

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



Making Dispute Resolution More Effective - MAP Peer Review Report, Finland (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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

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

Executive summary

Finland has an extensive treaty network with over 75 tax treaties and has signed and ratified the EU Arbitration Convention. Finland has an established MAP programme and has significant experience with resolving MAP cases. It has a relatively large inventory, with a moderate number of new cases submitted each year and more than 110 cases pending on 31 December 2018. Of these cases, approximately 35% concerns allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Finland met almost all of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Finland worked to address them, which has been monitored in stage 2 of the process. In this respect, Finland solved all but one of the identified deficiencies.

All of Finland's tax treaties include a provision relating to MAP. Those treaties mostly 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:

- Approximately 15% of its tax treaties does 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 Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments
- Approximately 15% of its tax treaties does not contain a provision requiring competent authorities to consult together for the elimination of double taxation in 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, Finland signed and ratified, without any reservations on the MAP article, the Multilateral Instrument. Furthermore, Finland opted in for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in its tax treaties. Through this instrument, a substantial 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 will not be modified, upon entry into force this Multilateral Instrument, Finland reported that it intends to initiate bilateral negotiations to fulfil these requirements. To this end, Finland has put a plan in place for the renegotiation of these treaties, which consists of three steps: (i) finalising pending negotiations, (ii) contacting treaty partners to identify and potentially resolve mismatches in the notifications under the Multilateral Instrument and, once these two steps have been finalised, (iii) contact the remaining treaty partners to initiate negotiations with a view to bring the treaties in line with the requirements under the Action 14 Minimum Standard.

Finland meets the Action 14 Minimum Standard concerning the prevention of disputes. It is allowed to enter into bilateral APAs and enables taxpayers to request to rollbacks of bilateral APAs and such rollbacks are granted in practice.

Furthermore, Finland 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 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 addition, Finland has included on the website of its Tax Administration information on the MAP process and how it applies this procedure in practice. In 2019 this website was updated to reflect the contact details of Finland's competent authority, as well as a list of information and documentation that taxpayers need to include in a MAP request. Along with this update, Finland has also issued specific MAP guidance in 2019.

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

2016-18	Opening inventory 1-1-2016	Cases started	Cases closed	End inventory 31-12-2018	Average time to close cases (in months) *
Attribution/allocation cases	62	47	69	40	32.39
Other cases	35	67	26	76	23.49
Total	97	114	95	116	29.95

* 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, Finland generally used as a start date the date when a taxpayer submitted a MAP request, or for cases when the MAP request was submitted in the other jurisdiction concerned, the date of the first letter from the competent authority of that jurisdiction. For cases where the taxpayer was requested to submit additional information, the start date used was the date on which this informed was received by the competent authority. For the end date, Finland generally used the date of the letter to the taxpayer notifying him of the outcome of the MAP.

The number of cases Finland closed in the years 2016-18 is approximately 83% of the number of 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 needed was 29.95 months. This particularly concerns attribution/allocation cases, as the average time to close these cases was 32.39 months, while the average time to close other cases was below the pursued 24-month average (23.49 months). For attribution/allocation cases the average also increased. Finland, however, provided an explanation for overstepping the 24-month average, which is that for a large number of closed cases the MAP process was suspended during the period domestic remedies for the same cases were pending. Finland also provided the median time needed to close MAP cases. While this median was above 24-months, the distraction of the period when domestic remedies were pending show that for attribution/allocation cases the median was below 24 months. Nevertheless, its MAP inventory as per 31 December 2018 increased with 17.5% as compared to the inventory on 1 January 2016. As Finland added new staff members to its competent authority function and internally streamlined the MAP process that have led to the acceleration of the resolution of these cases, no additional resources are currently needed to resolve them in a more timely, effective and efficient manner, albeit that monitoring for this purpose is warranted.

Furthermore, Finland 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 MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

Lastly, Finland also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Its competent authority monitors the implementation of these agreements and no issues have surfaced throughout the peer review process.

Introduction

Available mechanisms in Finland to resolve tax treaty-related disputes

Finland has entered into 78 tax treaties on income (and/or capital), of which 77 are in force.¹ These 78 treaties apply to 88 jurisdictions.² All of these 78 treaties provide for a mutual agreement procedure (“MAP”) for resolving disputes on the interpretation and application of the provisions of the tax treaty.

Finland is also a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.³ Furthermore, Finland adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which has been implemented in its domestic legislation as of 30 June 2019.⁴

Under the tax treaties concluded by Finland (including the EU Arbitration Convention), the competent authority function in Finland is the Ministry of Finance. The Ministry of Finance has, on the basis of section 88 of the Act on Assessment Procedure (“AAP”), delegated this function to Finland’s Tax Administration. Where no specific delegation clause is included in Finland’s tax treaty, or where the Ministry of Finance has decided to handle the case by itself, the Ministry of Finance will act as the competent authority. The following three offices are within Finland’s Tax Administration responsible for handling MAP cases:

- a. *Attribution/allocation cases and APAs*: a separate team within the Large Taxpayers’ Office
- b. *Other corporate income tax cases*: two nominated persons within the Large Taxpayers’ Office
- c. *Cases concerning individual taxpayers*: two nominated persons within the Individual Taxation Unit.

Currently there are 20 people within Finland’s Tax Administration involved in handling MAP cases. In the Ministry of Finance, five people are handling MAP requests as well as other tasks.

The website of Finland’s Tax Administration includes brief information on the mutual agreement procedure, which is available at (in Finnish and Swedish):

https://www.vero.fi/yritykset-ja-yhteisot/tietoa-yritysverotuksesta/kansainvalinen_toiminta/keskin%C3%A4inen-sopimusmenettely-map/

This website also includes a specific section in relation to the MAP process for individuals (also in Finnish and Swedish), whereby the possibility is created for these

taxpayers to contact the competent authority for MAP issues via a specific web contact form. The relevant information can be found at:

https://www.vero.fi/en/individuals/tax-cards-and-tax-returns/moving_away_from_finland/taxation-abroad-contrary-to-tax-treaty/

In addition, Finland also published detailed MAP guidance in the document titled *International tax dispute resolution procedure (VH/2006/00.01.00.2019)*, which is available at:

<https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/77253/kansainv%C3%A4listen-veroriitojen-ratkaisumenettely/>
(Finnish and Swedish)

<https://www.vero.fi/en/detailed-guidance/guidance/77253/international-tax-dispute-resolution-procedure/>
(English)

Developments in Finland since 1 August 2017

Developments relating to the tax treaty network

In the stage 1 peer review report of Finland it is reflected that it had signed in 2015 a new tax treaty with Spain and in 2016 with Germany, Portugal and Sri Lanka. The treaties with Spain, Germany and Sri Lanka have entered into force since 1 August 2017 and have thereby replaced the previous treaty with these jurisdictions. With respect to the treaty with Portugal, this treaty was in force until 31 December 2018. Since the newly signed treaty has not yet been ratified by Portugal, there is currently no treaty in place between Finland and Portugal.

Furthermore, on 7 June 2017 Finland signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”) to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. It further opted in for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. On 25 February 2019, Finland deposited its instrument of acceptance, following which the Multilateral Instrument has for Finland entered into force on 1 June 2019. With the deposit of the instrument of acceptance of the Multilateral Instrument, Finland also submitted its list of notifications and reservations to that instrument. In relation to the Action 14 Minimum Standard, Finland has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).⁵

In addition, Finland reported that since 1 August 2017 it has signed a new treaty with Hong Kong, which includes Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention, allowing taxpayers to file a MAP request to the competent authorities of either contracting state. Finland also signed, together with Denmark, the Faroe Islands, Iceland, Norway and Sweden, an amending protocol to the multilateral Nordic Convention, which also amends the MAP provision to allow taxpayers to file a MAP request to the competent authorities of either contracting state. The treaty with Hong Kong and the amending protocol to the Nordic convention have entered into force.

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, Finland reported that it takes a holistic view as to the bilateral renegotiations of its tax treaties, whereby also other BEPS minimum standards

are taken into account. Specifically in relation to the Action 14 Minimum Standard, Finland presented the following plan:

- continue with pending negotiations with three jurisdictions with a view to include Article 25(1-3) in the relevant tax treaties
- contacting treaty partners where due to mismatches in notifications the relevant treaty provision will not be modified by the Multilateral Instrument.

Finland reported that once it has finalised these two steps, it will initiate negotiations with the remaining treaty partners with a view to amend the treaty to bring it in line with the requirement under the Action 14 Minimum Standard.

Other developments

Finland reported that it has in 2019 completed a legislative process concerning dispute resolution in international tax matters, which includes the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union via the Action on the International Tax Dispute Resolution Procedure (530/2019) and the Government Decree on the International Tax Dispute Resolution Procedure (66/1/2019), as well as specific issues pertaining to the mutual agreement procedure. This latter concerns:

- a. Update to website containing information on the MAP process, such by including the contact details of the competent authority and a specification of the information and documentation taxpayers need to include in their MAP request
- b. Issuing of specific and detailed MAP guidance for mutual agreement procedures under Finland's tax treaties, the EU Arbitration Convention and Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (International tax dispute resolution procedure (VH/2006/00.01.00.2019)
- c. Rules to ensure an effective implementation of MAP agreements: (i) placing the implementation process solely in the hands of the Tax Administration instead of the specific department that was responsible for the MAP case at hand, and (ii) asking taxpayers' consent to a MAP agreement as a prerequisite for implementation.

Furthermore, Finland also reported that it hired more personnel to handle MAP cases, which regards both attribution/allocation cases and other cases. In addition, it specified that the Tax Administration is using a wider pool of tax specialists that assist in handling MAP cases and function under the strict supervision of the competent authority.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Finland'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 Finland, 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, Finland'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 Finland 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.⁶ 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 Finland. In this update report, Finland 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 Finland is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerns a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the tax treaties/agreements with:

- Former Yugoslavia, which Finland continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia
- Former Netherlands Antilles, which Finland continuous to apply to Curacao, to Sint Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius).

As it concerns two tax treaties that are applicable to multiple jurisdictions, each of these treaties is only counted as one treaty for this purpose. The same applies to the multilateral tax treaty between Denmark, Finland, the Faroe Islands, Iceland, Norway and Sweden (the “**Nordic Convention**”) and the separate treaties entered into with 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 Finland’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 Finland launched on 7 July 2017, with the sending of questionnaires to Finland and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Finland in December 2017, with the subsequent approval by the BEPS Inclusive Framework on 22 February 2018. On 22 February 2019, Finland submitted its update report, which initiated stage 2 of the process.

The period for evaluating Finland’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 up to 31 July 2017 and formed the basis for the stage 1 peer review report (“**Review Period**”). 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 15 peers provided input during stage 1: Australia, Belgium, China (People’s Republic of), Denmark, Germany, Italy, Norway, Portugal, Russia, Slovenia, Spain, Sweden, Switzerland, Turkey and the United States. In stage 1, these peers represent 60% of

post-2015 MAP cases in Finland’s inventory on 31 December 2016. Input was also received from one taxpayer. During stage 2, also Austria, Egypt, France, Japan, the Slovak Republic and the United Kingdom provided input. For this stage, these peers represent a least 40% of post-2015 MAP cases in Finland’s inventory that started in 2016, 2017 or 2018.⁷ Broadly all peers indicated having good working relationships with Finland, some of them noting that communication is frequent and fluid, as also that Finland’s competent authority is solution oriented. Some peers, however, mentioned that it in Finland can take a long time to issue position papers or that resolution of MAP cases are delayed due to the interrelationship between MAP and domestic court procedures in Finland. Specifically with respect to stage 2, almost all peers that provided input reported that the update report of Finland fully reflects the experiences these peers have had with Finland since 1 August 2017 and/or that there was no addition to previous input given. Seven peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance.

Input by Finland and co-operation throughout the process

During stage 1, Finland provided extensive answers in its questionnaire and provided detailed additional information, which was submitted on time. Finland was 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, Finland provided the following information:

- MAP profile⁸
- MAP statistics according to the MAP Statistics Reporting Framework (see below).⁹

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

Finally, Finland is a member of the FTA MAP Forum and has shown good co-operation during the peer review process and occasionally provided peer input on other jurisdictions’ implementation of the Action 14 Minimum Standard.

Overview of MAP caseload in Finland

The analysis of Finland’s MAP caseload for stage 1 relates to the period that started on 1 January 2016 and ended 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 Finland. The analysis of Finland’s MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2018 (the “**Statistics Reporting Period**”). According to the statistics provided by Finland, 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	62	47	69	40
Other cases	35	67	26	76
Total	97	114	95	116

General outline of the peer review report

This report includes an evaluation of Finland'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**”).¹⁰ Apart from analysing Finland's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Finland, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Finland to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Finland 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 Finland 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 Finland has entered into are available at: www.finlex.fi/fi/sopimukset/sopsteksti/. The treaty that is signed but have not yet entered into force are with Portugal (2016). Until 31 December 2018, Finland had a treaty in place with Portugal, which has been terminated as per 1 January 2019. Consequently, until the new treaty enters into force, which is pending ratification by Portugal, there is no treaty relationship between Finland and Portugal. Furthermore, Finland has signed in 2018 an amending protocol to the multilateral tax treaty with the Nordic countries, to which also Denmark, Faroe Islands, Iceland, Norway and Sweden are signatories (“**Nordic convention**”). This protocol has not yet entered into force. Reference is made to Annex A for an overview of Finland's tax treaties with respect to the mutual agreement procedure.

