

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



# **Making Dispute Resolution More Effective – MAP Peer Review Report, China (Stage 1)**

**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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 85 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 9 August 2019 and prepared for publication by the OECD Secretariat.

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## *Abbreviations and acronyms*

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



## Executive summary

The People's Republic of China (“**China**”) has a very large tax treaty network with over 100 tax treaties. China has an established MAP programme and has significant experience with resolving MAP cases. It has a large MAP inventory, with a modest number of new cases submitted each year and more than 110 cases pending on 31 December 2018. Of these cases, more than a half concern allocation/attribution cases. Overall the China meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, China is working to address them.

All of China's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the *Model Tax Convention on Income and Capital 2017* (OECD, 2017). Its treaty network is almost entirely consistent with the requirements of the Action 14 Minimum Standard, except for the fact that almost 10% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, China needs to amend and update a certain number of its tax treaties. In this respect, China signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, China reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard, thereby giving priority to those jurisdictions that have closer economic ties and substantial pending MAP cases with China.

China meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request roll-back of bilateral APAs and such roll-backs are granted in practice.

China further meets some of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in eligible cases, although it has since 1 January 2016 not received any MAP requests concerning cases where anti-abuse provisions are applied or cases where there has been an audit settlement. China, however, does not have 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. Apart from that, China has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice. This guidance, however, does not contain the contact details of China's competent authority.

Concerning the average time needed to close MAP cases, the MAP statistics for China for the period 2016-18 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	61	60	61	60	31.66
Other cases	28	40	11	57	28.09
Total	89	100	72	117	31.11

\*The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, China used as (i) the start date: for *attribution/allocation cases*; the date when the two competent authorities start bilateral consultation; and for *other cases*; the date when the first competent authority, which the MAP request is submitted to, sends the first position paper to the other competent authority, and (ii) the end date: the date when the two competent authorities reach an agreement or the date when the two competent authorities agree to end the MAP process or the date when the taxpayer formally applies for terminating the MAP when the case is “withdrawn by taxpayer”, or the date when China receives the official notification of another competent authority that the outcome is “unilateral relief granted”.

The number of cases China closed in the period 2016-18 is less than the number of all new cases started in those years. Its MAP inventory as per 31 December 2018 increased as compared to its inventory as per 1 January 2016. During these years, MAP cases were not closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 31.11 months and which both regards attribution/allocation cases and other cases. In this respect, a number of peers experienced difficulties, in particular in obtaining position papers from China’s competent authority, as well as responses to position papers. It will be monitored whether the foreseen hiring of additional staff for attribution/allocation cases will lead to the resolution of MAP cases in a more timely, effective and efficient manner as well as the more timely issuing of position papers and responses thereto.

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

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

## Reference

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

## *Introduction*

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

The People's Republic of China (“**China**”) has entered into 107 tax treaties on income (and/or capital), 100 of which are in force.<sup>1</sup> These 107 treaties are being applied to 108 jurisdictions.<sup>2</sup> All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty.

In China, the competent authority function to handle MAP cases is assigned to the State Taxation Administration or its authorised representatives, which concern the Commissioner or the Deputy Commissioner of the State Taxation Administration, the Director-General or the Deputy Director-General of the International Taxation Department within the State Taxation Administration. The competent authority of China currently employs 25 persons who handle APA and MAP cases next to other tasks such as treaty negotiations. Out of these 25 employees, 17 are in charge of handling attribution/allocation cases and the remaining eight handle other MAP cases.

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

[www.chinatax.gov.cn/n810341/n810755/c2538695/content.html](http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html)

(Public Notice [2017] No. 6 on transfer pricing cases in both Chinese and English versions)

[www.chinatax.gov.cn/n810341/n810755/c3523242/content.html](http://www.chinatax.gov.cn/n810341/n810755/c3523242/content.html)

(Public Notice [2013] No. 56 on other cases in Chinese version)

### **Recent developments in China**

China recently signed new treaties with Angola, Argentina, the Republic of the Congo, Gabon, Italy, Kenya and Spain, which have not yet entered into force. Apart from the treaties with Italy and Spain, all treaties are newly negotiated treaties with jurisdictions with whom there is currently no treaty in force.

Furthermore, on 7 June 2017 China signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. With the signing of the Multilateral Instrument, China also submitted its list of notifications and reservations to that instrument.<sup>3</sup> In relation to the Action 14 Minimum Standard, China reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.<sup>4</sup> This reservation is in line with the requirements of the Action 14 Minimum Standard.

Where treaties will not be modified by the Multilateral Instrument, China reported that it strives updating them through future bilateral negotiations. In this respect, China reported that it will give priority to the jurisdictions that have closer economic ties and more tax disputes with China. In this respect, China specified that it has already contacted some of the relevant treaty partners and that for one of these negotiations are being scheduled in 2019.

### Basis for the peer review process

The peer review process entails an evaluation of China's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by China, its peers and taxpayers. The questionnaires for the peer review process were sent to China and the peers on 31 December 2018.

The period for evaluating China's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2018 ("**Review Period**"). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of China's implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether China is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaties with the former Czechoslovak Socialist Republic, the former Socialist Federal Republic of Yugoslavia and the former Federal Republic of Yugoslavia, all of which China continues to apply to the Slovak Republic, Bosnia and Herzegovina and Serbia and Montenegro, respectively. As the treaty with the former Federal Republic of Yugoslavia is applicable to multiple jurisdictions, it is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of China's tax treaties regarding the mutual agreement procedure.

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

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

- MAP profile<sup>5</sup>
- MAP statistics<sup>6</sup> according to the MAP Statistics Reporting Framework (see below).

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

## Overview of MAP caseload in China

The analysis of China's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018 ("**Statistics Reporting Period**"). According to the statistics provided by China, its MAP caseload during this period was as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2018
Attribution/allocation cases	61	60	61	60
Other cases	28	40	11	57
Total	89	100	72	117

## General outline of the peer review report

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

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

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

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that China continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

## Notes

1. The tax treaties China has entered into are available at: [www.chinatax.gov.cn/n810341/n810770/index.html](http://www.chinatax.gov.cn/n810341/n810770/index.html). The treaties that are signed but have not yet entered into force are with Angola (2018), Argentina (2018), Botswana (2012), Republic of Congo (2018), Gabon (2018), Kenya (2017) and Uganda (2012). These treaties are taken into account in the analysis. Furthermore, China also signed new treaty with Spain (2018) and Italy (2019), which will replace the existing treaties, once entered into force. Reference is made to Annex A for the overview of China's tax treaties concerning the mutual agreement procedure.
2. China continues to apply the 1997 treaty with the former Federal Republic of Yugoslavia to both Serbia and Montenegro. China also continues to apply the 1987 treaty with the Czechoslovak Socialist Republic to the Slovak Republic and the 1988 treaty with former Yugoslavia to Bosnia and Herzegovina.
3. Available at: [www.oecd.org/tax/treaties/beps-mli-position-china.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-china.pdf).
4. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the People's Republic of China reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified.”.
5. Available at [www.oecd.org/tax/dispute/China-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/China-Dispute-Resolution-Profile.pdf).
6. The MAP statistics of China are included in Annex B and C of this report.
7. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).



## *Part A*

### **Preventing disputes**

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the the OECD Model Tax Convention (OECD, 2017) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

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

2. All but one of China's 107 tax treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.<sup>1</sup> The remaining treaty does contain a provision that is based on Article 25(3), first sentence, but misses the term “interpretation” and therefore is considered as not being the equivalent thereof.

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

#### ***Anticipated modifications***

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

4. China signed the Multilateral Instrument. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention – 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. In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar

as both notified, pursuant to Article 16(6)(d)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

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

### *Bilateral modifications*

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

### *Peer input*

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

### *Conclusion*

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

## **[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.

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

transactions over a fixed period of time.<sup>2</sup> The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

### *China’s APA programme*

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

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

11. In general, taxpayers are, pursuant to Article 4 of the Public Notice, allowed to request for a bilateral APA if the related party transactions exceed an annual amount of RMB 40 million for the three years prior to the year in which the APA application is accepted. China does not charge any fees to taxpayers when requesting for APAs.

### *Roll-back of bilateral APAs*

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

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

13. China has published annual reports on its APA programme since 2009, the most recent report concerns calendar year 2018<sup>4</sup> These reports contain comprehensive information on China’s APA programme, APA statistics and analysis, and contacts and forms for APA applications. The statistics published specify the number of APAs signed, by transaction type, by region and by the time taken to conclude an APA. According to the annual reports, China annually concluded five or six bilateral APAs over the past several years.

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

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

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

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

18. The remaining seven peers, all reported having experiences with China concerning bilateral APAs and the roll-back thereof. One of these peers mentioned it received one APA request in 2016 that also concerns a roll-back and which case is still pending. Furthermore, another peer reported it has since 1 January 2016 received 14 requests that concern a roll-back of a bilateral APA. This peer specified that it reached agreements hereon for three of such cases and that it has not found any difficulty in the implementation of roll-back of bilateral APAs. The peer added that China and this peer use APAs positively to avoid tax treaty related disputes. The third peer reported that it received one request for roll-back of a bilateral APA in February 2018 and that both competent authorities agreed to provide roll-back for this request, which is still in progress. The fourth peer reported that in 2016 and 2017 it received APA requests involving roll-back. While the peer mentioned that

these requests have not yet been formally accepted by the State Taxation Administration, the peer also noted that the State Taxation Administration already communicated to this peer that it would allow the roll-back in these cases. This peer added that there had been no issues encountered regarding the implementation of roll-back of bilateral APAs in cases prior to 1 January 2016. The fifth peer mentioned that while it has received one request for roll-back of a bilateral APA with China since 1 January 2016, it understands that a corresponding request in China has not yet been officially filed. Regardless, this peer noted that it is to date not aware of any issues that would prevent a roll-back, provided that an agreement on the APA can be reached.

