer noted that it welcomes Thailand’s intention to increase staff members to the MAP function to be able to monitor and manage the MAP caseload in a timely manner. The other peer which has no MAP cases with Thailand since 1 January 2020, mentioned that for APA cases with Thailand, it often received no position papers or position papers without substantive information before the competent authority meeting, which hampers substantial discussion at the meeting and resolution of the cases in a timely manner. This peer views this situation is caused by the resource constraints and therefore expects Thailand to ensure adequate resources for resolving cases in a timely and efficient manner.

201. With respect to these peer input, Thailand stated that it has increased the number of staff in charge of MAP and intends to further increase in 2022-23. Thailand also noted that it will closely monitor all MAP cases to enable the timely issuing of position papers and responses to such papers issued by the treaty partner on new and pending MAP cases.

202. Further to the above, Thailand specifically responded the peer who provided input based on their APA experiences with Thailand, noting that APA is not in the scope of minimum standard of element C.2 or C.3. Thailand clarified that it always commits to send position papers prior to the meeting date, and that the APA inventory with this peer has decreased from 28 cases in 2020 to 24 cases in 2021 with co-operative efforts of both sides as well as holding frequent meeting calls. In addition, Thailand noted that it intends to discuss with this peer during the next competent authority meeting about facts and circumstances for several APA cases, for which it did not include substantive information in the position papers.

Anticipated modifications

203. Thailand did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	Although MAP cases were closed within 24 months on average (which is the pursued average for resolving MAP cases received on or after 1 January 2017), peers indicated that they experienced some difficulties in resolving MAP cases, which concern obtaining positions papers in due time and receiving responses to position papers issued by peers. Furthermore, the MAP caseload has increased substantially since 1 January 2017. The peer input and the increase indicate that the competent authority may not be adequately resourced, and because of that there is a risk that pending or future MAP cases cannot be resolved in a timely, effective and efficient manner.	Thailand should ensure that adequate resources are made available for the competent authority function in order to resolve MAP cases in a timely, efficient and effective manner. In this respect, Thailand should closely monitor whether the recent and anticipated addition of resources will enable the timely issuing of position papers and responses to such papers issued by the treaty partner on new and pending 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.

204. 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

205. Thailand reported that staff in charge of MAP work independently on the resolution of MAP cases and will ensure that all MAP procedures are in line with the MAP provisions of its tax treaties, domestic MAP guideline and the international standard.

206. With respect to the relationship with the audit function, Thailand reported that the MAP process handled by the International Tax Affairs Center is independent from the audit function performed by the Large Business Tax Administration Division and Area Revenue Offices. It also reported auditors will not influence the MAP decision while the MAP officer will contact auditors to gather the necessary information if the facts are unclear and additional information is required.

207. Thailand also reported that staff in charge of MAP cases will take into consideration the actual terms of a tax treaty as applicable for the relevant year and that it is committed not to be influenced by policy considerations that Thailand would like to see reflected in future amendments to the treaty.

208. In regard of the above, Thailand considers that staff in charge of MAP have the necessary authority to resolve MAP cases and are not dependent on the approval/direction of outside personnel and that there are no impediments in Thailand's abilities to perform its MAP functions.

Recent developments

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

Practical application

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

210. Peers generally indicated no impediments in Thailand to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. One peer specifically mentioned that they are not being aware that staff in charge of the MAP in Thailand are dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

Period 1 January 2020-31 October 2021 (stage 2)

211. All peers that provided input during stage 2 stated that the update report provided by Thailand fully reflects their experience with Thailand since 1 January 2020 and/or there are no additions to the previous input given.

Anticipated modifications

212. Thailand did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

213. 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 Thailand

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

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

215. Thailand reported that it does not have specific performance indicators for MAP cases. It however reported that it considers the staff should ensure the timeframe of 24 months to resolve MAP cases, and it regularly monitors MAP caseload. In addition, Thailand reported that there are general performance indicators that apply to all civil servants working for the Revenue Department.