Furthermore, the 78 tax treaties Finland has entered into include treaties with Bermuda, Guernsey, the Isle of Man and Jersey. With these four jurisdictions, Finland 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. Finland continues to apply the treaty with the former Netherlands Antilles to Curacao, Sint Maarten, and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) and the treaty with the former Yugoslavia to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, and Serbia. Finland is also a signatory to the Nordic Convention that for Finland applies to Denmark, the Faroe Islands, Iceland, Norway and Sweden.
3. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.
4. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
5. Available at www.oecd.org/tax/treaties/beps-mli-position-finland-instrument-deposit.pdf.
6. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-finland-stage-1-9789264224742-en.htm.
7. 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.
8. Available at: www.oecd.org/tax/dispute/Finland-Dispute-Resolution-Profile.pdf.
9. The MAP statistics of Finland are included in Annex B and C of this report.
10. 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 (OECD, 2017a) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of Finland's tax treaties

2. Out of Finland's 78 tax treaties, 74 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.¹ The remaining four treaties contain a provision that is based on Article 25(3), first sentence, but either do not include the term "interpretation", "doubts" or the words "doubts" and "interpretation". Therefore, all four treaties are considered not containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.²

3. Finland reported that even though four of its tax treaties do not contain the full equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, there are no obstructions in its domestic legislation and/or administrative practice to enter into MAP agreements of a general nature on the interpretation and application of tax treaties.

4. Most peers that provided input reported that their tax treaty with Finland meets the requirement under element A.1. Two peers further reported that their treaty with Finland that was recently negotiated meets the requirements under element A.1 as well, although these new treaties are not yet currently in force. For the three treaties identified above that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, only one provided input. This peer did not declare whether its treaty with Finland is in line with element A.1, but did report that it has neither contacted nor is in discussion with Finland to update its treaty to include the required provision.

Recent developments

Bilateral modifications

5. Finland signed a new treaty with a treaty partner for which currently no treaty is in existence. This treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention and has already entered into force. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

6. Finland signed the Multilateral Instrument and has deposited its instrument of acceptance on 25 February 2019. The Multilateral Instrument has for Finland entered into force on 1 June 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 four tax treaties identified above, Finland listed two as a covered tax agreement under the Multilateral Instrument and made for these treaties, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). The relevant treaty partners are signatories to the Multilateral Instrument, listed their treaty with Finland as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(i). Both 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 Finland and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Peer input

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

Anticipated modifications

10. As is described in the Introduction, for those treaties that are not in line with this element of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Finland has put in place a plan for bringing these treaties in line with that standard. This plan, however, does not specifically pertain to element A.1. One of the remaining two tax treaties that do not contain the equivalent of Article 25(3), first sentence,

of the OECD Model Tax Convention concerns the treaty with the former Netherlands Antilles that Finland continues to apply to Curacao, Sint Maarten, and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) and for which no bilateral negotiations are necessary.

11. Regardless, Finland 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>Four out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these four treaties:</p> <ul style="list-style-type: none"> Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties no actions have been taken nor are planned to be taken, but are included in the plan for renegotiations. 	<p>For one of the two remaining treaties that has not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Finland should request via bilateral negotiations the inclusion of the required provision in accordance with its plan for renegotiations.</p> <p>Specifically with respect to the treaty with the former Netherlands Antilles that Finland continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius, Finland should ensure that, once it enters into negotiations with the jurisdictions 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.

12. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.³ 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.

Finland’s APA programme

13. Finland reported that it does not have specific APA legislation in place, but it is allowed to enter into bilateral and multilateral APAs with those jurisdictions with which it has a tax treaty in force. The legal basis for APAs in Finland is the mutual agreement procedure provision contained in its tax treaties.

14. In Finland, handling requests for APAs is the primary responsibility of Finland’s Tax Administration, specifically the Large Taxpayers’ Office. In this respect, Finland reported that APAs are binding on the Tax Administration for the duration of its validity, if the taxpayer observes the terms and conditions of the APA. Furthermore, Finland reported that it does not charge any fees for the submission of APA requests.

15. Further to the above, Finland published information on APAs on the website of Finland's Tax Administration.⁴ This guidance broadly describes what an APA is, which government institutions in Finland are responsible for handling APA requests, how a taxpayer can benefit from an APA, the basis for such APAs, the issues to be covered by an APA, the process to obtain an APA, the timelines of such APAs, the information to be included in a request for an APA, and the possibility of withdrawal, renewal or revision of an existing APA. In addition, the information contained on the website specifically addresses that as the APA negotiations are normally conducted in English, taxpayers are recommended to submit their APA request in English.

16. In view of the above, given the fact that there is no specific legislation on APAs in place, Finland reported that there is no exact date as of which an APA should be applied. As described on the website of Finland's Tax Administration, requests for APAs should be made as early as possible. In this respect, Finland noted that the process to be followed is that its competent authority and the taxpayer, prior to submitting an APA request discuss what fiscal years can be covered in an APA. As Finland itself does not have any timing requirements, the taxpayer is during such discussions informed that it should check whether the other jurisdiction concerned uses any filing requirements in terms of timing.

Roll-back of bilateral APAs

17. Finland reported that, where appropriate and upon the taxpayer's request, it is possible to apply the outcome of a bilateral APA in a mutual agreement procedure covering previous years, whereby the process and legal basis for granting roll-backs is similar as for regular bilateral APAs. In this respect, Finland added that there is no requirement that a primary adjustment should be made before a roll-back can be granted. The information on the website of Finland's Tax Administration does, however, not include any specific information on the possibility for roll-back of bilateral APAs.

Recent developments

18. Finland reported that it has recently introduced a lighter version of the APA process as part of its cross-border dialogue initiative. This initiative allows multinational enterprises to obtain guidance for tax matters when they plan changes that affect their operations, with a view to increase the predictability and certainty of these enterprises' tax position as well as to avoid disputes from arising.⁵ In this respect, Finland noted that it has completed two cross-border dialogue requests with treaty partners.

Practical application of roll-back of bilateral APAs

19. Finland publishes statistics on APAs in relation to EU and non-EU Member States on the website of the EU Joint Transfer Pricing Forum (in English).⁶

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

20. Finland reported that in the period 1 January 2016-31 July 2017 it received three requests for bilateral/multilateral APAs, all of which are still under review. None of these requests concern a request for a roll-back. While in this period it had no roll-back cases Finland clarified that it provided a roll-back of a bilateral APA with a treaty partner which related to an APA application submitted prior to 2016.

21. Most peers that provided input reported that in the period 1 January 2016-31 July 2017 they have not received any requests for roll-back of bilateral APAs with Finland. One peer in particular mentioned that roll-back of bilateral APAs is possible in Finland, but that it had no practical experience on this point. Furthermore, one peer indicated having received such requests for a roll-back request concerning Finland in 2016. At that time the bilateral APA was in the process of being resolved. In 2016 this APA was entered into alongside with allowing a roll-back for four years as from the initial APA period. This peer thereby specified that both competent authorities saw no obstacles in agreeing to such a roll-back and that it did not have any indication that Finland encountered any issues with the implementation of the roll-back.

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

22. Finland reported that since 1 August 2017 it has received ten APA requests, one of which concerns a request for a roll-back. This request is still in the process of being reviewed.

23. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Finland fully reflects their experience with Finland since 1 August 2017 and/or there are no additions to the previous input given. This concerns for all but one peer a confirmation that they had also during stage 2 no experience with Finland as to the roll-back of bilateral APAs. The remaining peer stated that it received one APA request in 2017 that also concerned a request for a roll-back involving Finland. This peer confirmed that the request was accepted and that the negotiation process is initiated.

Anticipated modifications

24. Finland did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

- These 74 treaties include the Nordic Convention that for Finland applies to Denmark, the Faroe Islands, Iceland, Norway and Sweden; and the treaty with former Yugoslavia that Finland continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia.
- These three treaties include the treaty with the former Netherlands Antilles that Finland continues to apply to Curacao, Sint Maarten, and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba).

In the stage 1 peer review report, reference was made to two treaties. Following the peer review process of other assessed jurisdictions, another treaty was identified that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. Consequently, the number of treaties not containing this equivalent should be three instead of two.

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 (OECD, 2017b).
4. Available at (in Finnish): https://www.vero.fi/yritykset-ja-yhteisot/tietoa-yritysverotuksesta/siirtohinnoittelu/menettelytavat_siirtohinnoitteluasioissa/siirtohinnoittelun_ennakkosopimus_ap/.
5. Information on the cross-border dialogue can be found at: https://www.vero.fi/yritykset-ja-yhteisot/tietoa-yritysverotuksesta/konserniverokeskuksessa_hoidetaan_suome/pre-emptive-discussion-and-cross-border-dialogue/.
6. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0152016enapastatistics.pdf. These statistics are up to 2018.

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.

25. 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 Finland's tax treaties

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

26. Out of Finland's 78 tax treaties, two contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.¹ Furthermore, 60 treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

27. The 16 remaining tax treaties can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident	15*
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 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

* These 15 treaties include the treaty with the former Netherlands Antilles that Finland continues to apply to Curacao, Sint Maarten, and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) and the treaty with former Yugoslavia that Finland continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia.

28. The 15 treaties included in the first row of the table 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, 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 14 of these 15 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 (four treaties)
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (eight treaties)²
- The relevant tax treaty is only one sided formulated in that they only apply to companies resident in Finland and therefore it is logical that the MAP article is also only one-sided formulated (two treaties).

29. For the remaining treaty, paragraph 1 of the non-discrimination provision also only covers nationals that are resident of one of the contracting states, but by virtue of another paragraph the non-discrimination provision applies to both nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention is therefore not clarified by a limited scope of the non-discrimination article, following which this treaty is considered not to be in line with this part of element B.1.

30. Furthermore, with respect to the treaty included in the second row of the table above, the provision incorporated in the protocol to this treaty reads:

... the expression “irrespective of the remedies provided by domestic law” in paragraph 1 of the Article means that the mutual agreement procedure is not alternative with the national contentious proceedings, which shall be, in any case, preventively initiated, when the claim is related to an assessment of taxes not in accordance with the Convention.

31. 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 treaty is therefore considered not in line with this part of element B.1.

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

32. Out of Finland's 78 tax treaties, 68 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.³

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

Provision	Number of tax treaties
No filing period for a MAP request	6
Filing period less than three years for a MAP request (two years)	3
Filing period longer than three years for a MAP request (five years)*	1

*This treaty concerns the Nordic Convention that for Finland applies to Denmark, Faroe Islands, Iceland, Norway and Sweden.

Peer input

34. Almost all peers that provided input reported that their tax treaty with Finland meets the requirements under element B.1. Two peers further reported that its treaty with Finland was recently negotiated and meets the requirements under element B.1 as well, although these new treaties are not yet currently in force. Furthermore, one peer mentioned that its treaty with Finland does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention. This is the treaty identified in paragraphs 30-31 that does not contain such equivalent. In this respect, this peer mentioned that there are no ongoing contacts with Finland to amend its treaty, as in this peer's view this treaty will be modified via the Multilateral Instrument. From the analysis conducted below, however, this treaty will not be modified via that instrument to incorporate the equivalent of Article 25(1), first sentence.

Practical application

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

35. As noted in paragraphs 30-31 above, in all but one of Finland's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Finland reported that also in the case of this treaty access to MAP is available in Finland regardless of whether taxpayers also have sought to resolve the dispute via domestically available administrative and judicial remedies. Access to MAP is also available in cases where domestic remedies already have been completed, whereby Finland's competent authority is not bound by a decision of its domestic courts. Where both procedures, however, have been initiated, Finland reported that it will suspend the MAP process until domestic remedies have been completed.

36. Finland's MAP guidance describes in section 2.1 that the MAP process and domestic available remedies are not mutually exclusive and that taxpayers can pursue both options simultaneously. It is further confirmed that where this is done, the MAP process will, as a general rule be put on hold until the domestic remedies have been completed. In addition,

it is also confirmed that Finland's competent authority is not bound by a decision of its domestic courts.

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

37. For those tax treaties that do not specify a filing period, Finland reported that there is no domestic legislation or administrative practice in place for those situations where a tax treaty does not contain a filing period for MAP requests. In practice, it would follow the timelines under the Multilateral Instrument, which would be the three-year period as set forth in Article 25(1), second sentence, of the OECD Model Tax Convention. This implies that in cases where the treaty does not contain a filing period for MAP requests, Finland's competent authority would accept a request submitted within this three-year period. Finland's MAP guidance, however, does not contain any information in relation hereto.

38. Finland further reported that in the period 1 January 2016-28 February 2019 it has received MAP request under those treaties that do not contain a filing period for the submission of MAP requests, whereby access to MAP was granted in all of these cases.

Recent developments

Bilateral modifications

39. Finland signed a new treaty with a treaty partner for which currently no treaty is in existence. This treaty contains a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and has already entered into force. Furthermore, Finland signed an amending protocol to an existing treaty to also include such equivalent regarding the first sentence of Article 25(1) and which also has entered into force. The effect of this newly signed treaty and the amending protocol has been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

40. Finland signed the Multilateral Instrument and has deposited its instrument of acceptance on 25 February 2019. The Multilateral Instrument has for Finland entered into force on 1 June 2019.

41. 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.

42. With the signing of the Multilateral Instrument, Finland opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties, pursuant to Article 16(4)(a)(i) of 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 (OECD, 2017), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Finland'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, Finland opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Finland listed 66 of its 78 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.⁴ None of these 66 treaties concern the two treaties mentioned in paragraph 26 above that already allow the submission of a MAP request to either competent authority.

43. In total, 15 of the 66 treaty partners are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Finland as a covered tax agreement under the Multilateral Instrument and 21 have, pursuant to Article 16(5)(a) of the Multilateral Instrument, reserved the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties.⁵ All remaining 29 treaty partners listed their treaty with Finland 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.

44. Of these 29 treaty partners, 16 already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Finland 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 13 treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

45. In view of the above and in relation to the two treaties identified in paragraphs 29-31 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, one is included in the list of 16 treaties mentioned above that has been modified via that instrument to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read after the adoption of the Action 14 final report.

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

46. 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, only 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.