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

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

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

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

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

### *Anticipated modifications*

24. China indicated that it does not anticipate any modifications in relation to element A.2.

### *Conclusion*

	Areas for improvement	Recommendations
[A.2]	-	China should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far.

## Notes

1. These 107 treaties include the treaty with the former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro, the treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic and the 1988 treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines (OECD, 2017b) for Multinational Enterprises and Tax Administrations.
3. The Public Notice [2016] No. 64 is available at [www.chinatax.gov.cn/n810214/n810606/c3936703/part/3936741.pdf](http://www.chinatax.gov.cn/n810214/n810606/c3936703/part/3936741.pdf). This notice replaced an earlier notice issued in 2009.
4. China APA annual report (2018) is available at: [www.chinatax.gov.cn/n810214/n810606/c4244610/part/4246243.pdf](http://www.chinatax.gov.cn/n810214/n810606/c4244610/part/4246243.pdf).

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## *Part B*

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

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

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

25. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties include a provision allowing taxpayers to request a mutual agreement procedure and that this procedure can be requested irrespective of the remedies provided by the domestic law of the treaty partners. In addition, to provide certainty to taxpayers and competent authorities on the availability of the mutual agreement procedure, a minimum period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, is the baseline.

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

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

26. Out of China's 107 tax treaties, 100 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report, OECD, 2015a), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.<sup>1</sup> In addition, none of China's tax treaties contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as changed by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either state.

27. The remaining seven 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 taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	6
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident and whereby the taxpayer can pursuant to a protocol provision not submit a MAP request irrespective of domestic available remedies.	1

28. The six treaties mentioned in the first row of the table are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015b) 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 all of those six treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the states (two treaties).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states (four treaties).

29. The treaty in the second row of the table incorporates a provision in the protocol to this treaty, which reads:

with reference to paragraph 1 of Article 25, the expression “notwithstanding the remedies provided by the national laws” means that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, first of all initiated, when the claim is related with an assessment of the taxes not in accordance with this agreement.

30. 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. This treaty is therefore considered not to be in line with this part of element B.1.

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

31. Out of China’s 107 tax treaties, 103 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 no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.<sup>2</sup>

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

Provision	Number of tax treaties
No filing period for a MAP request	2
Filing period less than 3 years for a MAP request (2 years)	1
Filing period less than 3 years for a MAP request (1 year)	1



## ***Practical application***

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

33. As noted in paragraphs 28 and 29 above, in all but one of China's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, China reported that it had not yet experienced that taxpayers submitted a MAP request and at the same time initiated such remedies for the same case. Regardless, China also reported that there is no provision in its domestic law that clearly specifies the relationship between MAP and domestic legal and administrative remedies. To provide further clarity on this point, China mentioned it is planning to clarify the relationship between MAP and domestic remedies in its domestic law or administrative regulations. As, however, this involves other departments within and outside the State Taxation Administration, there is no timeframe set when such clarification will be published.

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

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

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

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

38. The second peer pointed to the fact that Article 52 of the Public Notice [2017] No. 6 stipulates that for transfer pricing cases the State Taxation Administration can decline a MAP request submitted by a Chinese taxpayer or when China's competent authority is being notified of a MAP request submitted to the treaty partner, where the relevant special tax adjustment case is not concluded or the enterprise has not paid the tax that resulted from the adjustment. This peer observed that when it worked with China on the matching of their MAP statistics for the year 2016, it found out that there were five mismatches in the number of MAP cases for this year. The peer explained that in these cases taxpayers considered that the action by China would result in taxation not in accordance with the provisions of the tax treaty and for that reason they submitted a MAP request in China. China's competent authority, however, did not accept the request on the ground that China's tax audits had not been completed and the taxpayers had not paid the additional

tax accrued from the assessments of those audits. Taking this into consideration, the peer suggests that China should take a necessary step to ensure the availability and accessibility of MAP by reviewing this domestic regulation and practices to bring them in line with the requirements under the Action 14 Minimum Standard.

39. In responding to the peer input described in the above paragraph, China stated that Article 52 of Public Notice [2017] No. 6 is a general description of the situations where access to MAP might be denied. Those situations could be divided into three categories, namely denied access, objection not justified, and deferral of MAP access. For the cases referred to by the peer, China reported that there is no mismatch in the MAP statistics, because for these cases Chinese subsidiaries were audited and applied for MAP which requests were accepted. However, the associated enterprises also submitted MAP requests for the following years at the level of the peer, but for these years no audits were conducted and no notifications were issued. While the peer's competent authority accepted the MAP requests for these following years, China did not consider these requests as valid MAP requests. China reported that in the spirit of co-operation, the cases were nevertheless discussed with the peer. China further added that closely monitoring of taxpayers that were audited does not automatically lead to an adjustment for future years, but if following this monitoring it turns out that the taxpayer did not comply with the arm's principle, a formal audit may be initiated.

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

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

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

***Anticipated modifications***

*Multilateral Instrument*

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

42. China signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention 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 as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Article 16(4)(a)(i) will for a tax treaty not take effect if one of the

treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

43. With the signing of the Multilateral Instrument, China reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.<sup>3</sup> In this reservation, China declared that it would ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report. It subsequently declared it would implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction and application of such process will be further discussed under element B.2.

44. In view of the above, following the reservation made by China, the treaty identified in paragraph 29 above that is considered not including 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, will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

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

46. In regard of the two tax treaties identified in paragraph 31 above that contain a filing period for MAP requests of less than three years, China listed both treaties as a covered tax agreement under the Multilateral Instrument and for both of them did it make, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). The two relevant treaty partners, being a signatory to the Multilateral Instrument, listed its treaty with China as a covered tax agreement under that instrument and also made such notification. Therefore, at this stage, both tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

#### *Bilateral modifications*

47. With respect to the treaty that is 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, China reported it has recently signed a new treaty with the relevant treaty partner and that will replace the existing treaty in force. This treaty includes the equivalent of Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, which China will also include in all of its future tax treaties.

### *Peer input*

48. Most of the peers that provided input indicated that their treaty with China meets the requirements under this element, which conforms with the above analysis.

49. For the treaty identified in paragraph 29 that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, the relevant peer reported that it had notified China that once the Multilateral Instrument takes effect, the protocol provision contained in the treaty requiring the taxpayer to initiate domestic available remedies first when submitting a MAP request will become ineffective. This peer added that it will initiate a re-negotiation of the treaty with China in order to bring it in line with the Action 14 Minimum Standard.

50. With regard to the two treaties identified in paragraph 31 that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, one peer reported that it made the necessary notification under the Multilateral Instrument to meet the Action 14 Minimum Standard. The relevant treaty will indeed be modified by that instrument to include the second sentence. The other treaty partner provided peer input, but not as regards the second sentence.

### *Conclusion*

	Areas for improvement	Recommendations
[B.1]	One out of 107 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention and provides that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty is expected to be modified by the Multilateral Instrument to include a filing period of at least three years.  Concerning the first sentence of Article 25(1), the treaty was recently renegotiated to include Article 25(1), first sentence, of the OECD Model Tax Convention as read prior to the adoption of the Action 14 final report.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned. Furthermore, China should as quickly as possible ratify the newly negotiated treaty to include 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.
	One out of 107 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 shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. These treaties are expected to be modified by the Multilateral Instrument to include a filing period of at least three years.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.
		In addition, China should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report in all future tax treaties.

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

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

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

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

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

52. As discussed under element B.1, none of China's 107 treaties currently contains a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As previously discussed under element B.1, none of these tax treaties will, following China's reservation according to Article 16(5)(a) of the Multilateral Instrument, be modified by that instrument to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

53. China reported that it has not issued any official document in relation to the notification/consultation process that allows the other competent authority concerned to provide its views on the case when China's competent authority considers the objection raised in the MAP request not to be justified. In this respect, China commented that although its competent authority has not encountered such cases, it would in practice notify the other competent authority and it has already drafted a template notification letter for this purpose.

54. While China has not initiated a documented notification/consultation process and has not internally established in what situations its competent authority may arrive at the decision that the objection raised by taxpayers is not justified, Article 52 of the Public Notice [2013] No. 6 on transfer pricing cases stipulates that China's competent authority can decline MAP requests submitted by taxpayers in China, or can refuse to initiate discussions with the treaty partner when a MAP request is being submitted at the level of the competent authority of this treaty partner, in the following circumstances:<sup>4</sup>

- the enterprise or its related party is not a tax resident of either contracting state
- the subject of the MAP request is not related to special tax adjustments



- the MAP request lacks a factual or legal basis
- the MAP request is not in compliance with relevant provisions of the tax treaty, or
- the special tax adjustment case has not been concluded or the enterprise has not yet paid the tax due after the conclusion of the case.

