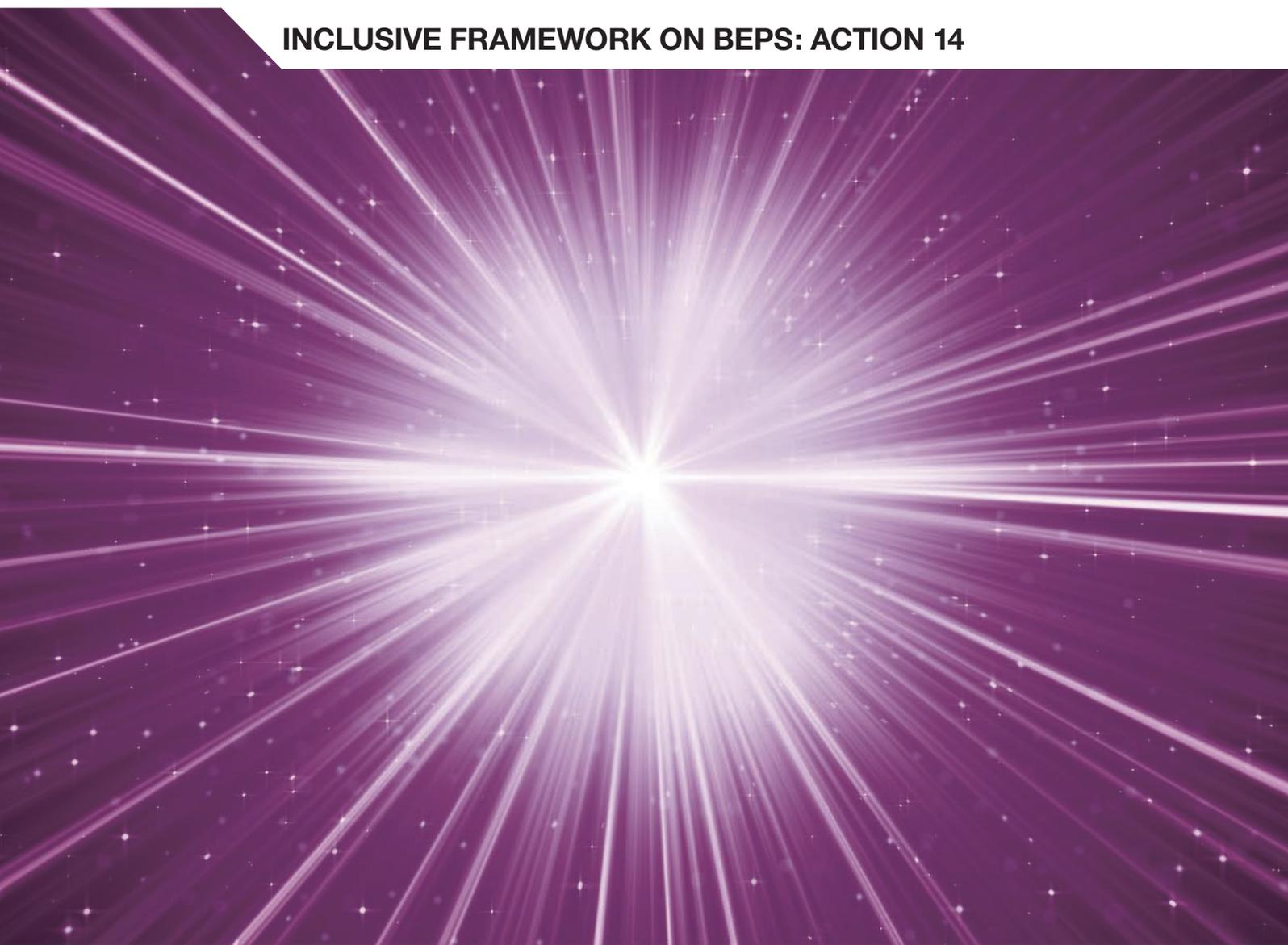


**OECD/G20 Base Erosion and Profit Shifting  
Project**



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

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**





OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

**Please cite this publication as:**

OECD (2017), *Making Dispute Resolution More Effective – MAP Peer Review Report, Sweden (Stage 1): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

<http://dx.doi.org/10.1787/9789264285736-en>

ISBN 978-92-64-28572-9 (print)

ISBN 978-92-64-28573-6 (PDF)

Series: OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

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

**Photo credits:** Cover © ninog-Fotolia.com.

Corrigenda to OECD publications may be found on line at: [www.oecd.org/about/publishing/corrigenda.htm](http://www.oecd.org/about/publishing/corrigenda.htm).

© OECD 2017

---

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgement of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to [rights@oecd.org](mailto:rights@oecd.org). Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at [info@copyright.com](mailto:info@copyright.com) or the Centre français d'exploitation du droit de copie (CFC) at [contact@cfcopies.com](mailto:contact@cfcopies.com).

---

## 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 via treaty provisions. With the negotiation for a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the MLI on 7 June 2017, paving 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 an Inclusive Framework on BEPS, 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 100 members, will monitor and peer review the implementation of the minimum standards as well as complete 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.



## *Table of contents*

<b>Abbreviations and acronyms</b> .....	7
<b>Executive summary</b> .....	9
<b>Introduction</b> .....	11
Available mechanisms in Sweden to resolve tax treaty-related disputes .....	11
Recent developments in Sweden .....	11
Basis for the peer review process .....	12
Overview of MAP caseload in Sweden .....	13
General outline of the peer review report .....	13
Bibliography .....	14
<b>Part A. Preventing disputes</b> .....	15
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties .....	15
[A.2] Provide roll-back of bilateral APAs in appropriate cases .....	16
Bibliography .....	19
<b>Part B. Availability and access to MAP</b> .....	21
[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties .....	21
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process .....	25
[B.3] Provide access to MAP in transfer pricing cases .....	26
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions .....	28
[B.5] Provide access to MAP in cases of audit settlements .....	29
[B.6] Provide access to MAP if required information is submitted .....	30
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties .....	31
[B.8] Publish clear and comprehensive MAP guidance .....	33
[B.9] Make MAP guidance available and easily accessible and publish MAP profile .....	35
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP .....	36
Bibliography .....	38
<b>Part C. Resolution of MAP cases</b> .....	39
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties .....	39
[C.2] Seek to resolve MAP cases within a 24-month average timeframe .....	40
[C.3] Provide adequate resources to the MAP function .....	44
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty .....	48
[C.5] Use appropriate performance indicators for the MAP function .....	49
[C.6] Provide transparency with respect to the position on MAP arbitration .....	50
Bibliography .....	52

<b>Part D. Implementation of MAP agreements</b> .....	53
[D.1] Implement all MAP agreements .....	53
[D.2] Implement all MAP agreements on a timely basis .....	54
[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) .....	55
Bibliography .....	57
<b>Summary</b> .....	59
<b>Annex A. Tax treaty network of Sweden</b> .....	63
<b>Annex B. MAP statistics: Pre-2016 cases</b> .....	69
<b>Annex C. MAP statistics: Post-2015 cases</b> .....	70
<b>Glossary</b> .....	71
<b>Figures</b>	
Figure C.1 Sweden’s MAP inventory .....	41
Figure C.2 End inventory on 31 December 2016 (179 cases) .....	41
Figure C.3 Cases resolved during the Reporting Period (50 cases) .....	42
Figure C.4 Average time (in months) .....	46

*Abbreviations and acronyms*

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



## Executive summary

Sweden has an extensive tax treaty network with over 75 tax treaties and has signed and ratified the EU Arbitration Convention. Sweden has an established MAP programme and has large experience with resolving MAP cases. It has a relatively large MAP inventory, with a considerable number of new cases submitted each year and more than 175 cases pending on 31 December 2016. Of these cases, 67% concern allocation/attribution cases. Overall Sweden meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Sweden is working to address them.

All of Sweden's tax treaties include a provision relating to MAP. Those treaties generally follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention on Income and on Capital 2014 (OECD Model Tax Convention, OECD 2015). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- One-fifth of its tax treaties does not include a provision requiring competent authorities to consult together for the elimination of double taxation in cases not provided for in the tax treaty (which is required under Article 25(3), second sentence); and
- One-fourth of its tax treaties do not include a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), or include 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, Sweden needs to amend and update a certain number of its tax treaties. In this respect, Sweden signed, without any reservations on the MAP article, the Multilateral Instrument, potentially covering 63 tax treaties. Where treaties will not be modified, upon entry into force of this Multilateral Instrument, Sweden reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. Furthermore, Sweden opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties.

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

Sweden also meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard, but needs to improve the level of clarity of its MAP guidance. It provides access to MAP in all eligible cases. It has also in place a notification and consultation process for those situations in which the Swedish competent authority considers the objection raised by taxpayers in a MAP request as not justified. The

website of the Swedish tax administrative includes only basic information on inter alia the availability of MAP and on how the MAP function in Sweden is construed and applied in practice. This information, however, does not establish comprehensive MAP guidance.

Concerning the average time needed to resolve MAP cases, the MAP statistics for the year 2016 are as follows:

2016	Opening Inventory	Cases started	Cases closed	End Inventory	Average time to resolve cases (in months)*
Attribution/ allocation cases	109	33	22	120	31.21
Other cases	57	30	28	59	22.89
<b>Total</b>	<b>166</b>	<b>63</b>	<b>50</b>	<b>179</b>	<b>26.55</b>

\* 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, Sweden used as a start date the date of registration of the MAP request and as the end date the date when the Swedish competent authorities takes the decision to execute the MAP agreement.

These figures show that the number of cases Sweden resolved is approximately 80% of the number of all new cases started in 2016. Its MAP inventory as per 31 December 2016 increased by approximately 7% as compared to its inventory as per 1 January 2016. Moreover, the competent authority of Sweden did not resolve MAP cases on average within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 26.55 months. The average time to resolve attribution/allocation is thereby considerably longer (31.21 months) than other cases (22.89 months). These statistics show that Sweden has not been adequately resourced in relation to the resolution of MAP cases, which particularly concerns attribution/allocation MAP cases. It is noted that recently Sweden provided additional resources to its competent authority function and envisages a further increase in the near future. Sweden should closely monitor whether these additional resources will lead to the resolution of MAP cases in a more timely, effective and efficient manner.

Nevertheless, Sweden meets the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases, as the Swedish 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, Sweden also meets the Action 14 Minimum Standard as regards implementation of MAP agreements. It monitors the implementation of these agreements and no issues have surfaced throughout the peer review process.

## *Introduction*

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

Sweden has entered into 84 tax treaties on income (and/or capital), all of which are in force.<sup>1</sup> These 84 treaties apply to 96 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 addition, five of the 84 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.<sup>3</sup>

Sweden is also a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.<sup>4</sup>

In 2000 the Swedish Ministry of Finance assigned competence to handle MAP cases to the Swedish Tax Agency (“**Swedish tax administration**” or “**Swedish competent authority**”) by Regulation 2000:1077 (in Swedish: *Förordning (2000:1077) om handläggning av ärenden enligt skatteavtal*). The Swedish tax administration handles both MAP and APA cases. The competent authority function is placed within a section of the legal department of the Swedish tax administration and is separated from the audit and examination departments.

Currently, the Swedish competent authority employs eight persons; of whom six work full time and two part-time. Sweden reported that it is in the process of employing two additional persons, whereas it already added a member to the staff in charge of MAP in September 2016.