47. In regard of the three tax treaties identified in paragraph 33 above that contain a filing period for MAP requests of less than three years, Finland listed all of them as a covered tax

agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), for all a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the relevant treaty partners, one is not a signatory to the Multilateral Instrument. The remaining treaty partners listed their treaty with Finland as a covered tax agreement under that instrument and also made such a notification. Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, modify two of the three treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Other developments

48. As is described in the Introduction, for those treaties that are not in line with this element of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Finland has put in place a plan for bringing these treaties in line with that standard. With respect to those two treaties that do not contain the first or second sentence of Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, Finland is currently negotiating with one treaty partner on the amendment of the treaty.

Peer input

49. Of the peers that provided input during stage 2, three provided input in relation to their tax treaty with Finland. 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 its treaty with Finland will be modified as regards the second sentence and that for the first sentence it has contacted Finland to address this issue and for which bilateral negotiations are pending. Furthermore, another peer confirmed they signed an amending protocol to the treaty to include Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.

Anticipated modifications

50. Finland reported it will seek to include Article 25(1), first and second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Two out of 78 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 shorter than three years, from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties:</p> <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention • One will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. For this treaty no actions have been taken, but is included in the plan for renegotiations. 	<p>For the treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, Finland should request via bilateral negotiations the inclusion of the required provision this treaty in accordance with its plan for renegotiations.</p>

	Areas for improvement	Recommendations
[B.1]	<p>One out of 78 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, 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.</p> <p>This treaty is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, no actions have been taken, but for this treaty negotiations are envisaged, scheduled or pending.</p>	<p>For the treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Finland should continue negotiations 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> <ul style="list-style-type: none"> a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.

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

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

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

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

Domestic bilateral consultation or notification process in place

52. As discussed under element B.1, out of Finland's 78 tax treaties, two currently contain 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, 29 of these 76 treaties have been or will be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

53. Finland reported that it has not introduced a formal consultation/notification process for those cases where its competent authority considered the objection raised by the taxpayer in the MAP request as not justified. However, it also reported that when a MAP

request is received by Finland's competent authority, it will send a notification of receipt to the other competent authority concerned as well as to the taxpayer. In the situation that Finland's competent authority considers the objection raised in a MAP request as not being justified, Finland reported it will discuss this judgment with the other competent authority concerned. It added that these cases, however, are rare.

54. Further to the above, Finland reported that it has documented this practice in its internal MAP guidance, which includes the procedures to be followed in case its competent authority considers an objection raised as not being justified.

Recent developments

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

Practical application

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

56. From the 2016 MAP statistics provided by Finland it follows that there were no cases with the outcome "objection not justified". Finland reported that in the period 1 January 2016-31 July 2017 its competent authority has in one case considered the objection raised by the taxpayer in its MAP requests as being not justified. In this particular case, the MAP request was originally submitted to the competent authority of the treaty partner, which forwarded this MAP request to Finland. Finland's competent authority considered a primary adjustment made in the other jurisdiction as not constituting a transfer pricing adjustment and for that reason considered the objection raised in the MAP request not to be justified. In that regard, Finland specified that there has been a lengthy MAP negotiation with the treaty partner before the decision was made that the objection was not justified. Finland reported that this outcome has been confirmed by the relevant peer.

57. All peers that provided input indicated not being aware of any cases for which Finland's competent authority denied access to MAP in the period 1 January 2016-31 July 2017, or being consulted/notified of a case that where Finland's competent authority considered the objection raised in a MAP request as not being justified.

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

58. Finland reported that in the period 1 August 2017-28 February 2019 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2017 and 2018 MAP statistics submitted by Finland show that one of its MAP cases was closed with the outcome "objection not justified". The decision hereto, however, was made by the competent authority of the relevant treaty partner.

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

Anticipated modifications

60. Finland 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.

61. 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

62. Out of Finland's 78 tax treaties, 51 contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, requiring their state to make a corresponding adjustment in case a transfer pricing adjustment is imposed by the other treaty partner.⁶ Of the remaining 27 treaties, 26 do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention.⁷ The remaining treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but does not include part of the last sentence reading "and the competent authorities of the contracting states shall, if necessary, consult each other". However, the MAP provision of this treaty defines that the competent authorities also may consult together for the purpose of reaching an agreement on the allocation of income in cases referred to in Article 9.

63. Finland is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.

64. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Finland's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Finland reported that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments within that process, such regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in its tax treaties.

65. The information available on the website of Finland's Tax Administration in relation to MAP specifically concerns transfer pricing cases. This information specifies that taxpayers can request for MAP in case of transfer pricing adjustments and in that regard includes a specific example. Furthermore, section 6.2 of Finland's MAP guidance also specifies that access to MAP is available for transfer pricing cases.

Recent developments

Bilateral modifications

66. Finland signed a new treaty with a treaty partner for which currently no treaty is in existence. This treaty contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention and has already entered into force. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

67. Finland signed the Multilateral Instrument and has deposited its instrument of acceptance on 25 February 2019. The Multilateral Instrument has for Finland entered into force on 1 June 2019.

68. 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 tax 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, pursuant to Article 17(3), the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, 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).

69. Finland 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 27 treaties identified in paragraph 62 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Finland listed 18 of them as a covered tax agreement under the Multilateral Instrument and included one of these in the list of treaties for which Finland has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument.⁸ Furthermore, Finland did not make a notification on the basis of Article 17(4) for these 17 treaties.

70. Of the relevant 17 treaty partners, five are not a signatory to the Multilateral Instrument, whereas one has not listed its treaty with Finland as a covered tax agreement under that instrument and one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with Finland already contains the equivalent of Article 9(2).⁹

71. For the remaining ten treaties, five 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 Finland 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 five 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. Finland 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 have indicated not being aware of a denial of access to MAP by Finland for transfer pricing cases in the period 1 January 2016-31 July 2017. Also taxpayers reported not being aware of such denial.

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

74. Finland reported that since 1 August 2017 it has received numerous 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 did not contain the required information and not because it was a transfer pricing case.

75. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Finland fully reflects their experience with Finland since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer mentioned it had received a MAP request concerning transfer pricing with Finland and this case was resolved without any difficulties. Another peer specified that it is not aware of any cases for which access to MAP was not granted by Finland.

Anticipated modifications

76. Finland 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 treaties. Other than this, Finland did not indicate that it anticipates any modifications in relation to element B.3.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

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 Finland's 78 tax treaties allows the 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 the domestic law and/or administrative processes of Finland do not contain a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

79. Finland reported that issues relating to the application of domestic and/or treaty anti-abuse provisions are within the scope of MAP. This, however, is not clarified in the information on MAP on the website of Finland's Tax Administration nor in its MAP guidance.

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. Finland reported that it has in the period 1 January 2016-31 July 2017 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 for 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 in that period.

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

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

83. Finland 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 Finland fully reflects their experience with Finland since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer specified that it is not aware of any cases for which access to MAP was not granted by Finland.

Anticipated modifications

85. Finland 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 independent from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework***Audit settlements***

87. Finland reported that under its domestic legislation there is no legal basis for audit settlements. In other words, there is no process in existence that allows Finland's Tax Administration and taxpayers to enter into settlements in the course of or after ending of an audit.

88. Finland's MAP guidance, in section 3.2.5, sets forth that the fact that taxpayers have entered into an audit settlement with the tax administration of its treaty partner does not create an obstacle to initiate the MAP process.

Administrative or statutory dispute settlement/resolution process

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

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. Finland reported that it has in the period 1 January 2016-31 July 2017 its competent authority had not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement, which is logical as no such process is in place in Finland.

92. All peers that provided input indicated not being aware of a denial of access to MAP by Finland in case there was already an audit settlement between the taxpayer and Finland's tax administration in the period 1 January 2016-31 July 2017. Also taxpayers reported not being aware of such denial.

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

93. Finland 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.

94. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Finland fully reflects their experience with Finland since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer specified that it is not aware of any cases for which access to MAP was not granted by Finland.

Anticipated modifications

95. Finland 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 that Finland requires taxpayers include in a request for MAP are discussed under element B.8.

98. Finland reported that when a taxpayer does not include in its MAP request the required information and documentation, its competent authority will send a request to the taxpayer asking it to supplement its request with additional information. Finland further reported that a specific timeframe is not given to the taxpayer and that in cases where there is a timeframe, the taxpayer is usually granted additional time if it so requests. In a very general sense, the general timelines used is two-four weeks, which is dependent on the comprehensiveness of the request for information. As will be described under the recent developments section below, Finland has implemented Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union as per 30 June 2019. The description in this paragraph only relates to MAP requests under tax treaties and not complaints submitted under this directive.

99. Where a taxpayer does not provide the requested information, Finland's competent authority will inform him in writing that the case is at risk of being closed if the additional information is not submitted within the given timeframe. If the taxpayer will then still not submit the requested information, the case will eventually be closed. Section 3.1 of Finland's MAP guidance stipulates that the failure by the taxpayer to provide the required information can affect the taxpayer's right under the MAP process, including the closure of the case.

Recent developments

100. Finland reported that it has implemented Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union in its domestic law via the Act on the international tax dispute resolution procedure (Laki kansainvälisten veroriitojen ratkaisumenettelystä (530/2019)) and Government Decree on the international tax dispute resolution procedure (Valtioneuvoston asetus kansainvälisten veroriitojen ratkaisumenettelystä [661/2019]). A complaint submitted under this directive will be rejected by Finland's competent authority if the taxpayer fails to supply any additional information requested by the competent authority. The competent authority must make an enquiry within three months of receiving the request and the taxpayer must respond within three months of receiving a request for additional information.

Practical application

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

101. Finland reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements. It further reported that in the period 1 January 2016-31 July 2017 its competent authority has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

102. All peers that provided input indicated not being aware of denial of access to MAP by Finland in situations where taxpayers complied with information and documentation in the period 1 January 2016-31 July 2017. Also taxpayers reported not being aware of such denial.

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

103. Finland reported that since 1 August 2017 it has also not received any cases nor denied access for cases to MAP for cases where the taxpayer had not provided the required information or documentation.

104. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Finland fully reflects their experience with Finland since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer specified that it is not aware of any cases for which access to MAP was not granted by Finland.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

106. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties contains 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 the Finland's tax treaties

107. Out of Finland's 78 tax treaties, 64 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.¹⁰ Furthermore, one treaty contains a provision that is based on Article 25(3), second sentence, of the OECD Model Tax Convention, but this provision refers to the *consultation regarding cases not provided for in the convention*, whereas the second sentence of Article 25(3) refers to the *consultation for the elimination of double taxation in cases not provided for in the convention*. As the particular tax treaty provides for a scope of application that is at least as broad as that second sentence of Article 25(3), it is considered to be in line with element B.7.

108. The remaining 13 treaties do not contain a provision that is based on or is the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.¹¹ Eight of these 13 treaties have a limited scope of application.¹² 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 eight treaties with a limited scope of application.

109. Almost all peers that provided input reported that its provisions of their tax treaty with Finland meet the requirements under element B.7. Two peers further reported that their treaty with Finland that was recently negotiated meets the requirements under element B.7 as well. For the 13 treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, only four peers that are signatory to three of these 13 treaties provided input. The first two peers did not indicate whether their treaty with Finland contains the required provision, one of which also did not indicate whether it had contacted or was already in discussions with Finland to incorporate the required provision. The other peer mentioned that it had recently signed the Multilateral Instrument *inter alia* to include the equivalent of Article 25(3), second sentence. This peer's treaty with Finland will indeed be modified by the Multilateral Instrument to incorporate such equivalent (see below). The third peer made the same remark and also this treaty will be modified by the Multilateral Instrument to include the required provision.

Recent developments

Bilateral modifications

110. Finland signed a new treaty with a treaty partner for which currently no treaty is in existence. This treaty contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention and has already entered into force. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

111. Finland signed the Multilateral Instrument and has deposited its instrument of acceptance on 25 February 2019. The Multilateral Instrument has for Finland entered into force on 1 June 2019.

112. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention – 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.

113. In regard of the five 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, Finland listed all of them as a covered tax agreement under the Multilateral Instrument and for all 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 relevant five treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Finland as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(ii).

114. Of the five treaty partners mentioned above, three have deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Finland and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified three treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. For the remaining two treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Peer input

115. Of the peers that provided input during stage 2, three provided input in relation to their tax treaty with Finland. 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.

Anticipated modifications

116. As is described in the Introduction, for those treaties that are not in line with this element of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Finland has put in place a plan for bringing these treaties in line with that standard. This plan, however, does not specifically pertain to element B.7. The remaining tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention concern treaties that are limited in scope. In this respect Finland 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 jurisdictions agree on a comprehensive treaty, the intention is to cover all or close to all cases. Against this background, it is Finland's understanding that Article 25(3) should be analysed in the context of the entire

tax treaty. If such a tax treaty is only limited to certain items of income and does not contain a provision regarding other items of income, it would in Finland's view not be logical to extend the scope of the MAP article to cases not covered by such a treaty. In addition, Finland believes that the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention to treaties with a limited scope would give the competent authorities the possibility to consult in cases that intentionally have been excluded from the scope of the treaty itself due to policy reasons.

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

Conclusion

	Areas for improvement	Recommendations
[B.7]	-	-

[B.8] Publish clear and comprehensive MAP guidance

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

118. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

Finland's MAP guidance

119. Finland published brief guidance on the MAP process and on how to file a MAP request on the website of Finland's Tax Administration.¹³ This website mentions that for submission of MAP requests taxpayers can send a free-form letter to the Tax Administration with the heading "Request to start a mutual agreement procedure within the meaning of an international tax treaty". It also specifies that before presenting the official MAP request the taxpayer should contact Finland's Tax Administration to establish the feasibility of a mutual agreement procedure.