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

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

- The applicant is a Chinese resident or national who can present a request to initiate MAP.
- The MAP request is submitted within the time frame prescribed in the relevant tax treaty.
- The matter for which the MAP request is submitted relates to an action taken or may be taken that violates the provisions of the tax treaty.
- The facts and evidences provided by the taxpayer in its MAP request can prove or cannot reasonably exclude the suspicion that the action taken by the other contracting state is not in accordance with the tax treaty.
- The matter for which the MAP request is submitted does not cover the situations specified in Article 18<sup>6</sup> leading to a decision to terminate the MAP.

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

### ***Practical application***

58. China reported that since 1 January 2016 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016-18 MAP statistics submitted by China, however, shows that one MAP case was closed with the outcome “objection not justified”. China reported that this decision was made by the competent authority of its treaty partner.

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

### *Anticipated modifications*

60. China reported that it plans to establish a documented notification/consultation process for those situations where its competent authority considers an objection raised in a MAP request as being not justified. The documentation of this process will be part of the revision of the Public Notice [2013] No. 56, which is foreseen by the end of 2019.

### *Conclusion*

	Areas for improvement	Recommendations
[B.2]	All 107 tax treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	China should without further delay introduce a document bilateral notification/consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps.  Furthermore, China should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.

### **[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. Jurisdictions should thus provide access to MAP in transfer pricing cases.

### *Legal and administrative framework*

62. Out of China's 107 tax treaties, 92 contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner.<sup>7</sup> Furthermore, 13 treaties do not contain such equivalent.<sup>8</sup> The remaining two treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but deviate from this provision since the granting of corresponding adjustments is only optional as the word "shall" is used instead of "may".

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

64. The relationship between MAP and transfer pricing is further described in the Public Notice [2017] No. 6. This notice provides comprehensive public guidance on both transfer

pricing audits and the mutual agreement procedure.<sup>9</sup> Article 47(2) of this notice mentions that the mutual agreement procedure is available with respect to special tax adjustments (transfer pricing adjustments) made by one treaty party that may lead to a corresponding adjustment at the level of the other treaty party.

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

65. China reported that since 1 January 2016, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

66. All peers that provided input indicated not being aware of a denial of access to MAP by China since 1 January 2016 on the basis that the case concerned was a transfer pricing case.

### *Anticipated modifications*

67. China 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 this provision in all of its future tax treaties. In that regard, China signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – 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 tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. 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).

68. China has, pursuant to Article 17(3), not reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 15 tax treaties identified in paragraph 61 above that are considered not to contain this equivalent, China listed all of these treaties as a covered tax agreement under the Multilateral Instrument, but for none of them made, a notification on the basis of Article 17(4).

69. With regard to those 15 treaties, three treaty partners are not a signatory to the Multilateral Instrument, whereas all remaining 12 treaty partners listed their treaty with China as a covered tax agreement.<sup>10</sup> Of these 12 treaty partners, one has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) on the basis that it shall accept a provision equivalent to Article 9(2) in its bilateral treaty negotiations. Therefore, at this



stage, 11 tax treaties will be superseded by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention, 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).

### ***Conclusion***

	Areas for improvement	Recommendations
[B.3]	-	As China has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.

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

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

70. 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***

71. None of China's 107 tax treaties allows competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of China do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

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

### ***Practical application***

73. China reported that since 1 January 2016 it has not denied access to MAP in any cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met,

or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, since that date no requests in relation hereto were received by its competent authority.

74. All peers that provided input indicated not being aware of cases that have been denied access to MAP in China since 1 January 2016 in relation to the application of treaty and/or domestic anti-abuse provisions.

### *Anticipated modifications*

75. China indicated that it does not anticipate any modifications in relation to element B.4.

### *Conclusion*

	Areas for improvement	Recommendations
[B.4]	China reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. China is therefore recommended to follow its policy and grant access to MAP in such cases.	

## **[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.

76. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to the MAP in such cases, unless they were already resolved via an administrative or statutory disputes settlement/resolution process that functions independently from the audit and examination function and which is only accessible through a request by taxpayers.

### *Legal and administrative framework*

#### *Audit settlements*

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

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

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

### *Practical application*

79. In view of the fact that it is in China not possible that the taxpayer and the tax administration enter into audit settlements, China reported that since 1 January 2016 it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

80. All peers that provided input indicated not being aware of a denial of access to MAP in China since 1 January 2016 in cases where there was an audit settlement between the taxpayer and the tax administration, which can be clarified by the fact that no such process is in place in China.

### *Anticipated modifications*

81. China indicated that it does not anticipate any modifications in relation to element B.5.

### *Conclusion*

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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

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

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

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

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

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

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

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

86. Further to the above, and concerning other MAP cases, there is no requirement for the Provincial Tax Authorities to report all the declined MAP requests to China's competent authority. In other words, if a taxpayer does not raise an objection to such a denial, the competent authority will not be formally informed of the denied MAP requests. In this respect, China explained that in practice, the Provincial Tax Authorities are accustomed to ask for a verbal approval from the State Taxation Administration before they make a final decision on whether or not to accept a MAP request. For that reason, China considered that it obtains the relevant information.

### ***Practical application***

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

88. All peers that provided input indicated not being aware of a limitation of access to MAP by China since 1 January 2016 in situations where taxpayers complied with information and documentation requirements.

### *Anticipated modifications*

89. China indicated that it plans to revise Public Notice [2013] No. 56 to clarify that the Provincial Tax Authorities are required to report to the State Taxation Administration each time they take a decision to deny access to MAP. The revision of the notice is expected in the second half of 2019.

### *Conclusion*

	Areas for improvement	Recommendations
[B.6]	-	As China has thus far not limited access to MAP in eligible cases when taxpayers have complied with China's information and documentation requirements for MAP requests, it should continue this practice.

## **[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.

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

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

91. Out of China's 107 tax treaties, 103 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.<sup>13</sup> The remaining four treaties do not contain a provision that is based on, or equivalent to, Article 25(3), second sentence, of the OECD Model Tax Convention.

### *Anticipated modifications*

#### *Multilateral Instrument*

92. China signed the Multilateral Instrument. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention – 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 as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

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

### *Bilateral modifications*

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

### *Peer input*

95. Most of the peers that provided input indicated that their treaty with China meets the requirements under element B.7, which conforms with the above analysis.

96. For the four treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, two of the relevant peers provided input reported that they expect their treaty with China will be modified by the Multilateral Instrument to include such equivalent, which conforms with the above analysis.

### *Conclusion*

	Areas for improvement	Recommendations
[B.7]	Four out of 107 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. These four treaties are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.  In addition, China should maintain its stated intention to include the required provision in all future tax treaties.

## **[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.

97. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be



reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

### *China's MAP guidance*

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

99. These notices are available at:

[www.chinatax.gov.cn/n810341/n810755/c2538695/content.html](http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html)

(Public Notice [2017] No. 6 on transfer pricing cases in both Chinese and English versions)

[www.chinatax.gov.cn/n810341/n810755/c3523242/content.html](http://www.chinatax.gov.cn/n810341/n810755/c3523242/content.html)

(Public Notice [2013] No. 56 on other cases in Chinese version)

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

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

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

- general outline of the MAP process in China
- definition of the competent authority, the role of the State Taxation Administration, the Provincial Tax Authorities and the local tax offices during the MAP process
- examples of situations for which a taxpayer can submit a MAP request, when a MAP request can be accepted and examples of situations in which a MAP case can be terminated
- the manner and form in which the taxpayer should submit its MAP request, including information to which authority taxpayers should submit a MAP request
- the specific information and documentation that should be included in a MAP request (see also below)

- a description of the process when the MAP request is not accepted
- how the MAP functions in terms of timing and the role of the competent authorities
- implementation of MAP agreements.

102. The above-described MAP guidance in the form of public notes includes detailed information on the availability and the use of MAP in China and how its competent authority conducts the procedure in practice. This guidance partially includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns the manner and form in which the taxpayer should submit its MAP request, but it does not contain the contact details of the competent authority or of the office in charge of MAP cases.<sup>14</sup>

103. Further to the above, although the information included in China's MAP guidance is detailed and comprehensive, some subjects are not specifically discussed. This concerns information on:

- whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the consideration of interest and penalties in MAP.

#### *Taxpayer input*

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

#### ***Information and documentation to be included in a MAP request***

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

#### *Transfer pricing cases*

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

107. 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.<sup>15</sup> This agreed guidance is shown below and for China's Public Notice [2017] No. 6 checked in the following list:

- ☒ identity of the taxpayer(s) covered in the MAP request
- ☒ the basis for the request



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

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

#### *Other cases*

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

110. The agreed guidance by the FTA MAP Forum as mentioned in paragraph 106 is shown below and for China’s Public Notice [2013] No. 56 checked in the following list:

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

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

### *Anticipated modifications*

112. China reported that it plans to revise its MAP guidance in 2019 to improve it for other cases in line with the requirements under the Action 14 Minimum Standard.