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

Recent developments

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

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

218. Peers provided no specific input in relation to element C.5.

Period 1 January 2020-31 October 2021 (stage 2)

219. All peers that provided input during stage 2 stated that the update report provided by Thailand fully reflects their experience with Thailand since 1 January 2020 and/or there are no additions to the previous input given.

Anticipated modifications

220. Thailand did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

221. 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

222. Thailand reported that it has domestic law limitations for including MAP arbitration in its tax treaties and its treaty policy does not allow it to include MAP arbitration in its tax treaties. This is clarified in Thailand's MAP profile.

Recent developments

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

Practical application

224. Thailand has not incorporated an arbitration clause in any of its 61 tax treaties as a final stage to the MAP.

Anticipated modifications

225. Thailand did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

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>.

Notes

1. For post-2016 cases, if the number of MAP cases in Thailand’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, Thailand reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
2. Thailand’s 2017, 2018 and 2019 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2017, 2018 and 2019. See further explanations in Annex B and Annex C.
3. For pre-2017 and post-2016 Thailand follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention (OECD, 2017)); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention (OECD, 2017)), which is also known as a transfer pricing MAP case”.

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.

226. 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

227. Thailand reported it will implement a MAP agreement reached notwithstanding any statute of limitation if the relevant tax treaty contains the equivalent of article 25 (2) second sentence of the OECD Model Tax Convention (OECD, 2017) while if the relevant tax treaty does not contain such equivalent, a MAP agreement will be implemented according to the statute of limitation under domestic legislation.

228. Thailand reported that in the case where the MAP agreement results in a tax refund, the MAP implementation is in accordance with the following Sections of the Revenue Code:

- For transfer pricing MAP cases, Section 71 Bis of the Revenue Code and Section 3 Octo apply. Section 71 Bis of the Revenue Code has been enacted for an accounting period started on or after 1 January 2019. Based on the provisions of Section 71 Bis, the refund can be claimed once the taxpayer is notified. The refund request must be submitted within three years after the due date of filing, or within 60 days after receiving the notification of a transfer pricing adjustment from the tax authority.
- For non-transfer pricing MAP cases, Section 27 Ter and Section 3 Octo apply. The refund request must be submitted within three years after the date of filing.

229. In that regard, Thailand explained that for both transfer pricing cases and non-transfer pricing cases, the Notification of the Ministry of Finance regarding an extension of tax refund request submission deadline with respect to the implementation of MAP agreements stipulates that the period of a tax refund request in accordance with a MAP agreement, where the submission deadline has expired, shall be extended for 60 days from the date of receiving a notification regarding the MAP agreement by the competent authority of Thailand. However, the extended deadline only applies where the relevant tax treaty contains the equivalent to Article 25 (2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Thailand further reported that this notification applies to a tax refund request for a MAP request filed on and after 24 August 2021.

230. No such explanation is provided in Thailand's MAP guidance.

Recent developments

231. Thailand reported that it issued the Notification of the Ministry of Finance regarding an extension of the tax refund request submission deadline with respect to the implementation of MAP agreements, which has come into effect after its publication in the Royal Gazette on 23 August 2021. It stipulates that where a tax refund request is submitted after a three-year period from the filing due date and where the relevant tax treaty contains the equivalent to Article 25 (2), second sentence, of the OECD Model Tax Convention (OECD, 2017), the period of a tax refund request in accordance with a MAP agreement is extended for 60 days from the date of receiving a notification regarding the MAP agreement by the competent authority of Thailand. However, this development does not address the implementation of MAP agreements where the relevant tax treaty does not contain the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), and thus the recommendation made in stage 1 has not been followed up.

Practical application

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

232. Thailand reported that in the period 1 January 2017-31 December 2019 there are no MAP agreements that needed to be implemented by Thailand and therefore it was not possible to assess the implementation of MAP agreements by Thailand.

233. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2017-31 December 2019 that was not implemented by Thailand, whereby all the peers noted that they had not reached agreements in that period that needed to be implemented by Thailand's competent authority. Furthermore, one peer noted that it is concerned that the time limit of three years for refund under its domestic law could be an obstacle for the resolution of the MAP case since the equivalent of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) is not stipulated in the tax treaty between the peer and Thailand. The peer would expect Thailand to provide for such equivalent in the tax treaty as well as relevant domestic law.

Period 1 January 2020-31 October 2021 (stage 2)

234. Thailand reported that since 1 January 2020 its competent authority did not enter into any MAP agreements that required implementation by Thailand.

235. All peers that provided input during stage 2 stated that the update report provided by Thailand fully reflects their experience with Thailand since 1 January 2020 and/or there are no additions to the previous input given.

Anticipated modifications

236. Thailand indicated that it intends to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of the tax treaties that currently do not contain such equivalent via the Multilateral Instrument or bilateral negotiations.

Conclusion

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

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

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

237. 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

238. Thailand reported there is no theoretical timeframe for implementing mutual agreements, but in practice a MAP will be implemented in a couple of months.

239. Regarding the steps taken by taxpayers, Thailand reported that once a MAP outcome is reached, the taxpayer will be informed in writing within 30 days and, if the taxpayer agrees, the MAP acceptance letter on MAP agreements should be submitted to the competent authority within 30 days. It further reported that the taxpayer must terminate all initiated domestic legal procedures (if any) and that he/she will refrain from taking any subsequent legal action for the MAP agreement to be implemented.

240. Thailand reported that upon receiving the confirmation from the taxpayer, the MAP agreement will be implemented. A copy of the MAP agreement will be sent to the office in charge of tax administration in the area where the taxpayer is located, and the responsible officer in such office will then implement the conclusions reached under the MAP agreement. Thailand further reported that throughout the process there will be close communication between the staff in charge of the MAP process and the tax administration office to ensure that the MAP agreement is smoothly implemented.

Recent developments

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

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

242. As discussed under element D.1, in the period 1 January 2017-31 December 2019 there are no MAP agreements that needed to be implemented by Thailand and therefore it was not possible to assess the timely implementation of MAP agreements by Thailand.

243. All peers that provided input have not indicated experiencing any problems with Thailand regarding the implementation of MAP agreements reached on a timely basis, which can be explained by the fact that there was no MAP agreement reached in the period 1 January 2017-31 December 2019 to be implemented in Thailand.

Period 1 January 2020-31 October 2021 (stage 2)

244. As described under element D.1, since 1 January 2020 Thailand did not enter into any MAP agreements that required implementation by Thailand.

245. All peers that provided input during stage 2 stated that the update report provided by Thailand fully reflects their experience with Thailand since 1 January 2020 and/or there are no additions to the previous input given.

Anticipated modifications

246. Thailand did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

247. 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 Thailand's tax treaties

248. As discussed under element D.1, Thailand's domestic legislation includes a statute of limitations of three years for implementing MAP agreements, unless overridden by tax treaties.

249. Thailand reserves its position on the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) as it considers that the implementation of reliefs and refunds following a mutual agreement ought to remain linked to time limits prescribed by their domestic laws.

250. Out of Thailand's 61 tax treaties, eight contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Furthermore, one tax treaty contains such equivalent and also the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments. Additionally, 50 do not contain such equivalent or the alternative provisions. The remaining two treaties do not contain such equivalent but include the alternative to Article 9(1).