Sweden did not issue specific guidance in relation to the governance and administration of the mutual agreement procedure, but such information is available on the following webpage of the Swedish tax administration:

[www.skatteverket.se/privat/skatter/arbeteinkomst/internationellainkomster/dubbelbeskattningavrakning/undanrojandeavdubbelbeskattning.4.69ef36891e1304a625800011554.html](http://www.skatteverket.se/privat/skatter/arbeteinkomst/internationellainkomster/dubbelbeskattningavrakning/undanrojandeavdubbelbeskattning.4.69ef36891e1304a625800011554.html)

### **Recent developments in Sweden**

Sweden reported that it has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), inter alia with a view to make the necessary modifications to the MAP article under its tax treaties to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. With the signing of the Multilateral Instrument, Sweden also submitted its list of notifications and reservations to that instrument.<sup>5</sup> In relation to this standard, Sweden reported it did not make reservation on the application of Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

## Basis for the peer review process

The peer review process entails an evaluation of Sweden’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 the information on its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Sweden, its peers and taxpayers. The period for evaluating Sweden’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 March 2017 (“**Review Period**”). This report, however, may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Sweden’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 Sweden 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 replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaties/agreement with the former Czechoslovakia, the Netherlands Antilles Islands and Yugoslavia for those jurisdictions for which these treaties are still being applied by Sweden.<sup>6</sup> As it concerns three tax treaties that are applicable to multiple jurisdictions, each of these treaties are only counted as one treaty for this purpose. The same applies to the multilateral tax treaty between Denmark, Finland, Faroe Islands, Iceland, Norway and Sweden (“**Nordic convention**”). Reference is made to Annex A for the overview of Sweden’s tax treaties regarding the mutual agreement procedure.

The questionnaires for the peer review process were sent to Sweden and the peers on 7 March 2017. While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, Sweden opted to provide information on period starting as from 1 January 2015 (the “**look back period**”) and also requested peer input relating to the look back period. In addition to its assessment on the compliance with the Action 14 Minimum Standard, Sweden also asked for peer input on best practices.

In total 21 peers provided input: Australia, Belgium, Canada, People’s Republic of China, Denmark, France, Germany, Greece, India, Italy, Japan, the Netherlands, Norway, Portugal, Russia, Singapore, the Slovak Republic, Spain, Switzerland, the United Kingdom and the United States. These peers represent approximately 60% of post-2015 MAP cases in Sweden’s inventory on 31 December 2016. Input was also received from taxpayers. Broadly all peers indicated having good working relationships with Sweden with regard to MAP, some of them emphasising the solution-orientated and flexible approach taken by the Swedish competent authority.

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

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

Finally, Sweden is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Sweden provided detailed peer input and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions. Sweden also provided peer input on the best practices for a number of jurisdictions that asked for it.

## Overview of MAP caseload in Sweden

The analysis of Sweden’s MAP caseload relates to the period that started on 1 January 2016 and ended on 31 December 2016 (the “**Statistics Reporting Period**”). According to the statistics provided by Sweden, on 31 December its MAP inventory was 179 cases, 120 of which concern attribution/allocation cases and 59 other cases. During the Statistics Reporting Period 63 cases were started and 50 cases were closed.

## General outline of the peer review report

This report includes an evaluation of Sweden’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; and
- D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).<sup>9</sup> Apart from analysing Sweden’s legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by Sweden 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 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 Sweden 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 Sweden has entered into are available at: <http://www4.skatteverket.se/rattsligvagledning/15311.html>. Reference is made to Annex A for the overview of Sweden’s tax treaties.
2. Sweden continues to apply the 1979 treaty with former Czechoslovakia to the Czech Republic and the Slovak Republic, the 1980 treaty with former Yugoslavia to Bosnia and Herzegovina,

- Croatia, Kosovo, Montenegro, Serbia and Slovenia, and the 2009 agreement to promote economic relations with the former Netherlands Antilles Islands to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba). Furthermore, Sweden has entered into a multilateral tax treaty with the Nordic countries, which are: Denmark, Finland, Faroe Islands, Iceland and Norway (“Nordic convention”). For purposes of this peer review report, this treaty is considered one tax treaty applicable to multiple jurisdictions.
3. This concerns treaties with Armenia, Germany, Japan, Switzerland and the United Kingdom. See for a discussion element C.6 of this report. Reference is made to Annex A for the overview of Sweden’s tax treaties that include an arbitration clause.
  4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July, 1990.
  5. Available at: [www.oecd.org/tax/treaties/beps-mli-position-sweden.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-sweden.pdf).
  6. Sweden continues to apply the 1991 treaty with former Czechoslovakia to the Czech Republic and the Slovak Republic, the 1981 treaty with former Yugoslavia to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia, and the 2009 agreement to promote economic relations with the former Netherlands Antilles Islands to Curacao, St. Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba).
  7. Available at: [www.oecd.org/tax/dispute/Sweden-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/Sweden-Dispute-Resolution-Profile.pdf).
  8. The MAP statistics of Sweden are included in Annex B and C of this report.
  9. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ([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)).

## *Bibliography*

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, [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) (accessed on 22 August 2017).

## *Part A*

### Preventing disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015) 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 Sweden's tax treaties*

2. Out of Sweden's 84 tax treaties, 79 contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) 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> Four of the five treaties do include a provision that is based on Article 25(3), first sentence, but does not incorporate all required elements, either because the term "interpretation" is not included (2 treaties), the scope of application is limited to certain articles of the treaty only (1 treaty), or only constitutes an invitation to reach an agreement on any difficulties or doubts arising as to the interpretation or application of the tax treaty (e.g. "may likewise to come to an agreement"), but does not require competent authorities to resolve by mutual agreement such difficulties or doubts (2 treaties).

3. Sweden reported it, regardless of whether the treaty contains the full text of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015), will be able to endeavour to solve any difficulties or doubts regarding the interpretation or application of its tax treaties. If the case under review concerns material questions, Sweden reported that approval by its parliament is required, which in practice, however, is a pure formality.

### *Anticipated modifications*

4. Sweden reported it has recently signed the Multilateral Instrument with a view to inter alia update – on the basis of Article 16(4)(c)(i) of that instrument – those tax treaties that do not contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015). Sweden is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where tax treaties, which do not contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015), will not be modified by the Multilateral Instrument, Sweden reported it will subsequently strive to update them via bilateral negotiations to be compliant with element A.1. In addition, Sweden reported it will seek to include Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

5. Most of the peers that provided input mentioned that their treaty with Sweden meets the requirement under element A.1. One of the peers is a party to one of the five treaties mentioned above that do not include the equivalent of Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015), but this peer considered that its treaty with Sweden meets the requirement under element A.1. One peer particularly noted that it recently started renegotiating the existing treaty with Sweden, which meets the requirement under element A.1.

### *Conclusion*

	Areas for Improvement	Recommendations
[A.1]	Five out of 84 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the <i>OECD Model Tax Convention</i> , OECD (2015).	Where treaties do not include the equivalent of Article 25(3), first sentence, of the <i>OECD Model Tax Convention</i> , OECD (2015) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Sweden should request the inclusion of the required provision via bilateral negotiations.  In addition, Sweden should maintain its stated intention to include the required provision in all future 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.

6. 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.

### ***Sweden's APA programme***

7. In 2009, Sweden introduced a special law regarding APAs. This law came into force on 1 January 2010 and allows the Swedish tax administration to enter into bilateral and multilateral APAs.<sup>3</sup> Section 8 of this law stipulates that taxpayers, which are or may become taxable under the Swedish income tax act (1999:1229) and insofar a tax treaty applies, may submit a request for an APA.<sup>4</sup> Pursuant to section 13, a decision containing an APA can only be issued to taxpayers if: (i) prior thereto an agreement has been reached with the other jurisdiction concerned, as specified in the request for an APA, insofar as there is a tax treaty with that particular jurisdiction and (ii) the APA is in accordance with the request for such APA, or has been accepted by the requesting taxpayer.<sup>5</sup> The law further describes how the process of obtaining an APA is conducted, the content of an APA and the binding effect of such agreement. The Swedish tax administration is thereby assigned competence for handling APA requests.

8. The website of the Swedish tax administration also includes information on APAs.<sup>6</sup> This concerns information on APAs on which government authority is competent for handling APA requests, what an APA is, what the requirements for obtaining an APA are, by whom they can be requested, a detailed list of information to be included in a APA request, costs for obtaining an APA (see below) and the binding effect of APAs once entered into.

9. Furthermore, the website of the Swedish tax administration containing information on APAs mentions that APAs are not issued for minor transactions or simple/straightforward issues, as also follows from section 12 of the law on APAs mentioned above. Sweden thereby charges fees to taxpayers when submitting an APA request. These fees amount to SEK 150 000 for a new request, SEK 125 000 for a renewal of an existing APA with changes and SEK 100 000 for a renewal of an existing APA with no changes.<sup>7</sup> All fees are due per jurisdiction the APA relates to.

10. Section 15 of the law on APAs notes that the validity of an APA in Sweden shall be between three and five years if there are no special reasons for determining the validity for a longer or shorter period. Sweden will accept the fiscal year in which the application for an APA is submitted as the first year to be covered in an APA.

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

11. Sweden reported that it is allowed to grant roll-back of bilateral APAs. Its law on APAs or the website containing information on APAs does not list any special conditions/requirements to be fulfilled when requesting such roll-back, but in a general sense there has to be some kind of effect on the APA-period in order to grant a roll-back. In more detail, a roll-back can be granted if there has been a transaction in a previous tax year that significantly impacts the transactions covered in the APA. The APA entered into with the other jurisdiction will then contain the full period for which the APA was requested, including the roll-back period. Sweden reported that domestically it will take separate decisions for previous and future fiscal years to give effect to the APA entered into. This approach is chosen in order to ensure that the APA will be implemented correctly for previous fiscal years.

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

12. Sweden publishes statistics on APAs in relation to EU and non-EU Member States on the website of the EU Joint Transfer Pricing Forum<sup>8</sup> (in English) and on the website of the Swedish tax administration (in Swedish).<sup>9</sup> For the years 2013-15 the number of requests

for bilateral APAs in Sweden amounted to ten, five and ten respectively. In relation to granting roll-backs of existing bilateral APAs, Sweden reported that from 1 January 2015 it has received eight requests for such roll-back (that is five in 2015 and three in 2016). From that date, the Swedish tax administration concluded seven APAs including a roll-back, of which two in 2015 and five in 2016.

13. Peers generally reported that they do negotiate and agree bilateral APAs with Sweden. Not all peers, however, have experience with granting roll-back of such bilateral APAs for the years under review or in general. In total five peers reported they have experiences with Sweden regarding the granting of roll-back of bilateral APAs. The experience reported is positive and notes that Sweden is open to grant roll-back in appropriate cases, thereby also noting the constructive work experience with the Swedish tax administration in relation hereto. One peer, however, noted that it has two APA cases with Sweden that relate to two pending MAP cases, for which Sweden is not willing to or has difficulties in discussing the economic circumstances for the whole period (previous and current fiscal years) as one single case.

14. Peers further reported that since 1 January 2015 taxpayers have in approximately five cases requested for roll-back of their bilateral APAs to which Sweden is a signatory party. In most cases such roll-back was agreed on by the competent authorities and in some cases the request is still pending.