### *Conclusion*

	Areas for improvement	Recommendations
[B.8]	Contact details of the competent authority are not included in the MAP guidance, which concerns both Public Notice [2013] No. 56 and Public Notice [2017] No. 6.	<p>China should without further delay update its MAP guidance to include the contact information of its competent authority.</p> <p>Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance China could consider including in Public Notice [2013] No. 56 and Public Notice [2017] No. 6 information on:</p> <ul style="list-style-type: none"> <li>• whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments</li> <li>• whether taxpayers can request for the multi-year resolution of recurring issues through MAP</li> <li>• the consideration of interest and penalties in the MAP.</li> </ul>

## **[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.

113. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.<sup>16</sup>

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

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

[www.chinatax.gov.cn/n810341/n810755/c2538695/content.html](http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html)

(Public Notice [2017] No. 6 on transfer pricing cases in both Chinese and English versions)

[www.chinatax.gov.cn/n810341/n810755/c3523242/content.html](http://www.chinatax.gov.cn/n810341/n810755/c3523242/content.html)

(Public Notice [2013] No. 56 on other cases in Chinese version)

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

### *MAP profile*

116. The MAP profile of China is published on the website of the OECD. This MAP profile is complete and often with detailed information. This profile includes external links that provide extra information and guidance where appropriate.

### *Anticipated modifications*

117. China reported that it plans to revise Public Notice [2013] No. 56 for other cases in line with the recommendations of the Action 14. The revision is scheduled for the end of 2019.

### *Conclusion*

	Areas for improvement	Recommendations
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, China should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.

## **[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.

118. As explained under element B.5, an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction's MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the previously mentioned processes.

### *MAP and audit settlements in the MAP guidance*

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

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

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

121. As previously discussed under element B.5, China has no administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and can only be accessed through a request by the taxpayer. In this regard, there is no need to address the effects of such process with respect to MAP in China's MAP guidance.

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

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

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

***Anticipated modifications***

124. China indicated that it does not anticipate any modifications in relation to element B.10.

***Conclusion***

	Areas for improvement	Recommendations
[B.10]	-	-

## Notes

1. These 101 treaties include the treaty with former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro and the treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic.
2. These 103 treaties include the treaty with former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro, the treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic and the treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.
3. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the People’s Republic of China reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided

by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified." An overview of China's positions on the Multilateral Instrument is available at: [www.oecd.org/tax/treaties/beps-mli-position-china.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-china.pdf).

4. These circumstances are also listed in Article 52 of the Public Notice [2017] No. 6 which is available at: [www.chinatax.gov.cn/n810341/n810755/c3523242/content.html](http://www.chinatax.gov.cn/n810341/n810755/c3523242/content.html).
5. The Public Notice [2017] No. 6 is available at: [www.chinatax.gov.cn/n810341/n810755/c3523242/content.html](http://www.chinatax.gov.cn/n810341/n810755/c3523242/content.html).
6. The circumstances in Article 18 upon which a MAP process can be terminated are:
  1. the taxpayer intentionally conceals important facts or provides false information
  2. the taxpayer refuses to provide necessary information and documentation relating to the cases as required by the tax authorities
  3. the facts of the cases and the position of the applicants cannot be proved and the MAP cannot proceed because both of the taxpayer and the tax authorities are not able to obtain necessary evidences for various reasons
  4. the competent authorities of other Contracting Parties unilaterally refuse or terminate MAP
  5. other circumstances that make the MAP unable to proceed or achieve expected goals.
7. These 92 treaties include the treaty with former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro. The treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic.
8. These 13 treaties include the treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.
9. The Public Notice [2017] No. 6 is available at: [www.chinatax.gov.cn/n810341/n810755/c2538695/content.html](http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html).
10. These three treaties include the treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.
11. The Public Notice [2017] No. 6 is available at: [www.chinatax.gov.cn/n810341/n810755/c2538695/content.html](http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html).
12. The Public Notice [2013] No. 56 is available at: [www.chinatax.gov.cn/n810341/n810755/c3523242/content.html](http://www.chinatax.gov.cn/n810341/n810755/c3523242/content.html).
13. These 103 treaties include the treaty with the former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro, the treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic and the treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.
14. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
15. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
16. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).

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- OECD (2015a), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.
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## *Part C*

### **Resolution of MAP cases**

#### **[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties**

Jurisdictions should ensure that their tax treaties contain a provision which requires that the competent authority who receives a MAP request from the taxpayer, shall endeavour, if the objection from the taxpayer appears to be justified and the competent authority is not itself able to arrive at a satisfactory solution, to resolve the MAP case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the tax treaty.

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

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

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

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

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

128. Two peers provided input regarding the granting of downward adjustments in China. One of these peers reported that it had not been able to reach an agreement with China that required China to refund paid taxes, except for one provisional agreement made recently. This peer views that China's competent authority has some hurdles in deciding



tax refunds and has less flexibility in resolving MAP cases, although it appreciates China's constructive efforts to improve this situation. The second peer reported similar instances, where China's competent authority had been consistently stating that a decrease in the amount of tax assessment is impossible in China due to a lack of relevant regulations allowing downward adjustments in transfer pricing cases when the taxpayer's profit margin is over the arm's length range that is used in the transfer pricing assessment. This peer therefore suggested the introduction of legislative measures in China, as the absence of such measures impedes the resolution of cases of double taxation. This peer further noted that it is its understanding that a prompt resolution of MAP cases will be possible during negotiations if China has flexibility for MAP cases where China's tax administration made the adjustment under review. In this respect, the peer specified that China has been consistently claiming that a decrease of the tax assessment is impossible in China, because it is the result of considering all the circumstances. In the peer's view, it makes it difficult to accomplish the aim of relief of double taxation through the MAP process. Flexible and rational approaches, instead of adherence to original tax assessments, are therefore needed for the expeditious resolution of MAP cases.

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

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

### ***Anticipated modifications***

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

131. China signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention – 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 treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

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

### *Bilateral modifications*

133. As through the Multilateral Instrument all of China's tax treaties will contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention there is no need for bilateral modifications. Regardless, China reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

### *Peer input*

134. Most of the peers that provided input indicated that their treaty with China meets the requirements under element C.1, which conforms with the above analysis. For the treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant peer did not provide input.

### **Conclusion**

	Areas for improvement	Recommendations
[C.1]	One out of 107 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. This treaty is expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.  In addition, China should maintain its stated intention to include the required provision in all future tax treaties.

## **[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).

135. 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*

136. Statistics regarding all tax treaty related disputes concerning China are published on the website of the OECD as from 2013.<sup>2</sup>

137. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. China provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving China and of which its competent authority was aware.<sup>3</sup> The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and Annex C respectively<sup>4</sup> and should be considered jointly to understand the MAP caseload of China. With respect to post-2015 cases, China reported having reached out to almost all of its MAP partners with a view to have their MAP statistics matching. In that regard, China reported that it could match its post-2015 MAP statistics with almost all of its MAP partners. In that regard, based on the information provided by China’s MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.

138. One peer provided input and mentioned that it completed matching of its 2018 MAP statistics with China by the end of April. While initially, the statistics did not match (in most cases probably due to lost notification letters), by using encrypted e-mails all pending cases could be matched in a timely manner. As regard the process, this peer mentioned that it went very smooth and uncomplicated, following a very co-operative approach.

### *Monitoring of MAP statistics*

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

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

#### *Global overview*

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

141. At the beginning of the Statistics Reporting Period China had 89 pending MAP cases, of which 61 were attribution/allocation cases and 28 other MAP cases.<sup>5</sup> At the end of the Statistics Reporting Period, China had 117 MAP cases in its inventory, of which 60 are attribution/allocation cases and 57 are other MAP cases. China’s MAP caseload has increased by 30% during the Statistics Reporting Period, whereby other cases more than have doubled during the same period.

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

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

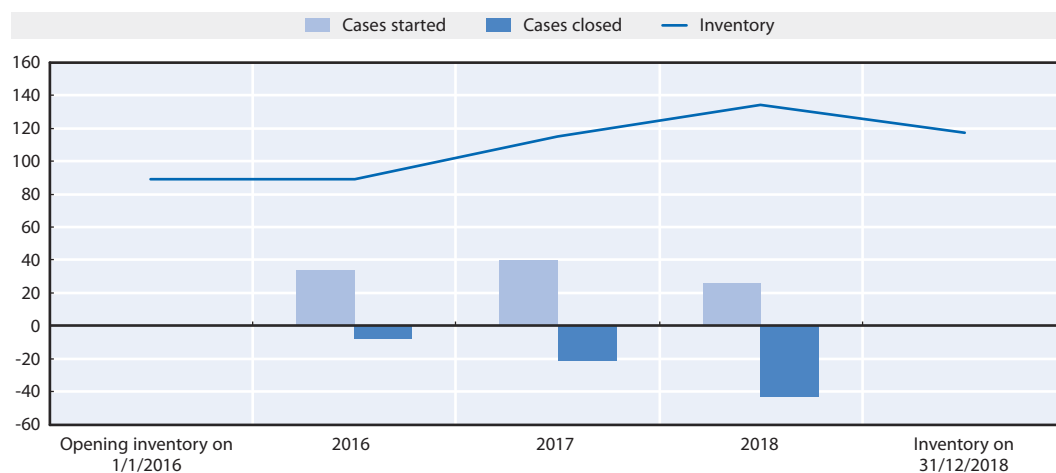
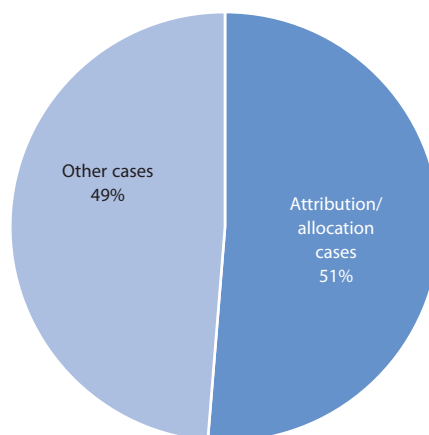


