

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



# **Making Dispute Resolution More Effective - MAP Peer Review Report, Norway (Stage 2)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**





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## *Foreword*

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

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

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

This report was approved by the Inclusive Framework on 12 May 2020 and prepared for publication by the OECD Secretariat.

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## *Abbreviations and acronyms*

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



## Executive summary

Norway has an extensive tax treaty network with almost 90 tax treaties. It has an established MAP programme and has significant experience with resolving MAP cases. It has a modest MAP inventory, with a modest number of new cases submitted each year and 100 cases pending on 31 December 2018. Of these cases, 24% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Norway met the majority of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Norway worked to address them, which has been monitored in stage 2 of the process. In this respect, Norway solved almost all of the identified deficiencies.

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

- More than 20% of its tax treaties do not 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), or contain the alternative provisions for both Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments
- Almost 20% of its tax treaties do not contain a provision stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty (which is required under Article 25(3), second sentence).

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Norway signed and ratified, without any reservation on the MAP article, the Multilateral Instrument. Through this instrument a number of its tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties have not been or will not be modified by the Multilateral Instrument, Norway reported that it strives updating all of them through bilateral negotiations. In this respect, it already is in the process of renegotiations or envisages to do so with a number of jurisdictions. For the remaining treaties, negotiations are currently not foreseen nor is there a plan put in place to bring these treaties in line with the requirements under the Action 14 Minimum Standard. Taking this into account, negotiations need to be initiated without further delay for a considerable number of treaties to ensure compliance with this part of the Action 14 Minimum Standard.

Norway 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 rollbacks of bilateral APAs and such rollbacks are granted in practice.

Norway also meets all requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases and

has since 2018 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. In 2018, Norway also published guidance on the availability of MAP and how the MAP function is construed and applied in practice. This guidance also reflects whether taxpayers have access to MAP in cases of audit settlements.

Concerning the average time needed to close MAP cases, the MAP statistics for Norway for the years 2016-18 are as follows:

2016-18	Opening inventory	Cases started	Cases closed	End inventory	Average time to close cases (in months)*
Attribution/allocation cases	40	33	49	24	29.89
Other cases	37	99	60	76	21.54
Total	77	132	109	100	25.29

\*The average time taken for closing MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for closing pre-2016 MAP cases, Norway used as a start date, the date of receipt of the MAP request by Norway's competent authority from the taxpayer once sufficient documentation is provided or the date of receipt of the notification letter from the other competent authority that received the MAP request from the taxpayer; and as an end date, the latest of the following dates: the date when the taxpayer accepts the outcome of the MAP process or the date when the mutual agreement was reached. If no agreement was reached, the end date will be the date when the taxpayer is notified of the outcome of the MAP case.

The number of cases Norway closed in 2016-18 is 83% of the number of new cases started in those years. During these years, MAP cases were on average not closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 25.29 months. This particularly concerns the resolution of attribution/allocation cases, as the average time to close these cases is thereby considerably longer (29.89 months) than the average time to close other cases (21.54 months). Furthermore, Norway's MAP inventory as per 31 December 2018 increased with 30% as compared to 1 January 2016, which only regards other cases (105%), as the inventory for attribution/allocation cases decreased with 40%. While the overall average to close MAP cases also decreased and although Norway has recently added resources to the competent authority function as well as has taken organisation steps to make the MAP process more effective and efficient, more resources are necessary to ensure a timely resolution of MAP cases, in particular for attribution/allocation cases, and to be able to cope with the significant increase in the number of other cases.

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

Lastly, Norway also meets the Action 14 Minimum Standard as regards implementation of MAP agreements. Although Norway does not monitor the implementation of MAP agreements, no issues have surfaced regarding the implementation throughout the peer review process.

## *Introduction*

### **Available mechanisms in Norway to resolve tax treaty-related disputes**

Norway has entered into 87 tax treaties on income (and/or capital), all of which are in force.<sup>1</sup> These 87 treaties apply to 95 jurisdictions.<sup>2</sup> All but one of these treaties provide for a mutual agreement procedure (“**MAP**”) for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, three of the 88 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.<sup>3</sup>

Under the tax treaties Norway entered into, its competent authority function is assigned to the Ministry of Finance. This function has been delegated to three different bodies within the Ministry or the Tax Administration, such depending on the type of MAP cases each of these teams handle. This concerns:

- i. *Attribution/allocation cases*: the MAP/APA section within the Large Business Department of the Tax Administration
- ii. *Cases regarding taxpayers covered by the Norwegian petroleum tax*: a dedicated person within the Tax Law Department within the Ministry of Finance
- iii. *Other cases*: the Tax Law Department within the Ministry of Finance as well as the MAP team within the Legal Department of the Directorate of Taxes.

Norway’s competent authority consists of more than 15 people, who deal partly with handling MAP cases along with other tasks.

In February 2018, Norway issued guidance on the governance and administration of the mutual agreement procedure (“**MAP guidance**”). This guidance was updated in February 2019 and is available at:

<https://www.regjeringen.no/en/topics/the-economy/taxes-and-duties/tax-treaties-between-norway-and-other-st/id417330/>  
(in English)

[www.regjeringen.no/no/tema/okonomi-og-budsjett/skatter-og-avgifter/skatteavtaler-mellom-norge-og-andre-stat/id417330/](http://www.regjeringen.no/no/tema/okonomi-og-budsjett/skatter-og-avgifter/skatteavtaler-mellom-norge-og-andre-stat/id417330/)  
(in Norwegian)

### **Developments in Norway since 1 August 2017**

#### ***Developments relating to the tax treaty network***

In the stage 1 peer review report of Norway it is reflected that it has entered into 89 tax treaties. This number of 89 treaties included a reference to the treaty with Bosnia and Herzegovina and Croatia. However, in relation to both states, it, however, concerns a continuation of the 1983 treaty with former Yugoslavia. Furthermore, Norway has entered

into a treaty with Aruba, which ran for a period of five years and which has not been extended. Taking this into account, Norway has entered into 87 tax treaties, which is taken as the basis for this report.

The stage 1 peer review reports also reflected that it signed new treaties with Belgium (2014) and Zambia (2015). Since 1 August 2017, the treaty with Zambia entered into force in 2017, whereas the treaty with Belgium entered into force in 2018, thereby replacing the treaty of 1988.

Furthermore, on 7 June 2017 Norway 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 to be compliant with the Action 14 Minimum Standard in respect of a number of tax treaties. On 17 July 2019, Norway deposited its instrument of ratification, following which the Multilateral Instrument has for Norway entered into force on 1 November 2019. With the depositing of its instrument of ratification, Norway also submitted its list of notifications and reservations to the Multilateral Instrument.<sup>4</sup> In relation to the Action 14 Minimum standard, Norway did not make any reservations on the application of Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

In addition, Norway reported that since 1 August 2017 it has signed, together with Denmark, the Faroe Islands, Finland, Iceland and Sweden an amending protocol to the multilateral Nordic Convention (2018), which also amends the MAP provision to allow taxpayers to file a MAP request to the competent authorities of either contracting state. This amending protocol entered into force on 28 November 2019. Norway further reported that it has conducted treaty negotiations with Ghana, Hong Kong and Iran on a new treaty and with Belgium, Brazil, Germany, Korea, Switzerland and Thailand on the amendment or replacement of the existing treaty.

For those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Norway reported that:

- It is currently in negotiations with Belgium, Brazil, France, Israel, Malaysia, the Slovak Republic, Thailand and the United States on the amendment or replacement of the existing treaty in force, *inter alia* to bring these treaties in line with the requirements under the Action 14 Minimum Standard.
- It finalised negotiations with Switzerland on the inclusion of the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments, but no agreement hereon could be reached.
- It envisages entering into negotiations with Canada and re-initiate negotiations with Italy, while Kenya and Tanzania were requested to initiate negotiations, but so far did not respond to this request.

For the remaining treaties, negotiations are currently not foreseen nor is there a plan put in place to bring these treaties in line with the requirements under the Action 14 Minimum Standard. Norway clarified that the renegotiations of these treaties only for purpose of Action 14 is of a low priority due to the absence of or only a very limited MAP relationship with the relevant treaty partners. When with these treaty partners negotiations are to be initiated, Norway stated it will ensure that the requirements under the Action 14 Minimum Standard are met.

## ***Other developments***

Norway reported that in February 2018 it has issued MAP guidance, which was revised in February 2019. This guidance outlines: (i) general information on the MAP process, (ii) access to MAP, (iii) the submission of a MAP request and the content of such request, (iv) taxpayers' role in the MAP process, (v) availability of arbitration, (vi) conclusion of a MAP agreement and the implementation process, (vii) the relationship between MAP and domestic judicial remedies and (viii) recurring issues and APAs.

Furthermore, Norway also reported that it has implemented a bilateral notification/consultation process to be applied when the objection raised by a taxpayer in its MAP request is considered not to be justified. In addition, it has also established internal routines to reflect other requirements under the Action 14 Minimum Standard in relation to the MAP process, such as time limits and correspondence with other competent authorities.

Norway further reported that it has hired additional personnel for handling MAP cases. Furthermore, in April 2018 the Tax Law Department within the Ministry of Finance has been reorganised. The tax treaty unit that is responsible for handling other MAP cases has merged with the unit for personal taxation. This reorganisation, however, did not impact the allocation of resources for handling MAP cases. In addition, in 2018 the Directorate of Taxes (under which heading the Legal Department resorts) established a specific MAP team within the Legal Department to handle other MAP cases. In 2019 Norway's Tax Administration has been reorganised, whereby the unit that is responsible for handling attribution/allocation cases is now placed in the specifically created MAP/APA section of the Large Business Department in the Priority Risks Division.

Lastly, Norway also reported that personnel within the competent authority have followed the training organised by the OECD. As to the operations of its competent authority, it also established internal routines to reflect the other requirements under the Action 14 Minimum Standard. This *inter alia* concerns the steps of a MAP process, the to be applied targeted timeframes and rules for correspondence with other competent authorities.

## **Basis for the peer review process**

### ***Outline of the peer review process***

The peer review process entails an evaluation of Norway's implementation of the Action 14 Minimum Standard, through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Norway, 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, Norway'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 22 February 2018. This report identifies the strengths and shortcomings of Norway 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.<sup>5</sup> 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 Norway. In this update report,



Norway 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 Norway is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty currently in force. Furthermore, the treaty analysis also takes into account the treaties/agreements with:

- Former Yugoslavia, which Norway continues to apply to Bosnia and Herzegovina, Croatia and Montenegro
- the former Netherlands Antilles Islands, which Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius)
- the United Kingdom (1955), which Norway continues to apply to Sierra Leone.

As for the first two treaties referred to it concerns tax treaties that are applicable to multiple jurisdictions, each treaty is only counted as one treaty for this purpose. The same applies to the multilateral tax treaty between Denmark, the Faroe Islands, Finland, Iceland, Norway and Sweden (“**Nordic convention**”) and the separate treaties entered into with Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man and Jersey that relate to transfer pricing and to certain categories of income of individuals. Reference is made to Annex A for the overview of Norway’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 was for Norway launched on 7 July 2017, with the sending of questionnaires to Norway and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Norway in December 2017, with the subsequent approval by the BEPS Inclusive Framework on 22 February 2018. On 22 February 2019, Norway submitted its update report, which initiated stage 2 of the process.

The period for evaluating Norway’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 July 2017. The period of review for stage 2 started on 1 August 2017 and depicts all developments as from that date until 28 February 2019.

In total 12 peers provided input during stage 1: Australia, Belgium, Denmark, Germany, the Netherlands, Portugal, Russia, Spain, Sweden, Switzerland, Turkey and the United States. In stage 1, these peers represent 85% of post-2015 MAP cases in Norway’s inventory on 31 December 2016. During stage 2, the same peers provided input, apart from Russia. In addition, also Austria, Canada, Egypt, Italy, Japan, the Slovak Republic and the United Kingdom provided input during stage 2. For this stage, these peers represent approximately 86% of post-2015 MAP cases in Norway’s inventory that started in 2016, 2017 or 2018.<sup>6</sup> Broadly, all peers reported having a good experience with Norway, some of them emphasising the availability of Norway’s competent authority and the fact that contact has been made easily. Specifically with respect to stage 2, almost all peers that provided



input reported that the update report of Norway fully reflects the experiences these peers have had with Norway since 1 August 2017 and/or that there was no addition to previous input given. Nine peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance.

### *Input by Norway and co-operation throughout the process*

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

- MAP profile<sup>7</sup>
- MAP statistics<sup>8</sup> according to the MAP Statistics Reporting Framework (see below).

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

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

## Overview of MAP caseload in Norway

The analysis of Norway's MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2016. For stage 2 the period ranges from 1 January 2017 to 31 December 2018. Both periods are taken into account in this report for analysing the MAP statistics of Norway. The analysis of Norway's MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2018 ("**Statistics Reporting Period**"). According to the statistics provided by Norway, its MAP caseload was as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2018
Attribution/allocation cases	40	33	49	24
Other cases	37	99	60	76
Total	77	132	109	100

## General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).<sup>9</sup> Apart from analysing Norway’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by the assessed jurisdiction, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Norway 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 Norway 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 Norway should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement and recommendation for this specific element.

## Notes

1. The tax treaties Norway has entered into are available at: <https://www.regjeringen.no/en/topics/the-economy/taxes-and-duties/tax-treaties-between-norway-and-other-st/id417330/>. Reference is made to Annex A for the overview of Norway’s tax treaties regarding the mutual agreement procedure.  
Furthermore, the 87 tax treaties Norway has entered into include treaties with Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man and Jersey. With these six jurisdictions, Norway has entered into separate treaties that have a limited scope of application, one of which relates to transfer pricing and one to certain categories of income of individuals. In this situation, the number of such treaties is regarded as one for the purpose of this peer review report and Annex A.
2. Norway continues to apply the 1983 treaty with former Yugoslavia to Bosnia and Herzegovina, Croatia and Montenegro; the 1989 treaty with the former Netherlands Antilles Islands to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba); and the 1955 treaty with the United Kingdom to Sierra Leone. Furthermore, Norway has entered into a multilateral tax treaty with the Nordic countries that for Norway applies to Denmark, Faroe Islands, Finland, Iceland and Sweden (“**Nordic convention**”).

3. This concerns the treaties with the Netherlands, Switzerland and the United Kingdom.
4. Available at: [www.oecd.org/tax/treaties/beps-mli-position-norway.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-norway.pdf).
5. Available at: [www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-norway-stage-1-9789264290389-en.htm](http://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-norway-stage-1-9789264290389-en.htm).
6. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework. All cases falling within the *de minimis* rule do not fall in this percentage.
7. Available at <https://www.oecd.org/tax/dispute/Norway-Dispute-Resolution-Profile.pdf>.
8. The MAP statistics of Norway are included in Annex B and C of this report.
9. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REV1).