120. Finland also published more comprehensive and detailed guidance on the MAP process on a specific section of the website of the Tax Administration, which is titled *International tax dispute resolution procedure (VH/2006/00.01.00.2019)*. This guidance is available at:

<https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/77253/kansainv%C3%A4listen-veroriitojen-ratkaisumenettely/>
(Finnish and Swedish)

<https://www.vero.fi/en/detailed-guidance/guidance/77253/international-tax-dispute-resolution-procedure/>
(English)

121. The information on this website and in the MAP guidance describes in detail for what situations a MAP request can be submitted under the available mechanisms for dispute resolution (see below) and how the MAP process operates. In more detail, this concerns:

01. Available mechanisms for dispute resolution	<ul style="list-style-type: none"> • MAP under tax treaties • MAP under the EU Arbitration Convention • MAP under the Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the EU
02. Premises of the MAP process	<ul style="list-style-type: none"> • Interaction with domestic remedies • Suspension of tax collection for the time period a MAP case is pending • Aim of the MAP process • Outline of the MAP process under the available mechanisms
03. Submission of a MAP request	<ul style="list-style-type: none"> • Language of the request (Finnish, Swedish and English) • Manner and form for the submission of the request • Time limits for the submission of a MAP request • Contact details of the competent authority
04. Outline of the MAP process	<ul style="list-style-type: none"> • Process for requesting additional information • Acceptance of a MAP request • Possibility of an unilateral solution for the case under review • Withdrawal of a MAP request • Applicable time limits throughout the process • Implementation of MAP agreements
05. Availability of arbitration	<ul style="list-style-type: none"> • Availability of arbitration under tax treaties, the EU Arbitration Convention and under the Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the EU
06. Miscellaneous	<ul style="list-style-type: none"> • Availability of MAP for transfer pricing cases, taxes withheld at source and bona-fide foreign taxpayer-initiated adjustments

122. The above-described information on MAP includes detailed information on the availability and the use of MAP in Finland and how its competent authority conducts the procedure in practice. The FTA MAP Forum agreed on information that 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.¹⁴ The information on MAP available in Finland includes both items. However, some subjects are not specifically discussed. This concerns whether MAP is available in cases of: (i) the application of anti-abuse provisions and (ii) multilateral MAPs. In addition, this information also does not specify the consideration of penalties in MAP (the consideration of interest is reflected).

123. During stage 2, peers did not provide specific input in relation to element B.8, but one peer mentioned that MAP guidance is not available in the English language. This peer suggested that, although not required, it would be useful to make such an English version available. Furthermore, one taxpayer considered the allowance of a form-free MAP request convenient, but echoed the peer input on availability of guidance in English. Since 2019, such guidance is made available in English.

Information and documentation to be included in a MAP request

124. Section 3.1 of Finland's MAP guidance specifies that – on the basis of section 3 of the Act on the International Tax Dispute Resolution Procedure (530/2019) – that the MAP request needs to contain specific information, albeit that there is not a specific template for MAP requests nor are there any formal requirements. Furthermore, section 3.2.1 of the MAP guidance specifies that the MAP request must specify which procedure the taxpayer intends to pursue; a MAP under a tax treaty, the EU Arbitration Directive or Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the EU.

125. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.¹⁵ This list is presented for Finland in the form of a checklist and concerns:

- ☒ identity of the taxpayer(s) covered in the MAP request
- ☒ the basis for the request (the nature of the action giving rise to, or expected to give rise to, taxation not in accordance with the convention)
- ☒ facts of the case
- ☒ analysis of the issue(s) requested to be resolved via MAP
- ☒ 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 MAP request was also submitted to the competent authority of the other treaty partner
- ☒ 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. Further to the above, section 3.1 of Finland's MAP guidance also specifies that taxpayers should provide copies of the relevant documents, including copies of the final tax assessment or other documents issued by the tax authorities and about any pending appeals court proceedings and decisions relating to the dispute. In addition, section 3.2 provides a detailed explanation for each item that needs to be reflected in the MAP request.

Recent developments

127. Finland reported that in March 2018 it has updated guidance on the website of the Tax Administration to reflect the contact details of its competent authority. Furthermore, Finland has also issued specific guidance on this website in relation to the MAP process for individuals, whereby the possibility is created for these taxpayers to contact the competent authority for MAP issues via a specific web contact form. This update has been reflected in the analysis above. The relevant information can be found at:

https://www.vero.fi/en/individuals/tax-cards-and-tax-returns/moving_away_from_finland/taxation-abroad-contrary-to-tax-treaty/

128. In addition, on 1 July 2019 Finland also published specific and detailed MAP guidance (International tax dispute resolution procedure (VH/2006/00.01.00.2019), which content has been outlined above.

Anticipated modifications

129. Finland 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.¹⁶

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

131. General information on the MAP process is published on the website of Finland's Tax Administration and can be found at (in Finnish, Swedish and English):

https://www.vero.fi/yritykset-ja-yhteisot/tietoa-yritysverotuksesta/kansainvalinen_toiminta/keskin%C3%A4inen-sopimusmenettely-map/

132. Furthermore, regarding the MAP process for individuals, guidance is available on a section of this website, which can be found at:

https://www.vero.fi/en/individuals/tax-cards-and-tax-returns/moving_away_from_finland/taxation-abroad-contrary-to-tax-treaty/

133. Finland also published more comprehensive and detailed guidance on the MAP process on a specific section of the website of the Tax Administration, which is titled *International tax dispute resolution procedure* (VH/2006/00.01.00.2019). This guidance is available at:

https://www.vero.fi/yritykset-ja-yhteisot/tietoa-yritysverotuksesta/siirtohinnoittelu/menettelytavat_siirtohinnoitteluasioissa/keskinainen_sopimusmenettely_map_siirto/
<https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/77253/kansainv%C3%A4listen-veroriitojen-ratkaisumenettely/>
 (Finnish and Swedish)

<https://www.vero.fi/en/detailed-guidance/guidance/77253/international-tax-dispute-resolution-procedure/>
 (English)

134. As regards its accessibility, this information on MAP is easily found on the website of Finland's Tax Administration, as also by searching for "MAP" or "mutual agreement procedure".

MAP profile

135. Finland's MAP profile is published on the website of the OECD and was last updated in October 2017.¹⁷ This MAP profile is complete, with most of the time additional information and guidance and external links which provide extra information and guidance.

Recent developments

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

Anticipated modifications

137. Finland 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.

138. 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

139. As previously discussed under element B.5, in Finland it is under domestic law not possible that the tax authorities and taxpayers enter into audit settlements during the course of or after an audit has been completed. In that regard, there is no need to address in its MAP guidance that such settlements do not preclude access to MAP. All peers that provided input raised no issues with respect to the availability of audit settlements and the inclusion of any information hereon in Finland's MAP guidance.

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

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

141. All but one peer indicated not being aware or being notified of any administrative or statutory dispute settlement/resolution process in Finland that may limit access to MAP. However, one peer mentioned that in Finland's MAP profile no reference is made to the existence of such process. This is logical since no such process is in existence in Finland.

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

142. As Finland does not have an internal administrative or statutory dispute settlement/resolution process in place, there is no need for notifying treaty partners of such process.

Recent developments

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

Anticipated modifications

144. Finland did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These two treaties include the Nordic Convention that for Finland applies to Denmark, the Faroe Islands, Iceland, Norway and Sweden.
2. Ibid.
3. These 68 treaties include the treaty with the former Netherlands Antilles that Finland continues to apply to Curacao, Sint Maarten, and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) and the treaty with former Yugoslavia that Finland continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia.
4. These 66 treaties include the treaty with former Yugoslavia that Finland continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia.
5. These 15 treaty partners include the treaty partners Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia, for which Finland continues to apply the treaty with former Yugoslavia. Bosnia and Herzegovina, Croatia and Serbia are signatories to the Multilateral Instrument. For these treaty partners the Multilateral Instrument will not apply in respect of Article 16, as both Bosnia and Herzegovina, Croatia and Serbia made a reservation pursuant to Article 16(5)(a) of the Multilateral Instrument not to replace the provision based on 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). For simplicity purposes, the relationship with Croatia and Serbia is only mentioned here and not in the further numbers of this section.
6. These 51 treaties include the Nordic Convention which for Finland applies to Denmark, Faroe Islands, Iceland, Norway and Sweden.
7. These 27 treaties include the treaty with the former Netherlands Antilles that Finland continues to apply to Curacao, Sint Maarten, and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) and the treaty with former Yugoslavia that Finland continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia.

In the stage 1 peer review report, reference was made to 26 treaties. Following the peer review process of other assessed jurisdictions, another treaty was identified that does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention. Consequently, the number of treaties not containing this equivalent should be 27 instead of 26.
8. These 18 treaty partners include the treaty partners Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia, for which Finland continues to apply the treaty with former Yugoslavia.
9. Ibid. Bosnia and Herzegovina, Croatia and Serbia, are signatories to the Multilateral Instrument. For these treaty partners Article 17(1) of the Multilateral Instrument will supersede the treaty with former Yugoslavia, as both Bosnia and Herzegovina, Croatia and Serbia did not make a reservation pursuant to Article 17(3) of the Multilateral Instrument not to incorporate Article 9(2) of the OECD Model Tax Convention. This is marked in the treaty table included in Annex A but is not further taken into account in the analysis.
10. These 64 treaties include the Nordic Convention that for Finland applies to Denmark, Faroe Islands, Iceland, Norway and Sweden; and the treaty with former Yugoslavia that Finland continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia.
11. These 13 treaties include the treaty with the former Netherlands Antilles Islands that Finland continues to apply to Curacao, Sint Maarten, and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba).
12. These eight treaties concern treaties with Aruba, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey and the treaty with the former Netherlands Antilles Islands that Denmark continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba).

13. Available at: https://www.vero.fi/en/individuals/tax-cards-and-tax-returns/moving_away_from_finland/taxation-abroad-contrary-to-tax-treaty/application-for-mutual-agreement-procedure/.
14. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
15. Ibid.
16. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
17. Available at: www.oecd.org/tax/dispute/Finland-Dispute-Resolution-Profile.pdf.

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- 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.

145. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also contain the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Finland's tax treaties

146. Out of Finland's 78 tax treaties, 77 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.¹ The remaining treaty does contain a provision that is based on Article 25(2), first sentence, but also includes additional language whereby the resolution of a MAP case is dependent on the notification of such MAP case to the other competent authority involved within a certain term. This additional language reads: "... provided that the competent authority of the other Contracting State is notified of the case within four and a half years from the due date or the date of filing of the return in that other State, whichever is later". As this additional wording may limit the situations where a MAP case is actually discussed, the provision is therefore considered not being the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

147. All peers that provided input reported that their tax treaty with Finland meets the requirements under element C.1. Two peers further reported that their treaty with Finland was recently negotiated and meets the requirements under element C.1 as well, although these new treaties are not yet currently in force. The treaty partner to the one treaty

identified above that does not contain the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention did not provide peer input.

Recent developments

Bilateral modifications

148. Finland signed a new treaty with a treaty partner for which currently no treaty is in existence. This treaty contains a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention and has already entered into force. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

149. Finland signed the Multilateral Instrument and has deposited its instrument of acceptance on 25 February 2019. The Multilateral Instrument has for Finland entered into force on 1 June 2019.

150. 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.

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

Anticipated modifications

152. Since, as indicated above, the tax treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will be modified by the Multilateral Instrument, there is no need for a bilateral modification. Regardless, Finland 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]	-	-

[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).

153. 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

154. Statistics regarding all tax treaty related disputes concerning Finland are published on the website of the OECD as of 2007.² Finland publishes MAP statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.³

155. 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. The statistics discussed below include both post-2015 and pre-2016 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 Finland’s MAP caseload.⁴

156. With respect to post-2015 cases, Finland reported that for the years 2016-18 it contacted its MAP partners with a view to have their MAP statistics matching. It noted that such matching was successful with all of its MAP partners that report their MAP statistics under the MAP Statistics Reporting Framework.

157. Four peers provided input on the matching of MAP statistics with Finland. All four confirmed that they were able to match their statistics with Finland for the years 2016-18 or for any individual year. One of these peers added that in this respect it had a very efficient communication with quick responses from Finland’s competent authority.

158. Based on the information provided by Finland’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

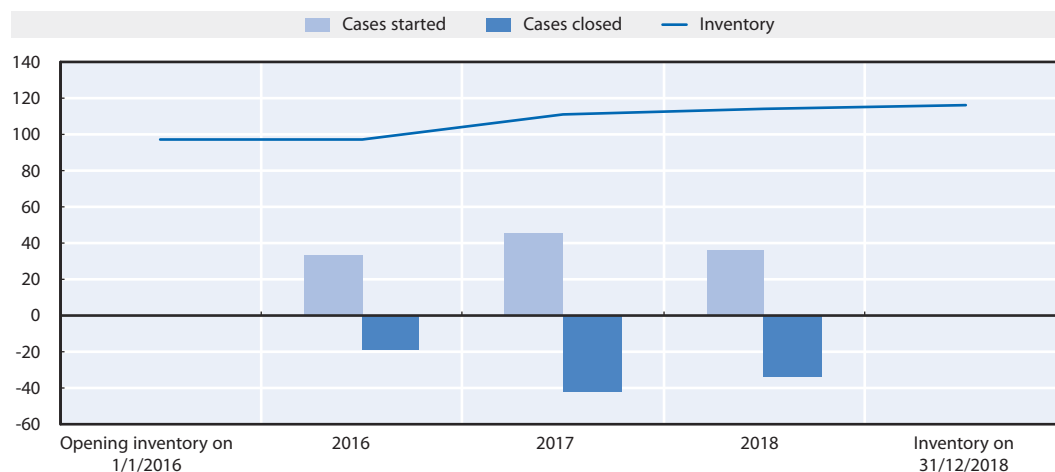
159. Finland reported that it monitors its MAP caseload on a regular basis. It further reported that it has an internal and up-to-date database containing information on the MAP caseload and specific information concerning each MAP case.