251. During stage 1, for the 52 treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or both alternatives, three of the relevant peers reported they have made notifications under Article 16 of the Multilateral Instrument and the relevant treaty will be modified by the Multilateral Instrument once Thailand signs and ratifies it. In addition, one of the relevant peers reported that it intends to amend or modify the relevant tax treaty through bilateral negotiation or the Multilateral Instrument. Another relevant peer reported that it is ready for negotiations for a corresponding amending protocol in order to bring the treaty in line with the Minimum Standard and already sent a letter to the competent authority of Thailand to show its readiness for negotiations. This peer further reported that it, however, did not receive a response to its letter yet. Other peers provided no specific input in relation to element D.3.

Recent developments

Bilateral modifications

252. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element D.3.

Multilateral Instrument

253. Thailand signed the Multilateral Instrument and has deposited its instrument of ratification on 31 March 2022. The Multilateral Instrument has for Thailand entered into force on 1 July 2022.

254. 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.

255. With respect to the 52 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives provided for in Articles 9(1) and 7(2), Thailand listed 49 tax treaties as covered tax agreements under the Multilateral Instrument, and for all treaties did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 49 treaty partners, nine are not a signatory to the Multilateral Instrument, whereas four did not list its treaty with Thailand under that instrument and two made a reservation on the basis of Article 16(5)(c). Out of the remaining 34 tax treaties, 30 made a notification on the basis of Article 16(6)(c)(ii).

256. Of these 30 tax treaties, 25 tax treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Thailand and these treaty partners. Therefore, at this stage the Multilateral Instrument has modified these treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining five treaties, the instrument will, upon entry into force for the treaties concerned, modify them to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

257. With respect to the remaining 22 tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternative provisions in Article 9(1) and Article 7(2) and that will not be modified by the Multilateral Instrument, Thailand reported that it is finalising renegotiations with two treaty partners on the replacement of the existing treaties to be in line with the Action 14 Minimum Standard. For the other treaty, Thailand has informed the treaty partner of its expectation that the treaty partner would revise its list of notifications and reservations to the Multilateral Instrument to have the treaty modified by it. If this is seen to not be possible, Thailand would initiate bilateral negotiations.

258. Thailand further reported that with respect to its position on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), as discussed under element D.1, it has amended its legislation in August 2021 to have a general rule to implement a MAP agreement in the case where a tax refund request is submitted after the domestic statute of limitation expires and that it intends to proceed with the withdrawal of its position accordingly.

Peer input

259. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Thailand. Three of these peers concerns a treaty partner to the treaty identified above that does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). One peer mentioned that it encourages Thailand to sign the Multilateral Instrument to be compliant with the Action 14 Minimum Standard. The other peer noted that its treaty with Thailand will not be modified by the Multilateral Instrument due to the reservation made by the peer and therefore bilateral treaty negotiations are necessary to be compliant with the Action 14 Minimum Standard. This peer also noted that it notified Thailand on this in 2021. Furthermore, the third peer provided input that its treaty with Thailand is expected to be modified by the Multilateral Instrument once

Thailand signs and ratifies that instrument, since it made the necessary notifications under that instrument.

260. With respect these peer input, Thailand signed the Multilateral Instrument and has deposited its instrument of ratification on 31 March 2022 and mentioned that for the input by the second peer above, it well noted the peer’s correspondence.

Anticipated modifications

261. For those treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or both alternative provisions in Articles 9(1) and 7(2), and that will not be modified by the Multilateral Instrument, Thailand indicated that it will design its bilateral renegotiation plan to bring those treaties to be in line with the Action 14 Minimum Standard.