## *Part A*

### Preventing disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

#### ***Current situation of Norway's tax treaties***

2. Out of Norway's 87 tax treaties, 82 treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention 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.<sup>1</sup> The remaining five treaties can be categorised as follows:

- One treaty does not contain any provision related to the mutual agreement procedure.<sup>2</sup>
- One treaty contains a provision that is based on Article 25(3), first sentence, of the OECD Model Tax Convention but the wording “may” is used instead of “shall” endeavour to resolve such cases and is therefore considered not being equivalent to the first sentence.
- Three treaties contain a provision that is based on Article 25(3), first sentence, of the OECD Model Tax Convention, but in all three the word “interpretation” is missing, whereas one treaty also misses the word “doubts”. All three treaties are therefore considered not having the equivalent of the first sentence.

3. Norway reported that whether or not the applicable treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, it will be able to endeavour to solve any difficulties or doubts regarding the interpretation or application of its tax treaties. In fact, Norway reported that it already entered into such an agreement with a jurisdiction for which the treaty did not contain the full equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

4. All peers that provided input reported that their tax treaty with Norway meets the requirements under element A.1, including one peer for which the treaty with Norway actually does not contain the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. For the other four treaties identified that do not contain the equivalent of Article 25(3), first sentence, the relevant peers did not provide input.

### ***Recent developments***

#### *Bilateral modifications*

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

#### *Multilateral Instrument*

6. Norway signed the Multilateral Instrument and has deposited its instrument of ratification on 17 July 2019. The Multilateral Instrument has for Norway entered into force on 1 November 2019.

7. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention – 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, 2017). 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 treaty has 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 of the fact that this tax treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

8. In regard of the five tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Norway did not list any of them as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, not modify any of the six tax treaties identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

#### *Other developments*

9. For those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Norway reported that it is currently in negotiations with three treaty partners *inter alia* to include Article 25(3), first sentence, of the OECD Model Tax Convention.

#### *Peer input*

10. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Norway. None of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(3), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument.

### *Anticipated modifications*

11. For the remaining two tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument, negotiations are currently not foreseen nor is there a plan in place to bring these treaties in line with the requirements under the Action 14 Minimum Standard, as with these jurisdictions there is no MAP experience. Norway clarified that for these treaties the first sentence of Article 25(3) will be included once negotiations on the amendment or replacement of the treaty will be initiated. One of these two treaties, however, concerns the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, for which such renegotiations are not necessary.

12. Regardless, Norway reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

### *Conclusion*

	Areas for improvement	Recommendations
[A.1]	<p>Five out of 87 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. None of these six treaties will be modified by the Multilateral Instrument to include the required provision. With respect to these six treaties:</p> <ul style="list-style-type: none"> <li>• Three treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.</li> <li>• For the remaining two treaties no actions have been taken nor are planned to be taken.</li> </ul>	<p>For four of the five tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and that will not be modified via the Multilateral Instrument to include the required provision, Norway should:</p> <ul style="list-style-type: none"> <li>• initiate or continue negotiations with three treaty partners to include Article 25(3), first sentence, of the OECD Model Tax Convention</li> <li>• for one without further delay request the inclusion of Article 25(3), first sentence, of the OECD Model Tax Convention via bilateral negotiations.</li> </ul> <p>Specifically with respect to the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, Norway should ensure that, once it enters into negotiations with the jurisdiction for which it applies that treaty, it includes the required provision.</p>

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

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

13. 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.<sup>3</sup> 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.

### ***Norway's APA programme***

14. Norway reported that it has implemented an APA programme since 2011, under which it is allowed to enter into bilateral APAs. Since the entry into force of the programme, Norway reported that it has entered into nine bilateral APAs, with five different treaty partners. As a matter of practice, Norway reported that some of the bilateral APAs it concluded were initiated after a MAP case was resolved for previous years.

15. Norway further reported that there is no specific timeline to submit a request for a bilateral APA. In practice, a taxpayer can submit a request for a bilateral APA that would apply as from the year when the request is actually submitted.

16. Apart from what is provided in Norway's MAP profile, there is no publically available information on Norway's bilateral APA programme. Norway, however, publishes an annual report regarding transfer pricing issues, including statistics on bilateral APAs.<sup>4</sup>

### ***Roll-back of bilateral APAs***

17. Norway reported that it is entitled to provide roll-back of bilateral APAs. A roll-back request thereto should, however, cover fiscal years that are not yet barred by Norway's statute of limitation and further the facts and circumstances of these fiscal years should be similar to those of the future fiscal years to be covered by the bilateral APA. In this respect, Norway indicated that its statute of limitation would enable a roll-back to cover the five years preceding the one in which the bilateral APA request is made. Section 11.2 of Norway's MAP guidance sets forth that in certain cases roll-back of bilateral APAs are possible.

### ***Recent developments***

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

### ***Practical application of roll-back of bilateral APAs***

#### ***Period 1 January 2016-31 July 2017 (stage 1)***

19. Norway reported having granted a roll-back in two cases since the introduction of its bilateral APA programme in 2011 and that no request for roll-back has ever been denied by Norway's competent authority.

20. Peers generally indicated not having received any request for a roll-back of a bilateral APA involving Norway. Two peers specified being aware that roll-back is available in Norway for bilateral APAs.

#### ***Period 1 August 2017-28 February 2019 (stage 2)***

21. Norway reported that since 1 August 2017 it has received two requests for a bilateral APA and one request for a renewal of an existing APA. In the requests for an APA (not the request for a renewal), the taxpayers also asked for a roll-back. In one of these cases, the roll-back has been granted, while the other two are in the process of being reviewed.

22. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Norway fully reflects their experience with Norway since 1 August 2017 and/



or there are no additions to the previous input given. This concerns a confirmation that they had also during stage 2 no experiences with Norway as to the roll-back of bilateral APAs.

### *Anticipated modifications*

23. Norway indicated that it intends publishing specific guidelines on its bilateral APA programme that would also address the possibility to request roll-backs of such APAs.

### *Conclusion*

	Areas for improvement	Recommendations
[A.2]	-	-

## Notes

1. These 82 treaties include the 1983 with former Yugoslavia that Norway continues to apply to Bosnia and Herzegovina, Croatia and Montenegro; the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba); and the Nordic convention that for Norway applies to Denmark, the Faroe Islands, Finland, Iceland and Sweden.
2. This concerns the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone.
3. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
4. The report (in Norwegian) is available at: <https://www.skatteetaten.no/globalassets/bedrift-og-organisasjon/rapportere-og-bransjer/bransjer-med-egne-regler/transfer-pricing/arsrapport-2018-transfer-pricing.pdf> (latest report published for 2018). An English version of the report is available at: <https://www.skatteetaten.no/globalassets/bedrift-og-organisasjon/rapportere-og-bransjer/bransjer-med-egne-regler/transfer-pricing/transfer-pricing---annual-report-2018.pdf>.

## References

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



## *Part B*

### **Availability and access to MAP**

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

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

24. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties contain 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 Norway's tax treaties***

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

25. Out of Norway's 87 tax treaties, one contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report 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.<sup>1</sup> Furthermore, 62 treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention 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.<sup>2</sup> The remaining 24 treaties can be categorised as follows:

Provision	Number of tax treaties
No MAP provision	1 <sup>a</sup>
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	22 <sup>b</sup>
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request	1
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby the taxpayer needs to appeal to the taxation authority instead of presenting its MAP request.	1

Notes: a. This concerns the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone.

b. These 22 treaties include the 1983 treaty with former Yugoslavia that Norway continues to apply to Bosnia and Herzegovina, Croatia and Montenegro.

26. The 21 treaties mentioned in the second row of the table are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, 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 20 of those 21 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 (eight treaties)
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (13 treaties).<sup>3</sup>

27. The remaining treaty contains a non-discrimination provision that applies both to nationals that are resident of one of the contracting states as to nationals that are not. This treaty is therefore considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as the limitation of the scope of the MAP provision is not clarified by the absence of or a limited scope of the non-discrimination provision, following which this treaty is considered not to be in line with this part of element B.1.

28. The protocol provision incorporated in the treaty mentioned in the third row of the table reads:

... the expression “notwithstanding the remedies provided by national laws” means that the taxpayer may only present his case for mutual agreement procedure if he has preventively initiated the national contentious proceedings, when the claim is related with an assessment of taxes not in accordance with the Convention.

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

30. The treaty mentioned in the last row of the table above requires from taxpayers to appeal to the taxation authority instead of presenting its MAP request. For this reason, this treaty is also considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. In practice, Norway reported that it did not interpret this tax treaty in a stricter way than if it contained the equivalent of Article 25(1), first sentence.

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

31. Out of Norway's 87 tax treaties, 66 treaties contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.<sup>4</sup>

32. The remaining 21 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	14
Filing period longer than three years for a MAP request (five years)	2 <sup>a</sup>
Filing period shorter than three years for a MAP request (two years)	4
No MAP provision	1 <sup>b</sup>

*Notes:* a. These two treaties include the 1983 treaty with former Yugoslavia that Norway continues to apply to Bosnia and Herzegovina, Croatia and Montenegro as well as the Nordic convention that for Norway applies to Denmark, the Faroe Islands, Finland, Iceland and Sweden.

b. This concerns the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone.

#### *Peer input*

33. All peers that provided input reported that their tax treaty with Norway meets the requirements under element B.1. For the seven treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, the relevant peers did not provide input.

#### *Practical application*

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

34. As noted in paragraphs 28-30 above, in all but two of Norway's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Norway reported that domestic administrative and judicial remedies can be invoked independently and at the same time as the MAP process. Both procedures would, however, not run in parallel. In practice, taxpayers will submit a protective complaint, writ or MAP request to comply with the relevant time limits and accordingly ask the administrative appeals board, the court or the competent authority not to proceed until the preferred remedy has been completed. Taxpayers that prefer to have the MAP process to be pursued first, may continue with domestic remedies after the conclusion of the MAP process, provided that they do not accept the outcome of that process. Furthermore, where taxpayers prefer to pursue domestic remedies first they may revert to the MAP process after finalising these remedies. However, where a domestic court has confirmed a Norwegian-initiated adjustment, the competent authority – as a matter of policy – will not deviate from the court's decision in MAP.

35. Section 10 of Norway's MAP guidance contains information on the interaction between the MAP process and domestic remedies. In this respect, section 10.1 clarifies that taxpayers can submit a MAP request, even if it also initiated domestic remedies for the same case under review. Sections 10.2-10.8 outlines the interaction between both processes, in particular how the process is run where one of the processes is applied first, thereby setting the other process on hold, which is similar as outlined above. In addition thereto, sections 10.4 and 10.7 stipulate that where a taxpayer has chosen to pursue to the MAP process first, it is required to withdraw pending domestic remedies as a prerequisite for having the MAP agreement implemented.

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

36. For those tax treaties that do not contain a filing period for MAP requests, Norway reported that its domestic law does not include any time limits and would therefore not deny access to MAP due to a late filing of the request. This is also clarified in section 5.5 of Norway's MAP guidance.

### *Recent developments*

#### *Bilateral modifications*

37. Norway signed an amending protocol to an existing treaty to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, to allow taxpayers to file a MAP request to the competent authority of either contracting state. This amending protocol entered into force on 28 November 2019. The effect thereof has been reflected in the analysis above where its relevance.

#### *Multilateral Instrument*

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

38. Norway signed the Multilateral Instrument and has deposited its instrument of ratification on 17 July 2019. The Multilateral Instrument has for Norway entered into force on 1 November 2019.

39. 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 as amended by the Action 14 final report 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 as it read prior to the adoption of the Action 14 final report. 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 both notified the depositary, pursuant to Article 16(6)(a), that this tax treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Article 16(4)(a)(i) will 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 its covered tax agreements.

40. With the signing of the Multilateral Instrument, Norway opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its listed tax treaties under that instrument a provision that is equivalent to Article 25(1), first sentence, of the OECD

Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Norway's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state in which they are a resident, Norway opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Norway listed 28 of its 87 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a) of the Multilateral Instrument, for all of them a notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. None of these 28 treaties concerns the treaty mentioned in paragraph 25 above that already allows the submission of a MAP request to either competent authority.

41. All of the relevant 28 treaty partners are a signatory to the Multilateral Instrument and listed their treaty with Norway as a covered tax agreement under that instrument, but ten reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties. The remaining 18 treaty partners listed their treaty with Norway as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

42. Of these 18 treaty partners, ten already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Norway and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. For the remaining eight treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

43. In view of the above and in relation to the four treaties identified in paragraphs 27-30 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, none are part of the 18 treaties that have been or will be modified via the Multilateral Instrument.

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

44. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – 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 tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary that this tax treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

45. In regard of the four tax treaties identified in paragraph 32 above that contain a filing period for MAP requests of less than three years, Norway listed none of them as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, the Multilateral Instrument will, upon entry into force, modify none of these four treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.



### *Other developments*

46. For those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Norway reported that it is currently in negotiations with two treaty partners *inter alia* to include Article 25(1), first and/or sentence, of the OECD Model Tax Convention. In more detail this concerns negotiations with two treaty partners for which the current treaty does not include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

### *Peer input*

47. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Norway. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(1), first and second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. This peer confirmed that the treaty will not be modified by the Multilateral Instrument due to Norway not listing the treaty as a covered tax agreement. While it understands that Norway intends to re-initiate bilateral negotiations (see above) to *inter alia* bring the treaty in line with the requirements under the Action 14 Minimum Standard, it had not yet received a formal proposal hereto.

### *Anticipated modifications*

48. Norway reported that when the tax treaties do not contain the equivalent of Article 25(1), first and/or second sentence, of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final (OECD, 2015b) and will not be modified by the Multilateral Instrument and for which no negotiations currently are pending, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. This concerns:

- a. One treaty that does not contain the equivalent of Article 25(1), first sentence
- b. Three treaties that do not contain the equivalent of Article 25(1), second sentence
- c. One treaty that does not contain the equivalent of Article 25(1), first and second sentence.

49. The first treaty referred to concerns the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, for which renegotiations are not necessary. Furthermore, for one of the three treaties under sub b) and the treaty listed under sub c), Norway reported it is envisaging entering into negotiations, or has sent requests thereto to the relevant treaty partner.