Analysis of Finland’s MAP caseload

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

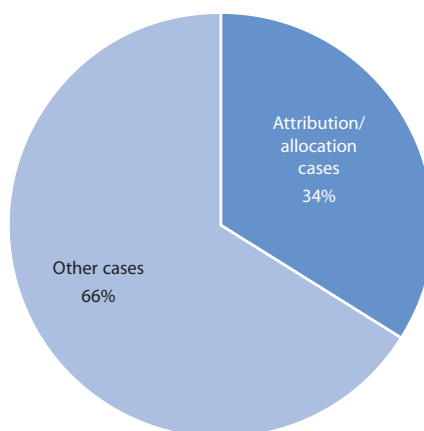
161. Figure C.1 shows the evolution of Finland's MAP caseload over the Statistics Reporting Period.⁵

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



162. At the beginning of the Statistics Reporting Period, Finland had 97 pending MAP cases, of which 62 concerned attribution/allocation cases and 35 other cases.⁶ At the end of the Statistics Reporting Period, Finland had 116 MAP cases, 40 of which were attribution/allocation cases and 76 of which were other cases. While the total number of MAP cases increased by approximately 20%, the number of attribution/allocation cases decreased by 35%, whereas other MAP cases increased by approximately 120%. The end inventory can be shown as in Figure C.2.

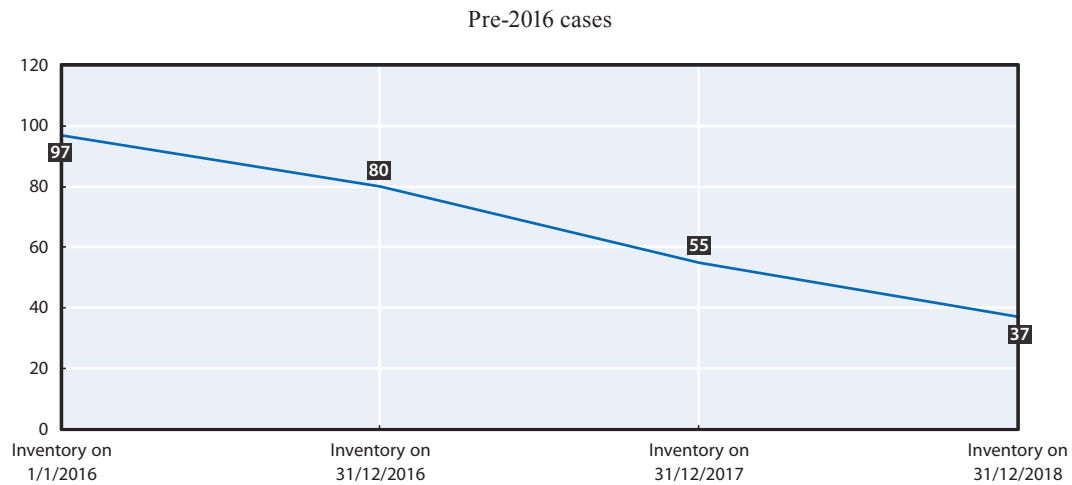
Figure C.2. End inventory on 31 December 2018 (116 cases)



Pre-2016 cases

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

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



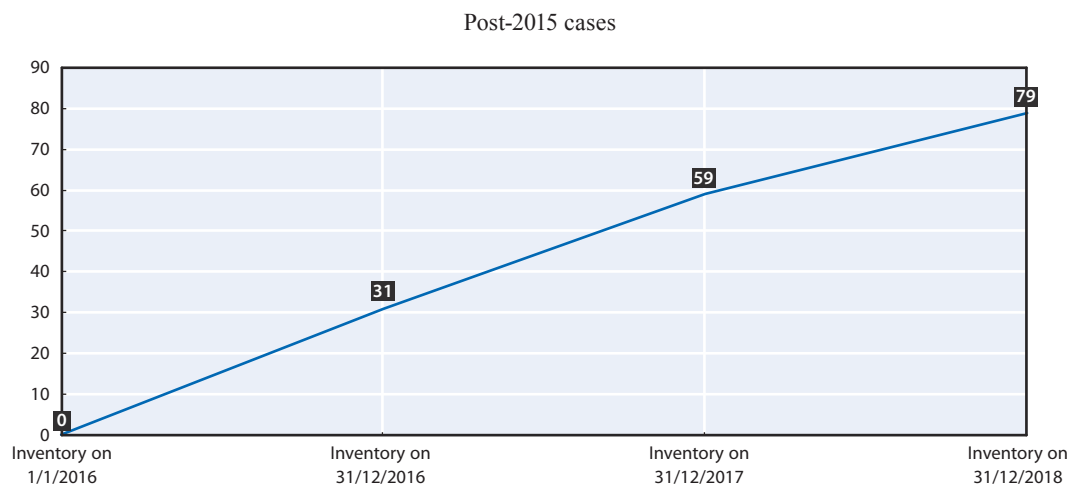
164. At the beginning of the Statistics Reporting Period, Finland's MAP inventory of pre-2016 MAP cases consisted of 97 cases, 62 of which were attribution/allocation cases and 35 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 37 cases, consisting of 12 attribution/allocation cases and 25 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	-19%	-46%	-56%	-81%
Other cases	-14%	-7%	-11%	-29%

Post-2015 cases

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

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



166. In total, 114 MAP cases started during the Statistics Reporting Period, 47 of which concerned attribution/allocation cases and 67 other cases. At the end of this period the total number of post-2015 cases in the inventory was 79 cases, consisting of 28 attribution/allocation cases and 51 other cases. Conclusively, Finland closed 35 post-2015 cases during the Statistics Reporting Period, 19 of them being attribution/allocation cases and 16 other cases. The total number of closed cases represents 31% of the total number of post-2015 cases that started during the Statistics Reporting Period.

167. 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.

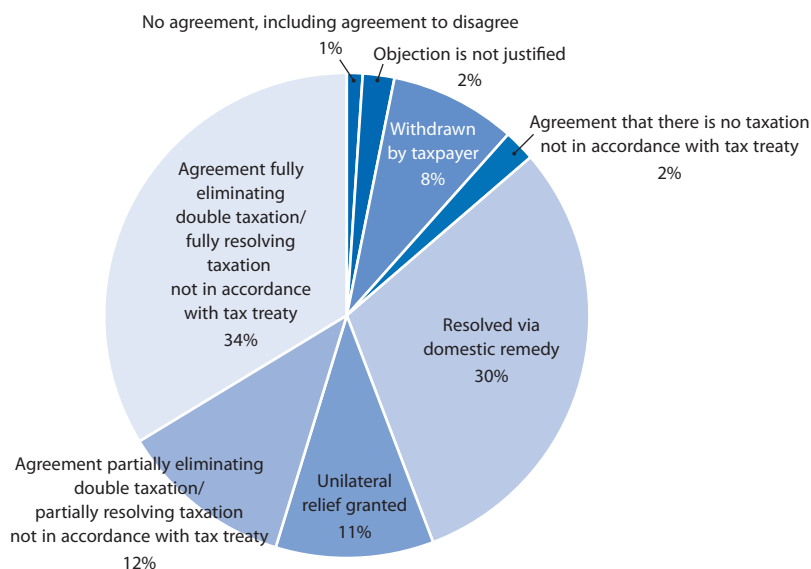
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	Cumulative % of cases closed compared to cases started over the three years (2016-18)
Attribution/allocation cases	20%	53%	40%	50%
Other cases	No cases closed	29%	50%	24%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

168. During the Statistics Reporting Period Finland closed 95 MAP cases, for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed during 2016, 2017 or 2018 (95 cases)



169. Figure C.5 shows that 32 out of 95 cases were closed through an agreement fully eliminating double taxation or fully resolving taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

170. In total, 69 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- resolved via domestic remedy (42%)
- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (26%)
- unilateral relief granted (13%).

Reported outcomes for other cases

171. In total, 26 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 (54%)
- agreement partially eliminating double taxation/partially resolving taxation not in accordance with the tax treaty (15%)
- withdrawn by taxpayers (15%).

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

172. The average time needed to close MAP cases during the Statistics Reported Period was 29.95 months, which can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	69	32.39
Other cases	26	23.49
All cases	95	29.95

Pre-2016 cases

173. For pre-2016 cases Finland reported that on average it needed 41.24 months to close 50 attribution/allocation cases and 44.83 months to close ten other cases. This resulted in an average time needed of 41.48 months to close 60 pre-2016 cases. Finland reported that for 54 out of 60 cases the 24-month average was exceeded.

174. For the purpose of computing the average time needed to resolve pre-2016 cases, Finland generally used as the:

- *Start date*: either the date when the taxpayer has submitted a MAP request, or when the MAP request was submitted in the other jurisdiction concerned, the date of the first letter from the competent authority of that jurisdiction. For cases where the taxpayer has been requested to submit additional information, the start date is the date on which this information has been received by the competent authority.
- *End date*: the date of the letter to the taxpayer notifying him of the outcome of the MAP.

Post-2015 cases

175. For post-2015 cases, Finland reported it needed 9.09 months to close 19 attribution/allocation cases and 10.15 months to close 16 other cases. This resulted in an average time needed of 9.58 months to close 35 post-2015 cases.

Peer input

176. On an overall level, most peers that provided input on Finland's implementation of the Action 14 Minimum Standard reported a good working relationship with Finland's competent authority, which is further discussed under element C.3 below. Some peers, however, also mentioned that it can take a long time in Finland to issue position papers as well as in the peers' own jurisdiction, which in turn can cause a delay in resolving MAP cases. Furthermore, one peer noted that a MAP is in Finland suspended if for the same case a court procedure is pending until the moment such procedure is finalised. In this peer's view this could also cause delays in resolving MAP cases.

Recent developments

177. In the stage 1 peer review report, Finland was under element C.2 recommended to seek to resolve the remaining 93% of its post-2015 MAP cases that were pending on 31 December 2016 (28 cases), such within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

178. With respect to this recommendation, Finland reported it took three specific steps in order to increase the number of MAP cases closed and the reduction in the average time needed to close such cases. This concerns:

- increasing the number of staff in charge of MAP within the Tax Administration: from seven to 14 persons handling attribution/allocation cases and requests for APAs and from three to six persons handling other MAP cases
- using of a wider pool of tax specialists within the Tax Administration that assist in analysing MAP cases, preparing of position papers and ensuring the implementation of MAP agreements. All these specialists work under the control of the competent authority (see further element C.4)
- streamlining the MAP process, for example, by organising more face-to-face meetings with the main MAP partners.

179. 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

180. Finland 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.

181. 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 Finland's competent authority

182. Under the tax treaties Finland entered into, the competent authority function is assigned to the Ministry of Finance. This function has been delegated to the Tax Administration in accordance with the provision of section 88 of the Act on Assessment Procedure, apart from those cases where no delegation clause is included in the tax treaty or where the Ministry of Finance has decided to handle the case by itself. This can be for cases of a principled nature. In this respect, Finland reported that over the past ten years this happened only in a small number of cases.

183. The following three offices are within Finland's Tax Administration responsible for handling MAP cases:

- a. *Attribution/allocation cases and APAs*: a separate team within the Large Taxpayers' Office
- b. *Other corporate income tax cases*: two nominated persons within the Large Taxpayers' Office
- c. *Cases concerning individual taxpayers* two nominated persons within the Individual Taxation Unit.

184. Finland reported that over the last few years, staff in charge of MAP has been increased. In 2010, there were only two persons handling MAP cases within Finland's Tax Administration. Currently there are five people handling MAP requests within the Ministry of Finance along with other tasks (e.g. providing expert opinions and legislative work related to international tax issues and treaty negotiations). Concerning staff in charge of MAP within the Tax Administration, Finland specified the following number:

Type of cases	Number of persons
Attribution/allocation cases and APAs	14
Other cases – corporate income taxes	2
Other cases – individuals	4
Total	20

185. Of the 14 persons handling attribution/allocation cases, three work full-time. The six persons that handle other cases all work part-time on handling such cases, along other tasks (e.g. handling advance rulings and providing support within the Tax Administration).

186. Finland further reported that staff in charge of MAP is required to have several years of experience in international tax affairs either within the Tax Administration or the private sector. In addition, Finland mentioned that internal training is available and it is possible that staff in charge of MAP can participate in private sector seminars and international tax administration seminars and workshops.

187. Further to the above, Finland also reported that it does not notify its treaty partners about the contact details of its competent authorities, or of staff in charge of MAP. However, Finland does frequently update its MAP profile and its transfer pricing profile on the website of the EU JTPF.⁷

188. According to Finland, sufficient funding is available to conduct face-to-face meetings with other competent authorities when necessary.

Recent developments

189. As discussed under element C.2, Finland reported it took three specific steps in order to increase the number of MAP cases closed and the reduction in the average time needed to close such cases. This concerns:

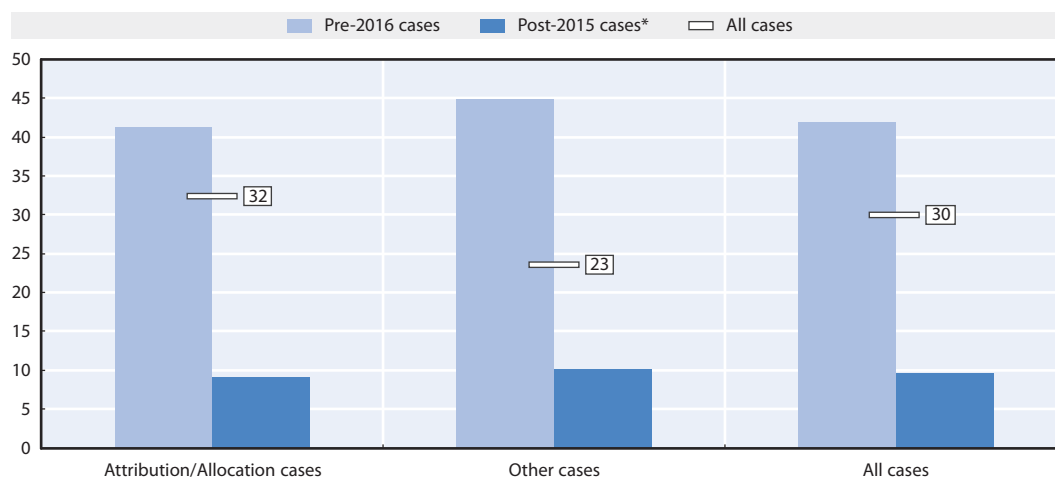
- increasing the number of staff in charge of MAP within the Tax Administration: from seven to 14 persons handling attribution/allocation cases and requests for APAs and from three to six persons handling other MAP cases
- using of a wider pool of tax specialist within the Tax Administration that assist in analysing MAP cases, preparing of position papers and ensuring the implementation of MAP agreements. All these specialist work under the control of the competent authority
- streamlining the MAP process, for example, by organising more face-to-face meetings with the main MAP partners.