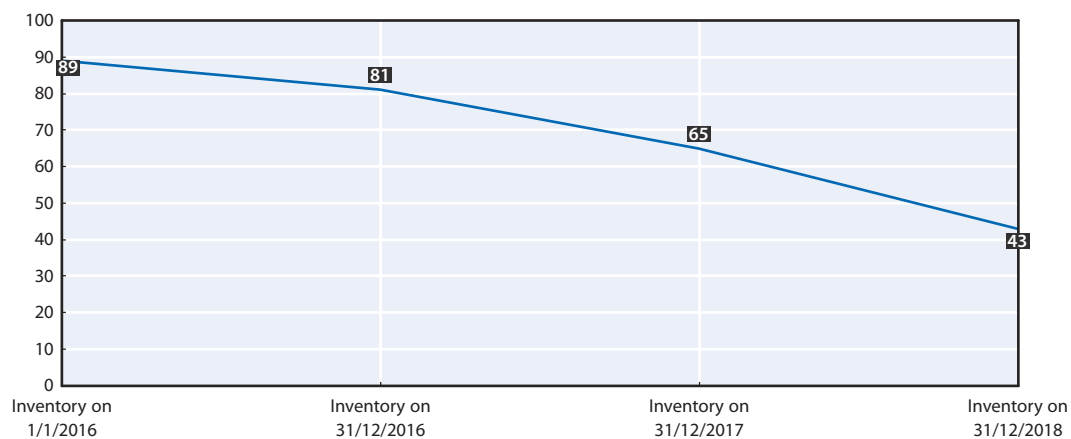
Figure C.2. End inventory on 31 December 2018 (117 cases)



### Pre-2016 cases

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

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



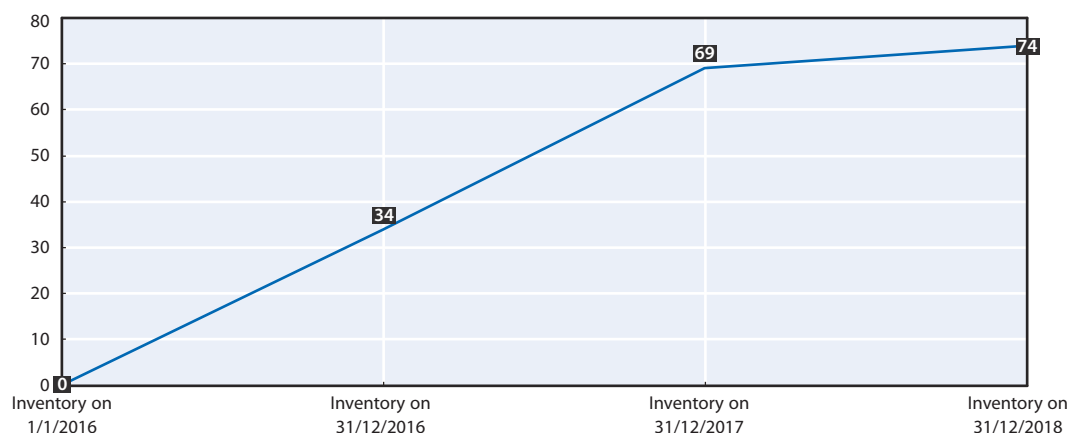
144. At the beginning of the Statistics Reporting Period, China's MAP inventory of pre-2016 MAP cases consisted of 89 cases, of which were 61 attribution/allocation cases and 28 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 43 cases, consisting of 21 attribution/allocation cases and 22 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

Pre-2016 cases only	Evolution of total MAP caseload in:			Cumulative evolution of total MAP caseload over the three years (2016-18)
	2016	2017	2018	
Attribution/allocation cases	-11%	-26%	-48%	-66%
Other cases	-4%	-7%	-12%	-21%

### Post-2015 cases

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

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



146. In total, 100 MAP cases started during the Statistics Reporting Period, 60 of which concerned attribution/allocation cases and 40 other cases. At the end of this period the total number of post-2015 cases in the inventory was 74 cases, consisting of 39 attribution/allocation cases and 35 other cases. Conclusively, China closed 26 post-2015 cases during the Statistics Reporting Period, 21 of them being attribution/allocation cases and five of them being other cases. The total number of closed cases represents 26.0% of the total number of post-2015 cases that started during the Statistics Reporting Period. While the number of attribution/allocation cases closed as compared to the total number of closed post-2015 cases that started in 2016-18 is 35%, the number of other cases is 13%.

147. 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.

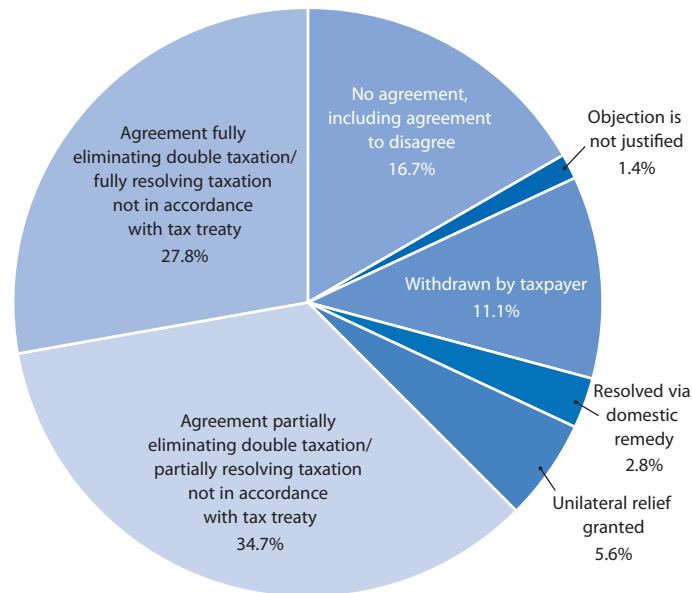
Post-2015 cases only	% of cases closed compared to cases started in:			Cumulative % of cases closed compared to cases started over the three years (2016-18)
	2016	2017	2018	
Attribution/allocation cases	(no cases closed)	14%	120%	35%
Other cases	(no cases closed)	11%	27%	13%

## Overview of cases closed during the Statistics Reporting Period

### Reported outcomes

148. During the Statistics Reporting Period China in total closed 72 MAP cases for which the following outcomes were reported:

Figure C.5. Cases closed in 2016, 2017 or 2018 (72 cases)



149. Figure C.5 shows that during the Statistics Reporting Period, 25 out of 72 cases [35%] were closed through an agreement that partially eliminated double taxation/partially resolved taxation not in accordance with the tax treaty, and 20 cases [28%] were closed through an agreement that fully eliminated double taxation/fully resolved taxation not in accordance with the tax treaty.

### Reported outcomes for attribution/allocation cases

150. In total, 61 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement that partially eliminated double taxation/partially resolved taxation not in accordance with the tax treaty [41%]
- agreement that fully eliminated double taxation/fully resolved taxation not in accordance with the tax treaty [25%]
- no agreement including agree to disagree [20%].

### Reported outcomes for other cases

151. In total, 11 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement that fully eliminated double taxation/fully resolved taxation not in accordance with the tax treaty [45%]
- withdrawn by taxpayer [18%]
- resolved via domestic remedy [18%].

### *Average timeframe needed to resolve MAP cases*

#### *All cases closed during the Statistics Reporting Period*

152. The average time needed to close MAP cases during the Statistics Reporting Period was 31.11 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	61	31.66
Other cases	11	28.09
All cases	72	31.11

#### *Pre-2016 cases*

153. For pre-2016 cases China reported that on average it needed 39.85 months to close 40 attribution/allocation cases and 47.07 months to close six other cases. This resulted in an average time needed of 40.79 months to close 46 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, China reported that it uses the following dates:

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

#### *Post-2015 cases*

154. For post-2015 cases China reported that on average it needed 16.06 months to close 21 attribution/allocation cases and 5.32 months to close five other cases. This resulted in an average time needed of 13.99 months to close 26 post-2015 cases.

### *Peer input*

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

156. One peer, however, voiced a different experience. It commented that although its competent authority was not aware of any denial of access to MAP by China’s competent authority since 1 January 2016, it has concerns regarding cases where its competent



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

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

158. Further to the above, one peer mentioned that it has a good working relationship with China's competent authority, as there is frequent email contact and several face-to-face meetings were scheduled in the past. The peer also mentioned that it would like to discuss cases at an earlier stage where there is (a likelihood of) double taxation. The peer expressed its opinion that it appears that audits in China take a relatively long time to be completed, following which it may be difficult for China's competent authority to resolve MAP cases as early as possible.

### *Anticipated modifications*

159. China indicated that it expects to increase the number of staff in charge of MAP concerning transfer pricing in 2019.

### *Conclusion*

	Areas for improvement	Recommendations
[C.2]	China submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016, 2017 and 2018. Based on the information provided by China's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.	China's MAP statistics show that during the Statistics Reporting Period it closed 26% (26 out of 100 cases) of its post-2015 cases in 13.99 months on average. In that regard, China is recommended to seek to resolve the remaining 75% of the post-2015 cases pending on 31 December 2018 (74 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

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

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

160. Adequate resources, including personnel, funding and training, are necessary to properly perform the competent authority function and to ensure that MAP cases are resolved in a timely, efficient and effective manner.