### *Anticipated modifications*

15. Sweden did not indicate that it anticipates any modifications in relation to element A.2.

### *Conclusion*

	Areas for Improvement	Recommendations
[A.2]	-	As Sweden has done thus far, it should continue to provide for roll-back of bilateral APAs in appropriate cases.

## Notes

1. These 79 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic, the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia, the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway, and the agreement with the Netherlands Antilles Islands that Sweden continues to apply to Curaçao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
3. Available at: <http://www4.skatteverket.se/rattsligvagledning/321837.html>.
4. The website of the Swedish tax administration that contains information on APAs also mentions this requirement and further specifies which taxpayers can request for APAs. Available at: <http://www4.skatteverket.se/rattsligvagledning/edition/2016.5/339233.html?q=priss%C3%A4ttningsbesked%20>.

5. The website of the Swedish tax administration that contains information on APAs further mentions that it is required that the applicable tax treaty includes a provision on the exchange of information. Available at: <http://www4.skatteverket.se/rattsligvagledning/edition/2016.5/339233.html?q=priss%C3%A4ttningsbesked%20>.
6. Available at: <http://www4.skatteverket.se/rattsligvagledning/edition/2016.5/339233.html?q=priss%C3%A4ttningsbesked%20>.
7. Section 24 of the law on APAs, however, grants the Swedish tax administration the right to, in individual cases, to decide on an exemption from all or part of the fee, provided that there is a special reason for it.
8. Available at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/jtpf0152016enapastatistics.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0152016enapastatistics.pdf). These statistics are up to fiscal year 2015.
9. Available at: [www.skatteverket.se/download/18.3810a01c150939e893f2ae97/1455890256090/arsredovisning-skatteverket-2015-skv165-utgava24.pdf](http://www.skatteverket.se/download/18.3810a01c150939e893f2ae97/1455890256090/arsredovisning-skatteverket-2015-skv165-utgava24.pdf). See page 88 of the document. These statistics are up to fiscal years 2015.

## *Bibliography*

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en>.
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.



## *Part B*

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

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

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

16. 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 Sweden's tax treaties***

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

17. Out of Sweden's 84 tax treaties, 55 treaties contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report, OECD 2015b), allowing taxpayers to submit a MAP request to the competent authority 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> Further, none of Sweden's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), as changed by the *Action 14 final report* (OECD, 2015b) and allowing taxpayers to submit a MAP request to either competent authority.

18. The 29 remaining tax treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), either as

changed by the *Action 14 final report* (OECD, 2015b) or as it read prior to that report, can be categorised as follows:

Provision	Number of treaties
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	27 <sup>2</sup>
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident and only when there is double taxation contrary to the principles of the agreement.	1
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the adoption of the Action 14 final report, whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

19. The 27 treaties mentioned above are considered not to have the full equivalent of Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, 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 22 of those 27 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not include a non-discrimination provision and only applies to residents of one of the states (11 treaties);<sup>3</sup> and
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (11 treaties).

20. The remaining five of the 27 above-mentioned treaties include a non-discrimination provision that applies both to nationals that are resident of one of the contracting states as to nationals that are not.<sup>4</sup> These five treaties are therefore considered not to have the full equivalent of Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), as the limitation of the scope of the MAP provision is not clarified by the absence of or a limited scope of the non-discrimination provision.

21. Furthermore, the one treaty mentioned in the third row of the table above allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this treaty limits such submission, as it requires that a domestic remedy should first be initiated before a case can be dealt with in MAP.<sup>5</sup> For this reason, the treaty is also considered not to have the full equivalent of Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the *Action 14 final report* (OECD, 2015b). This also applies to the other treaty mentioned in the second row of the table whereby taxpayers can only submit a MAP request for cases concerning *double taxation contrary to the provisions of the tax treaty* and not for cases concerning *taxation not in accordance with the provisions of the tax treaty*.

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

22. Out of Sweden’s 84 tax treaties, 63 contain a provision equivalent to Article 25(1), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.<sup>6</sup> The remaining 21 treaties that do not contain such provision can be categorised as follows:

Provision	Number of treaties
Filing period more than three years for a MAP request (4.5, 5 and 6 years) <sup>7</sup>	3
Filing period less than three years for a MAP request (two years)	1
No filing period for a MAP request <sup>8</sup>	17

23. Sweden reported it does not have a domestic statute of limitation for filing of MAP requests. On the website of the Swedish tax administration containing information on MAP it is stipulated that where treaties do not contain a three-year filing period, as provided for in Article 25(1), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a), taxpayers should be mindful that statutes of limitations may apply under domestic law of the treaty partners.<sup>9</sup> The website also notes that Sweden considers that the time period for filing of a MAP request usually commences at the moment the Swedish tax administration decides to adjust a taxpayer’s taxable income. In that regard it is specifically remarked that in certain situations it may be appropriate to submit a MAP request before a formal decision on income in Sweden has been made. This because there may be a risk that, where a decision that is made several years after the fiscal year under review has been closed, the other jurisdiction concerned is no longer in a position to make a correlative adjustment.

***Anticipated modifications***

24. Sweden reported it has recently signed the Multilateral Instrument with a view to inter alia modify – on the basis of Article 16(4)(a)(i) of that instrument – those tax treaties that contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the *Action 14 final report* (OECD, 2015b). By doing so, these treaties will allow taxpayers to submit a MAP request to the competent authority of either contracting state. Furthermore, for those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), as it read prior to the adoption of the *Action 14 final report* (OECD, 2015b), Sweden also reported it will replace in those treaties that part of the existing provision dealing with MAP in order to allow taxpayers to submit a MAP request to the competent authority of either contracting state. In that regard, Sweden reported it has not reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument.

25. With respect to the period of filing of a MAP request, as reflected in Article 25(1), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a), Sweden additionally reported that it intends – pursuant to Article 16(4)(a)(ii) of the Multilateral Instrument – to modify its tax treaties if these do not allow taxpayers to present a MAP request within a period of at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty. In that regard, Sweden reported it has not reserved the right, as is allowed pursuant to Article 16(5)(b) of the Multilateral Instrument, not to apply the second sentence of Article 16(1) of that instrument.

26. Sweden is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where the aforementioned tax treaties that do not contain a provision equivalent to Article 25(1), first and/or second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) and which will not be modified by the Multilateral Instrument, Sweden reported it will subsequently strive to update them via bilateral negotiations to be compliant with element B.1. In addition, Sweden reported it will seek to include Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a), as amended by the *Action 14 final report* (OECD, 2015b), in all of its future treaties.

27. Most peers that provided input reported that their treaty with Sweden meets the requirement under element B.1. For one peer, however, the treaty with Sweden does not include the equivalent of Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a). Furthermore, two peers mentioned their treaty with Sweden does not include the second sentence of Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) and for which they envisages to incorporate this sentence via signing of the Multilateral Instrument. Another peer mentioned that it recently started renegotiating the existing treaty with Sweden and intends to meet the minimum standard by incorporating the required provisions. Lastly, one peer particularly noted that it recently started renegotiating the existing treaty with Sweden, which meets the requirement under element B.1.

## Conclusion

	Areas for Improvement	Recommendations
[B.1]	<p>Eight out of 84 tax treaties do not contain a provision that is equivalent to Article 25(1) of the <i>OECD Model Tax Convention</i>, OECD (2015a). Of those eight tax treaties:</p> <ul style="list-style-type: none"> <li>seven do not contain a provision that is the equivalent of Article 25(1), first sentence, of the <i>OECD Model Tax Convention</i>, OECD (2015a), either as it read prior to the adoption of the <i>Action 14 final report</i>, OECD (2015b) or as amended by that final report; and</li> <li>one does not contain a provision based on Article 25(1), second sentence of the <i>OECD Model Tax Convention</i>, OECD (2015a) allowing taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul>	<p>Where treaties do not include the equivalent of Article 25(1) of the <i>OECD Model Tax Convention</i>, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Sweden should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> <li>a provision that is equivalent to Article 25(1), first sentence of the <i>OECD Model Tax Convention</i>, OECD (2015a) either: <ul style="list-style-type: none"> <li>a. As amended in the <i>Action 14 final report</i>, OECD (2015b); or</li> <li>b. As it read prior to the adoption of the <i>Action 14 final report</i>, OECD (2015b), thereby including the full sentence of such provision; and</li> </ul> </li> <li>a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>Specifically with respect to the treaty with former Yugoslavia, Sweden should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p> <p>In addition, Sweden should maintain its stated intention to include the required provision in all future treaties.</p>

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

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

28. 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 include 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***

29. None of Sweden's 84 treaties contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as changed by the *Action 14 final report* (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In that regard, Sweden reported it has no formal notification/consultation process in place to notify treaty partners where its competent authority considers the objection raised in the MAP request not to be justified. In this respect, Sweden reported that since the number of cases where access is denied or where the objection raised is considered not to be justified are exceptional, Sweden will always discuss a decision relating hereto with the other competent authority concerned. Recently, Sweden has included instruction in its internal circular, which is linked to the statistics database, what steps to follow when the objection raised a MAP request is considered as not being justified, when access to MAP is denied or when unilateral relief is granted. In that situation, the other competent authority will be notified of such outcome.

***Practical application***

30. Sweden reported that since 1 January 2015 it did not consider an objection raised in a MAP request as being not justified. In 2016, a total of four cases were denied access to MAP, one by Sweden (due to a late filing) and three by the competent authorities of the treaty partners (in two cases due to a late filing and in one case due to the fact that the case did not concern a transfer pricing case). Furthermore Sweden reported that in 2017 for one case access was denied due to the fact that the taxpayer concerned provided conflicting information to the competent authorities. This case was first discussed with between the competent authorities and based on that discussion the case was closed and reported as *Access denied*.

31. Peers generally reported not being aware of a case where the competent authority of Sweden considered the objection raised in a MAP request as not justified. One peer mentioned being notified that access to MAP was denied in 2016 concerning a MAP request submitted in November 2016, whereby the notification included a short summary of facts and circumstances and the reason why access to MAP was denied. Another peer mentioned being aware of a case where access was denied, which concerns the same case as Sweden referred to in paragraph 30 above.

### *Anticipated modifications*

32. As previously discussed under element B.1, Sweden has recently signed the Multilateral Instrument with a view to inter alia modify – on the basis of Article 16(4)(a)(i) of that instrument – those tax treaties that contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the *Action 14 final report* (OECD, 2015b). By doing so these treaties will allow taxpayers to submit a MAP request to the competent authority of either contracting state. Furthermore, for those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), as it read prior to the adoption of the final report on Action 14, Sweden also reported it will replace in those treaties that part of the existing provision dealing with MAP in order to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

33. Sweden is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where tax treaties will not be modified via the Multilateral Instrument, Sweden reported it will subsequently strive to update them via bilateral negotiations and by doing so allow taxpayers to submit a MAP request to the competent authority of either contracting state. In the meantime, Sweden will continue to apply its bilateral consultation process for those cases where its competent authority considers the objection raised in the MAP request not to be justified.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.2]	-	As Sweden has done thus far, it should continue to apply its consultation process for future cases in which its competent authority considers the objection raised in a MAP request as not being justified.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

34. Where two or more tax administrations take different positions on what constitutes arm's length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner's transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the main objective of tax treaties. Countries should thus provide access to MAP in transfer pricing cases.