Practical application

MAP statistics

190. As discussed under element C.2, Finland has not closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. There, however, is, a discrepancy in the time needed for the resolution of attribution/allocation cases and other cases, which can be illustrated 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.

191. Based on these figures, it follows that on average it took Finland 29.95 months to close MAP cases. The average time needed to resolve attribution/allocation cases is 32.39 months, while the average time required to resolve other cases is 23.49 months. While for other cases the average is slightly below 24 months, for attribution/allocation cases the average is significantly above the pursued 24-month average.

192. The stage 1 peer review report of Finland analysed the 2016 statistics and showed an average of 32.27 months, which concerns an average of 27.09 months for attribution/allocation cases and 46.76 months for other cases. It was on that basis concluded that the overall average was above the pursued average of 24 months. As Finland envisaged to add 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.

193. 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	28.76	40.66
Other cases	14.33	21.25
All cases	25.32	34.38

194. The 2017 statistics of Finland show that the average completion time of MAP cases decreased to 25.32 months, whereby the average for attribution/allocation cases increased slightly, but for other cases was reduced sharply to be far below the pursued 24-month average. However, the average for 2018 significantly increased again, in particular for attribution/allocation cases to be significantly above the 24-month average. While also for other cases the average increased, it remained to be within the pursued average of 24-months.

195. Furthermore – as analysed in element C.2 – the MAP inventory of Finland 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	62	47	69	40	-35%
Other cases	35	67	26	76	117%
Total	97	114	95	116	20%

196. The figures in the above table show that the inventory of MAP cases increased significantly, albeit that the inventory of attribution/allocation cases was reduced with 35%, while for other cases the number has more than doubled. The number of closed cases is around 83% of all cases started in the period 2016-18.

Clarifications by Finland

197. Finland provided an explanation for why it took some cases on average longer than 24 months to resolve MAP cases. In particular, Finland reported that the resolution of MAP cases may potentially deviate from the average timeframe of 24 months due to a longstanding Finnish practice. This practice is that if a taxpayer files both a domestic appeal and a MAP request, the MAP case will be put on hold as domestic remedies must

be resolved first. In Finland, this domestic appeal process may take up to five years and therefore it could take up to 60 months before Finland's competent authority begins to process a MAP request. Concerning the delays caused by simultaneous pending court cases, Finland reported that in one case it took 108 months to resolve (of which 32 months was caused by waiting on the response of the treaty partner), which caused that 20 months of the total average reported for pre-2016 cases is attributable to this particular case.

198. Finland further reported that in some cases it took a long time to receive additional information from the taxpayer or position papers from other competent authorities, which adversely affected the average timeframe. Finland also reported that with respect to pre-2016 cases it kept in its inventory very old cases, to which the other competent authorities concerned never responded to any letters by Finland's competent authority. Keeping these cases in the inventory may cause a longer average time frame to resolve MAP cases.

199. In addition, Finland also provided the median time necessary to resolve MAP cases. In this respect, Finland noted that these median numbers are significantly shorter than the average time reported and that these averages were heavily affected by long pending cases that were finally closed since 1 January 2016. To this end, Finland concluded that the median provides a more accurate indication of the time needed to resolve MAP cases. The median timeframes reported are as follows:

Cases resolved	Pre-2016 cases		Post-2015 cases		All	
	Number of cases	Median time	Number of cases	Median time	Number of cases	Median time
Attribution/allocation cases	50	37.51	19	8.52	69	36.13
Other cases	10	36.66	16	7.69	26	17.08
All cases	60	37.51	35	7.69	95	27.65

200. As outlined in paragraph 197 above, Finland's practice is to suspend a MAP case for the period domestic remedies are pending, which may impact the average time needed to close MAP cases. Not taking this into account would not provide for a balanced picture as to the state of play in Finland regarding the adequacy of resources and the actual time needed to close MAP cases in light of the pursued average of 24 months. In this respect, Finland gave as an example that 18 of the 23 pre-2016 attribution/allocation cases closed in 2017 have been resolved via domestic remedies, which in 2018 concerned 9 of the 15 attribution/allocation cases resolved. All these cases were taken into account in the calculation of the average time needed to close MAP cases. If this would not be the case for these 27 pre-2016 cases, on the basis of the information provided by Finland, the median timeframes would be as follows:

Cases resolved	Pre-2016 cases		Post-2015 cases		All	
	Number of cases	Median time	Number of cases	Median time	Number of cases	Median Time
Attribution/allocation cases	23	34.45	19	8.52	42	17.41
Other cases	10	36.66	16	7.69	26	17.08
All cases	33	34.45	35	7.69	68	17.08

201. In addition, Finland also provided an explanation for 15 of these 68 cases that took longer than 24 months to be resolved. This is:

Cases resolved in > 24 months	Attribution/ allocation cases	Other cases	All cases
Delays in communications between the competent authorities concerned	2	2	4
Longstanding process due to complexity of the case	2	3	5
Primary adjustment made in the other state withdrawn after 24 months without providing a position paper	3	-	3
Suspension of the MAP process due to simultaneous court case in the other state	1	-	1
Objection not justified decision made by the other state after 24 months	2	-	2
Total	10	5	15

Peer input

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

General

202. In total nine of the 15 peers that provided input, provided details in relation to their contacts with Finland's competent authority and their experiences in resolving MAP cases. The other five peers reported to have little experience with Finland and for that reason they were unable to provide extensive input and therefore only provided general input.

Contacts with Finland's competent authority

203. Almost all peers indicated that communication and co-operation is fluid with Finland's competent authority and that there were no impediments to the resolution of their MAP cases. One peer noted that even though it does not have substantial experience with Finland that the MAP process was going smoothly without any difficulties. Furthermore, another peer noted that its working relationship with Finland is in development and an additional peer noted that even though it did not consider Finland to be a significant MAP partner, it viewed its relationship with Finland's competent authority as good and noted that Finland's competent authority has so far responded promptly to all of its MAP related communications. Lastly, two peers mentioned that they have a very good working relationship with Finland and they consider it easy to contact its competent authority.

204. Peers also reported that contacts with Finland's competent authority generally takes place through conference calls, emails, written letters and in-person meetings, whereby one peer noted that this kind of communication works well. Some of these peers also reported that they were conducting regular face-to-face meetings with Finland's competent authority, generally once a year.

Handling and resolving MAP cases

205. Concerning the resolution of MAP cases one peer noted that Finland's competent authority has promptly responded in communications regarding their mutual MAP case. A second peer mentioned that the dialogue between their competent authorities is collaborative and solution oriented and acts as a sound basis for discussing and solving MAP cases. This peer also noted that historically the average time cycle of MAP allocation cases has been within the pursued average of 24 months. Another peer also noted that it

generally had a co-operative relationship with Finland's competent authority in resolving MAP cases in a principled manner. Furthermore, another peer mentioned the procedure for resolving MAP cases with Finland in done a correct way. Lastly, one peer mentioned that MAP cases with Finland through written communication only.

206. Some peers, however, also raised some criticism on the resolution of MAP cases in relation to Finland. Two peers commented on the length of time it takes to receive position papers from Finland's competent authority. One of these peers mentioned that meeting targeted timeframes for issuing such papers is often challenging for both competent authorities, whereby they both do not always meet these targets. This peer, however, also mentioned that in most cases progress is made in a reasonable time. Furthermore, a third peer mentioned that for one non attribution/allocation case, it was difficult to resolve it. This peer further specified that although this case involved difficult, technical and interpretative issues concerning the application of the treaty, resolution of such case has also been impeded by the ongoing, extended leave of the responsible person within Finland's competent authority. This peer therefore considered that, as it has not received any notification of temporary reassignment, that there may be a potential resource constraint within Finland's competent authority.

207. Another peer, like the peers mentioned above, noted that meeting target timeframes for issuing position papers, such as those in the Code of Conduct for the effective implementation of the EU Arbitration Convention, is often challenging, as both competent authorities do not always meet these timeframes. This peer commented on his understanding that when taxpayers initiate domestic appeals in Finland, Finland's competent authority does not actively pursue MAP and does not issue a position paper before there is a final court decision. This peer noted that, although it is in line with the rules of the EU Arbitration Convention, there is a risk that this practice could have the consequence that average cycle times for completing MAP cases take longer than two years if the taxpayer does not agree to suspend the MAP during the period for which such appeal is appending.

208. Another peer noted a specific instance where in one case the notification of the MAP request was only made by Finland's competent authority more than six months after the request was made. This peer also noted that Finland sometimes provides the relevant MAP documents in Finnish without any courtesy translation.

Suggestions for improvement

209. A few peers made suggestions regarding how its competent authorities could improve the resolution of MAP cases, whereby one peer concluded that Finland had provided adequate resources to its competent authority. Another peer mentioned that it will continue to keep in contact with Finland's competent authority and endeavour to reach an agreement in their mutual cases. A third peer pointed out that it looks forward to continue working with Finland's competent authority to resolve all MAP cases in the most efficient and effective manner. This peer also mentioned that it believes that both competent authorities can uphold their shared commitments under the Action 14 Minimum Standard, by continuing and fostering consistent, direct, and substantive communications at the level of analysts and management with a view to improve the efficiency of resolving MAP cases.

210. Further to the above, one peer suggested that Finland would benefit from more resources attributed to the competent authority function and from more frequent communication and consultation between the two competent authorities. Another peer reinforced the perception that Finland could benefit from more resources by stating that it is its understanding that Finland's competent authority is currently heavily understaffed, which makes it difficult to resolve MAP cases in a timely manner. This peer also remarked, however, that its working relationship with Finland is generally very good.

Taxpayer input

211. One taxpayer provided input and noted that for one case agreement was reached, which, however, took some time. This taxpayer further mentioned that access and assistance by Finland's competent authority has been good, whereby Finland acknowledged the receipt of the MAP request with a written confirmation which was considered a good practice.

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

212. Almost all peers that provided input during stage 1 stated in stage 2 that the update report provided by Finland fully reflects their experience with Finland since 1 August 2017 and/or there are no additions to the previous input given. Three peers provided specific input on their experiences with Finland concerning the resolution of MAP cases since that date, which all were positive.

213. The first peer mentioned that in its experience Finland's competent authority was professional and efficient, as well as that it has sufficient recourses. The second peer noted that it closed two MAP cases with Finland in the period 1 August 2017-28 February 2019. In the resolution of these cases, the peer that its experiences with Finland are very positive and that it has the impression that Finland's competent authority appears to be very professional and well-prepared for the resolution of MAP cases during negotiations. Lastly, the third peer mentioned its relationship with Finland's competent authority remains to be very good, even though the number of pending MAP cases is relatively low. It particularly considered Finland's competent authority to continue to respond promptly to communications, which resulted in an efficient resolution of MAP cases.

Anticipated modifications

214. Finland 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 closed in 29.95 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This particularly regards attribution/allocation cases, as the average is 32.39 months, as for other cases the average is slightly below the pursued 24-month average. While the median time to close MAP cases is for attribution/allocation cases still above 24 months, Finland has provided a detailed and justified explanation of the overstep of the 24-month average for these type of cases as well as for the overall average.</p> <p>Nevertheless, the MAP caseload has increased substantially, which only regards other cases, as the caseload for attribution/allocation cases decreased. The number of pending other MAP cases has doubled, which may indicate that the competent authority may not be adequately resourced to cope with this increase, although additional personnel has been assigned in recent years and successful steps have been taken to be able to increase the number of cases closed.</p>	<p>Finland should continue to closely monitor whether the addition of new staff to the competent authority and the steps taken to improve the functioning of its competent authority will further contribute to the resolution of MAP cases in a timely, efficient and effective manner. This in particular concerns the acceleration of the resolution of attribution/allocation cases and being able to cope with the significant increase in the number of other MAP cases.</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.

215. 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 consideration, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

216. Finland reported that its competent authority, when handling MAP cases, does not have to consult or involve any tax administration personnel on resolution of MAP cases apart from the people within the competent authority assigned to work on MAP cases. If a MAP case is handled within Finland's Tax Administration, at least two persons are involved in the decision making process, unless it is a less complicated or straightforward case. In such situation, the person assigned to handle the MAP request can make the decision himself. In that regard, Finland specified that staff in charge of MAP is itself fully authorised to prepare a position, negotiate and resolve MAP cases. Where necessary, however, auditors or specialists within the local tax offices might be asked to clarify the facts of the case under review. Where a MAP request is being handled by the Ministry of Finance, the position in a specific case is, as reported by Finland, always reviewed by another person within the department. If it concerns a complex case it is ultimately the head of the department who makes the decision.

217. In view of the above, Finland reported that there is neither a (formal) system in place requiring the competent authority to ask other departments (i.e. the audit department) for approval of any MAP agreements nor is the process for negotiating MAP agreements influenced by policy considerations.

Recent developments

218. As discussed under elements C.2 and C.3, Finland reported that it uses a wider pool of tax specialists within the Tax Administration that assist in analysing MAP cases, preparing of position papers and ensuring the implementation of MAP agreements. All these specialists work under the control of the competent authority. In practice, this implies that the competent authority assigns tasks to these specialists, gives them instructions and supervises their work through all phases of the MAP process. The supervision also entails that all work produced is being reviewed and approval by the competent authority is needed before an action can be completed, such as sending of a position paper to the other competent authority concerned, with a view to avoid unduly influence or biased view by the tax specialists on the process of preparing position papers.