#### *Description of China's competent authority*

##### *Organisation of the competent authority function*

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

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

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

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

164. Concerning the number of staff in charge of MAP cases, China reported that in 2016 nine additional persons were allocated to this function, six for handling transfer pricing cases and three for other cases. Currently, there are in total 25 persons responsible for handling MAP cases at the headquarters of the State Taxation Administration. This concerns 18 persons involved in handling transfer pricing cases and seven for other cases. In this respect, China reported that three of these 25 persons are experienced officials who have been working on MAP cases for more than ten years, and five for more than five years.

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

##### *Budget and training for staff in charge of MAP cases*

166. With regard to resources available to its competent authority function, China reported that it sets at the beginning of each year a budget plan for the MAP function,

which includes an overseas travelling budget. China clarified that this budget has always been sufficient to conduct face-to-face negotiations with treaty partners. For example, in 2018, the competent authority conducted 167 bilateral negotiations (including MAP and bilateral APA cases) with 11 treaty partners, which resulted in 52 cases being concluded.

167. In respect of training of staff in charge of MAP, China reported that annually there are more than five training programmes, which relate to both tax treaties and transfer pricing issues and also include OECD programmes.

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

### *Monitoring mechanism*

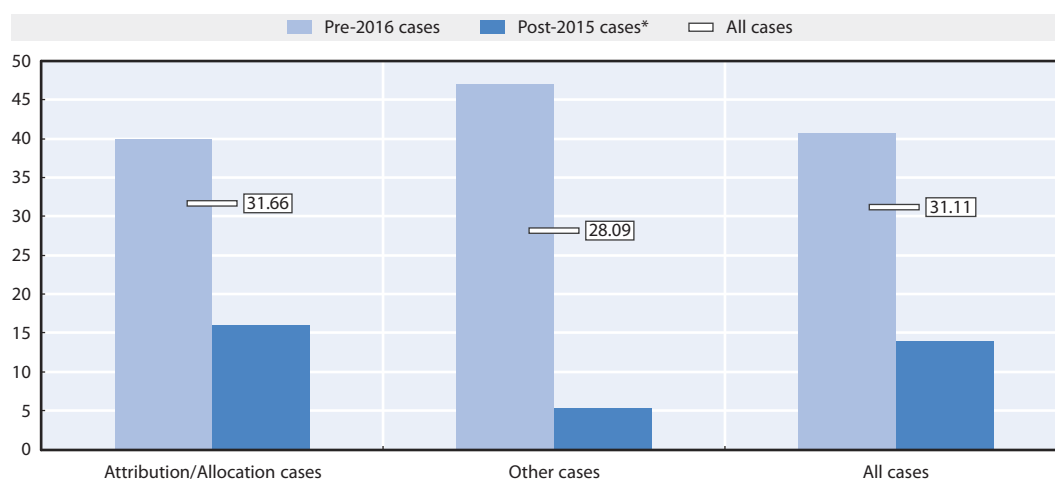
169. As described in paragraph 138, China has in place a system to record and monitor the progress of the MAP process. Where cases are about to exceed 24 months, China specified that the case manager would analyse the reasons of the delay. If it turns out that a delay was caused by insufficient resources, additional resources would be applied for.

### *Practical application*

#### *MAP statistics*

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

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



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

171. Based on these figures, it follows that on average it took China 31.11 months to close MAP cases during the Statistics Reporting Period.

*Peer input*

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

*Relationship and communications with China's competent authority**Major MAP partners*

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

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

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

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

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

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

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

#### Other MAP partners

180. Concerning the second group of peers, all pointed to their good or co-operative working relationship with China's competent authority. One of these peers, whose input was also discussed in paragraph 137, mentioned that it has a good relationship with China's competent authority in resolving MAP cases and that they are in regular contact with each other. For post-2015 cases, this peer noted that communications are now via email. For this type of communication, the peer reported that it agreed with China on a password list to encrypt emails to further enhance electronic exchanges and more swiftly resolve MAP cases. In the peer's view, this new way of communicating makes such communication swifter and easier. This is contrastive to previous experiences, where responses were not given quickly and, due to postal difficulties, such responses were not always received by the competent authority concerned.

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

182. Other peers also voiced positive experience in their contacts with China's competent authority. One of these peers mentioned that its overall experience with China has been positive and that the communication is fluent and effective. It further noted that one MAP case was resolved with China in a timely manner. Another peer mentioned that contacts were generally easy and took place via traditional letters and via email. This peer also reported that there were face-to-face meetings to discuss transfer pricing cases alongside

APA cases. The third peer also noted that it considered that in one MAP case with China, China's competent authority was easy to contact, co-operative and accessible. Lastly, one of these peers also mentioned that while no particular problems have arisen to contact China's competent authority, the contact information included in China's MAP profile appears to be specifically addressed towards Chinese taxpayers.

### *Issuing of position papers*

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

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

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

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

- Attribution/allocation case: this case started in November 2017, for which the peer is yet to receive a position paper, albeit that China's competent authority has committed to provide a position paper in advance of a scheduled face-to-face meeting.
- Other case: although the peer provided its position paper in June 2017, China's competent authority only replied in May 2018 that it could not trace the position paper sent by this peer. China's competent authority subsequently acknowledged the re-issued position paper sent in the same month, but there were no further contacts on the case.

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



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

189. With respect to this input, China mentioned that for five of these pending cases it encountered the problem of lost notification letters and it did not receive the peer's position papers for four of the pending cases until the end of 2018. To this China added that in order to better resolve MAP cases, its competent authority plans to contact the peer to see whether it is possible to arrange a face-to-face meeting in a short notice. In a reaction, the peer, whose input was also discussed in paragraph 137, mentioned that it started the use of encrypted emails with China, which helped the speed-up of the process and proved to be an efficient way to exchange documents during the MAP process. It further mentioned that it feels confident that its future communications via encrypted emails will foster a quicker and more effective resolution of MAP cases. As regards, the scheduling a face-to-face meeting, the peer noted that it was contacted by China's competent authority that it will elaborate the next necessary steps.

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

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

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

### *Adequacy of resources*

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



China to continue its efforts on increasing the number of personnel in charge of MAP and strengthening its organisational capacity for dealing with the increasing number of MAP cases with this peer.

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

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

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

### *Suggestions for improvement*

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

198. Another peer reported that it reached agreements on a significantly larger number of MAP cases in 2018 than in the previous years, and therefore appreciated China's competent authority's efforts in this regard. This peer, however, still has a large inventory and for some cases it experienced that the first MAP meeting has not been initiated for an extended period of time or subsequent meetings had not been held for an extended period of time after the initial meetings. This peer noted that it is a pressing challenge for China to build a method to resolve MAP cases in a timely and efficient manner, and that it is indispensable that China continues its efforts to increase the number of staff in charge of MAP cases and to strengthen its organisational capacity for dealing with an increasing number of MAP cases with this peer. It would also appreciate if China would continue its efforts on providing sufficient staffing and enhanced independency from the local

tax administrations, with a view to ensure an effective and efficient MAP process in line with the Action 14 Minimum Standard. Lastly, the peer also mentioned it is important to make mutual efforts to remove such obstacles as its domestic procedures that requires consultation with the local tax authorities and the practice to stick to the position of the tax administration and not to refund paid taxes in China.

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

### *Anticipated modifications*

200. As discussed in element C.2, China reported that it expects to increase the number of staff in charge of transfer pricing MAP cases in 2019.

### *Conclusion*

	Areas for improvement	Recommendations
[C.3]	MAP cases were not closed within 24 months on average, as the average was 31.11 months, which both regards attribution/allocation cases (31.11 months) and other cases (28.09 months). This state of play indicates that the competent authority is not adequately resourced to ensure that post-2015 cases are resolved within the average of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016). Furthermore, peers indicated that they experienced some difficulties in resolving MAP cases, which in particular concerns obtaining positions papers in due time and receiving responses to position papers issued by peers.	China should closely monitor whether the additional resources envisaged to be provided in 2019 to its competent authority will contribute to the resolution of MAP cases in a timely, effective and efficient manner. Such addition of resources should in particular enable China to issue position papers in due time and respond to position papers issued by competent authorities of the treaty partners.

### **[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.

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

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

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

#### *Attribution/allocation cases*

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

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

#### *Other cases*

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

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

207. China clarified that it has chosen to structure the MAP process in this way, given the fact that it is a country with a large territory and a large population. It is therefore easier for taxpayers to directly approach the Provisional Tax Authorities, and the officials within these authorities are well-trained to interpret the treaty provisions and to assist taxpayers to submit a MAP request. The Provincial Tax Authorities thereby function as an intermediary

between the State Taxation Administration and the taxpayer, as well as between the local tax offices and the State Taxation Administration. China added that because the Provincial Tax Authorities are independent from and superior to the local tax offices, they can support the State Taxation Administration (e.g. collecting information, fact checking and performing investigations) in a fair and objective manner. These Provincial Tax Authorities are nevertheless under the direct supervision and guidance of the State Taxation Administration and only provide assistance and support throughout the MAP process.

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

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

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

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

### *Other*

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

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

### *Practical application*

214. Most of the peers that provided input reported no impediments in China to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. One peer specifically stated that it is not aware that China's competent authority

staff would be formally dependent on the approval or direction of the tax administration personnel who made the adjustment at issue.