50. For the remaining two treaties listed under sub b), negotiations are currently not foreseen nor is there a plan put in place to bring these treaties in line with the requirements under the Action 14 Minimum Standard, as with these jurisdictions there is no MAP experience. Norway clarified that for these treaties the second sentence of Article 25(1) will be included once negotiations on the amendment or replacement of the treaty will be initiated.

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



## Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Three out of 87 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, either as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). Of those seven tax treaties:</p> <ul style="list-style-type: none"> <li>Two are included in the list of treaties for which negotiations are envisaged, scheduled or pending.</li> <li>For the remaining treaty no action has been taken nor are planned to be taken.</li> </ul>	<p>For those three tax treaties that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention either as it read prior to the adoption of the final report on Action 14 (OECD, 2015b) and that will not be modified via the Multilateral Instrument to include the required provision, Norway should continue negotiations with two of the three treaty partners to include the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> <li>as amended by the final report of Action 14 (OECD, 2015b); or</li> <li>as it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision.</li> </ol> <p>Specifically with respect to the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, Norway should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.</p>
	<p>Three out of 87 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties either 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, due to a protocol provision, can be shorter than three years. None of these three treaties is expected to be modified or superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). In this respect:</p> <ul style="list-style-type: none"> <li>One treaty is included in the list of treaties for which negotiations are envisaged, scheduled or pending.</li> <li>For two treaties no actions have been taken nor are planned to be taken.</li> </ul>	<p>For those three tax treaties that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention and that will not be modified via the Multilateral Instrument to include the required provision, Norway should:</p> <ul style="list-style-type: none"> <li>initiate or continue negotiations with one treaty partner to include Article 25(1), second sentence, of the OECD Model Tax Convention</li> <li>without further delay request the inclusion of Article 25(1), second sentence, of the OECD Model Tax Convention for the remaining two treaties via bilateral negotiations.</li> </ul>
[B.1]	<p>One out of 87 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report or as amended by that final report (OECD, 2015b), and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty will not be modified by the Multilateral Instrument to include both the first and second sentence of Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report. For this treaty, Norway envisages initiating bilateral negotiations to include the required provision.</p>	<p>For the treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Norway should follow its stated intention and request without further delay the inclusion of the required provision. This concerns a provision that is equivalent to Article 25(1), first and second sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> <li>as amended by the Action 14 final report; or</li> <li>as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.</li> </ol>

## **[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).

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

- i. of either treaty partner; or in the absence of such provision
- ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases, jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

### ***Domestic bilateral consultation or notification process in place***

53. As discussed under element B.1, out of Norway's 87 treaties, one currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, 18 of the remaining 86 treaties have been or will, upon entry into force for the treaties concerned, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

54. For the remaining 68 treaties that currently do not or will not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, Norway reported that it did not introduce a documented notification procedure whereby its competent authority notifies or consults the other competent authority concerned when it considers the objection raised in a MAP request not to be justified. However, in practice, Norway reported that its competent authority informs the other competent authority via regular mail or email and the notification includes information on the taxpayer, the issue raised and the reason why the request is considered as not justified as well as all relevant data necessary for the reporting of MAP statistics pursuant to the MAP Statistics Reporting Framework.

### ***Recent developments***

55. Norway reported that since 1 August 2017 it has introduced a written notification/consultation process to be applied when its competent authority considers the objection raised in a MAP request as not justified. This process and the steps to be taken are thereby included in the internal routines for the MAP process and have been shared with all staff

within the competent authority. In this respect, Norway specified that the following process applies in relation to this process:

- The competent authority will inform its treaty partner of a submitted MAP request within four weeks of receipt.
- If at that time the initial conclusion is drawn that the objection is not justified, it will be specified in the notification letter. If it is later, it will be in a follow-up letter. The notification will contain the reason for the conclusion, whereby the other competent authority is invited to provide its views on the case within a period of typically two months.
- The views presented (if any) are then taken into account on the final decision on whether access to MAP will or will not be given. If eventually it is decided that the objection raised is not justified, the MAP case will be closed and the other competent authority will be informed hereof alongside the relevant dates for purposes of reporting of MAP statistics.

56. Section 6.4 of Norway’s MAP guidance clarifies that a MAP request will not be rejected or the objection raised therein will not be considered as not being justified without the competent authority of the relevant treaty partner being notified thereof.

### ***Practical application***

#### *Period 1 January 2016-31 July 2017 (stage 1)*

57. From the 2016 MAP Statistics provided by Norway it follows that there were no cases with the outcome “objection not justified”. However, before August 2017, Norway considered that the taxpayers raised a not justified objection in two cases. In both cases, the other competent authority concerned was notified or consulted.

58. All but two peers that provided input indicated not being aware of or that it had been consulted/notified of a case where Norway’s competent authority considered the objection raised in a MAP request as not being justified in the period 1 January 2015-31 July 2017. One of the two remaining peers confirmed that it was consulted in a case where Norway’s competent authority considered the objection raised was not justified. The other peer confirmed that it was notified in a case where Norway’s competent authority considered the objection raised was not justified.

#### *Period 1 August 2017-28 February 2019 (stage 2)*

59. Norway reported that in the period 1 August 2017-28 February 2019 its competent authority has for no MAP requests it received decided that the objection raised by taxpayers in such request was not justified.

60. The 2017 and 2018 MAP statistics submitted by Norway show that four of its MAP cases were closed with the outcome “objection not justified”. This concerns three cases in 2017 and one in 2018. For the three cases in 2017, Norway specified that its competent authority made in two of them the decision that the objection raised by the taxpayer was not justified, both of which have been discussed in paragraph 57 above. For the case in 2018, Norway clarified that the competent authority of the treaty partner made the decision hereto.

61. All peers that provided input during stage 1 indicated that since 1 August 2017 they are not being aware of any cases for which Norway's competent authority considered the objection raised in a MAP request as not justified.

### *Anticipated modifications*

62. Norway 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.

63. 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. Countries should thus provide access to MAP in transfer pricing cases.

### *Legal and administrative framework*

64. Out of Norway's 87 tax treaties, 27 treaties contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their competent authorities to make a corresponding adjustment in case a transfer pricing adjustment is made by the treaty partner.<sup>5</sup> Furthermore, 53 treaties do not contain any provision that is based on Article 9(2) of the OECD Model Tax Convention.<sup>6</sup> For the remaining seven treaties the following analysis can be made:

- Six tax treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but whereby a corresponding adjustment is only optional, as the term "shall" is replaced by "may" and is therefore considered not being equivalent thereof
- One tax treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but whereby the adjustment in both contracting states needs to be agreed through consultations between the competent authorities and is therefore also considered not being equivalent thereof.

65. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Norway's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Norway indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, such regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in its tax treaties.

66. Norway's MAP guidance, in section 2.2 and 2.3, clarifies that taxpayers can submit a MAP request for transfer pricing cases and that access to MAP is available for these cases. It is further specified that Norway's competent authority will not deny access to MAP on the ground that the applicable tax treaty does not contain Article 9(2) of the OECD Model Tax Convention.

### ***Recent developments***

#### *Bilateral modifications*

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

#### *Multilateral Instrument*

68. Norway signed the Multilateral Instrument and has deposited its instrument of ratification on 17 July 2019. The Multilateral Instrument has for Norway entered into force on 1 November 2019.

69. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – 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. However, this shall only apply if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect if one or both of the signatory states to the tax treaty reserved the right, pursuant to Article 17(3), 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, or not to apply Article 17(2) in the absence of such equivalent, on the basis 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 of whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. 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).

70. Norway 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. In regard of the 60 treaties identified in paragraph 64 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Norway listed ten of them as a covered tax agreement under the Multilateral Instrument and included five of them in the list of treaties for which Norway has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Furthermore, Norway did not make a notification on the basis of Article 17(4) for the remaining five treaties. All of the relevant latter five treaty partners are a signatory to the Multilateral Instrument and listed their treaty with Norway as a covered tax agreement under that instrument, and did not

include this treaty in the list of treaties for which they made a reservation on the basis of Article 17(3).

71. Of these five treaties, two 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 Norway and these treaty partners, and therefore have superseded the relevant treaty provisions to include the equivalent of Article 9(2) of the OECD Model Tax Convention, 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 other three 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, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

### *Application of legal and administrative framework in practice*

#### *Period 1 January 2016-31 July 2017 (stage 1)*

72. Norway reported that it has in the period 1 January 2016-31 July 2017 not denied access to MAP on the basis that the case concerned was a transfer pricing case.

73. All peers that provided input indicated not being aware of a denial of access to MAP by Norway in the period 1 January 2016-31 July 2017 on the grounds that the case concerned was a transfer pricing case.

#### *Period 1 August 2017-28 February 2019 (stage 2)*

74. Norway reported that since 1 August 2017 it has received 17 MAP request relating to transfer pricing. For none of these cases it denied access to MAP on the basis that the case concerned was a transfer pricing case. In one case, such access was denied, on the ground that the MAP request was not filed within the required three-year filing period of the underlying treaty.

75. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Norway fully reflects their experience with Norway since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer specified that in its experience Norway allows access to MAP without any restrictions.

### *Anticipated modifications*

76. Norway reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention in all of its future tax treaties. Other than this, Norway did not indicate it anticipates any modifications in relation to element B.3.

### *Conclusion*

	Areas for improvement	Recommendations
[B.3]	-	-



#### **[B.4] Provide access to MAP in relation to the application of anti-abuse provisions**

Jurisdictions should provide access to MAP in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty.

77. 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***

78. None of Norway's 87 tax treaties allows competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also Norway's domestic law and/or administrative processes 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 application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

79. Norway reported that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of MAP. Norway's MAP guidance, in section 2.6 clarifies that access to MAP is available for cases concerning the application of anti-abuse provisions.

##### ***Recent developments***

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

##### ***Practical application***

###### ***Period 1 January 2016-31 July 2017 (stage 1)***

81. Norway reported that in the period 1 January 2016-31 July 2017 it has not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the application of a treaty anti-abuse provision has been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received in that period.

82. All peers that provided input indicated not being aware of a denial of access to MAP by Norway in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2016-31 July 2017.

*Period 1 August 2017-28 February 2019 (stage 2)*

83. Norway reported that since 1 August 2017 it has also not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received since that date.

84. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Norway fully reflects their experience with Norway since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer specified that in its experience Norway allows access to MAP without any restrictions.

*Anticipated modifications*

85. Norway 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.

86. 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*

87. From a legal perspective, Norway reported that audit settlements are not available. However, the outcome of an audit may reflect an understanding between the auditors and the taxpayer, which could be viewed as a certain type of audit settlement. In such cases, Norway indicated that access to MAP will still be granted to the taxpayer. Norway further reported that the taxpayer may appeal to the Tax Appeal Board after an audit has taken place, but this will not impact access to MAP in Norway.



88. Norway's MAP guidance, in section 2.8 clarifies that access to MAP is available for cases where the tax assessment in one of the contracting states is the result of a solution (or agreement) found between the taxpayer and the tax administration.

#### *Administrative or statutory dispute settlement/resolution process*

89. Norway reported that it has no administrative or statutory dispute settlement or resolution process(es) available, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

#### *Recent developments*

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

#### *Practical application*

##### *Period 1 January 2016-31 July 2017 (stage 1)*

91. Norway reported that in the period 1 January 2016-31 July 2017 it has not denied access to MAP in cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and tax administration. However, no such cases in relation hereto were received in that period.

92. All peers that provided input indicated not being aware of a denial of access to MAP by Norway in cases of audit settlements in the period 1 January 2016-31 July 2017.

##### *Period 1 August 2017-28 February 2019 (stage 2)*

93. Norway reported that since 1 August 2017 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and tax administration. However, no such cases in relation hereto were received since that date.

94. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Norway fully reflects their experience with Norway since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer specified that in its experience Norway allows access to MAP without any restrictions.

#### *Anticipated modifications*

95. Norway 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.

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

***Legal framework on access to MAP and information to be submitted***

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

98. Norway reported that upon receipt of a MAP request, its competent authority will analyse whether all required information and documentation is contained. Where this is not the case, its competent authority strives to send a request for information and documentation within two months after receiving the MAP request. If the MAP case is an “attribution/allocation” MAP case, Norway reported that its competent authority will set a deadline for taxpayers when issuing this first request for information and documentation. According to Norway, the timeframe granted to the taxpayers is between two to three months and is adapted to the information requested, whereby in exceptional cases the deadline could be extended to six months. If the MAP case is an “other” MAP case, Norway reported that it does not set a deadline but reminds the taxpayer of its request for information and documentation if it is remained unanswered during approximately two months. Norway reported that, in any case, its competent authority usually accepts an extension of the timeframe that would be requested by the taxpayer and that it would also remind the taxpayer of sending the information needed if the latter is late.

99. Where eventually taxpayers do not provide Norway's competent authority with the requested information and/or documentation, Norway reported that it will close the case with the outcome “objection not justified”.

100. Norway's MAP guidance, in section 2.5 clarifies that access to MAP will generally be granted, but that a taxpayer is not entitled to have a case being resolved through the MAP process *inter alia* if the taxpayer does not provide information in its request. In addition, section 4.2 also specifies that if taxpayers do not provide sufficient information in their MAP request to enable a case being handled properly, the request can be rejected.

***Recent developments***

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

### ***Practical application***

#### *Period 1 January 2016-31 July 2017 (stage 1)*

102. Norway reported it provides access to MAP in all cases where taxpayers have complied with the information and documentation required by its competent authority and as set out in its MAP guidance. It further reported that in the period 1 January 2016-31 July 2017 it has not denied access to MAP where taxpayers have complied with the information and documentation requirements.

103. All peers that provided indicated not being aware of a limitation of access to MAP by Norway in situations where taxpayers complied with information and documentation requirements in the period 1 January 2016-31 July 2017.

#### *Period 1 August 2017-28 February 2019 (stage 2)*

104. Norway reported that since 1 August 2017 it has also not limited access to MAP on the grounds that information in the MAP request was not the information or documentation required by its competent authority.

105. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Norway fully reflects their experience with Norway since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer specified that in its experience Norway allows access to MAP without any restrictions.

### ***Anticipated modifications***

106. Norway 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.

107. 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 contain the second sentence of Article 25(3) of the OECD Model Tax Convention, enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

### ***Current situation of Norway's tax treaties***

108. Out of Norway's 87 tax treaties, 71 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.<sup>7</sup> Of the remaining 16 treaties, one does not contain any MAP provision, while the other 15 treaties do not contain any provision based on or equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.<sup>8</sup>

109. Six of these 16 treaties have a limited scope of application.<sup>9</sup> This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention are not followed. As these treaties were intentionally negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, therefore, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention for those six treaties with a limited scope of application.