### ***Legal and administrative framework***

35. Out of Sweden 84 tax treaties, 58 contain a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) requiring their competent authorities to make a correlative adjustment in case a transfer pricing adjustment is made by the treaty partner.<sup>10</sup> Furthermore, 22 treaties do not include a provision equivalent to or based on Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a).<sup>11</sup> For the remaining four treaties the following specification can be made:

- one treaty contains a provision that is based on Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a), but which does not allow competent authorities to consult each other where necessary;
- one treaty contains a provision that is based on Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a), but whereby a corresponding adjustment is only possible through consultations between the competent authorities; and
- two treaties contain a provision that is based on Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a), but which from a material perspective do not incorporate several elements of Article 9(2), such as the possibility to unilaterally grant a corresponding adjustment.

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

37. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is included in Sweden's tax treaties and irrespective of whether its domestic legislation enables it to do corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Sweden states it will always provide access to MAP for transfer pricing cases.

The website of the Swedish tax administration containing information on MAP, however, does not specifically address that access to MAP will be granted for transfer pricing cases. This website mentions in a general sense that situations of taxation not in accordance with a tax treaty may concern transfer pricing cases, whereby two of the examples of cases that can be dealt with in MAP concern transfer pricing cases. Furthermore, in the overview of information that could be included in a MAP request, it is also stated that transfer pricing documentation should be enclosed in a MAP request concerning a transfer pricing case.

### ***Practical application***

38. Sweden reported that it has since 1 January 2015 not denied access to MAP on the basis that the case concerned a transfer pricing case.

39. Peers have indicated not being aware of a denial of access to MAP by Sweden for transfer pricing cases since 1 January 2015. Also taxpayers reported not being aware of such denial.

### ***Anticipated modifications***

40. Sweden reported that it is in favour of including Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015) in its tax treaties where possible. In that regard, Sweden recently signed the Multilateral Instrument to incorporate – on the basis of Article 17(2)

of that instrument – Article 9(2) of the OECD Model Tax Convention in those tax treaties that do not contain the equivalent of that provision. Sweden however, has, pursuant to Article 17(3)(a) of the Multilateral Instrument, reserved the right not to apply Article 17(2) to those treaties that already include a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a). In addition, Sweden reported it will seek to include Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

### **Conclusion**

	Areas for Improvement	Recommendations
[B.3]	-	As Sweden has thus far granted access to the 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.

41. 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***

42. None of Sweden's 84 tax treaties allow competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Sweden 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.

43. Sweden reported that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of MAP. The website of the Swedish tax administration containing information on MAP, however, does not specify whether taxpayers have access to MAP in such case or in cases in which there is 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.

***Practical application***

44. Sweden reported that it has since 1 January 2015 not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

45. Peers have indicated not being aware of a denial of access to MAP by Sweden in relation to the application of treaty and/or domestic anti-abuse provisions since 1 January 2015. Also taxpayers reported not being aware of such denial.

***Anticipated modifications***

46. Sweden did not indicate that it anticipates any modifications in relation to element B.4.

***Conclusion***

	Areas for Improvement	Recommendations
[B.4]	-	As Sweden has thus far granted access to the MAP in eligible 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, it should continue granting access for these 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.

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

***Legal and administrative framework***

48. Sweden reported that audit settlements are not possible in Sweden. More specific, in Sweden the tax administration and taxpayers cannot enter into a settlement agreement in the course of or after an audit. Sweden also has no administrative or statutory dispute settlement/resolution process in place that allows Sweden to deny access to MAP for issues resolved through that process.

***Practical application***

49. As Sweden has no audit settlement process available, it has since 1 January 2015 neither dealt with nor denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the Swedish tax administration, or where issues were already resolved through an administrative or statutory dispute settlement/resolution process.

50. Peers and taxpayers have indicated not being aware of a denial of access to MAP by Sweden since 1 January 2015 in case of audit settlements, which can be explained by the fact that in Sweden audit settlements are not possible.

***Anticipated modifications***

51. Sweden did not indicate that it anticipates any modifications in relation to element B.5.

***Conclusion***

	Areas for Improvement	Recommendations
[B.5]	-	-

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

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

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

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

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

***Practical application***

54. If taxpayers do not include in their MAP request all required information and documentation, the Swedish competent authority will request taxpayers to supplement this missing information and documentation. When making such request it will indicate to taxpayers the date when the response should be submitted, whereby the timeframe varies and is dependent on the complexity of the additional information requested. Generally, such timeframe ranges between one and two months. Sweden reported that taxpayers are allowed to ask for additional time to comply with the request, which is generally granted. If taxpayers do not submit the requested additional information within the given timeframe, the Swedish tax administration will either contact them and set a new timeframe, or inform them in writing that the case is at risk to be closed and stating the reasons for this (this is a

general requirement under domestic law prior to making a decision that is not in favour of the taxpayer), thereby giving them the opportunity to respond and provide the information within a certain timeframe. Only after this timeframe has elapsed, the case will be closed on the grounds that insufficient information was provided.

55. According to Sweden it provides access to MAP in all cases where taxpayers have complied with the information or documentation required by its competent authority and as set out in its MAP guidance. Sweden reported that it has since 1 January 2015 not denied access to MAP in this situation.

56. Peers have indicated not being aware of a limitation of access to MAP by Sweden since 1 January 2015 in situations where taxpayers complied with information and documentation requirements.

### *Anticipated modifications*

57. Sweden did not indicate that it anticipates any modifications in relation to element B.6.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.6]	-	As Sweden has thus far not limited access to the MAP in eligible cases when taxpayers have complied with Sweden'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.

58. 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 includes the second sentence of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015a), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties

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

59. Out of Sweden's 84 tax treaties, 17 do not contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.<sup>12</sup>

### *Anticipated modifications*

60. Sweden reported it has recently signed the Multilateral Instrument with a view to inter alia update – on the basis of Article 16(4)(c)(ii) of that instrument – those tax treaties that do not contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model*

*Tax Convention* (OECD, 2015a). Sweden is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where comprehensive tax treaties, which do not contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a), will not be modified by the Multilateral Instrument, Sweden reported it will subsequently strive to update them via bilateral negotiations to be compliant with element B.7. In addition, Sweden reported it will seek to include Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future comprehensive treaties.

61. Further to the above, Sweden also reported that it does not intend to include Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in tax treaties with a limited scope as such inclusion would contradict the purpose of those treaties. When states agree on a comprehensive treaty, the intention is to cover all or close to all cases. Against this background, it is Sweden's understanding that Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) should enable the competent authorities to deal with rare and exceptional cases, i.e. function as a backup-clause. The opposite applies for treaties with a limited scope. The intention here is to only cover a certain type of situations. Accordingly, in Sweden's view it is inappropriate to give the competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of the treaty.

62. Most of the peers that provided input mentioned that their treaty with Sweden meets the requirement under element B.7. One peer, however, noted that its treaty with Sweden does not include the second sentence of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015a), which is one of the 17 treaty partners mentioned above. This peer also mentioned that it intended to include this sentence in its treaty with Sweden via the signing of the Multilateral Instrument, but that in its understanding Sweden had chosen to exclude this treaty from being covered by the Multilateral Instrument. Further, another peer particularly noted that it recently started renegotiating the existing treaty with Sweden, which meets the requirement under element B.7.

## Conclusion

	Areas for Improvement	Recommendations
[B.7]	17 out of 84 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the <i>OECD Model Tax Convention</i> , OECD (2015a).	<p>Where treaties do not include the equivalent of Article 25(3), second sentence, of the <i>OECD Model Tax Convention</i>, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Sweden should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the agreement with the former Netherlands Antilles Islands that is being applied to Curacao, St. Maarten and the Caribbean part of the Netherlands, Sweden should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p> <p>In addition, Sweden should maintain its stated intention to include the required provision in all future treaties.</p>

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

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

63. 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.

***Sweden's MAP guidance***

64. Sweden has not issued separate MAP guidance. Information relating to MAP is provided for on the website of the Swedish tax administration, which is available at:

[www.skatteverket.se/privat/skatte/arbeteinkomst/internationellainkomster/dubbelbeskattningavrakning/undanrojandeavdubbelbeskattning.4.69ef368911e1304a625800011554.html](http://www.skatteverket.se/privat/skatte/arbeteinkomst/internationellainkomster/dubbelbeskattningavrakning/undanrojandeavdubbelbeskattning.4.69ef368911e1304a625800011554.html)

65. The information included on the website of the Swedish tax administration includes very basic information on tax treaties and their function, as also information on the availability of MAP. There is in Sweden no specific guidance available that sets out Sweden's rules, guidelines and procedures relating to the MAP function. The information that is included concerns:

- a. The role of the Swedish tax administration in relation to negotiating treaties, handling requests for APAs and MAPs;
- b. The function and aim of tax treaties;
- c. Basic information on MAP, its process and for what situations it can be requested;
- d. Availability of suspension of tax collection for the period a MAP case is pending;
- e. Contact details of the Swedish competent authority;
- f. The information and documentation taxpayers should include in a MAP request; and
- g. The filing period for a MAP.

66. The above-described MAP guidance of Sweden includes only basic information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.<sup>13</sup> Although this information is available, numerous subjects are not specifically discussed in Sweden's MAP guidance. This concerns whether MAP is available in cases of: (i) transfer pricing adjustments, (ii) the application of anti-abuse provisions, (iii) multilateral MAPs and (iv) bona fide foreign-initiated self-adjustments. In addition, this information also not specifies: (a) whether taxpayers can request for the multi-year resolution of recurring issues through MAP, (b) the consideration of interest and penalties in MAP, (c) the availability of arbitration under tax treaties, (d) the relationship between MAP and domestic available remedies and (e) the process how MAP

agreements are implemented in terms of steps to be taken and timing of these steps, including any actions to be taken by taxpayers (if any).

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

67. The website of the Swedish tax administration containing information on MAP includes guidance on what taxpayers should submit in a MAP request. Furthermore, the website notes that taxpayers are allowed (as an option) to submit the MAP request in the English language, which can be of advantage if the treaty partner is not a Nordic country.

68. 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>14</sup> In light of this list, the requirements in Sweden on what information and documentation should be included in a MAP request are checked below:

- Identity of the taxpayer(s) covered in the MAP request;
- The basis for the request (the nature of the action giving rise to, or expected to give rise to, taxation not in accordance with the convention);
- Facts of the case;
- Analysis of the issue(s) requested to be resolved via MAP;
- Whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes;
- Whether the MAP request was also submitted to the competent authority of the other treaty partner;
- Whether the issue(s) involved were dealt with previously; and
- A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

69. In addition to the above list, the website of the Swedish tax administration further mentions that a MAP request should preferably include:

- The name of the other jurisdiction involved;
- A reference to the article in the tax treaty concerned that has been applied incorrectly and an explanation substantiating the position of the taxpayer;
- Identity of the associated enterprises and a statement of the relationship with the taxpayer;
- The fiscal year(s) covered by the request;
- The name of the tax office that made the adjustment in the other jurisdiction involved;
- Copies of relevant documents sent to or received from the tax authority in the other jurisdiction involved;
- Information on any APA or other agreement relevant to the request;

- Any proposed settlement of the matter by the taxpayer;
- Other relevant information and documents; and
- For transfer pricing cases: the transfer pricing documentation of the group to which the taxpayer belongs.