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

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

217. In this respect, China explained that its competent authority would allow personnel from the local tax administration to be present at competent authority meetings. China believes their presence is beneficial in three aspects, namely: (i) helpful to clarify the facts of the case or calculations, (ii) to facilitate future implementation of agreements and (iii) obtaining insight in how competent authority proceedings are conducted in practice. When going abroad, China explained it would send names and titles of the personnel from the local tax administration to the treaty partner. When inviting treaty partners come to China, China would introduce personnel from the local tax administration in the room to the treaty partners. Furthermore, a competent authority may request that tax administration personnel who made the adjustment at issue leave the meeting and such a request will be honoured, by which it will be then only the competent authorities that would decided on the conclusion of a MAP case.

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

### ***Anticipated modifications***

219. China indicated that it does not anticipate any modifications in relation to element C.4.

## Conclusion

	Areas for improvement	Recommendations
[C.4]	-	As it has done thus far, China should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that China would like to see reflected in future amendments to the treaty.

### [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.

220. For ensuring that each case is considered on its individual merits and will be resolved in a principled and consistent manner, it is essential that any performance indicators for the competent authority function and for the staff in charge of MAP processes are appropriate and not based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue.

#### *Performance indicators used by China*

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

222. With regard to the evaluation of staff in charge of the MAP process, China reported that the target is to resolve tax disputes effectively and eliminate double taxation for the taxpayer. This evaluation is performed by the direct superior on a quarterly basis, taking into account the workload and working process. A summary of quarterly evaluations is made annually. China clarified that the evaluation will not take into consideration the amount of taxes subject of the relevant MAP cases.

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

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



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

### *Practical application*

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

### *Anticipated modifications*

226. China indicated that it does not anticipate any modifications in relation to element C.5.

### *Conclusion*

	Areas for improvement	Recommendations
[C.5]	-	As it has done thus far, China should continue to use appropriate performance indicators.

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

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

227. 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*

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

### *Practical application*

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

### *Anticipated modifications*

230. China indicated that it does not anticipate any modifications in relation to element C.6.

### *Conclusion*

	Areas for improvement	Recommendations
[C.6]	-	-



## Notes

1. These 106 treaties include the treaty with former Federal Republic of Yugoslavia that China continues to apply to both Serbia and Montenegro, the treaty with the former Czechoslovak Socialist Republic that China continues to apply to the Slovak Republic and the treaty with former Yugoslavia that China continues to apply to Bosnia and Herzegovina.
2. Available at: [www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm](http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm). These statistics are up to and include year 2017.
3. China's 2016 and 2017 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016. See further explanations in Annex B and Annex C.
4. For post-2015 cases, if the number of MAP cases in China's inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, China reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. For pre-2016 and post-2015 cases, China follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that "an attribution/allocation MAP case is a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case".
6. The Public Notice [2017] No. 6 is available at: [www.chinatax.gov.cn/n810341/n810755/c2538695/content.html](http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html).
7. The Public Notice [2013] No. 56 is available at: [www.chinatax.gov.cn/n810341/n810755/c3523242/content.html](http://www.chinatax.gov.cn/n810341/n810755/c3523242/content.html).

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## *Part D*

### **Implementation of MAP agreements**

#### **[D.1] Implement all MAP agreements**

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

231. In order to provide full certainty to taxpayers and the jurisdictions, it is essential that all MAP agreements are implemented by the competent authorities concerned.

#### ***Legal framework to implement MAP agreements***

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

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

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

234. Further to the above, China reported that although there is no specific provision in its regulations to require the consent of the taxpayer before reaching a MAP agreement, the taxpayer is allowed to withdraw, suspend or terminate the MAP during the whole

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

### ***Practical application***

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

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

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

### ***Anticipated modifications***

238. China indicated that it does not anticipate any modifications in relation to element D.1.

### ***Conclusion***

	Areas for improvement	Recommendations
[D.1]	-	As it has done thus far, China should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.

## [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.

239. Delays in implementing 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*

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

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

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

### *Practical application*

242. As described under element D.1, 18 post-2015 cases for which MAP agreements were reached after 1 January 2016 required an implementation in China, of which 12 were already implemented. The average duration of the implementation of these cases were 101 days respectively. China further commented that for one case it took 152 days to implement the agreement due to the difficulty in contacting the taxpayer who had left China by the time the MAP agreement was reached. The remaining six MAP agreements are pending implementation, whereby five of them were recently concluded in December 2018.

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

*Anticipated modifications*

244. China indicated that it does not anticipate any modifications in relation to element D.2.

*Conclusion*

	Areas for improvement	Recommendations
[D.2]	-	As it has done thus far, China should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.

**[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.

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

*Legal framework and current situation of China's tax treaties*

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

247. Out of China's 107 tax treaties, 97 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.<sup>3</sup>

248. The remaining ten treaties can be categorised as follows:

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

that other State, whichever is later, or a longer period if permitted by the domestic law of that other State. As pursuant to this provision there is also a risk that not all MAP agreements can be implemented notwithstanding domestic time limits, it is considered not being equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention

### *Anticipated modifications*

#### *Multilateral Instrument*

249. China signed the Multilateral Instrument. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

250. In regard of the ten tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions for Articles 9(1) and 7(2), China listed all of them as a covered tax agreement under the Multilateral Instrument and for all made, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant ten treaty partners, three are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with China as a covered tax agreement and two made a reservation on the basis of Article 16(5)(c). The remaining four treaty partners made a notification under Article 16(6)(c)(ii). Therefore, at this stage, four of the ten tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

#### *Bilateral modifications*

251. China reported that for those six tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. In this respect, China reported it has contacted one treaty partner, and will contact another treaty partner, with a view to bring the treaty in line with the requirements under element D.3. Furthermore, one treaty partner has informed China that it will withdraw its reservation under the Multilateral Instrument,



following which it is expected that the treaty with that treaty partner will be modified by the instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention.

252. For the remaining three treaties, China reported it has put a plan in place under which it will give priority to the jurisdictions that have closer economic ties and more tax disputes with China. Regardless, China reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

### *Peer input*

253. Most of the peers that provided input indicated that their treaty with China meets the requirements under this element D.3, which conforms with the above analysis. For the ten treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or both alternatives, five of the relevant ten peers provided input. Two of such peers indicated that they expect that their treaty with China will be modified by the Multilateral Instrument to include such an equivalent, which conforms with the above analysis.

254. Out of the remaining three peers, one confirmed that its China does not meet the requirements under element D.3, but also reported that it is willing to accept the alternative provisions setting time limits for making adjustments. It has sent a draft amending protocol to China in June 2017, which was confirmed by China. The second peer reported that it contacted all of its treaty partners for bilateral negotiations in order to meet the requirement of the BEPS Minimum Standards, which was also confirmed by China. The remaining peer reported it has not contacted China with regard to amending the treaty provision in order to be compliant with the Action 14 Minimum Standard.

### *Conclusion*

	Areas for improvement	Recommendations
[D.3]	<p>Ten out of 107 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 provided for in Article 9(1) and Article 7(2). Of these ten treaties:</p> <ul style="list-style-type: none"> <li>• Four are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned</li> <li>• One is expected to be modified by the Multilateral Instrument to include the required provision once the treaty partner has amended its notifications</li> <li>• For one treaty China reported it has reached out to the relevant treaty partner to renegotiate the treaty <i>inter alia</i> with a view to include the required provision.</li> </ul>	<p>China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in those five treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned and upon amendment of the notifications by one of the treaty partners.</p> <p>For four of the remaining five treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, China should request, or respond to a request on, the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions, and continue such negotiations with a fifth treaty partner with a view to include such provision or both of alternative provisions.</p> <p>In addition, China should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p>

## Notes

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

## Reference

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



## Summary

	Areas for improvement	Recommendations
<b>Part A: Preventing disputes</b>		
[A.1]	One out of 107 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. This treaty is expected to be modified by the Multilateral Instrument upon entry into force for the treaty concerned.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.  In addition, China should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	-	China should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far.
<b>Part B: Availability and access to MAP</b>		
[B.1]	One out of 107 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention and provides that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty is expected to be modified by the Multilateral Instrument to include a filing period of at least three years.  Concerning the first sentence of Article 25(1), the treaty was recently renegotiated to include Article 25(1), first sentence, of the OECD Model Tax Convention as read prior to the adoption of the Action 14 final report.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned. Furthermore, China should as quickly as possible ratify the newly negotiated treaty to include 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
	One out of 107 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 shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. These treaties are expected to be modified by the Multilateral Instrument to include a filing period of at least three years.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.
		In addition, China should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report in all future tax treaties.