### ***Peer input***

110. Almost all peers that provided input reported that their treaty with Norway meets the requirements under element B.7. For the 16 treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, three peers provided the following input: (i) one peer mentioned that it has signed the Multilateral Instrument that will modify the relevant tax treaty to meet the requirements of the Action 14 Minimum Standard, (ii) another peer specified that it has not contacted Norway nor is it in discussion with Norway to amend their treaty with a view to incorporate the required provision and (iii) a third peer specified that the required provision is contained in its model tax treaty even though it is not contained in its treaty with Norway.

### ***Recent developments***

#### ***Bilateral modifications***

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

#### ***Multilateral Instrument***

112. Norway signed the Multilateral Instrument and has deposited its instrument of ratification on 17 July 2019. The Multilateral Instrument has for Norway entered into force on 1 November 2019.

113. 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 – 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. 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 both notified, pursuant to Article 16(6)(d)(ii), the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

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

### *Other developments*

115. For those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Norway reported that it is currently in negotiations with four treaty partners and envisages re-initiating negotiations with one treaty partner *inter alia* to include Article 25(3), second sentence, of the OECD Model Tax Convention.

### *Peer input*

116. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Norway. None of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(3), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument.

### *Anticipated modifications*

117. For the remaining three comprehensive tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument and for which no negotiations are pending, negotiations are currently not foreseen by Norway nor has it put a plan in place to bring these treaties in line with the requirements under the Action 14 Minimum Standard, as with these jurisdictions there is no MAP experience. Norway clarified that for these treaties the second sentence of Article 25(3) will be included once negotiations on the amendment or replacement of the treaty will be initiated. One of these three treaties, however, concerns the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, for which such renegotiations are not necessary.

118. Further to the above, Norway also reported that it does not intend to include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties with a limited scope as such inclusion would contradict the purpose of those treaties. When states agree on a comprehensive treaty, the intention is to cover all or close to all cases. Against this background, it is Norway's understanding that Article 25(3), second sentence, of the OECD Model Tax Convention should enable the competent authorities to deal with rare and exceptional cases, i.e. function as a backup-clause. The opposite applies for treaties with a limited scope. The intention here is to only cover a certain type of situations. Accordingly, in Norway's view it is inappropriate to give the competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of the treaty.

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

### Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>16 out of 87 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 16 treaties, six concern tax treaties with a limited scope of application. With respect to the ten remaining comprehensive treaties:</p> <ul style="list-style-type: none"> <li>• Three are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.</li> <li>• Seven treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. With respect to these seven treaties: <ul style="list-style-type: none"> <li>- Four treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.</li> <li>- For the other three no actions have been taken nor planned to be taken.</li> </ul> </li> </ul>	<p>For six of the seven comprehensive tax treaties 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, Norway should:</p> <ul style="list-style-type: none"> <li>• continue such negotiations to include Article 25(3), second sentence, of the OECD Model Tax Convention for the four treaties for which such negotiations are envisaged, scheduled or pending</li> <li>• for the remaining two treaties without further delay request the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) for the remaining two treaties via bilateral negotiations.</li> </ul> <p>Specifically with respect to the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, Norway should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.</p>

## [B.8] Publish clear and comprehensive MAP guidance

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

120. 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.

### Norway's MAP guidance

121. Norway has published rules, guidelines and procedures on the MAP process and how it conducts that process in practice. This guidance is available in Norwegian and English and can be found at:

[https://www.regjeringen.no/contentassets/a91a5dd41bde46c88ed4dfc2bf724252/guide\\_for\\_the\\_mutual\\_agreementprocedure.pdf](https://www.regjeringen.no/contentassets/a91a5dd41bde46c88ed4dfc2bf724252/guide_for_the_mutual_agreementprocedure.pdf)  
(English)

[https://www.regjeringen.no/contentassets/a91a5dd41bde46c88ed4dfc2bf724252/veileder\\_for\\_gjensidig\\_avtaleprosedyre.pdf](https://www.regjeringen.no/contentassets/a91a5dd41bde46c88ed4dfc2bf724252/veileder_for_gjensidig_avtaleprosedyre.pdf)  
(Norwegian)



122. The information included in this MAP guidance can be reflected as follows

01. General outline of the MAP process
02. Cases for which a MAP request can be submitted (including examples)
03. Submission of the MAP request <ul style="list-style-type: none"> <li>• Definition of the competent authority</li> <li>• Contact details of the competent authority</li> </ul>
04. The manner and form for the submission of a MAP request <ul style="list-style-type: none"> <li>• Information to be included in a MAP request</li> <li>• Possibility of filing protective MAP requests</li> <li>• Language of the request</li> </ul>
05. Time limits for submitting a MAP request
06. Outline of the MAP process
07. Taxpayer's role in the MAP process
08. Availability of arbitration
09. Implementation of MAP agreements
10. Interaction between MAP and domestic remedies
11. Miscellaneous <ul style="list-style-type: none"> <li>• Multi-year resolution of recurring issues through MAP</li> <li>• APAs</li> </ul>

123. The above-described MAP guidance includes detailed information on the availability and the use of MAP in Norway 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.<sup>10</sup> Although Norway's MAP Guidance is considered comprehensive, it is not reflected whether MAP is available in cases of multilateral MAPs. In addition, Norway's MAP guidance also not specifies: (a) the consideration of interest in MAP and (b) whether suspension of tax collection is available for the period a MAP case is pending.

### ***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.<sup>11</sup> This agreed guidance is shown below.

125. Section 4.3 of Norway's MAP guidance includes the information taxpayers need to include in their MAP request. These 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.

126. In addition to the above, Norway's competent authority also requires the following documents and/or information to be provided:

- circumstances of importance regarding whether the time limit for applying for a MAP has been complied with
- whether the case has been appealed by means of an administrative appeal or is the subject of legal proceedings in Norway or the other state, as well as the status of any ongoing administrative or legal proceedings
- whether the wish is for the MAP to be initiated immediately or whether the taxpayer wishes to wait for the outcome of other judicial remedies, such as appeals etc. in Norway and/or at the level of the treaty partner.

127. In addition to the above, section 4.4 of the MAP guidance also requires *inter alia* the following documents and/or information to be provided for attribution/allocation MAP cases:

- a list of amendments to tax assessments in Norway and/or another state, divided by income year, where the amounts are given in Norwegian kroner with specified exchange rates
- a more detailed specification of the intra-group transactions to which the application relates, as well as information about other intra-group transactions that can be of significance for the assessment of the case
- a functional and comparability analysis, and a selection of the transfer pricing method
- a copy of the taxpayer's transfer pricing documentation, including the master file and local files for affected entities
- information about any bilateral or unilateral APAs or any other agreement, advance ruling, etc., that is of significance to the case
- a copy of any valuation reports, valuations, etc., that are of significance to the case
- a copy of intra-group or external agreements etc. that have been entered into that are of significance to the case
- information on whether the taxpayer in Norway has initiated an amendment of the credit deduction for taxes paid abroad, an income deduction for foreign paid tax or a corresponding adjustment of the income comprised by the MAP request as a result of an increase abroad of the taxpayer's or the associated enterprise's income.



### *Recent developments*

128. Norway has in February 2018 introduced MAP guidance, which was revised in February 2019. In the above analysis, the content of this guidance has been reflected.

### *Anticipated modifications*

129. Norway 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.

130. 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.<sup>12</sup>

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

131. Norway's MAP guidance is published on the website of the Ministry of Finance and can be in English and Norwegian found at:

<https://www.regjeringen.no/en/topics/the-economy/taxes-and-duties/tax-treaties-between-norway-and-other-st/id417330/>  
(English)

[www.regjeringen.no/no/tema/okonomi-og-budsjett/skatter-og-avgifter/skatteavtaler-mellom-norge-og-andre-stat/id417330/](http://www.regjeringen.no/no/tema/okonomi-og-budsjett/skatter-og-avgifter/skatteavtaler-mellom-norge-og-andre-stat/id417330/)  
(Norwegian)

132. As regards its accessibility, the MAP guidance is logically grouped on the taxation section of this website and as such can be easily found. Furthermore, when searching for "mutual agreement procedure" on the homepage, the guidance is directly shown.

### *MAP profile*

133. Norway's MAP profile is published on the website of the OECD, which was last updated in February 2019. This MAP profile is complete and includes additional information where necessary.

### *Recent developments*

134. Norway has introduced and published in February 2018 its MAP guidance, which was revised in February 2019. Following the update of this guidance, its MAP profile was updated accordingly.

*Anticipated modifications*

135. Norway 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.

136. 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 previous mentioned processes.

*MAP and audit settlements in the MAP guidance*

137. As previously mentioned under element B.5, in Norway audit settlements are not available from a legal perspective, but the outcome of an audit may, however, reflect an understanding between the auditors and the taxpayer. According to Norway, such an agreement does not preclude access to MAP. Section 2.8 of Norway's MAP guidance confirms that such an agreement would not affect a taxpayer's right to have its case being dealt with in MAP.

138. Peers indicated no issues with respect to the availability of audit settlements and the inclusion of information hereon in Norway's MAP guidance.

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

139. As previously mentioned under element B.5, Norway 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, and for that reason its MAP guidance does not address this issue.

140. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement or resolution processes in Norway, which can be clarified by the fact that such process is not in place.

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

141. As Norway does not have an internal administrative or statutory dispute settlement/resolution process available, there is no need for notifying treaty partners of such process.

***Recent developments***

142. Norway has introduced in February 2018 MAP guidance, which was revised in February 2019 and which also addresses the availability of MAP for cases where taxpayers and the tax administration entered into an agreement on the findings in an audit.

***Anticipated modifications***

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

***Conclusion***

	Areas for improvement	Recommendations
[B.10]	-	-

## Notes

1. This treaty includes the Nordic Convention that for Norway applies to Denmark, the Faroe Islands, Finland, Iceland, Norway and Sweden.
2. These 62 treaties includes the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba).
3. These 13 treaties include the 1983 treaty with former Yugoslavia that Norway continues to apply to Croatia and Montenegro.
4. These 66 treaties include the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba). In addition, one of these 66 treaties includes a deadline for submissions of MAP requests of three years, whereby the commencement date of this deadline is different from the text of Article 25(1), second sentence. Instead of “from the first notification of the action”, a MAP request should be submitted “within three years of the date of such action or the latest of such actions as the case may be”, which is considered in line with element B.1.
5. These 27 treaties include the Nordic convention that for Norway applies to Denmark, the Faroe Islands, Finland, Iceland and Sweden.
6. These 53 treaties include the 1983 treaty with former Yugoslavia that Norway continues to apply to Bosnia and Herzegovina, Croatia and Montenegro; the 1989 treaty with the former

- Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba); and the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone.
7. These 71 treaties include the 1983 treaty with former Yugoslavia that Norway continues to apply to Bosnia and Herzegovina, Croatia and Montenegro; the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba); and the Nordic convention that for Norway applies to Denmark, the Faroe Islands, Finland, Iceland and Sweden.
  8. The one treaty concerns the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone.
  9. These six treaties concern treaties with Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man and Jersey.
  10. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
  11. Ibid.
  12. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).

## *References*

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

## *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 contain the first sentence of Article 25(2) of the OECD Model Tax Convention, 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 Norway's tax treaties***

145. Out of Norway's 87 tax treaties, 82 treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention 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.<sup>1</sup>

146. For the remaining five treaties the following analysis is made:

- One treaty does not contain a MAP provision<sup>2</sup>
- One treaty does not include part of the sentence obliging a competent authority to assess whether it is itself able to arrive at a satisfactory solution.
- One treaty requires that the appeal is proved to be justified, which may limit the cases when the MAP process may be entered into. However, in practice, Norway reported that it would not interpret this treaty in a stricter way than if it contained the exact wording of Article 25(2), first sentence, of the OECD Model Tax Convention.
- One treaty contains the wording “may” instead of “shall” endeavour to resolve the case.

- One treaty contains a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention but also contains additional wording that limits the possibility to discuss cases bilaterally, as this additional language reads “... provided that the competent authority of the other Contracting State is notified of the case within four and a half year from the due date or the date of filing of the return in that other State, whichever is later”. This additional wording may limit the situations where a case is effectively dealt with in MAP.

147. For these reasons, all five treaties are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

#### *Peer input*

148. All peers that provided input reported that their tax treaty with Norway meets the requirements under element C.1, including one peer for which the treaty with Norway actually does not contain the equivalent to Article 25(2), first sentence of the OECD Model Tax Convention. For the other four treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant peers did not provide input.

#### ***Recent developments***

##### *Bilateral modifications*

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

##### *Multilateral Instrument*

150. Norway signed the Multilateral Instrument and has deposited its instrument of ratification on 17 July 2019. The Multilateral Instrument has for Norway entered into force on 1 November 2019.

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

152. In regard of the five tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Norway listed one treaty as a covered tax agreement under the Multilateral Instrument and for this treaty did it make, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its tax treaty with Norway under that instrument and also made a notification it does not contain a provision described in Article 16(4)(b)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaty

concerned, modify the treaty identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

### *Other developments*

153. For those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Norway reported that it is currently in negotiations with two treaty partners *inter alia* to include Article 25(2), first sentence, of the OECD Model Tax Convention.

### *Peer input*

154. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Norway. None of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument.

### *Anticipated modifications*

155. For the remaining two tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument, negotiations are currently not foreseen nor is there a plan put in place to bring these treaties in line with the requirements under the Action 14 Minimum Standard, as with these jurisdictions there is no MAP experience. Norway clarified that for these treaties the first sentence of Article 25(2) will be included once negotiations on the amendment or replacement of the treaty will be initiated. One of these two treaties, however, concerns the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, for which such renegotiations are not necessary.

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

### *Conclusion*

	Areas for improvement	Recommendations
[C.1]	<p>Five out of 87 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these five treaties:</p> <ul style="list-style-type: none"> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.</li> <li>• Four treaties will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. With respect to these treaties: <ul style="list-style-type: none"> <li>- Two treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.</li> <li>- For the remaining two treaties no actions have been taken nor are planned to be taken.</li> </ul> </li> </ul>	<p>For three of the remaining four treaties that do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument to include the required provision, Norway should:</p> <ul style="list-style-type: none"> <li>• continue negotiations with two treaty partners to include Article 25(2), first sentence, of the OECD Model Tax Convention</li> <li>• for the remaining treaty without further delay request the inclusion of Article 25(2), first sentence, of the OECD Model Tax Convention via bilateral negotiations.</li> </ul> <p>Specifically with respect to the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, Norway should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.</p>



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

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

157. 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*

158. Statistics regarding all tax treaty related disputes concerning Norway are published on the website of the OECD as of 2006.<sup>3</sup> In addition, Norway publishes a yearly report regarding transfer pricing issues, including MAP statistics concerning attribution/allocation cases.<sup>4</sup>

159. 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. Norway provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Norway and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively and should be considered jointly for an understanding of the MAP caseload of Norway.<sup>5</sup>

160. With respect to post-2015 cases, Norway reported that for the years 2016-18 it has reached out to all of its MAP partners with a view to have their MAP statistics matching. Norway indicated that it could match its statistics with all its MAP partners.

