

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



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

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**





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## Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and via treaty provisions. With the negotiation for a multilateral instrument having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the multilateral instrument 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 Korea to resolve tax treaty-related disputes .....	11
Recent developments in Korea .....	11
Basis for the peer review process .....	12
Overview of MAP caseload in Korea .....	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 .....	17
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 .....	26
[B.3] Provide access to MAP in transfer pricing cases .....	28
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions .....	29
[B.5] Provide access to MAP in cases of audit settlements .....	31
[B.6] Provide access to MAP if required information is submitted .....	32
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties .....	33
[B.8] Publish clear and comprehensive MAP guidance .....	35
[B.9] Make MAP guidance available and easily accessible and publish MAP profile .....	40
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP .....	41
Bibliography .....	43
<b>Part C. Resolution of MAP cases</b> .....	45
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties .....	45
[C.2] Seek to resolve MAP cases within a 24-month average timeframe .....	47
[C.3] Provide adequate resources to the MAP function .....	52
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty .....	60
[C.5] Use appropriate performance indicators for the MAP function .....	62
[C.6] Provide transparency with respect to the position on MAP arbitration .....	63
Bibliography .....	64

<b>Part D. Implementation of MAP agreements</b> .....	65
[D.1] Implement all MAP agreements .....	65
[D.2] Implement all MAP agreements on a timely basis .....	67
[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) .....	68
Bibliography .....	71
<b>Summary</b> .....	73
<b>Annex A. Tax treaty network of Korea</b> .....	77
<b>Annex B. MAP Statistics: pre-2016 cases</b> .....	83
<b>Annex C. MAP statistics: post-2015 cases</b> .....	84
<b>Glossary</b> .....	85
<b>Figures</b>	
Figure C.1 Korea’s MAP inventory .....	48
Figure C.2 End inventory on 31 December 2016 (131 cases) .....	48
Figure C.3 Cases closed during the Statistics Reporting Period (35 cases) .....	49
Figure C.4 Average time (in months) .....	54

## *Abbreviations and acronyms*

<b>AITA</b>	Adjustment of International Taxes Act
<b>APA</b>	Advance Pricing Agreement
<b>BEPS</b>	Base Erosion and Profit Shifting
<b>EDAITA</b>	Enforcement Decree of the Adjustment of International Taxes Act
<b>FTA</b>	Forum on Tax Administration
<b>MAP</b>	Mutual Agreement Procedure
<b>NTS</b>	National Tax Service of Korea
<b>OECD</b>	Organisation for Economic Co-operation and Development



## Executive summary

Korea has an extensive tax treaty network with over 90 tax treaties and has an established MAP programme and considerable experience with resolving MAP cases. It has a large MAP inventory, with a modest number of new cases submitted each year and more than 125 cases pending on 31 December 2016. Of these cases, 60% concern allocation/attribution cases. Overall Korea meets the majority of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Korea is working to address them.

All of Korea's tax treaties include a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention 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:

- About one-fourth of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Approximately 10% of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Korea needs to amend and update a portion of its tax treaties. In this respect, Korea signed the Multilateral Instrument, through which a number of its tax treaties will be potentially modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force and entry into effect of this Multilateral Instrument, Korea 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, but has not yet a plan in place for that purpose.

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

Korea also meets almost all of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases. It further has in place a formal notification/consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Korea also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice. However, Korea's domestic law allows

its competent authority not to initiate a MAP where it is recognised that MAP is utilised for purposes of tax avoidance. This possibility bears the risk that in cases where anti-abuse provisions are being applied access to MAP will not be granted, which is considered not in line with the Action 14 Minimum Standard.

Concerning the average time needed to close MAP cases, the MAP statistics for Korea 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	86	18	26	78	40.24
Other cases	58	4	9	53	29.99
<b>Total</b>	<b>144</b>	<b>22</b>	<b>35</b>	<b>131</b>	<b>37.60</b>

\* The average time taken for closing MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for closing pre-2016 MAP cases, Korea generally used as a start date the date on which the Korean competent authority received a notification from the other competent authority concerned of its intention to accept the MAP request. It generally used as the end date the date: (i) the date on which a MAP agreement is reached, the date of closure of a case if it is unilaterally closed, the date of providing unilateral relief, or date of withdrawal of a MAP request by the taxpayer, (ii) the date on which closing letters are exchanged in case no MAP agreement is reached, or (iii) the date of withdrawal of a MAP request by the taxpayer following the ruling of a domestic court on the same case.