262. In addition, Thailand reported that it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>52 out of 61 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). With respect to these 52 treaties:</p> <ul style="list-style-type: none"> • 25 have been modified by the Multilateral Instrument to include the required provision. • Five are expected to be modified by the Multilateral Instrument to include the required provision. • 22 will not be modified by the Multilateral Instrument to include the required provision. With respect to these 22 treaties: <ul style="list-style-type: none"> - For two, renegotiations on the replacement of the existing treaties have been finalised. - For one, the relevant treaty partner has been engaged by Thailand with a view to have the treaty modified by the Multilateral Instrument. Where this is not possible, Thailand would initiate bilateral negotiations. - For 19, no actions have been taken but Thailand intends to modify them via bilateral negotiations. 	<p>With respect to the remaining 22 tax 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), Thailand should:</p> <ul style="list-style-type: none"> • sign the two newly negotiated treaties as soon as possible with the treaty partners for which negotiations have been finalised to include the required provision via bilateral negotiations • for one treaty, continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision or be willing to accept both alternative provisions • for the remaining 19 treaties, request, without further delay, the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	-
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	<p>Two out of 61 tax treaties do not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a). None of these treaties are expected to be modified by the Multilateral Instrument to include the required provision. With respect to these two treaties:</p> <ul style="list-style-type: none"> • For one renegotiations on the replacement of the existing treaty have been finalised. • For one no actions have been taken but Thailand intends to modify it via bilateral negotiations 	<p>Thailand should sign the newly negotiated treaty as soon as possible with the treaty partner for which negotiations have been finalised to include the required provision via bilateral negotiations.</p> <p>In addition, Thailand should for the other treaty partner, without further delay, request the inclusion of the required provision via bilateral negotiations.</p> <p>For both treaties, 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>Access to MAP is not provided irrespective of domestic remedies as taxpayers need to lodge an appeal with domestic courts against the decision of the Commission of Appeal in order to have full access to MAP.</p>	<p>Thailand should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017) can access the MAP irrespective of domestic remedies. In that regard, Thailand should follow its stated intention to amend its legislation and internal procedures that aim to prevent conflicts between the appeal decision and the MAP agreement so that taxpayers have the choice to opt for MAP irrespective of domestic remedies.</p>
[B.2]	-	-
[B.3]	<p>Access to MAP in transfer pricing cases will not be granted for jurisdictions where Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is not contained in the tax treaty with such jurisdictions.</p>	<p>Thailand should change its domestic policy to ensure that for those cases where the treaty does not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2017), access to MAP will always be granted for eligible cases.</p>
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-

	Areas for improvement	Recommendations
[B.7]	<p>Eight out of 61 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these eight treaties:</p> <ul style="list-style-type: none"> • Seven have been modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One will not be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, no actions have been taken but Thailand intends to modify it via bilateral negotiations. 	<p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Thailand should without further delay request the inclusion of the required provision via a bilateral negotiation.</p>
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	-	-
[C.2]	<p>Matching of MAP statistics was not sought with all of the treaty partners.</p>	<p>Thailand should endeavour matching its MAP statistics with all of its treaty partners.</p>
[C.3]	<p>Although MAP cases were closed within 24 months on average (which is the pursued average for resolving MAP cases received on or after 1 January 2017), peers indicated that they experienced some difficulties in resolving MAP cases, which concern obtaining position papers in due time and receiving responses to position papers issued by peers. Furthermore, the MAP caseload has increased substantially since 1 January 2017. The peer input and the increase indicate that the competent authority may not be adequately resourced, and because of that there is a risk that pending or future MAP cases cannot be resolved in a timely, effective and efficient manner.</p>	<p>Thailand should ensure that adequate resources are made available for the competent authority function in order to resolve MAP cases in a timely, efficient and effective manner. In this respect, Thailand should closely monitor whether the recent and anticipated addition of resources will enable the timely issuing of position papers and responses to such papers issued by the treaty partner on new and pending MAP cases.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	<p>As will be discussed under element D.3 not all of Thailand's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to time limits in its domestic law.</p>	<p>When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in a Thailand's relevant tax treaty, prevent the implementation of a MAP agreement, Thailand should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Thailand should for clarity and transparency purposes notify the treaty partner thereof without delay.</p>
[D.2]	-	-