161. Four peers provided input on the matching of MAP statistics with Norway. Of these four, three confirmed that they were able to match their statistics with Norway for the years 2016-18 or for any individual year. One of these peers, however, noted that it has not matched its MAP statistics for the years 2016 and 2017, but that they are in the process of doing so for the year 2018.

162. Based on the information provided by Norway’s MAP partners, its post-2015 MAP statistics for the years 2016-18 actually match those of its treaty partners as reported by the latter.

### *Monitoring of MAP statistics*

163. Norway reported that it introduced a tracking system that enables it to deal with the MAP caseload in order to keep track of all pending MAP cases and to ensure the timely resolution of MAP cases.

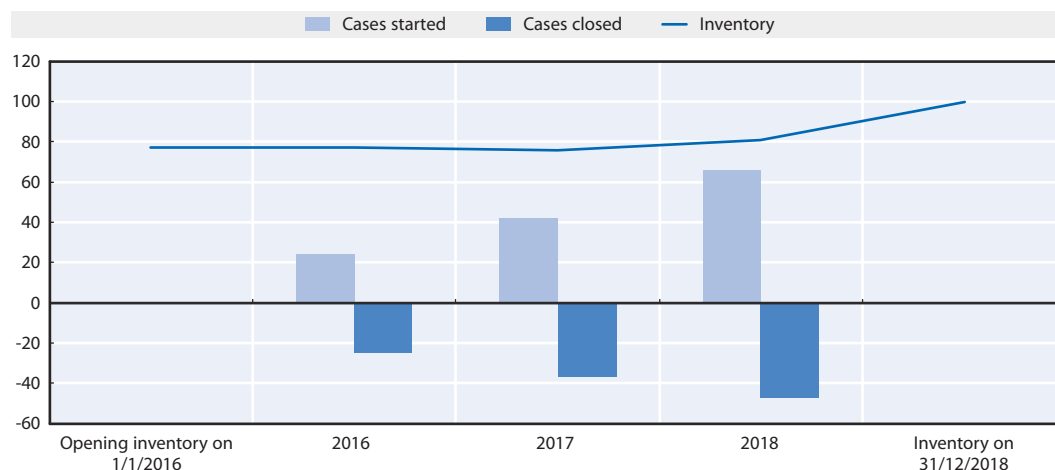
### *Analysis of Norway’s MAP caseload*

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



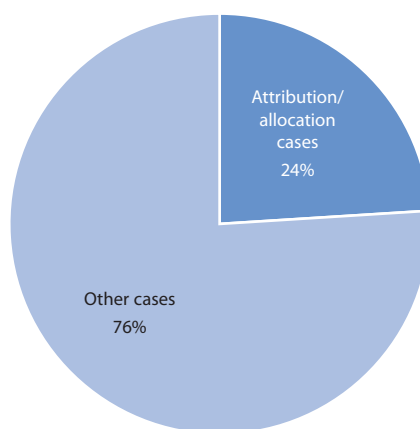
165. Figure C.1 shows the evolution of Norway's MAP caseload over the Statistics Reporting Period.<sup>6</sup>

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



166. At the beginning of the Statistics Reporting Period Norway had 77 pending MAP cases, of which 40 are attribution/allocation cases and 37 other MAP cases.<sup>7</sup> At the end of the Statistics Reporting Period, Norway had 100 MAP cases in inventory, of which 24 are attribution/allocation cases and 76 other MAP cases. Consequently, Norway's pending MAP cases have increased by 30% during the Statistics Reporting Period. This concerns a decrease of 40% in the number of attribution/allocation cases and an increase of 105% in the number of other cases. The breakdown of the end inventory can be shown as in Figure C.2.

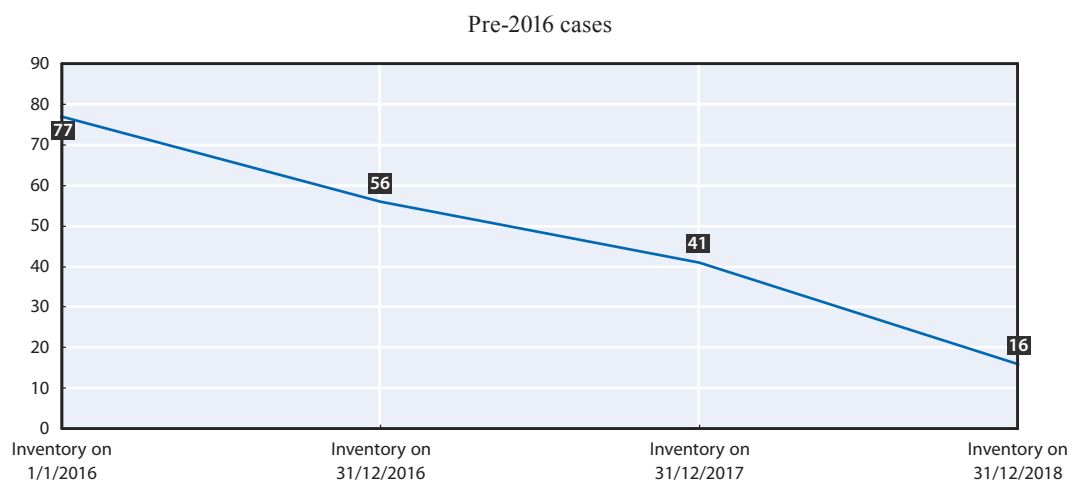
Figure C.2. End inventory on 31 December 2018 (100 cases)



#### *Pre-2016 cases*

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

Figure C.3. Evolution of Norway's MAP inventory



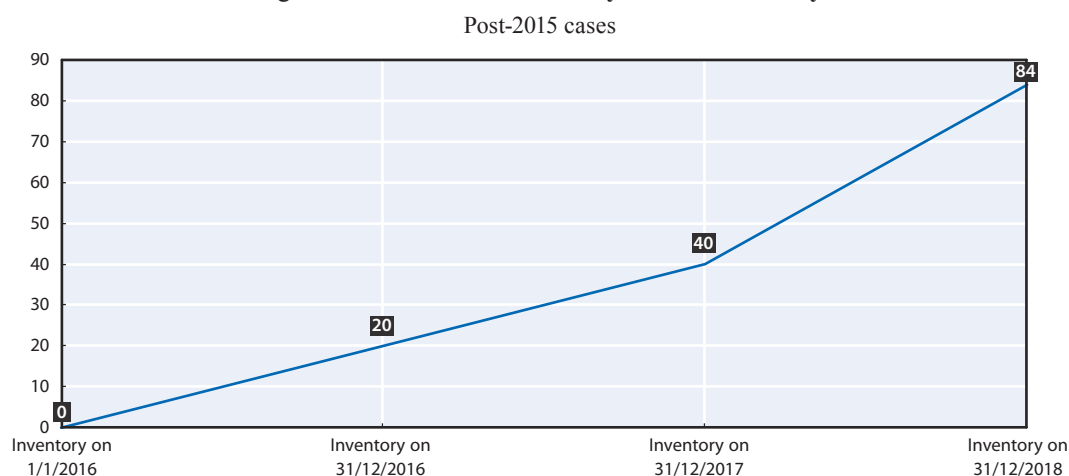
168. At the beginning of the Statistics Reporting Period, Norway's MAP inventory of pre-2016 MAP cases consisted of 77 cases, of which 40 were attribution/allocation cases and 37 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 16 cases, consisting of six attribution/allocation cases and ten other cases. This decrease concerns more than 25 % of the total Opening inventory of pre-2016 cases, which can be broken down in a decrease by 85 % of the number of attribution/allocation cases and a decrease by 73 % of the number of other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	-30%	-36%	-67%	-85%
Other cases	-24%	-18%	-57%	-73%

### Post-2015 cases

169. Figure C.4 shows the evolution of Norway's post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of Norway's MAP inventory



170. In total, 132 MAP cases started during the Statistics Reporting Period, 33 of which concerned attribution/allocation cases and 99 other cases. At the end of the Statistics Reporting Period the total post-2015 cases inventory had decreased to 84 cases, consisting of 18 attribution/allocation cases and 66 other cases. Conclusively, Norway closed 48 post-2015 cases during the Statistics Reporting Period, 15 of them being attribution/allocation cases and 33 other cases. The number of post-2015 cases closed as compared to the number of post-2015 cases started during the Statistics Reporting Period is shown in the table below.

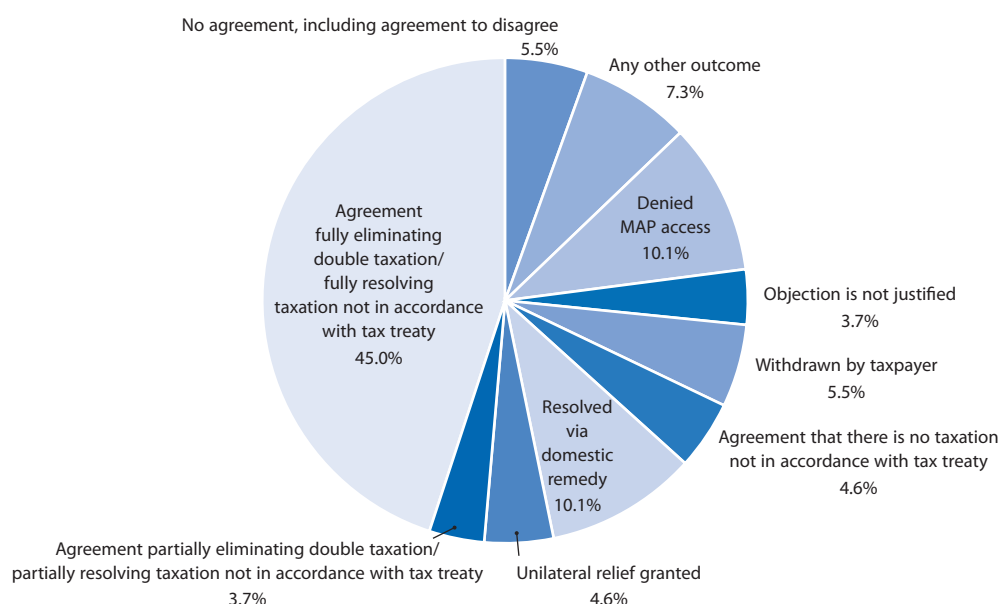
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	Cumulative % of cases closed compared to cases started over the three years (2016-18)
Attribution/allocation cases	No cases closed	43%	69%	45%
Other cases	22%	57%	25%	33%

### *Overview of cases closed during the Statistics Reporting Period*

#### *Reported outcomes*

171. During the Statistics Reporting Period Norway closed 109 MAP cases for which the outcomes in Figure C.5 were reported.

Figure C.5. Cases closed during 2016, 2017 or 2018 (109 cases)



172. Figure C.5 shows that during the Statistics Reporting Period, 49 out of the 109 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

*Reported outcomes for attribution/allocation cases*

173. In total, 49 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (57%)
- no agreement including agreement to disagree (10%)
- resolved via domestic remedy (8%)
- any other outcome (8%).

*Reported outcomes for other cases*

174. In total, 60 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (35%)
- denied MAP access (17%)
- resolved via domestic remedy (12%)
- withdrawn by taxpayers (10%)
- agreement that there is no taxation not in accordance with the convention (8%).

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

175. The average time needed to close MAP cases during the Statistics Reporting Period was 25.29 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	49	29.98
Other cases	60	21.54
All cases	<b>109</b>	<b>25.29</b>

*Pre-2016 cases*

176. Norway reported that on average it needed 39.19 months to close 34 attribution/allocation cases and 38.44 months to close 27 other cases. This resulted in an average time needed of 38.86 months to close 61 pre-2016 cases.

177. For the purpose of computing the time to close pre-2016 cases, Norway reported that it used as:

- *Start date*: the date of receipt of the MAP request by Norway's competent authority from the taxpayer once sufficient documentation is provided or the date of receipt of the notification letter from the other competent authority that received the MAP request from the taxpayer

- *End date*: the latest of the following dates: the date when the taxpayer accepts the outcome of the MAP process or the date when the mutual agreement was reached. If no agreement was reached, the end date will be the date when the taxpayer is notified of the outcome of the MAP case.

178. Norway further specified that for purposes of pre-2016 cases, protective claims were not considered as MAP cases.

### *Post-2015 cases*

179. For post-2015 cases, Norway reported it needed 8.80 months to close 15 attribution/allocation cases and 7.71 months to close 33 other cases. This resulted in an average time needed of 8.06 months to close 48 post-2015 cases.

### *Peer input*

180. Peers generally did not indicate experiencing any issues with the timely resolution of MAP cases involving Norway. One peer noted that Norway's competent authority endeavours to resolve MAP cases in a reasonable timeframe. Two peers, however, reported having experienced some difficulty in receiving timely responses and position papers from Norway's competent authority. Another peer specified that Norway's competent authority in charge of attribution/allocation cases does not always provide a position paper before the competent authority meetings. This peer and another one also suggested that more timely communication would enable better collaboration in order to seek the resolution of MAP cases on a timely basis. Norway indicated, in response, that it seeks to resolve them within 24 months as it has recently made efforts to allocate more resources to the MAP function and accelerate the resolution of MAP cases (see also element C.3). It also indicated that its competent authority will prioritise pre-2016 cases in dealing with MAP cases.

### *Recent developments*

181. In the stage 1 peer review report Norway was under element C.2 recommended to seek to resolve the remaining 83% of its post-2015 MAP cases that were pending on 31 December 2016 (20 cases), such within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

182. With respect to this recommendation, Norway reported that it has established internal routines, *inter alia* with respect to the steps of a MAP process and the to be applied targeted timeframes and correspondence with other competent authorities. Norway further reported that it has hired additional personnel for MAP cases. For attribution/allocation cases, this has led to an acceleration of the resolution of such cases, in particular pre-2016 cases. As per 31 December 2018, the number of the remaining pre-2016 cases was six. Furthermore, for post-2015 cases, the number of cases closed in 2018 is similar as to the number of cases received. With respect to other cases, Norway reported that it expects that the addition of resources will in the near future have a positive effect on the number of closed cases.