The number of cases Korea closed is approximately 60% higher as the number of all new cases started in 2016. Its MAP inventory as per 31 December 2016 decreased with approximately 10% as compared to its inventory as per 1 January 2016. Korea's competent authority, however, did not close MAP cases on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 37.60 months. This mainly concerns the resolution of attribution/allocation cases, as the average time to close these cases is significantly longer (40.24 months), although other MAP cases are also not closed within the 24-month average (29.99 months). While the available resources within Korea's competent authority are sufficient to conduct its MAP function, these figures indicate the governance within this competent authority is not conducive to resolve MAP cases in a timely, effective and efficient manner. In this respect, Korea reported that it is foreseen to hire additional staff. Next to taking steps to improve the governance within its competent authority, Korea should also closely monitor whether this will lead to the resolution of such cases in a more timely, effective and efficient manner.

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

Lastly, Korea in essence meets the Action 14 Minimum Standard as regards the implementation of MAP agreements and its competent authority monitors such implementation. However, where the other jurisdiction concerned initiated the MAP, Korea requires taxpayers to ask for a rectification of the tax assessment within a period of two months as a prerequisite for implementation. This system bears the risk that not all MAP agreements are implemented. The same applies for the system whereby a later ruling by a domestic court can annul an already implemented MAP agreement, although such have not occurred.

## *Introduction*

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

Korea has entered into 95 tax treaties on income (and/or capital), of which 92 are in force and which apply to 95 jurisdictions.<sup>1</sup> All of these 95 treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. None of Korea’s tax treaties include an arbitration procedure as a final stage to the MAP.

Under Korea’s domestic law, specifically Article 22(1) of the Adjustment of International Taxes Act (“**AITA**”), the Minister of Strategy and (the Director General for International Tax & Customs Affairs and the Director of the Tax Treaties Team) and the Commissioner of the National Tax Services (Assistant Commissioner for International Taxation, the Director of International Cooperation Division, and the Director of the MAP/APA team) are the designated competent authorities. The Minister of Strategy and Finance is assigned competence to handle MAP cases of a general nature (e.g. the interpretation and application of tax treaties) and the Commissioner of the National Tax Service is assigned competence to handle taxpayer-specific MAP cases. Within the National Tax Service two divisions are responsible for handling MAP and APA cases, namely the *International Cooperation Division* and the *MAP/APA team*. The International Cooperation Division consists of 17 persons and is, next to other tasks, responsible for handling MAP and APA cases with Asian countries. The MAP/APA team, which was established in 2015, consists of 12 persons and is, next to other tasks, responsible for handling MAP/APA cases not being dealt with by the International Cooperation Division.

During the Review Period, Korea had no public MAP guidance available, but the relevant rules on MAP are included in Korea’s domestic law, specifically chapter 6 of the AITA and chapter 6 of the Enforcement Decree of the Adjustment of International Taxes Act (“**EDAITA**”). Korea issued and published MAP guidance in August 2017. This MAP guidance is available at (in both Korean and English):

[www.nts.go.kr/eng/resources/resour\\_21.asp?mbsinfokey=MBS20170825105756920  
&minfoKey=MINF7420080211223143&type=V](http://www.nts.go.kr/eng/resources/resour_21.asp?mbsinfokey=MBS20170825105756920&minfoKey=MINF7420080211223143&type=V)

### **Recent developments in Korea**

Korea recently signed a new tax treaty with Ethiopia (2016), which not yet has entered into force. Furthermore, Korea recently also signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”) to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all

the relevant tax treaties. Where treaties will not be modified by the Multilateral Instrument, or for which no negotiations are pending or scheduled, Korea mentioned it is in the process of analysing whether and how to update them with a view to be in line with the Action 14 Minimum Standard. With the signing of the Multilateral Instrument, Korea also submitted its list of notifications and reservations to that instrument. In relation to the Action 14 Minimum Standard, Korea has not made any reservations to article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).<sup>2</sup>

Furthermore, Korea increased staff in charge of MAP with six new persons in 2016 and one in 2017. In that regard Korea reported that it is continuously making efforts to have an adequate number of personnel available, and that it is in a negotiation process with the relevant government agency to obtain more staff for the MAP function.

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

The peer review process entails an evaluation of Korea's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by the assessed jurisdiction, its peers and taxpayers.