	Areas for improvement	Recommendations
[B.2]	All 107 tax treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	China should without further delay introduce a document bilateral notification/consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps.  Furthermore, China should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.
[B.3]	-	As China has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	China reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. China is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	-	-
[B.6]	-	As China has thus far not limited access to MAP in eligible cases when taxpayers have complied with China's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Four out of 107 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. These four treaties are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.
		In addition, China should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	Contact details of the competent authority are not included in the MAP guidance, which concerns both Public Notice [2013] No. 56 and Public Notice [2017] No. 6.	China should without further delay update its MAP guidance to include the contact information of its competent authority.  Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance China could consider including in Public Notice [2013] No. 56 and Public Notice [2017] No. 6 information on: <ul style="list-style-type: none"> <li>• whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments</li> <li>• whether taxpayers can request for the multi-year resolution of recurring issues through MAP</li> <li>• the consideration of interest and penalties in the MAP.</li> </ul>
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, China should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	-	-

	Areas for improvement	Recommendations
<b>Part C: Resolution of MAP cases</b>		
[C.1]	One out of 107 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. This treaty is expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.	China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.  In addition, China should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	China submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016, 2017 and 2018. Based on the information provided by China's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. China's MAP statistics show that during the Statistics Reporting Period it closed 26% (26 out of 107 cases) of its post-2015 cases in 13.99 months on average. In that regard, China is recommended to seek to resolve the remaining 74% of the post-2015 cases pending on 31 December 2018 (74 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	MAP cases were not closed within 24 months on average, as the average was 31.11 months, which both regards attribution/allocation cases (31.11 months) and other cases (28.09 months). This state of play indicates that the competent authority is not adequately resourced to ensure that post-2015 cases are resolved within the average of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016). Furthermore, peers indicated that they experienced some difficulties in resolving MAP cases, which in particular concerns obtaining positions papers in due time and receiving responses to position papers issued by peers.	China should closely monitor whether the additional resources envisaged to be provided in 2019 to its competent authority will contribute to the resolution of MAP cases in a timely, effective and efficient manner. Such addition of resources should in particular enable China to issue position papers in due time and respond to position papers issued by competent authorities of the treaty partners.
[C.4]	-	As it has done thus far, China should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that China would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, China should continue to use appropriate performance indicators.
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	-	As it has done thus far, China should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.
[D.2]	-	As it has done thus far, China should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.

	Areas for improvement	Recommendations
[D.3]	<p>Ten out of 107 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 provided for in Article 9(1) and Article 7(2). Of these ten treaties:</p> <ul style="list-style-type: none"> <li>• Four are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.</li> <li>• One is expected to be modified by the Multilateral Instrument to include the required provision once the treaty partner has amended its notifications.</li> <li>• For one treaty China reported it has reached out to the relevant treaty partner to renegotiate the treaty <i>inter alia</i> with a view to include the required provision.</li> </ul>	<p>China should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in those five treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned and upon amendment of the notifications by one of the treaty partners.</p> <p>For four of the remaining five treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, China should request, or respond to a request on, the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions, and continue such negotiations with a fifth treaty partner with a view to include such provision or both of alternative provisions.</p> <p>In addition, China should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p>



## Annex A

### Tax treaty network of the People's Republic of China

Treaty partner	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.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6												
	Inclusion Art. 25(1) first sentence?		Inclusion Art. 25(1) second sentence? (Note 1)		Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) first sentence? (Note 3)		Inclusion Art. 25(2) second sentence? (Note 4)		Inclusion Art. 25(3) first sentence? (Note 5)		Inclusion Art. 25(3) second sentence? (Note 6)		Inclusion arbitration provision?							
	If yes, submission to either competent authority? (new Art. 25(1), first sentence)		If no, please state reasons		Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons		Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases		Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP		Y = yes 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							
	If N, date of signing		if ii, specify period		Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons		Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases		Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP		Y = yes 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							
	E = yes, either CAs O = yes, only one CA N = No		N/A		Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons		Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases		Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP		Y = yes 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		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	N		9/10/2018		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
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	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
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	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y		Y		Y	
	Y		Y		Y		Y		Y		Y		Y		Y		Y					

	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.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6													
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?												
											If no, please state reasons	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)									
Argentina	N	2/12/2018	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N			
Australia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N*	N*	Y	Y	N	N	N			
Austria	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Azerbaijan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Bahrain	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Bagladesh	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Barbados	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Belarus	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Belgium	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	N*	N			
Bosnia and Herzegovina	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Botswana	N	11/4/2012	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Brazil	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Brunei	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Bulgaria	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Cambodia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Canada	Y	N/A	O	i	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			
Chile	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N			



Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
DTC in force?	B.1		B.1		B.3		B.4		C.1		D.3		A.1		B.7		C.6			
	Inclusion Art. 25(1) first sentence?		Inclusion Art. 25(1) second sentence? (Note 1)		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?		Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) first sentence? (Note 3)		Inclusion Art. 25(2) second sentence? (Note 4)		Inclusion Art. 25(3) first sentence? (Note 5)		Inclusion Art. 25(3) second sentence? (Note 6)		Inclusion Art. 25(3) third sentence? (Note 7)			
Treaty partner	If yes, submission to either competent authority? (new Art. 25(1), first sentence)		If no, please state reasons																	
India	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Indonesia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	N
Iran	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ireland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Israel	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Italy	N	23/3/2019	O	Y	2 years	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Jamaica	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Japan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kazakhstan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kenya	N	21/9/2017	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kuwait	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kyrgyzstan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Laos	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Lithuania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Malaysia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	N

	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")				Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6													
	Inclusion Art. 25(1) first sentence?		Inclusion Art. 25(1) second sentence? (Note 1)		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?		Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence? (Note 4)		Inclusion Art. 25(3) first sentence? (Note 5)		Inclusion second sentence? (Note 6)		Inclusion arbitration provision?							
Treaty partner	DTC in force?		If yes, submission to either competent authority? (new Art. 25(1), first sentence)		If no, please state reasons																	
Malta	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Mauritius	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Mexico	Y	N/A	O	Y	N/A	i**	Y	i	N*	N	N	Y	N*	Y	Y	Y	Y	Y	Y	N*	N	N
Moldova	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Mongolia	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Montenegro	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Morocco	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Nepal	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Netherlands	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
New Zealand	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Nigeria	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
North Macedonia	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Norway	Y	N/A	O	Y	N/A	i**	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Oman	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Pakistan	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Papua New Guinea	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Philippines	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N



	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration											
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6													
	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?													
Treaty partner	DTC in force?	If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons																			
Tajikistan	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Thailand	Y	N/A	Y	N/A	i	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Trinidad and Tobago	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Tunisia	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Turkey	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Turkmenistan	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Uganda	N	11/1/2012	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Ukraine	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
United Arab Emirates	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
United Kingdom	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
United States	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Uzbekistan	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Venezuela	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Viet Nam	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Zambia	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Zimbabwe	Y	N/A	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N



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

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

### *Legend*

E*	The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
E**	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
O*	The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
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 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	61	0	0	1	0	0	3	1	0	2	0	54	36.70
Others	28	0	0	0	0	0	1	0	0	0	0	27	33.00
Total	89	0	0	1	0	0	4	1	0	2	0	81	36.24

Notes: The number of cases in the inventory are different from those in China's published MAP statistics. This results from the fact that China corrected its statistics as to the number of cases.

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											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 3	
Attribution/Allocation	54	0	0	1	1	0	5	7	0	0	0	40	31.86
Others	27	0	0	0	0	0	2	0	0	0	0	25	40.70
Total	81	0	0	1	1	0	7	7	0	0	0	65	32.97

Notes: The number of cases in the inventory are different from those in China's published MAP statistics. This results from the fact that China corrected its statistics as to the number of 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										No. of pre-2016 cases remaining in MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	40	0	0	4	0	0	5	2	0	8	0	21	46.89
Others	25	0	0	1	0	0	2	0	0	0	0	22	56.00
Total	65	0	0	5	0	0	7	2	0	8	0	43	48.13

## Annex C

## MAP Statistics Reporting for Post-2015 cases

2016 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period		
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	23	0	0	0	0	0	0	0	0	0	0	23	N/A
Others	0	11	0	0	0	0	0	0	0	0	0	0	11	N/A
Total	0	34	0	0	0	0	0	0	0	0	0	0	34	N/A

Notes: The number of cases in the inventory are different from those in China's published MAP statistics. This results from the fact that China was notified of cases later from other treaty partners.

2017 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	23	22	0	0	0	2	0	0	1	0	0	0	42	2.93
Others	11	18	0	0	1	1	0	0	0	0	0	0	27	3.71
Total	34	40	0	0	1	3	0	0	1	0	0	0	69	3.24

Notes: The number of cases in the inventory are different from those in China's published MAP statistics. This results from the fact that China corrected the number of 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	42	15	0	0	0	0	0	2	14	0	2	0	39	18.24
Others	27	11	0	1	0	0	2	0	0	0	0	0	35	6.39
Total	69	26	0	1	0	0	2	2	14	0	2	0	74	16.55

## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>MAP Guidance</b>	Public Notice [2017] No. 6 of the State Taxation Administration on Issuing the “Administrative Measures of Special Tax Investigation and Adjustment and Mutual Agreement Procedure” and Public Notice [2013] No. 56 of the State Taxation Administration on Releasing the “Implementation Measures of Mutual Agreement Procedure for Tax Treaty Related Issues”
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
<b>OECD Transfer Pricing Guidelines</b>	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
<b>Pre-2016 cases</b>	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
<b>Post-2015 cases</b>	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
<b>Review Period</b>	Period for the peer review process that started on 1 January 2016 and ended on 31 December 2018
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2018
<b>Terms of Reference</b>	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

# Making Dispute Resolution More Effective – MAP Peer Review Report, China (Stage 1)

## 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 1 peer review of the implementation of the Action 14 Minimum Standard by the People's Republic of China.

Consult this publication on line at <https://doi.org/10.1787/85e69082-en>.

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