	Areas for improvement	Recommendations
[D.3]	<p>52 out of 61 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). With respect to these 52 treaties:</p> <ul style="list-style-type: none"> • 25 have been modified by the Multilateral Instrument to include the required provision. • Five are expected to be modified by the Multilateral Instrument to include the required provision. • 22 will not be modified by the Multilateral Instrument to include the required provision. With respect to these 22 treaties: <ul style="list-style-type: none"> - For two, renegotiations on the replacement of the existing treaties have been finalised. - For one, the relevant treaty partner has been engaged by Thailand with a view to have the treaty modified by the Multilateral Instrument. Where this is not possible, Thailand would initiate bilateral negotiations. - For 19, no actions have been taken but Thailand intends to modify them via bilateral negotiations. 	<p>With respect to the remaining 22 tax 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), Thailand should:</p> <ul style="list-style-type: none"> • sign the two newly negotiated treaties as soon as possible with the treaty partners for which negotiations have been finalised to include the required provision via bilateral negotiations. • for one treaty, continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision or be willing to accept both alternative provisions • for the remaining 19 treaties, request, without further delay, the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.1	Article 9(2) of the OECD MTC	B.4	C.1	D.3	A.1	B.7	C.6	Arbitration								
Belarus	Y	N/A	O	Y	N/A	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Belgium	Y	N/A	O	Y	N/A	ii***	Y	Y	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	N
Bulgaria	Y	N/A	O	Y	N/A	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Cambodia	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Canada	Y	N/A	O	Y*	2-years	ii	Y	Y	ii	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Chile	Y	N/A	O	Y	N/A	Y	Y	Y	N	Y	Y	Y	Y	Y	Y*	Y*	Y*	Y*	Y*	N
China (People's Republic of)	Y	N/A	O	Y	N/A	ii***	Y	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	N
Cyprus (1)	Y	N/A	O	Y	N/A	ii***	Y	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	N
Czech Republic	Y	N/A	O	Y	N/A	ii	Y	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
Denmark	Y	N/A	O	Y	N/A	ii	Y	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	N
Estonia	Y	N/A	O	Y*	2-years	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Finland	Y	N/A	O	Y	N/A	ii	Y	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	N
France	Y	N/A	O	Y	N/A	ii***	Y	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	N
Germany	Y	N/A	O	Y	N/A	ii	Y	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
Hong Kong (China)	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hungary	Y	N/A	O	Y	N/A	ii***	Y	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	N
India	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Indonesia	Y	N/A	O	Y*	2-years	ii***	Y	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	N
Ireland	Y	N/A	O	Y	N/A	Y	Y	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	N
Israel	Y	N/A	O	Y	N/A	ii***	Y	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	N
Italy	Y	N/A	O	iv*	2-years	ii*	Y	Y	N*	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	N

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	A.1	B.7	A.1	B.7	A.1	B.7	A.1	B.7	A.1	B.7	Arbitration
Japan	Y	N/A	O	Y	N/A	ii	i	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kuwait	Y	N/A	O	Y	N/A	ii	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Lao People's Democratic Republic	Y	N/A	O	Y	N/A	ii	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O	Y	N/A	ii***	i	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	Y	N
Malaysia	Y	N/A	O	i***	N/A	ii***	i	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	Y	N
Mauritius	Y	N/A	O	Y	N/A	ii***	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N
Myanmar	Y	N/A	O	Y	N/A	ii	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N
Nepal	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N
Netherlands	Y	N/A	N	i	N/A	ii	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N
New Zealand	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y*	Y	Y	N
Norway	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N
Oman	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y*	Y	Y	N
Pakistan	Y	N/A	O	Y*	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Philippines	Y	N/A	O	Y	N/A	Y	i	Y	iii	Y	Y	Y	iii	Y	Y	Y	Y	Y	Y	Y	N
Poland	Y	N/A	O	i***	N/A	ii***	i	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	Y	N
Romania	Y	N/A	O	Y	N/A	ii***	i	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	Y	N
Russia	Y	N/A	N	Y	N/A	ii***	i	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y*	Y	Y	N
Seychelles	Y	N/A	O	Y	N/A	Y	i	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	Y	N
Singapore	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovenia	Y	N/A	O	Y	N/A	ii***	i	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	Y	N