219. Finland further clarified that these tax specialist may have been involved in certain audits. However, where a case for which an audit in Finland led to an adjustment that eventually ends up in the MAP process, it will be assured that the tax specialist concerned will not be involved in handling this MAP case (e.g. the preparation of a position paper or

the decision-making process). In this respect, management within the competent authority will analyse whether the tax specialist was involved in the audit process and if so, this is taking into account when assigning cases to staff within the competent authority.

Practical application

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

220. All peers that provided input did not report any impediments in Finland 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 Finland being influenced by considerations of the policy that it would like to see reflected in future amendments to the treaty. Two peers specifically mentioned that they are not being aware that staff in charge of the MAP in Finland is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

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

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

Anticipated modifications

222. Finland 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.

223. 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 Finland

224. Finland reported that within its Tax Administration staff is evaluated based on criteria that are related to efficiency and quality of work, communication skills, knowledge and degree of involvement in internal development projects. Furthermore, the senior management of the Tax Administration annually sets targets regarding the various functions within the organisation. Specifically relating to staff in charge of MAP, Finland reported that the staff as a whole is being evaluated on the time it takes to resolve MAP cases, which is monitored via its internal MAP database, and the number of cases resolved. This evaluation is intended to evaluate the group's functioning and as a tool to organise resources.

225. In view of the above, Finland emphasised that staff in charge of MAP is not evaluated nor uses it performances indicators on the basis of content of MAP agreements reached, the amount of maintained tax revenue nor the number of sustained audit adjustments.

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

- ☒ 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

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

Practical application

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

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

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

229. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Finland fully reflects their experience with Finland 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 Finland to evaluate staff in charge of the MAP process.

Anticipated modifications

230. Finland 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.

231. 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

232. Finland reported that it has no domestic law limitations for including MAP arbitration in its tax treaties and its policy allows to include arbitration in its tax treaties.

233. In addition, Finland is a signatory to the EU Arbitration Convention and has adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive has been implemented in Finland's domestic legislation as per 30 June 2019.

234. The website of Finland's Tax Administration includes information on the availability of the EU Arbitration Convention and how Finland applies that convention in practice. The position on MAP arbitration, however, is not further specified on this webpage, but information hereon is available in Finland's MAP profile.

Recent developments

235. Finland signed the Multilateral Instrument and has deposited its instrument of acceptance on 25 February 2019. The Multilateral Instrument has for Finland entered into force on 1 June 2019. With the depositing of the instrument of acceptance, Finland also opted in for part VI, which includes a mandatory and binding arbitration provision. The effects of this opting in is also further described below.

Practical application

236. None of Finland's 78 tax treaties currently contain an arbitration clause as a final stage to the MAP. One treaty, however, does include a most favoured nation arbitration clause. This provision stipulates that if Finland enters into a treaty with a third state that includes an arbitration clause, then Finland and that contracting jurisdiction will enter into negotiations with a view to include such a clause in their treaty with each other.

237. In addition, with respect to the effect of part VI of the Multilateral Instrument on Finland's tax treaties, there are next to Finland in total 29 signatories to this instrument that also opted for part VI. Concerning these 29 signatories, Finland listed 20 as a covered tax agreement under the Multilateral Instrument and 19 of these 20 treaty partners also listed their treaty with Finland under that instrument.

238. For these 19 treaties, 14 treaty partners have already deposited their instrument of ratification. In this respect, part VI will apply to these 14 treaties and introduce the arbitration provision of the Multilateral Instrument in these treaties.⁸ One of these 14 treaties regards the tax treaty referred to above containing a most-favoured nation clause. For the other five treaties for which the treaty partner has not yet ratified the Multilateral Instrument, Finland reported it expects that part VI will introduce a mandatory and binding arbitration procedure in all five treaties.

239. Section 5.4 of Finland's MAP guidance includes further details as to which treaties Finland considers to be modified by the Multilateral Instrument to include the mandatory and binding arbitration procedure of part VI of that instrument. It further includes details for which cases part VI can be applied from Finland's perspective, how part VI will be applied in regard of these treaties and as of what date it can be applied.

Anticipated modifications

240. Finland reported that it is currently in the process of analysing which of its tax treaties, and to what extent, will be modified to incorporate the arbitration provision of part VI of the Multilateral Instrument upon its entry into force.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 77 treaties include the Nordic Convention that for Finland applies to Denmark, Faroe Islands, Iceland, Norway and Sweden; the treaty with the former Netherlands Antilles that Finland continues to apply to Curacao, Sint Maarten, and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba); and the treaty with former Yugoslavia that Finland continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to 2018.
3. Available at http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to 2018.
4. For post-2015 cases, if the number of MAP cases in Finland'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, Finland reported its MAP caseload for such a treaty partner on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. Finland's 2016 and 2017 MAP statistics were corrected in the course of the peer review process and deviate from the 2016 and 2017 published MAP statistics. See for a further explanation Annex B and Annex C.

6. Finland reported that for pre-2016 cases for determining whether a case is considered an attribution/allocation MAP case cases it followed the rules contained in Annex D of the MAP Statistics Reporting Framework. Annex D of MAP Statistics Reporting Framework defines such case as: “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”. Furthermore, Finland also reported that other MAP cases are considered cases not related to attribution/allocation cases, cases where the function of the foreign company has been considered to establish a permanent establishment, cases of withholding taxes and cases concerning individuals.
7. Available at: http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/tpprofile-fi.pdf.
8. Annex A reflects the effect of part VI of the Multilateral Instrument for these 14 treaties.

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.

241. 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

242. Finland reported that its competent authority is authorised to implement MAP agreements, once reached. In that regard, Finland reported that there are no domestic statutes of limitations for implementation of MAP agreements. Depending on which government agency handled the case and which of Finland's domestic provisions were applied in the course of the MAP agreement, MAP agreements are implemented in Finland either by the Tax Administration or the Ministry of Finance. However, these rules only apply to applications submitted before the legislative amendments described in the recent developments section below took effect. In any case, where the implementation of a MAP agreement requires a repayment to the taxpayer in Finland, it reported that such payment is always made by the Tax Administration.

243. Concerning the process for implementing MAP agreements Finland reported that implementation will be done automatically without asking for taxpayer approval. In other words, taxpayer approval is not a prerequisite for implementation, although Finland noted that in some cases it has followed the process of a treaty partner asking taxpayer's consent to a MAP agreement in the same way, whereby no time limit for giving such consent was set.

Recent developments

244. Finland reported that it has initiated a legislative project, which among other things aimed at evaluating the implementation of MAP agreements. The outcome of this evaluation has led to a proposal for amending the implementation process, namely that the competence to implement said agreements would only be placed in the hands of the Tax Administration, whereas currently it is in the hands of either the Tax Administration or the Ministry of Finance, depending on which party was responsible for handling the case and the amount of taxes at stake. Finland envisages that these changes would make the implementation process more effective and less complicated, in particular concerning

administrative issues. In addition, the proposal for the amendment of the implementation process of MAP agreements also entails the introduction of requesting taxpayers' approval of such agreements as a prerequisite for implementation. Finland reported that the proposal was sent to Parliament in December 2018, has been adopted in 2019 and entered into force on 30 June 2019.

245. Section 2.1 of Finland's MAP guidance that was issued in July 2019 now also states that taxpayers have a right to accept the outcome of the MAP process. Section 4.8 further describes that taxpayers have a period of 60 days from the date of communication of the MAP agreement to them. The agreement will be implemented only, however, where taxpayers have withdrawn from any pending appeal relating to the case for which an agreement was entered into. Section 4.8 also describes the legal basis for the implementation of the MAP agreement, thereby explaining that the agreement is implemented *ex officio* without the need for taxpayers to explicitly requesting it.

Practical application

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

246. Finland reported that all MAP agreements that were reached in the period 1 January 2016-31 July 2017 have been (or will be) implemented. Furthermore, Finland also reported that it has a tracking system available that, among other things, also includes information on the implementation of MAP agreements.

247. All but one peer that provided input reported not being aware of MAP agreements that were reached in the period 1 January 2016-31 July 2017 that were not implemented by Finland. Also taxpayers did not indicate being aware of any issues relating to the implementation of MAP agreements in Finland. The remaining peer reported that all MAP agreements with Finland were implemented timely and correctly, except for one attribution/allocation case for which an agreement was reached at the end of 2016, but has not been implemented yet. In addition, another peer noted that the procedure in Finland for implementing MAP agreements appears to it to be complicated.

248. With respect to the case identified by the peer, Finland reported that the specific case referred to concerned a situation in which its Tax Administration had to verify the identity of the taxpayer before being able to implement the MAP agreement. After completion of this process, the MAP agreement was implemented, for which Finland reported that the taxpayer confirmed in August 2018 that it received a refund of taxes.

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

249. Finland reported that all MAP agreements that were reached on or after 1 August 2017 have been (or will be) implemented.

250. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Finland fully reflects their experience with Finland since 1 August 2017 and/or there are no additions to the previous input given. One peer thereby added that it is not aware of any MAP agreement that has not been implemented by Finland.

Anticipated modifications

251. Finland 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.

252. 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

253. Finland reported that the implementation of a MAP agreement is in practice dependent on the legislative practice applied, which was discussed under element D.1. It also reported that implementation is done as quickly as possible but there are no specific timelines set for such implementation.

Recent developments

254. There are no recent developments with respect to element D.2 other than those discussed under element D.1.

Practical application

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

255. Finland reported that all MAP agreements that were reached in the period 1 January 2016-31 July 2017 have been (or will be) implemented on a timely basis.

256. Apart from the input discussed under element D.1, all peers that provided input have not indicated experiencing any issues with Finland regarding the implementation of MAP agreements reached on a timely basis. Also taxpayers did not indicate being aware of any issues relating to the timely implementation of MAP agreements.

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

257. Finland reported that generally all MAP agreements reached in the period 1 August 2017-28 February 2019 were implemented on a timely basis.

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

Anticipated modifications

259. Finland 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.

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

Legal framework and current situation of Finland's tax treaties

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

262. Out of Finland's 78 tax treaties, 63 contain a provision that is 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.¹ Furthermore, two treaties do not contain such equivalent but do contain the alternative provisions in Article 9 and the MAP article, setting a time limit for making adjustments. Both treaties are therefore considered containing the alternatives for Article 9(1) and Article 7(2).

263. For the remaining 13 treaties the following analysis is made:

- Nine treaties do not contain the equivalent of 25(2) second sentence, of the OECD Model Tax Convention nor the alternative provisions for Article 9(1) and Article 7(2).
- Two treaties do not contain the equivalent of 25(2) second sentence, of the OECD Model Tax Convention, but contain the alternative provision in Article 9(1).
- One treaty contains a provision that is based on Article 25(2), second sentence but the actual implementation of a MAP agreement is dependent on the notification of a MAP request to the other competent authority involved within a certain term. This treaty therefore is considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.
- One treaty contains a provision that is based on Article 25(2), second sentence, whereby MAP agreements should be implemented within ten years from the due date or the date of filing of a tax return in the other state concerned (whichever is later), or a longer period if permitted under the domestic law of the other state

concerned. As this provision bears the risk that MAP agreements cannot be implemented due to time constraints in domestic law of the treaty partners, this treaty therefore is also considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

264. Almost all peers that provide input reported that their tax treaty with Finland meet the requirements under element D.3. Two peers further reported that their treaty with Finland was recently negotiated and meet the requirements under element D.3 as well, although these new treaties are not yet currently in force. Furthermore, two peers mentioned that their treaty with Finland does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or that it includes deviating language. The treaties with both peers are identified above as not containing such equivalent. One of these peers did not indicate whether it had contacted or is in discussion with Finland to update its treaty with a view to include the required provision or the alternatives. The other peer mentioned that there are no ongoing contacts with Finland to amend its treaty given the fact that the required provision will be incorporated by the Multilateral Instrument. This treaty will indeed be modified by that instrument to incorporate that equivalent of Article 25(2), second sentence. For the other treaties identified above 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 in general or in relation to element D.3.

Recent developments

Bilateral modifications

265. Finland signed a new treaty with a treaty partner for which currently no treaty is in existence. This treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention and has already entered into force. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

266. Finland signed the Multilateral Instrument and has deposited its instrument of acceptance on 25 February 2019. The Multilateral Instrument has for Finland entered into force on 1 June 2019.

267. 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 (OECD, 2016). 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.

268. In regard of the 13 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), Finland listed all as covered tax agreements under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(ii), for all of them a notification that these treaties do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Of the relevant 13 treaty partners, four are not a signatory to the Multilateral Instrument, whereas one has not listed its treaty with Finland as a covered tax agreement under the instrument and one made a reservation on the basis of Article 16(5)(a). All remaining seven treaty partners also made a notification on the basis of Article 16(6)(c)(ii).

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

Other developments

270. Further to the above, Finland reported that for one of the remaining six 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 Finland 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.

271. In addition, as is described in the Introduction, for those treaties that are not in line with this element of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Finland has put in place a plan for bringing these treaties in line with that standard. With respect to element D.3, for the remaining five tax treaties that do not contain the second sentence of Article 25(2) of the OECD Model Tax Convention and that have not been or will not be modified by the Multilateral Instrument to include this sentence, Finland reported that it is currently in negotiations with two treaty partners and that it will initiate such negotiations with the remaining three treaty partners once these negotiations have been completed.