The questionnaires for the peer review process were sent to Korea and the peers on 7 July 2017. The period for evaluating Korea's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 July 2017 ("**Review Period**"). Korea opted to provide information and requested peer input concerning the period starting as from 1 January 2014. While the period starting on 1 January 2014 is taken into account in the analysis in this report, the basis of conclusions only concerns the period starting on 1 January 2016. Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Korea'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 Korea 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, were taken into account, even if it concerns a replacement of an existing treaty. Reference is made to Annex A for the overview of Korea's tax treaties regarding the mutual agreement procedure.

In total 17 peers provided input: Australia, China, Denmark, France, Germany, India, Ireland, Italy, Japan, the Netherlands, Russia, Singapore, Spain, Sweden, Switzerland, Turkey and the United States. These peers represent approximately 45% of post-2015 MAP cases in Korea's inventory on 31 December 2016. Broadly all peers appreciated the easiness of contacts with the Korean competent authority and reported a good working relationship with them. Concerning the resolution of MAP cases, some peers reported positive experience and some of them raising issues in terms of frequent change of personnel, difficulties in effectively conducting face-to-face meetings and resolving cases, delays in receiving position papers, limited authority to enter into MAP agreements due to competence at different government levels, and the possibility in Korea's domestic law to unilaterally end MAP cases after a certain period.

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

- MAP profile<sup>3</sup>
- MAP statistics<sup>4</sup> according to the MAP Statistics Reporting Framework (see below).

Finally, Korea is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Korea provided peer input, sometimes with suggestions on how to improve the process with the concerned assessed jurisdictions.

## Overview of MAP caseload in Korea

The analysis of Korea’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 Korea, on 31 December 2016 its MAP inventory was 144 cases, 86 of which concern attribution/allocation cases and 58 other cases. During the Statistics Reporting Period 22 cases were started and 35 cases were closed.

## General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).<sup>5</sup> Apart from analysing Korea’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Korea. Furthermore, the report depicts the changes adopted and plans shared by Korea 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 Korea 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 Korea has entered into are available at: [www.nts.go.kr/eng/resources/resour\\_02.asp?minfoKey=MINF7620080220173406](http://www.nts.go.kr/eng/resources/resour_02.asp?minfoKey=MINF7620080220173406). The treaties that are signed but have not yet entered into force are with Ethiopia (2016), Nigeria (2006) and Sudan (2004). Reference is made to Annex A for the overview of Korea's tax treaties.
2. Available at: [www.oecd.org/tax/treaties/beps-mli-position-korea.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-korea.pdf).
3. Available at: [www.oecd.org/tax/dispute/Korea-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/Korea-Dispute-Resolution-Profile.pdf).
4. The MAP statistics of Korea are included in Annex B and C of this report.
5. The terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective can be found in the Peer Review Documents (OECD, 2016): [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).

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- 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 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 Korea’s tax treaties*

2. Out of Korea’s 95 tax treaties, 92 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. In two of the remaining three treaties the term “interpretation” is not included, whereas in the other treaty the words “doubts” and “interpretation” are not included. For these reasons all three treaties are considered not having the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

3. Korea reported that there are no obstructions for entering into interpretative mutual agreements when a tax treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015). In fact, Korea indicated that it had experience with entering into MAP discussions with the treaty partners to the three treaties identified above that do not contain the equivalent of Article 25(3), whereby the absence of some terms did not pose any difficulties.

## *Anticipated modifications*

### *Multilateral Instrument*

4. Korea recently signed the Multilateral Instrument. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depository of the fact that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

5. In regard of the three tax treaties identified above, Korea listed two of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). The relevant treaty partners also made such notification. At this stage therefore, the Multilateral Instrument will, upon entry into force, modify two of the three tax treaties identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

### *Bilateral modifications*

6. Korea reported that when the tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will not be modified by the Multilateral Instrument it intends to update them via bilateral negotiations with a view to be compliant with element A.1. In this respect, Korea is in the process of analysing, for those treaties for which no negotiations are pending or scheduled, whether and how to update them with a view to be in line with the Action 14 Minimum Standard. In addition, Korea 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.

### *Peer input*

7. Most peers that provided input reported that their treaty with Korea meets the requirements under element A.1. For the two treaties identified above that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), only one peer provided input and considered it treaty with Korea to conform to element A.1.