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	Article 25(1) of the OECD MTC	Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Arbitration	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6			
South Africa	Y	N/A	O	i**	N/A	i**	Y	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Spain	Y	N/A	O	Y	N/A	ii***	Y	i	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Sri Lanka	Y	N/A	O	Y	N/A	ii	Y	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Sweden	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Switzerland	Y	N/A	O	Y	N/A	ii	Y	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Chinese Taipei	Y	N/A	O	Y	N/A	ii	Y	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Tajikistan	Y	N/A	O	Y	N/A	Y	Y	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Türkiye	Y	N/A	O	iv**	Domestic law	Y	Y	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ukraine	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	N
United Arab Emirates	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	N
United Kingdom	Y	N/A	O	i***	N/A	Y	Y	i	Y	Y*	Y	Y	Y	Y*	Y	Y*	Y	Y*	Y	N
United States	Y	N/A	O	Y	N/A	Y	Y	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	N
Uzbekistan	Y	N/A	O	Y	N/A	Y	Y	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	N
Viet Nam	Y	N/A	O	Y	N/A	Y	Y	i	Y	N*	Y	Y	Y	N*	Y	Y	Y	Y	Y	N

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

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

Annex B

MAP Statistics Reporting for pre-2017 cases
(1 January 2017 to 31 December 2020)

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
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
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	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	5	0	0	0	0	0	0	0	0	0	0	5	n.a.
Total	5	0	0	0	0	0	0	0	0	0	0	5	n.a.

Note: The number of pre-2017 cases has been updated by Thailand in 2019, which explains the mismatch with the published version of its 2017 statistics.

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
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
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	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	5	0	0	0	0	0	0	0	0	0	0	5	n.a.
Total	5	0	0	0	0	0	0	0	0	0	0	5	n.a.

Note: The number of pre-2017 cases has been updated by Thailand in 2019, which explains the mismatch with the published version of its 2018 statistics.

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

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

Annex C

MAP Statistics Reporting for post-2016 cases (1 January 2017 to 31 December 2020)

2017 MAP Statistics														
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2017	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	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	Column 13	Column 14	Column 15
Attribution/Allocation	0	0	0	1	0	0	0	0	0	0	0	0	0	5.96
Others	0	0	0	0	0	0	0	0	0	0	0	0	1	n.a.
Total	0	0	0	1	0	0	0	0	0	0	0	0	1	5.96

Note: The number of post-2016 cases has been updated by Thailand in 2019, which explains the mismatch with the published version of its 2017 statistics.

2018 MAP Statistics														
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2018	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	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	Column 13	Column 14	Column 15
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	1	0	0	0	0	0	0	0	0	0	0	0	4	n.a.
Total	1	0	0	0	0	0	0	0	0	0	0	0	5	n.a.

Note: The number of post-2016 cases has been updated by Thailand in 2019, which explains the mismatch with the published version of its 2018 statistics.

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			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	1	0	0	0	0	1	0	0	0	0	0	0	0	13.63
Others	4	4	0	0	0	0	0	0	0	0	0	0	8	n.a.
Total	5	4	0	0	0	1	0	0	0	0	0	0	8	13.63

Note: The numbers of other cases are different from those in Thailand's published MAP statistics owing to correction of errors.

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			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	8	0	0	0	0	0	0	0	0	0	0	0	8	n.a.
Total	8	0	0	0	0	0	0	0	0	0	0	0	8	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 guidance	Mutual Agreement Procedure Guideline
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
Statistics 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, Thailand (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 Thailand.



PRINT ISBN 978-92-64-71620-9
PDF ISBN 978-92-64-34558-4



9 789264 716209