Peer input

272. Of the peers that provided input during stage 2, three provided input in relation to their tax treaty with Finland. One of these peers concerns a treaty partner to one of the treaties identified above that do not contain Article 25(2), second sentence, of the OECD Model Tax Convention. This peer mentioned that its tax treaty will be modified by the Multilateral Instrument to include the second sentence, which conforms with the above analysis. Another peer noted that while its treaty with Finland does not formally meet the requirements under element D.3, it is exploring with Finland the possibility to adapt the treaty through the Multilateral Instrument, which, however, is not possible given this peer's reservation under this instrument as regards the inclusion of Article 25(2), second sentence, of the OECD Model Tax Convention.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>13 out of 78 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor both alternatives provisions in Article 9(1) and Article 7(2). Of those 13 tax treaties:</p> <ul style="list-style-type: none"> • Five have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • Two are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has amended its notifications. • Five will not be modified by the Multilateral Instrument to include the required provision. With respect to these five treaties: <ul style="list-style-type: none"> - for two negotiations are envisaged, scheduled or pending - for the remaining three no actions have been taken, but they are included in the plan for renegotiations. 	<p>For five of the 13 treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention following its entry into force to include such equivalent, Finland should:</p> <ul style="list-style-type: none"> • continue negotiations to include the required provision or be willing to accept the inclusion of both alternative provisions for the two treaties for which such negotiations are envisaged, scheduled or pending • also request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions in accordance with its plan for renegotiations.

Notes

1. These 63 treaties include the Nordic Convention that for Finland applies to Denmark, Faroe Islands, Iceland, Norway and Sweden; the treaty with the former Netherlands Antilles that Finland continues to apply to Curacao, Sint Maarten, and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba); and the treaty with former Yugoslavia that Finland continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia.

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>.

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	<p>Four out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these four treaties:</p> <ul style="list-style-type: none"> Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties no actions have been taken nor are planned to be taken, but are included in the plan for renegotiations. 	<p>For one of the two remaining treaties that has not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Finland should request via bilateral negotiations the inclusion of the required provision in accordance with its plan for renegotiations.</p> <p>Specifically with respect to the treaty with the former Netherlands Antilles that Finland continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius, Finland should ensure that, once it enters into negotiations with the jurisdictions for which it applies that treaty, it includes the required provision.</p>
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	<p>Three out of 78 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 shorter than three years, from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these three treaties:</p> <ul style="list-style-type: none"> Two are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. One will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. For this treaty no actions have been taken, but is included in the plan for renegotiations. 	<p>For the treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, Finland should request via bilateral negotiations the inclusion of the required provision this treaty in accordance with its plan for renegotiations.</p>
	<p>One out of 78 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, 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.</p> <p>This treaty is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, no actions have been taken, but for this treaty negotiations are envisaged,, scheduled or pending.</p>	<p>For the treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Finland should continue negotiations 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"> as amended in the Action 14 final report; or as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	-	-
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	-	-
[C.2]	-	-
[C.3]	<p>MAP cases were closed in 29.95 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This particularly regards attribution/allocation cases, as the average is 32.39 months, as for other cases the average is slightly below the pursued 24-month average. While the median time to close MAP cases is for attribution/allocation cases still above 24 months, Finland has provided a detailed and justified explanation of the overstep of the 24-month average for these type of cases as well as for the overall average.</p> <p>Nevertheless, the MAP caseload has increased substantially, which only regards other cases, as the caseload for attribution/allocation cases decreased. The number of pending other MAP cases has doubled, which may indicate that the competent authority may not be adequately resourced to cope with this increase, although additional personnel has been assigned in recent years and successful steps have been taken to be able to increase the number of cases closed.</p>	<p>Finland should continue to closely monitor whether the addition of new staff to the competent authority and the steps taken to improve the functioning of its competent authority will further contribute to the resolution of MAP cases in a timely, efficient and effective manner. This in particular concerns the acceleration of the resolution of attribution/allocation cases and being able to cope with the significant increase in the number of other MAP cases.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-

	Areas for improvement	Recommendations
[D.3]	<p>13 out of 78 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor both alternative provisions in Article 9(1) and Article 7(2). Of those 13 tax treaties:</p> <ul style="list-style-type: none"> • Five have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • Two are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has amended its notifications. • Five will not be modified by the Multilateral Instrument to include the required provision. With respect to these five treaties: <ul style="list-style-type: none"> - for two negotiations are envisaged, scheduled or pending - for the remaining three no actions have been taken, but they are included in the plan for renegotiations. 	<p>For five of the 13 treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention following its entry into force to include such equivalent, Finland should:</p> <ul style="list-style-type: none"> • continue negotiations to include the required provision or be willing to accept the inclusion of both alternative provisions for the two treaties for which such negotiations are envisaged, scheduled or pending • also request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions in accordance with its plan for renegotiations.

Annex A

Tax treaty network of Finland

	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)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the 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?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?					
	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 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					
Argentina	Y	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Armenia	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Aruba	Y	O	Y	N/A	i	Y	Y	Y	Y	N	N	Y	Y	N	N
Australia	Y	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y****
Austria	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y****
Azerbaijan	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Barbados	Y	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Belarus	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Column 1	Column 2	Column 3	Column 4		Column 5	Column 6		Column 7		Column 8		Column 9	Column 10	Column 11
	Article 25(1) of the OECD Model Tax Convention ("MTC")	Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC		Arbitration					
	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6						
Treaty partner	DTC in force?	Inclusion Art. 25(1)?	Inclusion Art. 25(1) second sentence?		Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a 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?	Inclusion Art. 25(2) second sentence?		Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?		
				If no, please state reasons					If no, alternative provision in Art. 7 & 9 OECD MTC?					
Belgium	Y	E*	Y	N/A	Y	i	Y	Y*	Y*	Y*	Y*	Y***		
Bermuda	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N		
Bosnia and Herzegovina	Y	O	Y	N/A	i***	i	Y	Y	Y	Y	Y	N		
Brazil	Y	O	Y	N/A	i	i	Y	N	Y	Y	Y	N		
British Virgin Islands	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N		
Bulgaria	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	N		
Canada	Y	O	Y	N/A	Y	i	Y	iii	Y	Y	Y	Y***		
Caribbean part of the Netherlands	Y	O	Y	N/A	i	i	Y	Y	Y	N	N	N		
Cayman Islands	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N		
Curacao	Y	O	Y	N/A	i	i	Y	Y	Y	N	N	N		
China (People's Republic of)	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N		
Croatia	Y	O	Y	N/A	i***	i	Y	Y	Y	Y	Y	N		
Cyprus (1)	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	N		
Czech Republic	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	N		
Denmark	Y	E	ii	5-years	Y	i	Y	Y	Y	Y	Y	N		
Egypt	Y	O*	i	N/A	i	i	Y	N*	Y	Y	Y	N		
Estonia	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	N		
Faroe Islands	Y	E	ii	5-years	Y	i	Y	Y	Y	Y	Y	N		
France	Y	E*	i	N/A	i***	i	Y	Y*	Y*	Y*	Y	Y***		
Georgia	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y	N		

Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7		Column 8	Column 9		Column 10	Column 11				
			Article 25(1) of the OECD Model Tax Convention ("MTC")	Article 9(2) of the OECD MTC			Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC	Arbitration						
Treaty partner	DTC in force?	Inclusion Art. 25(1)?	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a 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?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?							
Germany	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	N				
Greece	Y	O*	Y	N/A	i**	i		Y	Y	Y	Y	Y	N				
Guernsey	Y	O	Y	N/A	i	i		Y	Y	Y	Y	N	N				
Hong Kong	Y	E	Y	N/A	Y	i		Y	Y	Y	Y	Y	N				
Hungary	Y	O	Y	N/A	i**	i		Y	Y	Y	Y	Y	N				
Iceland	Y	E	ii	5-years	Y	i		Y	Y	Y	Y	Y	N				
India	Y	O	Y	N/A	Y	i		Y	Y	Y	Y	Y	N				
Indonesia	Y	O	Y	N/A	Y	i		Y	Y	Y	Y	Y	N				
Ireland	Y	E*	Y	N/A	Y	i		Y	Y	Y	Y	Y*	Y***				
Isle of Man	Y	O	Y	N/A	i	i		Y	Y	Y	Y	N	N				
Israel	Y	O	Y	N/A	Y	i		Y	Y	Y	Y	Y	N				
Italy	Y	N	iii*	2-years	i**	i		Y	N*	N*	Y	N*	N				
Japan	Y	E**	i	N/A	i***	i		Y	Y*	Y	Y	Y	Y***				
Jersey	Y	O	Y	N/A	i	i		Y	Y	Y	Y	N	N				
Kazakhstan	Y	O	Y	N/A	Y	i		Y	Y	Y	Y	Y	N				
Korea	Y	O*	Y	N/A	i**	i		Y	Y	Y	Y	Y	N				
Kosovo	Y	O	Y	N/A	i	i		Y	Y	Y	Y	Y	N				
Kyrgyzstan	Y	O	Y	N/A	Y	i		Y	Y	Y	Y	Y	N				
Latvia	Y	O	Y	N/A	Y	i		Y	Y	Y	Y	Y	N				
Lithuania	Y	E*	Y	N/A	Y	i		Y	Y	Y	Y	Y	N				
Luxembourg	Y	E*	Y	N/A	i***	i		Y	Y	Y	Y	Y	Y***				
Malaysia	Y	O*	ii	2 years	i**	i		Y	Y	Y	Y	Y	N				
Malta	Y	E*	Y	N/A	Y	i		Y	Y	Y	Y	Y	Y***				
Mexico	Y	O*	Y	N/A	Y	i		N*	N	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		
	DTC in force?	Treaty partner	Inclusion Art. 25(1)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence?		Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?		Inclusion arbitration provision?	
				If no, please state reasons	If no, will your CA provide access to MAP in TP cases?		Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the 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?	If no, alternative provision in Art. 7 & 9 OECD MTC?		Inclusion Art. 25(3) first sentence?
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11

	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC	Arbitration		
	B.1	B.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)?	Inclusion Art. 25(1) second sentence?	Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a 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?	Inclusion Art. 25(2) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
					If no, will your CA accept a taxpayer's request for MAP in relation to such cases?					
Tajikistan	Y	O	Y	N/A	Y	i	Y	Y	Y	N
Tanzania	Y	O	i	N/A	Y	i	Y	Y	Y	N
Thailand	Y	O	Y	N/A	Y	i	Y	ii	Y	N
Turkey	Y	O*	Y	N/A	Y	i	Y	Y	Y	N
Turkmenistan	Y	O	Y	N/A	Y	i	Y	Y	Y	N
Ukraine	Y	E*	Y	N/A	Y	i	Y	Y	Y	N
United Arab Emirates	Y	E*	Y	N/A	i***	i	Y	Y	Y	N
United Kingdom	Y	E*	i	N/A	Y	i	Y	Y*	Y*	Y***
United States	Y	O	i	N/A	Y	i	Y	N	Y	N
Uruguay	Y	O*	Y	N/A	Y	i	Y	Y	Y	N
Uzbekistan	Y	O	Y	N/A	Y	i	Y	Y	Y	N
Viet Nam	Y	O	Y	N/A	i	i	Y	Y	Y	N
Zambia	Y	O	Y	N/A	i	i	Y	Y	Y	N

Notes: 1. Footnote by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the “Cyprus” issue.

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

2. Finland had until 31 December 2018 a treaty in place with Portugal. As per 1 January 2019, this treaty terminated. While Finland has signed a new treaty with Portugal in 2016, this treaty has not yet entered into force due to Portugal not having ratified the treaty.

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*/II*/IV*/N*	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
I**/IV**/N**	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
I***	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 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	62	0	1	1	3	2	5	0	0	0	0	50	31.24
Others	35	0	0	0	1	0	1	0	2	1	0	30	46.76
Total	97	0	1	1	4	2	6	0	2	1	0	80	35.80

Note: Average time indicates the time from start to end without deducting the time the case has been on hold because of the use of domestic legal remedies.

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 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	50	0	0	1	1	18	3	0	0	0	0	27	37.26
Others	30	0	0	0	0	0	0	2	0	0	0	28	39.45
Total	80	0	0	1	1	18	3	2	0	0	0	55	37.44

Note: There is a discrepancy between the number of pre-2016 MAP cases in Finland's inventory as per 31 December 2016 and 1 January 2017. * The reported number of MAP cases pending on 31 December 2016 was 81, which consisted of 50 attribution/allocation cases and 31 other cases. * The reported number of MAP cases pending on 1 January 2017, which consisted of 50 attribution/allocation cases and 30 other cases.

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											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	No. of pre-2016 cases remaining in MAP inventory on 31 December 2018	
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	27	0	1	0	2	9	3	0	0	0	0	12	55.34
Others	28	0	0	1	0	0	2	0	0	0	0	25	45.21
Total	55	0	1	1	2	9	5	0	0	0	0	37	53.65

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	10	0	0	0	1	0	1	0	0	0	0	8	2.19
Others	0	23	0	0	0	0	0	0	0	0	0	0	23	0.00
Total	0	33	0	0	0	1	0	1	0	0	0	0	31	2.19

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	8	17	0	0	2	2	0	5	0	0	0	0	16	7.03
Others	23	28	0	0	3	0	0	3	2	0	0	0	43	8.05
Total	31	45	0	0	5	2	0	8	2	0	0	0	59	7.51

Notes: There is a discrepancy between the number of post-2015 MAP cases in Finland's inventory as per 31 December 2016 and 1 January 2017. * The reported number of MAP cases pending on 31 December 2016 was 28, which consisted of 6 attribution/allocation cases and 22 other cases * The reported number of MAP cases pending on 1 January 2017, which consisted of 8 attribution/allocation cases and 23 other cases.

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	16	20	0	0	0	0	0	1	7	0	0	0	28	13.14
Others	43	16	0	0	0	0	0	8	0	0	0	0	51	12.26
Total	59	36	0	0	0	0	0	9	7	0	0	0	79	12.70

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP guidance	An overview on the website of Finland's Tax Administration on Mutual Agreement in Transfer Pricing Matters
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
Nordic Convention	Multilateral tax treaty between Denmark, Finland, the Faroe Islands, Iceland, Norway and Sweden
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
Pre-2016 cases	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2018
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REV1)

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective - MAP Peer Review Report, Finland (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 minimum standard is complemented by a set of best practices.

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 Finland.



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