70. Furthermore, Sweden requires that the request is signed by either the taxpayer or an authorised agent. Furthermore, if it is not the taxpayer itself that submits the request, the MAP request also needs to include a power of attorney for representing the taxpayer.

### *Anticipated modifications*

71. Sweden did not indicate that it anticipates any modifications in relation to element B.8.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.8]	Guidance on MAP is available, but further clarity should be provided.	<p>Sweden should improve the level of clarity of its MAP guidance.</p> <p>Additionally, although not part of the Action 14 Minimum Standard, in order to further improve the level of clarity, Sweden could consider including in its MAP guidance information on:</p> <ul style="list-style-type: none"> <li>• Whether MAP is available in cases of: (i) transfer pricing adjustments, (ii) the application of anti-abuse provisions, (iii) multilateral MAPs and (iv) 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> <li>• The availability of arbitration under tax treaties;</li> <li>• The relationship between MAP and domestic available remedies; and</li> <li>• The process how MAP agreements are implemented in terms of steps to be taken and timing of these steps, including any actions to be taken by taxpayers (if any).</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.

72. 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>15</sup>

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

73. As discussed in the Introduction, Sweden included information on MAP on the website of the Swedish tax administration, which can be found at:

[www.skatteverket.se/privat/skatter/arbeteinkomst/internationellainkomster/dubbelbeskattningavrakning/undanrojandeavdubbelbeskattning.4.69ef368911e1304a625800011554.html](http://www.skatteverket.se/privat/skatter/arbeteinkomst/internationellainkomster/dubbelbeskattningavrakning/undanrojandeavdubbelbeskattning.4.69ef368911e1304a625800011554.html)

74. As regards its accessibility, the information on MAPs is logically grouped on the website of the Swedish tax administration and as such easily accessible.

### ***MAP profile***

75. The MAP profile of Sweden is published on the website of the OECD.<sup>16</sup> This MAP profile is complete and includes external links which provide extra information and guidance.

### ***Anticipated modifications***

76. Sweden did not indicate that it anticipates any modifications in relation to element B.9.

### ***Conclusion***

	Areas for Improvement	Recommendations
[B.9]	-	Sweden should ensure that future updates of the information on MAPs are made publically available and easily accessible. Its MAP profile, published on the shared public platform, should be 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.

77. 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***

78. As previously discussed under B.5, Sweden does not allow audit settlements and for that reason its MAP guidance does not further touches upon this issue.

79. Peers indicated no issues regarding element B.10 in relation to audit settlements.

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

80. As previously mentioned under element B.5, Sweden does not have an administrative or statutory dispute settlement/resolution process available and for that reason its MAP guidance does not further touch upon this issue.

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

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

***Anticipated modifications***

82. Sweden did not indicate that it anticipates any modifications in relation to element B.10.

***Conclusion***

	Areas for Improvement	Recommendations
[B.10]	-	-

**Notes**

1. These 55 treaties include the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway.
2. These 27 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic, the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia and the agreement with the Netherlands Antilles Islands that Sweden continues to apply to Curaçao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
3. These 11 treaties include the agreement with the Netherlands Antilles Islands that Sweden continues to apply to Curaçao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
4. These five treaties include the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia.
5. This relevant provision reads: “[...] the term ‘irrespective of the remedies provided by the domestic law’ means that the introduction of a mutual agreement procedure is not an alternative to the national legal procedures to which, in all cases, recourse must first be had when the conflict relates to an application of [...] taxes which is not in accordance with the Convention.”

6. These 63 treaties include the agreement with the Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
7. These three treaties include the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway. For the one treaty where the period to file a MAP request is 4.5 years, also the start date for the filing period deviates from the OECD Model Tax Convention, as it reads: “[...] four and a half year from the expiry of the year in which the action resulting in taxation not in accordance with the provisions of the convention was taken”. This different start date, however, does not lead to a period for filing of MAP requests of less than three years, as is required under element B.1.
8. These 17 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia.
9. Available at: [www.skatteverket.se/privat/skatter/arbeteinkomst/internationellainkomster/dubbelbeskattningavrakning/undanrojandeavdubbelbeskattning.4.69ef368911e1304a625800011554.html](http://www.skatteverket.se/privat/skatter/arbeteinkomst/internationellainkomster/dubbelbeskattningavrakning/undanrojandeavdubbelbeskattning.4.69ef368911e1304a625800011554.html).
10. These 58 treaties include the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway.
11. These 23 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic, the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia and the agreement with the Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
12. These 17 treaties include the agreement with the Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
13. 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).
14. Ibid.
15. 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).
16. Available at: [www.oecd.org/tax/dispute/Sweden-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/Sweden-Dispute-Resolution-Profile.pdf).

## *Bibliography*

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en>.
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en>.

## *Part C*

### **Resolution of MAP cases**

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

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

83. 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, 2015), 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 Sweden’s tax treaties***

84. Out of Sweden’s 84 tax treaties, 79 contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) 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> The remaining five treaties include a provision that is based on or has similarities with Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015), but are for the following reasons not considered equivalents of such provision:

- The objective of the MAP is to come to an agreement to avoid double taxation instead of taxation that is not in accordance with the provisions of the treaty (one treaty); and
- The part of the sentence reading: “if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution” is absent (four treaties).

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

85. Sweden reported it has recently signed the Multilateral Instrument with a view to inter alia update – on the basis of Article 16(4)(b)(i) of that instrument – those tax treaties that do not contain a provision equivalent to Article 25(2), first sentence, of the *OECD*

*Model Tax Convention* (OECD, 2015). Sweden is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where tax treaties, which do not contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015), will not be modified by the Multilateral Instrument, Sweden reported it will subsequently strive to update them via bilateral negotiations to be compliant with element C.1. In addition, Sweden reported it will seek to include Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

86. Most of the peers that provided input mentioned that their treaty with Sweden meets the requirement under element C.1. Further, another peer particularly noted that it recently started renegotiating the existing treaty with Sweden, which meets the requirement under element C.1. None of the treaty partners of the five treaties discussed above provided peer input on Sweden’s implementation of the Action 14 Minimum Standard.

### Conclusion

	Areas for Improvement	Recommendations
[C.1]	Five out of 84 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a).	Where treaties do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Sweden should request the inclusion of the required provision via bilateral negotiations.  In addition, Sweden should maintain its stated intention to include the required provision in all future 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).

87. 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

88. Statistics regarding all tax treaty related disputes concerning Sweden are published on the website of the OECD as of 2007.<sup>2</sup> Sweden also publishes MAP statistics regarding transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.<sup>3</sup>

89. 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. Sweden provided their MAP statistics pursuant to the MAP Statistics Reporting Framework

within the given deadline, including all cases involving Sweden and of which its competent authority was aware. The statistics discussed below include both post-2015 and pre-2016 cases and the full statistics are attached to this report as Annex B and C respectively and should be considered jointly for an understanding of the MAP caseload of Sweden.<sup>4</sup> With respect to post-2015 cases, Sweden reported having reached out to all its MAP partners with a view to have their MAP statistics matching. Sweden indicated it could match its statistics with these partners.

### *Monitoring of MAP statistics*

90. Sweden reported that it is constantly monitoring progress of its MAP cases and where in the process bottlenecks arise.

### *Analysis of Sweden's MAP caseload*

#### *Global overview*

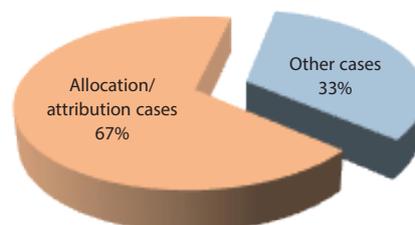
91. The following graph shows the evolution of the Sweden's MAP caseload over the Statistics Reporting Period.

Figure C.1. Sweden's MAP inventory



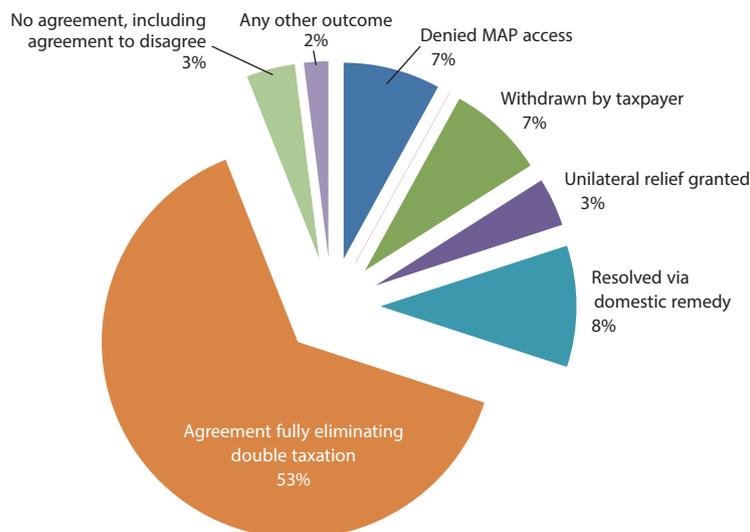
92. At the beginning of the Statistics Reporting Period Sweden had 166 pending MAP cases, of which 109 concerned attribution/allocation cases and 57 other cases.<sup>5</sup> At the end of the Statistics Reporting Period, Sweden had 179 MAP cases, 120 of which are attribution/allocation cases and 59 other cases. While the total number of cases slightly increased by approximately 7% over the Statistics Reporting Period, the number of attribution/allocation cases has increased slightly more during this 10% period. This end inventory can be illustrated as follows:

Figure C.2. End inventory on 31 December 2016 (179 cases)



93. During the Statistics Reporting Period Sweden in total resolved 50 MAP cases, for which the following outcomes were reported:

Figure C.3. Cases resolved during the Reporting Period (50 cases)



94. This chart shows that during the Statistics Reporting Period, 32 out of 50 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

#### *Pre-2016 cases*

95. At the beginning of the Statistics Reporting Period, Sweden's MAP inventory of pre-2016 MAP cases consists of 166 cases, of which were 109 attribution/allocation cases and 57 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 126 cases, consisting of 89 attribution/allocation cases and 37 other cases. This decrease concerns 25% of the opening inventory, with an equal reduction in attribution/allocation cases and other MAP cases (both 20).

#### *Post-2015 cases*

96. As mentioned in paragraph 92, 63 MAP cases were started on or after 1 January 2016, 33 of which concerned attribution/allocation cases and 30 other cases. At the end of the Statistics Reporting Period the total post-2015 cases inventory had decreased to 53 cases, consisting of 31 attribution/allocation cases and 22 other cases. Sweden in total resolved 10 post-2015 cases during the Statistics Reporting Period, reflecting 16% of the total post-2015 cases.

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

#### *Pre-2016 cases*

97. For pre-2016 cases, Sweden reported that on average it needed 33.88 months to resolve attribution/allocation cases and 30.74 months to resolve other cases. This resulted in an average time needed of 32.31 months to close pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Sweden used in general as the:

- *Start date*: the date of registration of the MAP request; and
- *End date*: the date when the Swedish competent authority takes the decision to execute the MAP agreement.

#### *Post-2015 cases*

98. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics of Sweden only comprises 12 months.