183. From the MAP statistics provided for the years 2016-18, it can be derived that each year the number of cases closed increased. However, as also follows from these statistics, Norway's MAP inventory also increased with 30%. Furthermore, Norway has in the period 2016-18 not closed its MAP cases within the pursued average of 24 months. For these years, the number of post-2015 cases closed as compared to the cases that started in these years was 36%. Element C.3 will further consider these numbers in light of the adequacy of resources.

184. All peers that provided input during stage 1 confirmed that this input holds equally relevance for the period starting on 1 August 2017. Specific input on the resolution of MAP cases will be further discussed under element C.3.

### *Anticipated modifications*

185. Norway did not indicate that it anticipates any modifications in relation to element C.2.

### *Conclusion*

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

186. 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 Norway's competent authority*

187. Under the tax treaties Norway entered into, its competent authority function is assigned to the Ministry of Finance. This function has been delegated to three different bodies within the Ministry or the Tax Administration, such depending on the type of MAP cases each of these teams handle. This concerns:

- i. *Attribution/allocation cases*: the MAP/APA section within the Large Business Department of the Tax Administration
- ii. *Cases regarding taxpayers covered by the Norwegian petroleum tax*: a dedicated person within the Tax Law Department within the Ministry of Finance
- iii. *Other cases*: the Tax Law Department of the Ministry of Finance as well as the MAP team within the Legal Department of the Directorate of Taxes.

188. Norway's competent authority consists of more than 15 people, who deal partly with MAP cases. These can be specified as follows:

- *Attribution/allocation cases*: persons within the MAP/APA unit are responsible for handling attribution/allocation MAP cases as well as bilateral APA requests, along with other tasks such as participating in OECD's Working Party no. 6 and the FTA MAP Forum, training of other staff within Norway's Tax Administration with respect to transfer pricing, and assisting with respect to valuation issues. Norway reported that this team has consisted of five to almost ten employees, which results from a continuous effort to hire experienced and skilled staff to perform this function even though there has been a certain turnover. In particular, Norway indicated that several people have been hired over the last years and that these recruitments concerned not only experienced staff which were previously working in other units within Norway's Tax Administration but also experienced staff previously working for the private sector as well as junior staff.

- *Cases regarding taxpayers covered by the Norwegian petroleum tax:* one person within the Legal Department of the Ministry of Finance is acting as the competent authority for cases regarding taxpayers covered by the Norwegian petroleum tax. This person is assisted by another person who is professionally competent in the petroleum tax area and by the MAP/APA unit where appropriate, on a case by case basis.
- *Other cases:* three persons in the Tax Law Department of the Ministry of Finance are acting as competent authority to handle other MAP cases, along with other tasks such as treaty negotiations and policy work. Furthermore, three persons constitute the MAP team in the Legal Department of the Directorate of Taxes, who deal with MAP cases alongside other international tax issues.

189. Further to the above, according to Norway, the budget available to arrange meetings, travelling and attending meetings abroad is sufficient.

### ***Recent developments***

190. Norway reported that it has hired additional personnel for handling MAP cases. Furthermore, in April 2018 the Tax Law Department within the Ministry of Finance has been reorganised. The tax treaty unit that is responsible for handling other MAP cases has merged with the unit for personal taxation. This reorganisation, however, did not impact the allocation of resources for handling MAP cases. Furthermore, in 2018 the Directorate of Taxes (under which heading the Legal Department resorts) established a specific MAP team within the Legal Department to handle other MAP cases. In addition, in 2019 Norway's Tax Administration has been reorganised, whereby the unit that is responsible for handling attribution/allocation cases is now placed in the specifically created MAP/APA section of the Large Business Department in the Priority Risks Division. The changes and recent developments relating to the addition of personnel and the reorganisation have been reflected above in the description of Norway's competent authority.

191. Further to the above, Norway also reported that personnel within the competent authority have followed the training organised by the OECD. As to the operations of its competent authority, it also established internal routines to reflect the other requirements under the Action 14 Minimum Standard. This *inter alia* concerns the steps of a MAP process, the to be applied targeted timeframes and rules for correspondence with other competent authorities.

192. Lastly, in the stage 1 peer review report of Norway (paragraph 129), peers made two suggestions for improvements, which are: (i) to improve the timeliness and increase the frequency of communication between the competent authorities and (ii) ensure that position papers for attribution/allocation cases are sent prior to face-to-face meetings. With respect to these suggestions, Norway reported that it increased the frequency of communications with the competent authorities of its MAP partners, which in particular concerns an increase of conference calls for attribution/allocation cases. Norway added that this has led to a decrease in the average time to close such cases. As to the second suggestion, Norway reported that its competent authority puts a lot of time and effort into the preparation and writing of positions papers, such with a view to explain the adjustment made and the position taken. In that regard, Norway specified that its competent authority generally sends such papers in advance of face-to-face meetings.

### *Monitoring mechanism*

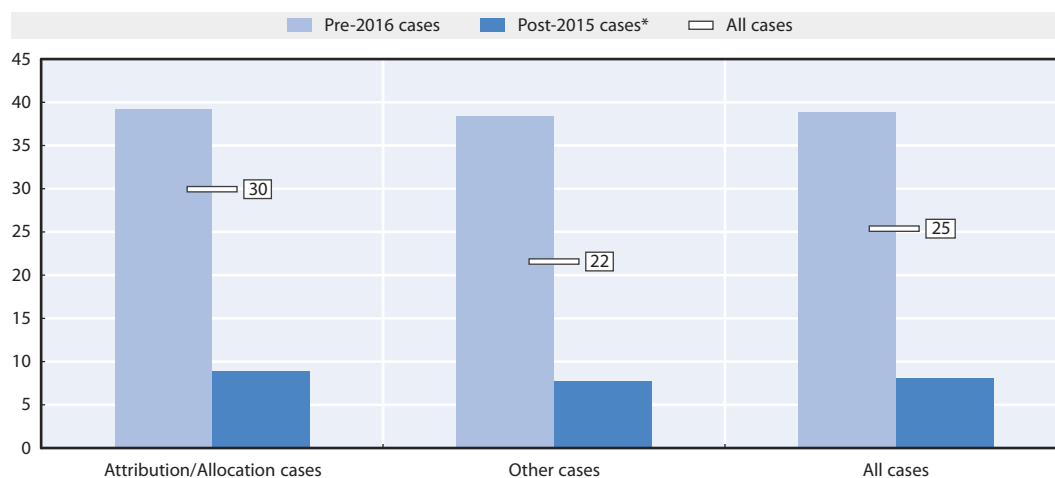
193. Norway reported that it has in place a framework for assessing whether the resources allocated to the MAP function are adequate, which consists of monitoring the time needed to resolve cases as well as an analysis of the influx of MAP cases (types of cases, number of cases following an adjustment initiated in Norway or abroad, etc.).

### *Practical application*

#### *MAP statistics*

194. As discussed under element C.2 Norway did not close its MAP cases within during the Statistics Reporting Period within the pursued 24-month average. There, however, is a difference between the average time taken to close attribution/allocation cases and other cases, as other cases are closed within this pursued average. This can be shown by Figure C.6.

Figure C.6. Average time (in months) to close cases in 2016-18



\*Note that post-2015 cases only concern cases opened and closed during 2016-18.

195. Based on these figures, it follows that on average it took Norway 25.29 months to close MAP cases. The average time needed to resolve attribution/allocation cases is 29.89 months, while the average time required to resolve other cases is 21.54 months. While for other cases the average is below 24 months, for attribution/allocation cases the average is above the pursued 24-month average.

196. The stage 1 peer review report of Norway analysed the 2016 statistics and showed an average of 29.87 months, which concerns an average of 36.30 months for attribution/allocation cases and 23.93 months for other cases. It was on that basis concluded that the overall average was above the pursued average of 24 months. As Norway then recently added personnel to the MAP function, it was recommended to closely monitor whether this addition will contribute to the resolution of MAP cases in a timely, efficient and effective manner.



197. For stage 2, the 2017 and 2018 MAP statistics are also taken into account. The average time to close MAP cases can for these years be split as follows:

	2017	2018
Attribution/Allocation cases	25.04	29.91
Other cases	10.58	29.20
All cases	16.84	29.52

198. The 2017 statistics of Norway show that the average completion time of MAP cases very significantly decreased from 29.87 to 16.84 months, which regarded both types of cases, albeit that the average for other MAP cases was reduced to be far below the 24-pursued average. However, the average for 2018 led to an increase of the average, in particular for other cases, causing that both types of cases were above the pursued average of 24 months.

199. Furthermore – as analysed in element C.2 – the MAP inventory of Norway significantly increased since 1 January 2016. This can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 01/01/2018	Increase in %
Attribution/allocation cases	40	33	49	24	-40%
Other cases	37	99	60	76	105%
<b>Total</b>	<b>77</b>	<b>132</b>	<b>109</b>	<b>100</b>	<b>30%</b>

200. The figures in the above table show that the inventory for attribution/allocation cases decreased significantly, but that it for other cases more than doubled. Furthermore, the number of closed cases is around 83% of all cases started in the period 2016-18.

### *Clarifications by Norway*

#### Period 1 January 2016-31 July 2017 (stage 1)

201. Norway provided the following clarification for why it did not close its MAP cases within the pursued average of 24-months:

- *Attribution/allocation cases:* prior to January 2015, these MAP cases were handled by the Ministry of Finance and the Directorate of Taxes. Only a few persons, who were also involved in other tasks, were responsible for these MAP cases. Moreover, Norway reported that in two specific cases, delays were caused by special circumstances occurring in the other state where (i) in one case, specific circumstances in the other competent authority resulted in a delay and the primary adjustment made in the other state was finally withdrawn and (ii) in the other case, delay was due to the awaited acceptance on a federal level by the other competent authority.
- *Other cases:* Norway reported that the MAP cases were handled by the Ministry of Finance and the Directorate of Taxes, by persons who were also involved in other tasks, which were given priority to the resolution of MAP cases. Moreover, Norway indicated that the time necessary to the processing of these cases in other contracting states also explained the delays that occurred. In particular, Norway specified that two cases took more than 24 months before double taxation was fully eliminated in 2016. In one case, Norway reported not being aware of the case before

receiving a reminder 13 months after the original notification of the case was made by the other competent authority. In the other case, Norway indicated that there was a misunderstanding in Norway about whether the MAP was closed and the case therefore remained open for several years before it was actually discussed.

*Period 1 August 2017-28 February 2019 (stage 2)*

202. Norway specified that for one attribution/allocation case domestic remedies were also initiated at the level of the treaty partner, whereby the MAP case was put on hold until these remedies were finalised. The outcome of these remedies led to the adjustment made by the treaty partner to be annulled, following which the MAP case was closed with the outcome “resolved via domestic remedies”. The MAP case was pending for 38 months, without being discussed.

***Peer input***

*Period 1 January 2016-31 July 2017 (stage 1)*

203. Peers generally reported having a good and cooperative working relationship with Norway. In particular, a number of peers indicated being frequently in contact with Norway’s competent authority. Peers with an important MAP caseload with Norway further reported being in contact with Norway’s competent authority via traditional letters, emails, phone calls and face-to-face meetings. One peer also reported maintaining contact with Norway’s competent authority during the OECD meetings.

204. Peers generally raised no issue regarding the adequacy of the resources allocated to the competent authority function in Norway. As discussed in element C.2, however, some peers expressed concerns about the timeliness of communication between their competent authority and Norway’s competent authority or about the fact that Norway’s competent authority in charge of attribution/allocation cases does not always provide a position paper before the competent authority meetings and suggested to increase the frequency of communication in order to accelerate the resolution of MAP cases. One peer further suggested that more resources are attributed to the resolution of MAP cases in Norway.

*Period 1 August 2017-28 February 2019 (stage 2)*

205. Most peers that provided input during stage 1 stated in stage 2 that the update report provided by Norway fully reflects their experience with Norway since 1 August 2017 and/or there are no additions to the previous input given. Six peers provided specific input on their experiences with Norway concerning the resolution of MAP cases since that date.

206. The input of these six peers vary. One of them only specified the number of pending MAP cases, whereas a second peer noted that it is able to resolve MAP cases with Norway in a timely manner. The third peer mentioned that in 2019 its competent authority had a teleconference and one face-to-face meeting with Norway’s competent authority regarding attribution/allocation cases. This peer considered these to be very efficient as well as that Norway’s competent authority was very well-prepared and solution-oriented during these meetings. The remaining three peers also valued their good working relationship with Norway. One of them, however, mentioned that in its view Norway’s competent authority tended to be a kind of formal in resolving MAP cases, as well as that it (relatively) requests a lot of documents and factual information to accept a case into the process. Recently, this peer noted that a more pragmatic approach is being shown in resolving cases and also that position papers are provided in a more timely manner. The peer valued these developments.

207. The other two peers experienced some difficulties in resolving MAP cases since 1 August 2017. One of them noted that although in general the MAP process with Norway worked well, it experienced in one case that there has been a delay in responding to correspondence, despite reminders that were sent to Norway's competent authority. The other peer mentioned that while it considers Norway's competent authority to be sufficiently trained and experienced, it experienced difficulties and delays in resolving a non-attribution/allocation case. For this case, the MAP request was submitted in April 2016, whereby the peer issued a position paper in July 2016, and a response was not received until January 2019. This brought the peer to the conclusion that there may be resource constraints in Norway. In that regard, it suggested to improve communications when delays in the MAP process occur, including providing reasons thereof, which would result in better case management.

### *Anticipated modifications*

208. Norway did not indicate that it anticipates any modifications in relation to element C.3.

### *Conclusion*

	Areas for improvement	Recommendations
[C.3]	<p>MAP cases were resolved in 25.29 months on average. Although the average completion time thereby has decreased in 2017-18 as compared to 2016, it is still slightly above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). There is therefore a risk that post-2015 are not resolved within the average of 24 months, although Norway has recently added resources to the competent authority function and has taken organisational steps to make the MAP process more effective and efficient. This only regards attribution/allocation cases, for which the average completion time is 29.98 months, for other cases the average is below 24 months.</p> <p>Furthermore, the MAP caseload has also increased with 30% since 1 January 2016. This regards only other MAP cases, which more than doubled, while the number of attribution/allocation cases has decreased with 40%. Although on an annual basis more MAP cases are closed, this increase in the number of cases indicates that the competent authority may not be adequately resourced to cope with this increase.</p>	<p>While Norway has recently added more resources to its competent authority function and has implemented organisational changes, resulting in more cases being closed and a reduction of the average completion time, further actions should be taken to ensure a timely resolution of MAP cases, which only regards attribution/allocation cases. In that regard, Norway should devote additional resources to its competent authority to handle these cases and to be able to cope with the significant increase in the number of other MAP cases, such to be able to resolve MAP cases in a timely, efficient and effective manner.</p>

### **[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.

209. Ensuring that staff in charge of MAP can and will resolve cases, absent of any approval/direction by the tax administration personnel directly involved in the adjustment and absent of any policy considerations, contributes to a principled and consistent approach to MAP cases.