## Conclusion

	Areas for improvement	Recommendations
[A.1]	Three out of 95 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	<p>Korea should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Korea should request the inclusion of the required provision via bilateral negotiations. To this end, Korea should, following the outcome of its analysis on which treaties need modification in light of the Action 14 Minimum Standard, put a plan in place on how it envisages updating this treaty to include such equivalent.</p> <p>In addition, Korea should maintain its stated intention to include the required provision in all future treaties.</p>

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

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

8. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.<sup>1</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.

#### *Korea’s APA programme*

9. Following the enactment of the Adjustment of International Taxes Act (“**AITA**”) in 1995, Korea introduced an APA programme in 1997. Article 6(1) of the AITA allows resident taxpayers to request for a (unilateral or bilateral) APA when it intends to apply the arm’s length principle for a specific period of fiscal years. The request has to be submitted to the Commissioner of the National Tax Service and before expiration of the first fiscal year to which the APA request relates to. Article 6(2) of the AITA subsequently allows the Commissioner of the National Tax Service to enter into bilateral APAs with Korea’s treaty partners under the mutual agreement procedure. The specific divisions handling requests for bilateral APA’s are the MAP/APA team and the International Cooperation Division.

10. Articles 9-14 of the Enforcement Decree of the Adjustment of International Taxes Act (“**EDAITA**”) include more information on the practical application of Korea’s APA program. Article 9 sets forth the specific information taxpayers have to submit in their request for a bilateral APA and the basics of the process of obtaining such APA.

Article 11(3) of the EDAIT further specifies that where competent authorities reach an agreement on the terms of the bilateral APA, the Commissioner of the National Tax Service shall notify the taxpayer hereof within 15 days from the date of conclusion and provide it with the details of the agreement reached. The taxpayer in turn has to inform in writing whether it agrees with the agreement reached within a period of two months from this notification. If the taxpayer gives its consent in due time, the Commissioner of the National Tax Service has, pursuant to Article 11(6) of the EDAIT, to execute the APA agreement within 15 days upon receipt of the approval letter.

11. Korea annually publishes a report on its APA programme, with the last available report concerning fiscal year 2015.<sup>2</sup> In this report detailed information is included on *inter alia* the number of APA cases (requests received, pending requests and APAs concluded), period for completion of APAs, covered transactions, running period of APAs, a specification of APAs per industry sector and jurisdictions, and used transfer pricing method. Specifically concerning fiscal year 2015 Korea is in active APA discussions with competent authorities of 19 treaty partners.<sup>3</sup> Since 2008 it has received 320 requests for bilateral APAs (35 in 2015), of which 180 were granted and 140 are pending.<sup>4</sup> Typically, bilateral APAs run for a period of five years, but shorter or longer period are also allowed.

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

12. Korea reported its competent authority is, pursuant to Article 6(3) of the AITA, allowed to grant roll-back for bilateral APAs. Although no specific particularities or requirements are included in the AITA, a roll-back can generally be granted when the transactional conditions of the roll-back period are the same as for the prospective period to which the APA applies. Roll-back of bilateral APAs are thereby possible for a maximum period of five years immediately preceding the period subject to the application of the APA. So where a bilateral APA applies for the period 2015-20, a roll-back of such APA can be provided for the period 2010-14.

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

13. Korea reported that as of 1 January 2014 in total 34 roll-back requests were granted, which concerns 16 in 2014, 11 in 2015 and 17 in 2016. Most roll-backs thereby apply for five years, but roll-backs are also granted for lesser years. For example, of the 11 roll-back of bilateral APAs in 2015, six covered a roll-back of three years or less, whereas five concern a roll-back of five years.

14. Peers generally reported that they do negotiate and agree bilateral APAs with Korea. Most of these peers also have experience with Korea concerning roll-back of bilateral APAs during the Review Period. A number of peers reported not having such experiences, as they did not receive any request for roll-backs concerning an APA with Korea as from 1 January 2014. One of these peers reported that in the past they had received such requests and mentioned that Korea was open to provide for roll-backs. Another peer reported that it was in the past able to agree with Korea on a roll-back in one case.

15. The eight peers that reported having experience with Korea in relation to granting roll-back of bilateral APAs reported that since 1 January 2014 they received 41 requests for such roll-back. For one peer this concerned 27 requests (of which 14 were received in 2014, eight in 2015 and five in 2016). For two other peers this concerned six respectively four requests, and for the remaining four peers this concerned one request. All peers reported positive experiences with Korea in agreeing on a roll-back of bilateral APAs.