99. During the Statistics Reporting Period Sweden resolved ten cases, two of which concerned an attribution/allocation case and eight of which concerned other cases. These resolved cases represent 15.87% of the new received post-2015 cases during the Statistics Reporting Period. The attribution/allocation cases were on average closed within 4.54 months, all of which led to an agreement that fully eliminated double taxation or fully resolving the taxation not in accordance with the provisions of the applicable tax treaty. The other eight MAP cases were on average closed within 3.27 months and with the following outcomes: access denied (two cases), unilateral relief granted (two cases), resolved via domestic remedy (two cases) and agreement that fully eliminated double taxation or fully resolving the taxation not in accordance with the provisions of the applicable tax treaty (two cases). All post-2015 that were resolved in 2016, were on average closed in 3.52 months.

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

100. The average time needed to resolve MAP cases during the Statistics Reporting Period was 26.55 months, which average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	22	31.21
Other cases	28	22.89
All cases	50	26.55

#### *Peer input*

101. All peers that provided input to Sweden's implementation of the Action 14 Minimum Standard report a good working relationship with the Swedish competent authority, which is further discussed under element C.3 below. This concerns both jurisdictions that have a substantial MAP inventory with Sweden as also (which are the most frequent) jurisdictions with a relatively modest MAP caseload with Sweden. Peers reported that contacts with the Swedish competent authority are very easy and that it is solution-oriented. Peers further indicated that cases are generally resolved within a reasonable period.

### *Anticipated modifications*

102. As will be further discussed under element C.6, Sweden is open to include a mandatory and binding arbitration provision in its tax treaties to provide that treaty-related disputes will be resolved within a specified timeframe and which should globally improve the time needed to settle MAP cases. Apart from that Sweden did not indicate that it anticipates any modifications in relation to element C.2.

### *Conclusion*

	Areas for Improvement	Recommendations
[C.2]	Sweden submitted timely comprehensive MAP statistics and indicated they have been matched with almost all of its MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether Sweden's MAP statistics match those of its treaty partners as reported by the latter.	
		Within the context of the state of play outlined above and in relation to the MAP statistics provided by Sweden, it resolved during the Statistics Reporting Period 15.87% (ten out of 63 cases) of its post-2015 cases in 3.52 months on average. In that regard, Sweden is recommended to seek to resolve the remaining 84.13% of the post-2015 cases pending on 31 December 2016 (53 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.

103. 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 Sweden's competent authority*

104. As described in the Introduction, by Regulation 2000:1077 (in Swedish: *Förordning (2000:1077) om handläggning av ärenden enligt skatteavtal*) the Swedish Ministry of Finance delegated the competent authority function to the Swedish tax administration, apart from MAP cases of a general nature that arise under Article 25(3), first sentence, which are still being handled by the Swedish Ministry of Finance. The competent authority is placed within a section of the legal department of the Swedish tax administration. Such placement was particularly chosen to ensure that the competent authority function is separated from those departments within the Swedish tax administration that are involved in conducting tax audits and imposing tax assessments. For the same reason, the competent authority function is within the legal department placed in a section that is separated from inter alia the international/corporate tax departments.

105. Currently, the Swedish competent authority employs eight persons; of whom six work full time and two work part time. There are four economists who work mainly with APAs, but are also involved in handling MAP cases. The other four persons mainly work with MAP cases, but are also involved in handling APA cases. Sweden reported that it is in the process of employing two additional economists, whereas it already added a lawyer to the staff in charge of MAP in September 2016.

106. The Swedish competent authority is authorised to handle requests for both MAPs and bilateral/multilateral APAs. Next to this work, staff in charge of MAP also participates in meetings of the working parties of the OECD, the FTA MAP Forum and at a European level participates in the work of the EU Joint Transfer Pricing Forum. There is no involvement in treaty negotiations, which is conducted at the level of the Swedish Ministry of Finance.

### ***Authority to handle and resolve MAP cases***

107. When in Sweden a taxpayer intends to submit a MAP request it can file such request directly with the competent authority. The situation may occur that taxpayers submit a MAP request to the local tax administration office. If such situation occurs, such request will be forwarded to the competent authority.

108. After receipt of the MAP request, the Swedish competent authority – when deemed necessary – sends the request to the local tax administration office concerned (or its audit department) and requests for comments on the case and, additionally, whether there is any further information on the taxpayer or other relevant information for the case under review. Sweden reported that its competent authority is neither bound by the opinion of the local tax administration nor are employees of the (audit department) of the local tax administration office involved in MAP negotiations. These employees may be asked for an opinion when preparing the Swedish position, but they are not involved the actual preparation of such position or negotiating MAP agreements.

109. At the level of the Swedish competent authority only a few employees are assigned competence to enter into MAP agreements with the competent authorities of treaty partners. These employees are always part of the team that conducts MAP negotiations. If there is a doubt on the scope of a tentative MAP agreement, the head of the section will make the final decision on the case. Furthermore, all Swedish positions in individual MAP cases are always reviewed by at least one other person within the competent authority.

### ***Monitoring mechanism***

110. Sweden reported that in order to resolve MAP cases in a timely and principled manner, Sweden is constantly reviewing how it handles MAP cases and where in the process bottlenecks arise. More specifically, the head of section within the competent authority monitors cases, especially long pending cases, on a regular basis in terms of actions that have been taken and how to proceed with the case. In that regard, Sweden addressed that the increase in number of MAP and APA requests during the last years and the anticipated further increase in the years to come has resulted, and will continue to do so, in a strained situation for the competent authority. As mentioned above, the Swedish competent authority is in the process of employing two additional persons, which may be increased further in coming years.

111. Furthermore, Sweden also reported that its competent authority monitors the MAP caseload, which is an element in requesting for additional resources. To be more specific, in Sweden the need for additional resources at the level of the competent authority is monitored/or assessed by two criteria, namely: (i) the number of overall MAP cases in the inventory of Sweden and (ii) the workload of each employee (e.g. number of open cases and upcoming negotiations). With respect to criterion (i) this monitoring/assessing is conducted three times a year and with respect to criterion (ii) such is done at regular intervals. When additional resources are necessary at the level of the Swedish competent authority,

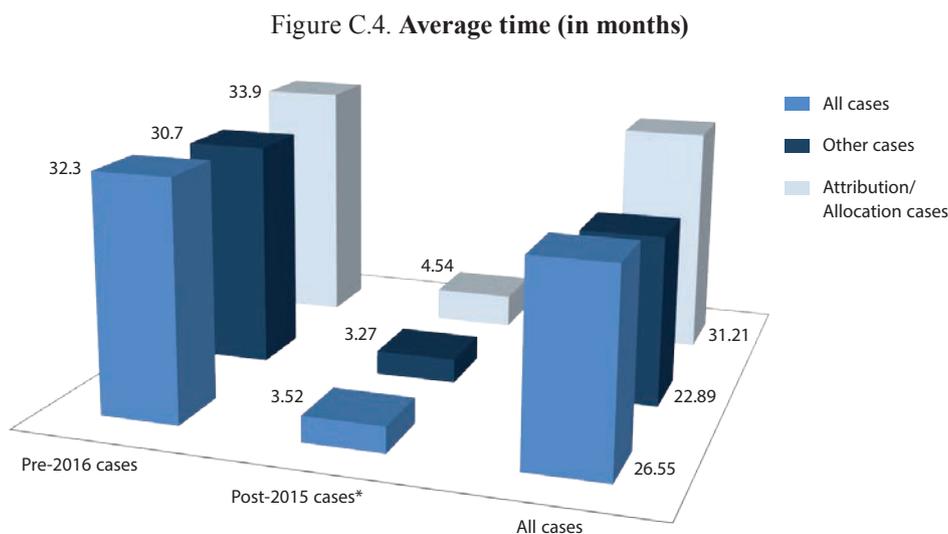
a request relating hereto is made to the head of the legal department of the Swedish tax administration, which in turn makes requests for additional resources for prioritised areas to the Swedish Ministry of Finance. The decision relating hereto is made through the annual budget process.

112. In terms of resources available to perform its MAP function, apart from staffing, Sweden reported that it has sufficient resources available for travelling, translation of documents and conducting face-to-face meetings with other competent authorities.

### ***Practical application***

#### *MAP statistics*

113. As discussed under element C.2, Sweden has resolved its MAP cases during the Statistics Reporting Period slightly above the pursued 24-month average. Moreover, a discrepancy can be noted in the time needed for the resolution of attribution/allocation cases and other cases, which can be illustrated by the following graph:



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

114. Based on these figures, it follows that on average it took Sweden 26.55 months to resolve MAP cases. It took Sweden 31.21 months to resolve attribution/allocation cases, which may indicate that additional resources specifically dedicated to these cases may be necessary to accelerate their resolution.

### ***Peers and taxpayer input***

115. All peers that provided input reported a good working relation with the Swedish competent authority, both those having a large as well as those having a moderate MAP inventory with Sweden. Although Sweden does not notify its treaty partners of which department acts as the competent authority, peers have raised no issues regarding contacting the Swedish competent authority. In fact, they noted that it is easy to come in contact with them. Some peers thereby noted that they have frequent contacts with the Swedish competent authority, by means of written, telephone and e-mail communication and

sometimes via (annual) competent authority meetings. Two peers specifically mentioned that they schedule once a year a competent authority meeting to discuss all pending cases. In addition, one peer in particular noted that it recently had its first MAP case resolved with Sweden, which was conducted in a cooperative atmosphere. Discussions were done via conference calls and in English, which were easy to organise even if there was a substantial time difference. Another peer praised its excellent relationship with the Swedish competent authority, thereby noting that the latter works diligently to ensure that timelines are respected and no unnecessary delays occur to resolve cases. Also this peer noted that competent authority meetings are frequently scheduled based on the pending MAP cases. Furthermore, a peer also mentioned that the Swedish competent authority provides prompt responses to queries raised. Lastly, one peer mentioned that the relevant documents of a MAP case sent also contain the references of the staff in charge of the case within the Swedish tax administration.

116. With respect to the resolution of MAP cases all peers noted the commitment by the Swedish competent authority to resolve cases in a timely manner, whereby some of them especially appreciated the prompt response and providing of all information relating to the case under review. Most of these peers reported no issues in resolving their MAP cases with Sweden. One peer in particular noted that staff in charge of MAP in Sweden is well trained to handle MAP cases. Another peer noted that it was together with Sweden able to resolve cases in a timely, effective and efficient manner, whereby responses to the peer's positions by the Swedish competent authority was quick and whereby both competent authorities also adopted reasonable negotiation positions. Furthermore, one peer noted that the Swedish competent authority timely provides written position papers and in some cases conference calls are scheduled between their competent authorities to prepare discussions for planned competent authority meetings.

117. Peers also reported that MAP cases are generally resolved timely, although one peer provided specific and deviating input. This peer noted that the Swedish competent authority is not willing to discuss a MAP case if for this case also a court procedure is pending in Sweden, as such case will be set on hold in Sweden until the court procedure has been finalised. This peer also mentioned that it is difficult to obtain an agreement with the Swedish competent authorities on the facts and circumstances of some cases, to agree on whether taxpayers have complied with the minimum required information and, if this latter is not the case, how to continue negotiations on the resolution of the case. Specifically with respect to attribution/allocation cases, this peer noted that the timeframes for resolving cases vary, as some cases tend to take long before being resolved and others only take a relatively short time. Furthermore, this peer also reported that it is difficult to obtain substantiated position papers from Sweden, as they are short and in this peer's view not always refer to the facts of the case or the previous position papers issued. Despite this criticism, the peer reported that a good negotiating climate exists between the competent authorities, even if in certain cases they do not agree.