### ***Functioning of staff in charge of MAP***

210. Norway reported that its competent authority has to resolve MAP cases in accordance with the applicable tax treaty and that it is not dependent on the approval or the direction of the tax administration personnel directly involved in the adjustments at issue. In practice, the competent authority may only ask the tax auditors for the description of the facts and circumstances and for the provision of some documents. Norway specified that the personnel with the tax administration, however, is never involved in the decisions made by the competent authority.

211. Norway further specified that even though the MAP/APA section that handles attribution/allocation cases is placed within the Tax Administration, it operates fully independently from the other departments and does not consult them when it handles MAP cases. Norway reported that this practice is clarified in the letter issued by the Ministry of Finance to delegate the competent authority function to this section. Furthermore, Norway indicated that the MAP/APA section may provide advice and training to the tax administration personnel, which is aimed at enhancing the tax auditors' awareness of the international taxation issues. Norway specified, however, that the tax administration personnel is not dependent on the MAP/APA unit's approval or direction on how to handle a certain tax audit. Moreover, Norway reported that the MAP/APA unit has the authority – and makes use of such an authority in practice – to overturn the tax authorities' decisions if appropriate.

212. Furthermore, Norway reported that the resolution of MAP cases by its competent authority is not influenced by policy considerations. In particular, staff working with the MAP/APA unit that handles attribution/allocation cases is not involved in any treaty negotiation or policy work. Norway also indicated that staff in charge of other 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 Norway would like to see reflected in future amendments to the tax treaty.

### ***Recent developments***

213. As discussed under element C.3, in 2019 Norway's Tax Administration has been reorganised, whereby the unit that is responsible for handling attribution/allocation cases is now placed in the created MAP/APA section of the Large Business Department in the Priority Risks Divisions. In this respect, Norway reported that the new organisation does not affect the independent operation of the MAP/APA section, which, like was the case prior to the reorganisation, operates fully independent from all other units within the tax administration.

### ***Practical application***

#### ***Period 1 January 2016-31 July 2017 (stage 1)***

214. All peers that provided input did not report any impediment by Norway to perform its MAP function absent from the approval or the direction of the tax administration personnel directly involved in the adjustments at issue or Norway being influenced by policy considerations that it would like to see reflected in future amendments to the tax treaty.

*Period 1 August 2017-28 February 2019 (stage 2)*

215. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Norway fully reflects their experience with Norway since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer highlighted that it had no indication that Norway's competent authority is dependent on the approval or direction of the tax administration personnel directly involved in the adjustment at issue or is influenced by policy considerations that it would like to see reflected in future amendments to the treaty.

***Anticipated modifications***

216. Norway 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.

217. 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 Norway***

218. Norway reported that it has two systems in place to evaluate the performance of staff in charge of MAP processes, such depending on the types of cases the staff is responsible for. In order to do so, Norway may use any performance indicator that it may consider as appropriate, such as the achievement of an objective set during a dialogue between each employee and his/her superior. In particular, Norway reported that while the amounts of adjustments maintained and foreign adjustments rejected is monitored, this does not influence the evaluation of the MAP function.

219. The Action 14 final report includes examples of performance indicators that are considered appropriate. These indicators are shown below and for Norway are presented in the form of a checklist:

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

***Recent developments***

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

***Practical application******Period 1 January 2015-31 July 2017 (stage 1)***

221. All peers that provided input indicated not being aware that Norway uses performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue.

***Period 1 August 2017-28 February 2019 (stage 2)***

222. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Norway fully reflects their experience with Norway since 1 August 2017 and/or there are no additions to the previous input given. One of the peers thereby specified that it is not aware of any performance indicators used by Norway to evaluate staff in charge of the MAP process.

***Anticipated modifications***

223. Norway 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.

224. 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***

225. Norway reported that there are no domestic law limitations for including MAP arbitration in its tax treaties. Norway was a participant in the sub-group on arbitration as part of the Multilateral Instrument of Action 15 of the BEPS project, but finally did not opt for arbitration in the Multilateral Instrument itself as Norway's view is that mandatory binding arbitration should be considered in light of a tax treaty as a whole and is therefore best pursued on a bilateral basis in connection with (re)negotiations for a new tax treaty or an amending protocol to an existing tax treaty. Norway further indicated that it will offer some of its treaty partners to include arbitration as a final stage to the MAP process on a bilateral basis when negotiating a new tax treaty or discussing a protocol amending an existing tax treaty.



226. Norway's MAP profile indicates that MAP arbitration is a mechanism currently available for the resolution of tax treaty related disputes in Norway. Also Norway's MAP guidance, in section 8 stipulates that arbitration is available under some of its tax treaties.

### *Recent developments*

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

### *Practical application*

228. Norway has incorporated an arbitration clause based on Article 25(5) of the OECD Model Tax Convention in three of its 87 treaties as a final stage to the MAP process.

229. In addition, Norway included in one treaty a most-favoured nation clause concerning the inclusion of an arbitration provision. This provision entails the entering into negotiations for the inclusion of an arbitration provision, should Norway's treaty partner include an arbitration provision in a tax treaty with a third state. With respect to this treaty, Norway reported that the conditions for the most-favoured nation clause have been fulfilled and that it is with the relevant treaty partner in negotiations to update the treaty to also include an arbitration provision.

### *Anticipated modifications*

230. Norway did not indicate that it anticipates any modifications relating to element C.6.

### *Conclusion*

	Areas for improvement	Recommendations
[C.6]	-	-

## Notes

1. These 83 treaties includes the 1983 treaty with former Yugoslavia that Norway continues to apply to Bosnia and Herzegovina, Croatia and Montenegro; the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba); and the Nordic convention that Norway applies to Denmark, the Faroe Islands, Finland, Iceland and Sweden.
2. This concerns the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone.
3. Available at: [www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm](http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm). These statistics are up to and include 2018.
4. The report (in Norwegian) is available at: <https://www.skatteetaten.no/globalassets/bedrift-og-organisasjon/rapportere-og-bransjer/bransjer-med-egne-regler/transfer-pricing/arsrapport-2018-transfer-pricing.pdf> (latest report published for 2018). An English version is available at: <https://www.skatteetaten.no/globalassets/bedrift-og-organisasjon/rapportere-og-bransjer/bransjer-med-egne-regler/transfer-pricing/transfer-pricing---annual-report-2018.pdf>.



5. For post-2015 cases, if the number of MAP cases in Norway’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 for any treaty partner, Norway reports its MAP caseload for such treaty partner on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
6. Norway’s 2016 statistics were corrected in the course of the peer review process and deviate from the 2016 published MAP statistics. See for a further explanation Annex B.
7. For pre – 2016 and post-2015 Norway 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, 2015]); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention [OECD, 2015]), which is also known as a transfer pricing MAP case”.

## *References*

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

## *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.

231. 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***

232. Section 12-1 (3) – c) of Norway’s Tax Administration Act provides that:

The tax authorities shall alter a tax assessment when ... the alteration follows from an agreement as stated in the Double Taxation Agreement Act.

233. In this respect, Norway reported that it will implement all agreements reached in MAP discussions both for upward and downward adjustments of taxpayers’ positions, and notwithstanding any domestic law statute of limitation and irrespective of whether the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention is contained in the applicable tax treaty. Section 9.6 of Norway’s MAP guidance confirms that all MAP agreements will be implemented regardless of a domestic statute of limitation.

234. Concerning the process for implementing MAP agreements, Norway reported that its competent authority requests the taxpayer concerned to give its approval to the agreement reached as a prerequisite for implementation. This applies both for agreements reached as the result of the MAP process, as well as for any agreements reached following the decision of an arbitration panel as a final stage to the MAP process. In practice, Norway reported that its competent authority requests that the taxpayers give their consent within one month after being notified of the MAP agreement reached. In attribution/allocation cases, Norway reported that such a timeframe could be extended to two months. Norway further indicated that it sends a reminder to the taxpayer if it does not provide its consent within the deadline.

235. Once the taxpayer has given its approval, Norway’s competent authority requests the local tax office to implement the MAP agreement. Norway reported that it follows up the implementation of MAP agreements by requesting copies of the assessments made by the local tax offices pursuant to a MAP agreement.

236. Section 9 of Norway's MAP guidance contains information on the implementation process of MAP agreements. In this respect, sections 9.1 and 9.2 confirm the right of acceptance for taxpayers of the agreement reached and the subsequent implementation process. Section 9.4 further specifies that a condition for implementation is that taxpayers have to withdraw any pending appeals that have been initiated for the same case for which a MAP agreement was entered into.

### ***Recent developments***

237. Norway has issued in February 2018 MAP guidance, which has been revised in February 2019 and which includes the administrative steps to be taken for implementing MAP agreements (see above). Norway further reported that for attribution/allocation cases it has implemented a tracking system to follow up on the implementation of MAP agreements. This system is in the form of a spreadsheet that is being reviewed on a monthly basis. For other cases, the monitoring of the implementation of MAP agreements is on a case-by-case basis.

### ***Practical application***

#### ***Period 1 January 2016-31 July 2017 (stage 1)***

238. Norway reported that all MAP agreements that were reached in the period 1 January 2016-31 July 2017, once accepted by taxpayers, have been (or will be) implemented.

239. Peers generally reported not being aware of MAP agreements that were reached in the period 1 January 2016-31 July 2017 that were not implemented in Norway. One peer specified that it considers that all MAP agreements reached both before and during this period have been implemented both timely and correctly.

#### ***Period 1 August 2017-28 February 2019 (stage 2)***

240. Norway reported that all MAP agreements that were reached on or after 1 August 2017 have been (or will be) implemented and that it is not aware of any agreement that was not implemented.

241. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Norway fully reflects their experience with Norway since 1 August 2017 and/or there are no additions to the previous input given.

### ***Anticipated modifications***

242. Norway did not indicate that it anticipates any modifications in relation to element D.1.

### ***Conclusion***

	Areas for improvement	Recommendations
[D.1]	-	-

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

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

243. 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*

244. Norway reported that in its domestic legislation and/or administrative framework it does not have in place a timeframe for implementation of MAP agreements reached. Norway further reported that it strives to send a reminder to the local tax office regarding the implementation of MAP agreements if it was not implemented within two months after such office was asked to do so.

### *Recent developments*

245. As discussed under element D.1, Norway has for attribution/allocation cases implemented a tracking system to follow up on the implementation of MAP agreements. This system is in the form of a spreadsheet that is being reviewed on a monthly basis.

### *Practical application*

#### *Period 1 January 2016-31 July 2017 (stage 1)*

246. Norway reported that all MAP agreements that were reached in the period 1 January 2016-31 July 2017, once accepted by taxpayers, have been (or will be) implemented on a timely basis.

247. All peers that provided input generally reported not being aware of MAP agreements that were reached in the period 1 January 2016 -31 July 2017 that were not implemented in Norway on a timely basis. One peer specified that it considers that all MAP agreements reached both before and during this period have been implemented both timely and correctly.

#### *Period 1 August 2017-28 February 2019 (stage 2)*

248. Norway reported that generally all MAP agreements reached since 1 August 2017 were implemented on a timely basis. It, however, referred to one case where the implementation of the agreement had been delayed, due to challenges at the level of the treaty partner to implement the agreement in a different fiscal year than the year the agreement pertained to. For this case, the treaty partner approached Norway's competent authority with the request to agree with an alternative implementation. While the initial agreement was reached in June 2018, the revised agreement was reached in December 2018 and implemented thereafter.

249. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Norway fully reflects their experience with Norway since 1 August 2017 and/or there are no additions to the previous input given. One peer specifically mentioned it is not aware of any delays in relation to the implementation of MAP agreements reached.

*Anticipated modifications*

250. Norway 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.

251. 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 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 Norway's tax treaties*

252. As discussed under element D.1, Norway's domestic legislation does not include a statute of limitations for implementing MAP agreements.

253. Out of Norway's 87 tax treaties, 69 treaties contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.<sup>1</sup>

254. For the remaining 18 treaties the following analysis is made:

- One treaty does not contain a MAP provision.<sup>2</sup>
- 17 treaties neither contain a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention nor the alternative provisions for Article 9(1) and Article 7(2).

*Peer input*

255. Almost all peers that provided input reported that their treaty with Norway meets the requirements under element D.3. One peer specified that its treaty with Norway does not formally meet the requirement of element D.3 but that Norway and them were exploring the possibility to align the treaty with the Action 14 Minimum Standard though the signing of the Multilateral Instrument. Norway, however, did not include the treaty with this peer in the list of the tax agreements to be covered by the Multilateral Instrument. For the other 17 treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, the relevant peers did not provide input.

## *Recent developments*

### *Bilateral modifications*

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

### *Multilateral Instrument*

257. Norway signed the Multilateral Instrument and has deposited its instrument of ratification on 17 July 2019. The Multilateral Instrument has for Norway entered into force on 1 November 2019.

258. 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 – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. 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 tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Furthermore, Article 16(4)(b)(ii) of the Multilateral Instrument does not take effect, if one or both of the signatory states to the tax treaty has, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, 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) of the OECD Model Tax Convention concerning the introduction of a time limit for making transfer pricing profit adjustments.

259. In regard of the 18 tax treaties above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), Norway listed two of them as a covered tax agreement under the Multilateral Instrument and for both 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 Multilateral Instrument. Both relevant treaty partners are signatories to the Multilateral Instrument and listed their treaty with Norway as a covered tax agreement under that instrument. While one of these treaty partners also made a notification on the basis of Article 16(6)(c)(ii), the other made a reservation on the basis of Article 16(5)(c). Therefore, at this stage, only one of the 18 treaties identified above will, upon entry into force for the treaty concerned, be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

### *Other developments*

260. For those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Norway reported that it is currently in negotiations with six treaty partners *inter alia* to include Article 25(2), second sentence, of the OECD Model Tax Convention and further that negotiations are envisaged with another treaty partner.

261. Furthermore, Norway reported that for one of the remaining ten treaties that will not be modified by the Multilateral Instrument to the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, the relevant treaty partner has informed Norway that it will withdraw its reservation under the Multilateral Instrument, following which it is expected that the treaty with that treaty partner will be modified by the instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention.