118. In relation to suggestions for improvement, a number of peers provided input. One peer considers that regular competent authority meetings to discuss pending MAP cases and possible bilateral APAs are an efficient manner to make progress on cases and suggested that use could be made of physical meetings in conjunction with follow-up (video) conference calls and e-mails. Other peers also suggested organising competent authority meetings at more frequent occasions (i.e. once per year) to improve the timelines for resolving MAP cases. In addition, one peer specifically mentioned that for improving the efficiency of the MAP process both competent authorities could continue and foster direct communications at the level of case handlers and management level. Lastly, another peer suggested that

for attribution/allocation cases more specialised personnel could be provided for, which suggestion was also made for other MAP cases as additionally more frequent communication between the competent authorities.

### *Anticipated modifications*

119. Sweden did not indicate that it anticipates any modifications in relation to element C.3, other than the envisaged hiring of additional staff discussed above.

### *Conclusion*

	Areas for Improvement	Recommendations
[C.3]	As Sweden resolved MAP cases in 26.55 months on average, there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016 and which might indicate that the Swedish competent authority is not adequately resourced.	Sweden should closely monitor whether the additional resources recently provided to the MAP function, as well as the additional resources already envisaged to be provided in the near future, will contribute to the resolution of MAP cases in a timely, efficient and effective manner.

#### **[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.

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

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

121. Paragraphs 104-109 above discussed how the competent authority function is organised in Sweden. All personnel working in the Swedish competent authority are involved in handling MAP cases and related work at the level of the OECD and the EU.

122. As noted in paragraph 108, in practice the Swedish competent authority operates independently and has full authority to resolve MAP cases. There is neither a (formal) system in place requiring the competent authority to ask other government institutions (i.e. the audit department of the Swedish tax administration) for approval of any MAP agreements nor is the process for negotiating MAP agreements influenced by policy considerations. Within the competent authority there are specific persons assigned competence to negotiate MAP agreements, whereby these persons are always present during competent authority meetings. Furthermore, all Swedish positions in MAP cases are always reviewed by at least one other person within the Swedish competent authority. For more delicate issues the head of department will take the final decision.

***Practical application***

123. Peers generally reported no impediments in Sweden to perform its MAP function absent from approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. Two peers specifically mentioned that they are not being aware that staff in charge of the MAP in Sweden is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

***Anticipated modifications***

124. Sweden did not indicate that it anticipates any modifications in relation to element C.4.

***Conclusion***

	Areas for Improvement	Recommendations
[C.4]	-	As it has done thus far, Sweden 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 adjustments at issue, or being influenced by considerations of the policy that Sweden would like to see reflected in future amendments to the treaty.

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

125. 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.

126. 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 Sweden***

127. Sweden reported that the primary goal for staff in charge of MAP processes is to have an average for resolving MAP cases of less than 24 months as well as to shorten the timeframe needed for handling APA requests. In this respect, Sweden monitors/assesses its MAP caseload at least three times per year and the workload of each employee at regular intervals. For its competent authority as a whole, Sweden evaluates its MAP process and the work performed by the staff on a regular basis.

128. With respect to the evaluation of work performance of staff in charge of MAP, Sweden reported that such evaluation is regulated in the general employee policy of the Swedish tax administration. Performance indicators used are: (i) working efficiently towards the set goals, (ii) fulfilling the tasks and (iii) using time efficiently and meeting the timeframes. For the head of section, the performance indicators include inter alia result and goal orientation, complying with goals set, long term resourcing of staff and the proper functioning of the section.

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

- Number of MAP cases resolved;
- Consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers); and
- 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).

130. Sweden does not particularly use these performance indicators. It further reported that neither the number of MAP cases concluded nor the amounts concerned of these cases are part of the evaluation process. The performance indicators used are considered in line with what is required under element C.5.

### ***Practical application***

131. Peers generally provided no specific input relating to this element. Two peers particularly noted that they are not aware of the use of performance indicators by Sweden that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue. As discussed under element C.3, all peers reported that the Swedish competent authority is cooperative, constructive and solution-oriented and also has the intent to resolve cases in a timely, effective and principled manner.

### ***Anticipated modifications***

132. Sweden did not indicate that it anticipates any modifications in relation to element C.5.

### ***Conclusion***

	Areas for Improvement	Recommendations
[C.5]	-	As it has done thus far, Sweden 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.

133. 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***

134. Sweden has no domestic law limitations for including MAP arbitration in its tax treaties and is open to include a mandatory and binding arbitration clause in the course of treaty negotiations. In addition, Sweden is a signatory to the EU Arbitration Convention

and has been a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument. The website of the Swedish tax administration containing information on MAP, however, does not specify the availability of arbitration under tax treaties.

### ***Practical application***

135. Up to date, Sweden has incorporated an arbitration clause in five tax treaties as a final stage to the MAP. In four treaties this concerns an equivalent of Article 25(5) of the *OECD Model Tax Convention* (OECD, 2015a), whereby in some treaties deviations from this provision were agreed (i.e. a three or four-year period for the MAP instead of a two-year period or a limitation of the scope of the arbitration procedure). One of these four treaties is with Japan, which includes in the protocol additional rules for conducting the arbitration procedure. The fifth treaty provides for a voluntary and binding arbitration procedure with an arbitration court, which shall be composed of judges of the contract states, third states or international organisations.

### ***Anticipated modifications***

136. Sweden reported that it has opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision. It is currently in the process of analysing which of its tax treaties, and to what extent, will be modified to incorporate the arbitration provision.

### ***Conclusion***

	Areas for Improvement	Recommendations
[C.6]	-	-

## **Notes**

1. These 79 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic, the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia, the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway, and the agreement with the Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
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 fiscal year 2015.
3. Available at: [http://ec.europa.eu/taxation\\_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum\\_en](http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en). These statistics are up to and include fiscal year 2015.
4. For post-2015 cases, if the number of MAP cases in Sweden'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, Sweden 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. Sweden that for pre-2016 and post-2015 cases it follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation case. Annex D of the MAP Statistics Reporting Framework defines such case as: “a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); 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”.

## *Bibliography*

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en>.
- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, OECD, Paris, [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) (accessed on 22 August 2017).
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en>.
- OECD (2007), *Manual on Effective Mutual Agreement Procedures*, OECD, Paris, [www.oecd.org/ctp/38061910.pdf](http://www.oecd.org/ctp/38061910.pdf).

## *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.

137. 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***

138. Chapter 67, section 38, of the Swedish Tax Procedure Act stipulates that if on the basis of a MAP agreement Sweden has to amend its taxation, the Swedish competent authority is allowed to do so. Sweden reported that it will implement all MAP agreements reached notwithstanding domestic time limits. In other words, there is in Sweden no statute of limitations for implementing MAP agreements.

139. When the Swedish competent authority enters into a MAP agreement, it will take a decision in accordance with that agreement. Sweden reported that this decision will be executed immediately, regardless of whether or not the concerned tax year is statute barred under domestic law. Taxpayer's consent to the decision following the MAP agreement is not a prerequisite for implementation.

140. The website of the Swedish tax administration containing information on MAP does not include information in relation to the process of implementation of MAP agreements, such in terms of steps to be taken and timing of these steps.

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

141. Sweden reported that all MAP agreements reached since 1 January 2015 have or will be implemented. In that regard it noted that its competent authority follows up with the local tax administration whether the decision executing the MAP agreement has been implemented. Each case handler in the Swedish competent authority is thereby responsible for checking with the local tax administration that the MAP agreement is actually implemented.

142. In general peers and taxpayers have not indicated experiencing any issues with Sweden regarding the implementation of MAP agreements reached on or after 1 January 2015. One peer specifically mentioned that all MAP agreements with Sweden concerning allocation/attribution cases and other cases have correctly been implemented.

*Anticipated modifications*

143. Sweden did not indicate that it anticipates any modifications in relation to element D.1.

*Conclusion*

	Areas for Improvement	Recommendations
[D.1]	-	As it has done thus far, Sweden should continue to implement all MAP agreements 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.

144. Delay of implementation of MAP agreements may lead to adverse financial consequences for both taxpayers and competent authorities. To avoid this and to increase certainty for all parties involved, it is important that the implementation of any MAP agreement is not obstructed by procedural and/or statutory delays in the jurisdictions concerned.

*Theoretical timeframe for implementing mutual agreements*

145. Sweden has in its domestic legislation and/or administrative framework no timeframe for implementation of MAP agreements reached. This regards both the situation in which the MAP agreement leads to additional tax to be paid or to a refund of tax in Sweden. Furthermore, the website of the Swedish tax administration containing information on MAP does not include information on the timeframe for implementing MAP agreements. In this respect, Sweden reported that its competent authority strives at writing the implementation decision as soon as possible after the MAP agreement is entered into and subsequently reviews whether the local tax administration has implemented that decision.

*Practical application*

146. In general peers and taxpayers have not indicated experiencing any issues with Sweden regarding the implementation of MAP agreements reached on or after 1 January 2015 in general or not on a timely basis. One peer specifically mentioned that all MAP agreements with Sweden concerning allocation/attribution cases and other cases have correctly and timely been implemented.

*Anticipated modifications*

147. Sweden did not indicate that it anticipates any modifications in relation to element D.2.

*Conclusion*

	Areas for Improvement	Recommendations
[D.2]	-	As it has done thus far, Sweden 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.

148. 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, 2015) 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 Sweden's tax treaties***

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

150. Out of Sweden's 84 tax treaties, 62 contain a provision that is equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.<sup>1</sup> Furthermore, 21 treaties do not include such provision nor include the alternatives provisions in Article 9(1) and 7(2).<sup>2</sup> The remaining treaty includes a provision that is equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015), but is supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states. This concerns the requirement for the competent authority of Sweden to give notice to the competent authority of the treaty partner within the time limits in the domestic law of one of that treaty partners that there may be a claim for tax adjustment. This treaty is therefore considered not having the full equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015). This requirement, however, is only one-sided and only applies to the treaty partner and not to Sweden. In this regard, Sweden indicated that it will always implement MAP agreements notwithstanding any domestic statute of limitations.

***Anticipated modifications***

151. Sweden reported it has recently signed the Multilateral Instrument with a view to inter alia modify – on the basis of Article 16(4)(b)(ii) of that instrument – those tax treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) stipulating that any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the contracting states. In that regard, Sweden reported it has not, as is allowed pursuant to Article 16(5)(c) of the Multilateral Instrument, reserved the right not to apply the second sentence of Article 16(2) of that instrument. Sweden is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where the above-discussed tax treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention*

(OECD, 2015) and which will not be modified by the Multilateral Instrument, Sweden reported it will subsequently strive to update them via bilateral negotiations to be compliant with element D.3. In addition, Sweden reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention in all of its future treaties.