### *Peer input*

262. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Norway. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(1), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. This peer, however, only stated that the information included in the update report of Norway is correct.

### *Anticipated modifications*

263. For the remaining nine tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument and for which negotiations are not pending or planned, negotiations are currently not foreseen by Norway nor has it put a plan in place to bring these treaties in line with the requirements under the Action 14 Minimum Standard, as with these jurisdictions there is no MAP experience. Norway clarified that for these treaties the second sentence of Article 25(2) will be included once negotiations on the amendment or replacement of the treaty will be initiated. One of these nine treaties, however, concerns the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, for which such renegotiations are not necessary.

264. Regardless, Norway reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future tax treaties.

### *Conclusion*

	Areas for improvement	Recommendations
[D.3]	<p>18 out of 87 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor contain the alternative provisions provided for in Article 9(1) or Article 7(2). Of these 18 treaties:</p> <ul style="list-style-type: none"> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention.</li> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has amended its notifications.</li> <li>• 16 treaties will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. With respect to these 16 treaties: <ul style="list-style-type: none"> <li>- Seven treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.</li> <li>- For the other nine no actions have been taken nor are planned to be taken.</li> </ul> </li> </ul>	<p>For 15 of the 16 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, Norway should:</p> <ul style="list-style-type: none"> <li>• continue such negotiations to include Article 25(2), second sentence, of the OECD Model Tax Convention or be willing to accept the alternative provisions for the seven treaties for which such negotiations are envisaged, scheduled or pending</li> <li>• without further delay request via bilateral negotiations the inclusion of Article 25(2), second sentence, of the OECD Model Tax Convention or be willing to accept the alternative provisions for the remaining eight treaties via bilateral negotiations.</li> </ul> <p>Specifically with respect to the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, Norway should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision or be willing to accept the alternative provisions.</p>



## Notes

1. These 69 treaties include the 1983 treaty with former Yugoslavia that Norway continues to apply to Bosnia and Herzegovina, Croatia and Montenegro; the 1989 treaty with the former Netherlands Antilles Islands that Norway continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba); and the Nordic convention that for Norway applies to Denmark, the Faroe Islands, Finland, Iceland and Sweden.
2. This concerns the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone.

## 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
<b>Part A: Preventing disputes</b>		
[A.1]	<p>Five out of 87 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. None of these six treaties will be modified by the Multilateral Instrument to include the required provision. With respect to these six treaties:</p> <ul style="list-style-type: none"> <li>• Three treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.</li> <li>• For the remaining two treaties no actions have been taken nor are planned to be taken.</li> </ul>	<p>For four of the five tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and that will not be modified via the Multilateral Instrument to include the required provision, Norway should:</p> <ul style="list-style-type: none"> <li>• initiate or continue negotiations with three treaty partners to include Article 25(3), first sentence, of the OECD Model Tax Convention</li> <li>• for one without further delay request the inclusion of Article 25(3), first sentence, of the OECD Model Tax Convention via bilateral negotiations.</li> </ul> <p>Specifically with respect to the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, Norway should ensure that, once it enters into negotiations with the jurisdiction for which it applies that treaty, it includes the required provision.</p>
[A.2]	-	-
<b>Part B: Availability and access to MAP</b>		
[B.1]	<p>Three out of 87 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties either 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, due to a protocol provision, can be shorter than three years. None of these three treaties is expected to be modified or superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). In this respect:</p> <ul style="list-style-type: none"> <li>• One treaty is included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>• For two treaties no actions have been taken nor are planned to be taken.</li> </ul>	<p>For those three tax treaties that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention and that will not be modified via the Multilateral Instrument to include the required provision, Norway should:</p> <ul style="list-style-type: none"> <li>• initiate or continue negotiations with one treaty partner to include Article 25(1), second sentence, of the OECD Model Tax Convention</li> <li>• without further delay request the inclusion of Article 25(1), second sentence, of the OECD Model Tax Convention for the remaining two treaties via bilateral negotiations.</li> </ul>

	Areas for improvement	Recommendations
[B.1]	One out of 87 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report or as amended by that final report (OECD, 2015b), and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty will not be modified by the Multilateral Instrument to include both the first and second sentence of Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report. For this treaty, Norway envisages initiating bilateral negotiations to include the required provision.	For the treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Norway should follow its stated intention and request without further delay the inclusion of the required provision. This concerns a provision that is equivalent to Article 25(1), first and second sentence of the OECD Model Tax Convention either: <ul style="list-style-type: none"> <li>a. as amended by the Action 14 final report; or</li> <li>b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.</li> </ul>
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	17 out of 87 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 16 treaties, seven concern tax treaties with a limited scope of application. With respect to the ten remaining comprehensive treaties: <ul style="list-style-type: none"> <li>• Three are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.</li> <li>• Seven treaties will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. With respect to these seven treaties: <ul style="list-style-type: none"> <li>- Four treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.</li> <li>- For the other three no actions have been taken nor planned to be taken.</li> </ul> </li> </ul>	For six of the seven comprehensive tax treaties 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, Norway should: <ul style="list-style-type: none"> <li>• continue such negotiations to include Article 25(3), second sentence, of the OECD Model Tax Convention for the four treaties for which such negotiations are envisaged, scheduled or pending</li> <li>• for the remaining two treaties without further delay request the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention for the remaining two treaties via bilateral negotiations.</li> </ul> Specifically with respect to the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, Norway should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-

	Areas for improvement	Recommendations
<b>Part C: Resolution of MAP cases</b>		
[C.1]	<p>Five out of 87 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these five treaties:</p> <ul style="list-style-type: none"> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.</li> <li>• Four treaties will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. With respect to these treaties: <ul style="list-style-type: none"> <li>- Two treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.</li> <li>- For the remaining two treaties no actions have been taken nor are planned to be taken.</li> </ul> </li> </ul>	<p>For three of the remaining four treaties that do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument to include the required provision, Norway should:</p> <ul style="list-style-type: none"> <li>• continue negotiations with two treaty partners to include Article 25(2), first sentence, of the OECD Model Tax Convention</li> <li>• for the remaining treaty without further delay request the inclusion of Article 25(2), first sentence, of the OECD Model Tax Convention.</li> </ul> <p>Specifically with respect to the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, Norway should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.</p>
[C.2]	-	-
[C.3]	<p>MAP cases were resolved in 25.29 months on average. Although the average completion time thereby has decreased in 2017-18 as compared to 2016, it is still slightly above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). There is therefore a risk that post-2015 are not resolved within the average of 24 months, although Norway has recently added resources to the competent authority function and has taken organisational steps to make the MAP process more effective and efficient. This only regards attribution/allocation cases, for which the average completion time is 29.98 months, for other cases the average is below 24 months.</p> <p>Furthermore, the MAP caseload has also increased with 30% since 1 January 2016. This regards only other MAP cases, which more than doubled, while the number of attribution/allocation cases has decreased with 40%. Although on an annual basis more MAP cases are closed, this increase in the number of cases indicates that the competent authority may not be adequately resourced to cope with this increase.</p>	<p>While Norway has recently added more resources to its competent authority function and has implemented organisational changes, resulting in more cases being closed and a reduction of the average completion time, further actions should be taken to ensure a timely resolution of MAP cases, which only regards attribution/allocation cases. In that regard, Norway should devote additional resources to its competent authority to handle these cases and to be able to cope with the significant increase in the number of other MAP cases, such to be able to resolve MAP cases in a timely, efficient and effective manner.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	-	-
[D.2]	-	-

	Areas for improvement	Recommendations
[D.3]	<p>18 out of 87 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor contain the alternative provisions provided for in Article 9(1) or Article 7(2). Of these 18 treaties:</p> <ul style="list-style-type: none"> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention.</li> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has amended its notifications</li> <li>• 16 treaties will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. With respect to these 16 treaties: <ul style="list-style-type: none"> <li>- Seven treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.</li> <li>- For the other nine no actions have been taken nor are planned to be taken.</li> </ul> </li> </ul>	<p>For 15 of the 16 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, Norway should:</p> <ul style="list-style-type: none"> <li>• continue such negotiations to include Article 25(2), second sentence, of the OECD Model Tax Convention or be willing to accept the alternative provisions for the seven treaties for which such negotiations are envisaged, scheduled or pending</li> <li>• without further delay request via bilateral negotiations the inclusion of Article 25(2), second sentence, of the OECD Model Tax Convention or be willing to accept the alternative provisions for the remaining eight treaties via bilateral negotiations.</li> </ul> <p>Specifically with respect to the 1955 treaty with the United Kingdom that Norway continues to apply to Sierra Leone, Norway should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision or be willing to accept the alternative provisions.</p>

## Annex A

### Tax treaty network of Norway

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



		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?  If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1)  If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)  If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Belgium	Y	O	Y	N/A	Y	i	Y	Y	Y	N	N
Benin	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Bermuda	Y	O	Y	N/A	i	i	Y	Y	Y	N	N
Bosnia and Herzegovina	Y	O	ii	5 years	i	i	Y	Y	Y	Y	N
Brazil	Y	O	i	N/A	i	i	Y	N	Y	N	N
British Virgin Islands	Y	O	Y	N/A	i	i	Y	N	Y	N	N
Bulgaria	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Canada	Y	O	ii	2 years	i	i	Y	N	Y	Y	N
Caribbean part of the Netherlands	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Cayman Islands	Y	O	Y	N/A	i	i	Y	Y	Y	N	N
Chile	Y	O	i	N/A	Y	i	Y	N*	Y	N*	N
China (People's Republic of)	Y	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Côte d'Ivoire	Y	O	i	N/A	i	i	Y	N	Y	Y	N
Croatia	Y	O	ii	5 years	i	i	Y	Y	Y	Y	N
Curaçao	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Cyprus (1)	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Czech Republic	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N
Denmark	Y	O	ii	5 years	Y	i	Y	Y	Y	Y	N

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

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?  If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1)  If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)  If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Kazakhstan	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Kenya	Y	O	Y	N/A	i	i	Y	N	Y	Y	N
Korea	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Latvia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Lithuania	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	N
Luxembourg	Y	E*	i	N/A	i***	i	Y	Y	Y	Y	N
Malawi	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Malaysia	Y	N	i	N/A	i	i	N	N	N	N	N
Malta	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	N
Mexico	Y	O*	Y	N/A	i**	i	N*	N	Y	N*	N
Morocco	Y	O	i	N/A	i	i	Y	N	Y	Y	N
Montenegro	Y	O	ii	5 years	i	i	Y	Y	Y	Y	N
Nepal	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Netherlands	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y
New Zealand	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
North Macedonia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Pakistan	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Philippines	Y	O	ii	2 years	i	i	Y	Y	Y	Y	N
Poland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Portugal	Y	O	Y	N/A	Y	i	Y	Y	Y	N*	N
Qatar	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?  If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1)  If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)  If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Romania	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Russia	Y	E*	Y	N/A	i	i	Y	Y	Y	Y	N
Senegal	Y	O	ii	2 years	i	i	Y	Y	Y	Y	N
Serbia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Sierra Leone	Y	N	iv	N/A	N/A	N/A	N	N	N	N	N
Singapore	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Slovak Republic	Y	O	i	N/A	i	i	Y	N	Y	Y	N
Slovenia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
South Africa	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Spain	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Sri Lanka	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Sint Maarten	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Sweden	Y	O	ii	5 years	Y	i	Y	Y	Y	Y	N
Switzerland	Y	O	Y	N/A	i	i	Y	N	Y	Y	Y
Tanzania	Y	O	i	N/A	i	i	Y	Y	Y	Y	N
Thailand	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N
Trinidad and Tobago	Y	O	i	N/A	i	i	Y	N	Y	Y	N
Tunisia	Y	O	i	N/A	Y	i	Y	N	Y	Y	N
Turkey	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Uganda	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Ukraine	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?  If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1)  If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)  If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
United Kingdom	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y
United States	Y	O	i	N/A	i	i	N	Y	N	N	N
Venezuela	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Viet Nam	Y	O	Y	N/A	i	i	Y	Y	N	Y	N
Zambia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Zimbabwe	Y	O	Y	N/A	i	i	N	Y	Y	Y	N

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

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

### Legend

E*	The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
E**	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
O*	The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
Y*	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.
Y**	The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.

Y***	The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
i*/i*/iv*/N*	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
i**/iv**/N**	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
i***	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

## Annex B

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

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	40	0	0	0	0	1	10	1	0	0	0	28	36.30
Others	37	0	0	3	0	0	6	0	0	0	0	28	32.71
Total	77	0	0	3	0	1	16	1	0	0	0	56	34.76

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	28	0	0	0	0	2	2	3	0	1	2	18	38.45
Others	28	1	0	1	0	1	2	0	0	0	0	23	24.99
Total	56	1	0	1	0	3	4	3	0	1	2	41	33.96

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

- The reported number of MAP cases pending on 31 December 2016 was 55, which consists of 28 attribution/allocation cases and 27 other cases.
- The reported number of MAP cases pending on 1 January 2017 was 56, which consists of 28 attribution/allocation cases and 28 other cases.

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



2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	18	0	0	0	0	0	6	0	0	4	2	6	42.69
Others	23	0	1	1	0	0	1	0	5	1	4	10	47.59
Total	41	0	1	1	0	0	7	0	5	5	6	16	45.24

## Annex C

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

2016 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	6	0	0	0	0	0	0	0	0	0	0	6	0.00
Others	0	18	0	0	0	0	2	2	0	0	0	0	14	4.17
Total	0	24	0	0	0	0	2	2	0	0	0	0	20	4.17

2017 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	6	14	0	0	0	3	1	2	0	0	0	0	14	2.68
Others	14	28	6	3	0	1	2	4	0	0	0	0	26	6.08
Total	20	42	6	3	0	4	3	6	0	0	0	0	40	5.16

2018 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	14	13	1	0	0	0	0	8	0	0	0	0	18	12.88
Others	26	53	3	0	1	1	2	6	0	0	0	0	66	10.81
Total	40	66	4	0	1	1	2	14	0	0	0	0	84	11.66



## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>MAP guidance</b>	Guide for the mutual agreement procedure pursuant to tax treaties (MAP) of 20 February 2019
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
<b>OECD Transfer Pricing Guidelines</b>	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
<b>Pre-2016 cases</b>	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
<b>Post-2015 cases</b>	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2018
<b>Terms of Reference</b>	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, Norway (Stage 2)**

## **INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process.

The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' Stage 1 peer review report. This report reflects the outcome of the Stage 2 peer monitoring of the implementation of the Action 14 Minimum Standard by Norway.



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