152. Most peers that provided input reported that their treaty with Sweden meets the requirement under element D.3. For one peer, however, the treaty with Sweden does not include the second sentence of Article 25(2) of the *OECD Model Tax Convention* (OECD, 2015). Furthermore, three peers, which are signatory parties to the 21 treaties mentioned above, noted that their treaty with Sweden does not include the second sentence. Two of these peers mentioned they envisage incorporating this sentence in their treaty with Sweden via signing the Multilateral Instrument or via bilateral negotiations. The third peer noted that it is willing to accept the alternative provisions in Article 9(1) and 7(2) in its treaty with Sweden, such also via signing the Multilateral Instrument. In addition, another peer particularly noted that it recently started renegotiating the existing treaty with Sweden, which meets the requirement under element D.3.

### Conclusion

	Areas for Improvement	Recommendations
[D.3]	22 out of 84 tax treaties do contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor the alternatives provisions in Article 9(1) and Article 7(2).	<p>Where treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015), or include the alternatives provided in Article 9(1) and Article 7(2), and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Sweden should request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>Specifically with respect to the treaty with former Czechoslovakia and the treaty with former Yugoslavia, Sweden should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or its alternatives.</p> <p>In addition, Sweden should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternative provisions, in all future treaties.</p>

### Notes

1. These 62 treaties include the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway and the agreement with the Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).
2. These 21 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic and the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia.

## *Bibliography*

- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, [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) (accessed on 22 August 2017).
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en>.



## Summary

	Areas for Improvement	Recommendations
<b>Part A: Preventing disputes</b>		
[A.1]	Five out of 84 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015).	Where treaties do not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Sweden should request the inclusion of the required provision via bilateral negotiations.  In addition, Sweden should maintain its stated intention to include the required provision in all future treaties.
[A.2]	-	As Sweden has done thus far, it should continue to provide for roll-back of bilateral APAs in appropriate cases.
<b>Part B: Availability and access to MAP</b>		
[B.1]	<p>Eight out of 84 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention, OECD (2015a). Of those eight tax treaties:</p> <ul style="list-style-type: none"> <li>• seven do not contain a provision that is the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a), either as it read prior to the adoption of the Action 14 final report, OECD (2015b) or as amended by that final report; and</li> <li>• one does not contain a provision based on Article 25(1), second sentence of the OECD Model Tax Convention, OECD (2015a) allowing taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul>	<p>Where treaties do not include the equivalent of Article 25(1) of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Sweden should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> <li>• a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention, OECD (2015a) either: <ul style="list-style-type: none"> <li>a. As amended in the Action 14 final report, OECD (2015b); or</li> <li>b. As it read prior to the adoption of the Action 14 final report, OECD (2015b), thereby including the full sentence of such provision; and</li> </ul> </li> <li>• a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>Specifically with respect to the treaty with former Yugoslavia, Sweden should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p> <p>In addition, Sweden should maintain its stated intention to include the required provision in all future treaties.</p>
[B.2]	-	As Sweden has done thus far, it should continue to apply its consultation process for future cases in which its competent authority considers the objection raised in a MAP request as not being justified.

	Areas for Improvement	Recommendations
[B.3]	-	As Sweden has thus far granted access to the MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	-	As Sweden has thus far granted access to the MAP in eligible 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, it should continue granting access for these cases.
[B.5]	-	-
[B.6]	-	As Sweden has thus far not limited access to the MAP in eligible cases when taxpayers have complied with Sweden's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	17 out of 84 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a).	<p>Where treaties do not include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Sweden should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the agreement with the former Netherlands Antilles Islands that is being applied to Curacao, St. Maarten and the Caribbean part of the Netherlands, Sweden should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p> <p>In addition, Sweden should maintain its stated intention to include the required provision in all future treaties.</p>
[B.8]	Guidance on MAP is available, but further clarity should be provided.	<p>Sweden should improve the level of clarity of its MAP guidance.</p> <p>Additionally, although not part of the Action 14 Minimum Standard, in order to further improve the level of clarity, Sweden could consider including in its MAP guidance information on:</p> <ul style="list-style-type: none"> <li>• Whether MAP is available in cases of: (i) transfer pricing adjustments, (ii) the application of anti-abuse provisions, (iii) multilateral MAPs and (iv) 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> <li>• The availability of arbitration under tax treaties;</li> <li>• The relationship between MAP and domestic available remedies; and</li> <li>• The process how MAP agreements are implemented in terms of steps to be taken and timing of these steps, including any actions to be taken by taxpayers (if any).</li> </ul>
[B.9]	-	Sweden should ensure that future updates of the information on MAPs are made publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.
[B.10]	-	-

	Areas for Improvement	Recommendations
<b>Part C: Resolution of MAP cases</b>		
[C.1]	Five out of 84 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a).	Where treaties do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Sweden should request the inclusion of the required provision via bilateral negotiations.  In addition, Sweden should maintain its stated intention to include the required provision in all future treaties.
[C.2]	Sweden submitted timely comprehensive MAP statistics and indicated they have been matched with almost all of its MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether Sweden's MAP statistics match those of its treaty partners as reported by the latter.	
	Within the context of the state of play outlined above and in relation to the MAP statistics provided by Sweden, it resolved during the Statistics Reporting Period 15.87% (10 out of 63 cases) of its post-2015 cases in 3.52 months on average. In that regard, Sweden is recommended to seek to resolve the remaining 84.13% of the post-2015 cases pending on 31 December 2016 (53 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	As Sweden resolved MAP cases in 26.55 months on average, there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016 and which might indicate that the Swedish competent authority is not adequately resourced.	Sweden should closely monitor whether the additional resources recently provided to the MAP function, as well as the additional resources already envisaged to be provided in the near future, will contribute to the resolution of MAP cases in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Sweden 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 adjustments at issue, or being influenced by considerations of the policy that Sweden would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Sweden 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, Sweden should continue to implement all MAP agreements if the conditions for such implementation are fulfilled.
[D.2]	-	As it has done thus far, Sweden 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]	22 out of 84 tax treaties do contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor the alternatives provisions in Article 9(1) and Article 7(2).	<p>Where treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015), or include the alternatives provided in Article 9(1) and Article 7(2), and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Sweden should request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>Specifically with respect to the treaty with former Czechoslovakia and the treaty with former Yugoslavia, Sweden should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or its alternatives.</p> <p>In addition, Sweden should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternative provisions, in all future treaties.</p>

## Annex A

### Tax treaty network of Sweden

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

		Action 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence?		Inclusion Art. 9(2)?	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?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
		If yes, submission to either competent authority	If no, please state reasons		If no, will your CA provide access to MAP in TP cases?							
Azerbaijan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Bangladesh	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Barbados	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belarus	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belgium	Y	O	Y	N/A	i	i	Y	N	Y	N	N	N/A
Bermuda	Y	O	Y	N/A	i	i	Y	Y	Y	N	N	N/A
Bolivia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Bosnia and Herzegovina	Y	N	i	N/A	i	i	Y	N	Y	Y	N	N/A
Botswana	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Brazil	Y	O	i	N/A	i	ii	Y	N	Y	Y	N	N/A
British Virgin Islands	Y	O	Y	N/A	i	i	Y	Y	Y	N	N	N/A
Bulgaria	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Canada	Y	N	i	N/A	Y	i	Y	N	Y	Y	N	N/A
Caribbean Netherlands	Y	N	Y	N/A	i	i	Y	Y	Y	N	N	N/A
Cayman Islands	Y	O	Y	N/A	i	i	Y	Y	Y	N	N	N/A
Chile	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N/A
China	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Chinese Taipei	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

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

		Action 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6		
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11		
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?  If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence?  If no, please state reasons		Inclusion Art. 9(2)?  If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?  If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?		
Italy	Y	N	Y	N/A	i	i	Y	Y	Y	Y	N	N/A	
Jamaica	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A	
Japan	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	i	
Jersey	Y	O	Y	N/A	Y	i	Y	Y	Y	N	N	N/A	
Kazakhstan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A	
Kenya	Y	O	i	N/A	i	i	N	N	N	Y	N	N/A	
Korea	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A	
Kosovo	Y	N	i	N/A	i	i	Y	N	Y	Y	N	N/A	
Latvia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A	
Lithuania	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A	
Luxembourg	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A	
Macedonia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A	
Malaysia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A	
Malta	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A	
Mauritius	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A	
Mexico**	Y	O	iv	4.5 years	Y	i	Y	N	Y	N	N	N/A	
Montenegro	Y	N	i	N/A	i	i	Y	N	Y	Y	N	N/A	
Namibia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A	
Netherlands	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A	
New Zealand	Y	O	i	N/A	i	i	N	N	N	N	N	N/A	
Nigeria	Y	O	ii	6-years	Y	i	Y	Y	Y	Y	N	N/A	
Norway	Y	O	ii	5-years	Y	i	Y	Y	Y	Y	N	N/A	

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

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

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

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.

\*\* Footnote on the treaty with Mexico: The tax treaty between Sweden and Mexico provide for a filing period for MAP requests of 4.5 years, whereby the start date of this period is different from the text used in Article 25(1), second sentence, of the OECD Model Tax Convention and reads: “The case must be presented within four and a half years from the expiry of the year in which the action resulting in taxation not in accordance with the provisions of the Convention was taken.”

## Annex B

### MAP Statistics: pre-2016 cases

Category of cases	No. of pre-2016 in MAP inventory on 1 January 2016	Number of pre-2016 closed during the reporting period by outcome										No. of pre-2016 remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 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	109	2	0	3	0	2	13	0	0	0	0	89	33.88
Others	57	0	0	1	0	1	15	0	0	2	1	37	30.74
Total	166	2	0	4	0	3	28	0	0	2	1	126	32.31

## Annex C

### MAP statistics: post-2015 cases

Treaty partner	No. of post-2015 in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 closed during the reporting period by outcome										No. of post-2015 cases remaining in 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 eliminated/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	0	33	0	0	0	0	0	2	0	0	0	0	31	4.54
Others	0	30	2	0	0	2	2	2	0	0	0	0	22	3.27
Total	0	63	2	0	0	2	2	4	0	0	0	0	53	3.52

*Note:* MAP cases recorded in this table meet the definition of MAP case and use the counting method as outlined in Annex D (section 1) of the report “MAP Statistics Reporting Framework” commissioned by the Committee on Fiscal Affairs, published on 1 September 2016.

## *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>Look-back period</b>	Period starting from 1 January 2015 and ending on 31 December 2015 for which Sweden wished to provide information and requested peer input
<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 15 July 2014
<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 2015 (including look-back period) and ended on 31 March 2017
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2016
<b>Swedish competent authority/ Swedish tax administration</b>	Swedish Tax Agency
<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



## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

## OECD/G20 Base Erosion and Profit Shifting Project

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

### INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Addressing base erosion and profit shifting is a key priority of governments around the globe. In 2013, OECD and G20 countries, working together on an equal footing, adopted a 15-point Action Plan to address BEPS. Beyond securing revenues by realigning taxation with economic activities and value creation, the OECD/G20 BEPS Project aims to create a single set of consensus-based international tax rules to address BEPS, and hence to protect tax bases while offering increased certainty and predictability to taxpayers. In 2016, the OECD and G20 established an Inclusive Framework on BEPS to allow interested countries and jurisdictions to work with OECD and G20 members to develop standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package. Over 100 countries and jurisdictions have joined the Inclusive Framework.

Under Action 14, jurisdictions 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 jurisdictions 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 Sweden, which is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: <http://oe.cd/bepsaction14>.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264285736-en>.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases. Visit [www.oecd-ilibrary.org](http://www.oecd-ilibrary.org) for more information.