One peer in particular noted that the actual agreement of such roll-back depends on the facts and circumstances of each specific case, but that roll-backs with Korea are possible in appropriate cases. Another peer with a relatively high caseload of roll-back requests concerning Korea reported that it has not found any difficulty in the implementation of roll-backs agreed on with Korea. A third peer also voiced positive experience with Korea and noted that the latter is generally able to provide for a roll-back of bilateral APAs and has in practice agreed to apply such roll-back in all cases. This latter input was echoed by another peer, which mentioned not having encountered any concerns with regard to providing for the roll-back request. Lastly, one peer in particular mentioned that it has one roll-back request concerning a bilateral APA with Korea, which case is still under review, following which it could not share any experience.

### *Anticipated modifications*

16. Korea did not indicate that it anticipates any modifications in relation to element A.2.

### *Conclusion*

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

## Notes

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
2. Available at: [www.nts.go.kr/eng/resources/resour\\_21.asp?mbsinfokey=MBS20170825105756920&minfoKey=MINF7420080211223143&type=V](http://www.nts.go.kr/eng/resources/resour_21.asp?mbsinfokey=MBS20170825105756920&minfoKey=MINF7420080211223143&type=V).
3. Ibid, section II.
4. Ibid, section VII, paragraph 1.

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## *Part B*

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

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

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

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

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

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

18. Out of Korea's 95 tax treaties, 85 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident 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.

19. None of Korea's tax treaties contain the 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 state. However, pursuant to Article 22(1) of the AITA (revised as per December 2016), Korea allows non-resident taxpayers (individuals and corporations) to file a MAP request in Korea.

20. The ten remaining tax treaties 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 the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	9
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 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

21. The nine treaties included in the first row of the table are considered not to have the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), 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 seven of these nine treaties are considered to be in line with this part of element B.1:

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

22. For the remaining two of the nine treaties, the non-discrimination provision is based on Article 24(1) of the OECD Model Tax Convention (OECD, 2015a) and applies to both nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) is therefore not clarified by a limited scope of the non-discrimination article, following which these two treaties are considered not to be in line with this part of element B.1.

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

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

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

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

25. Out of Korea’s 95 tax treaties, 82 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.

26. The remaining 13 treaties can be categorised as follows:

Provision	Number of treaties
No filing period for a MAP request	8
Filing period less than three years for a MAP request (two years)	5

27. Under Korea’s domestic law, Article 22(1) AITA, taxpayers should file a MAP request within three years as from the date they became aware of the tax assessed, generally the date on which taxpayers receive a taxation notice.<sup>1</sup> Where a tax treaty does not contain a period for filing of MAP requests, this general rule will apply, which is considered to be in line with element B.1.

28. One peer provided input in relation to the filing of a MAP request under its treaty with Korea, which does not contain a filing period for such requests. The peer referred to a provision in Korea’s domestic law that allows the Korean competent authority to deny access to MAP unless: (i) the taxpayer files a MAP request and (ii) the other competent authority concerned and the Korean competent authority accept the MAP request within three years of an action in Korea that resulted for the taxpayer in taxation not in accordance with the treaty. In this respect, the peer stressed that the adherence to such provision in Korea may limit a taxpayer’s access to MAP in its entirety or, in cases that concern multiple years, limit the number of fiscal years that can be resolved in MAP. This peer also noted that such time limitation is not intended by its treaty with Korea, as it does not contain a filing period, as also that denial of access to MAP due to late filing of a MAP request is only allowed if it is reflected in the terms of the treaty. That said, the peer also noted that it is not aware of any denial of access or limitations to MAP by Korea since 1 January 2014 in general and/or that is the result of the application of Korea’s domestic law in relation to time limits.

29. In relation to this peer input, Korea responded that the provision included in Article 22(1) AITA concerning the three-year filing period for MAP requests will not be applied in relation to MAP requests submitted under the treaty with this specific peer.

*Anticipated modifications**Multilateral Instrument*

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

30. Korea reported it has recently signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read after the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report (OECD, 2015b), OECD 2015b) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent

to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14. This, however, only if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depository of the fact that this tax treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a). Such modification will for a specific treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a) of the Multilateral Instrument, reserved the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties.

31. With the signing of the Multilateral Instrument, Korea opted to introduce in all of its tax treaties, pursuant to Article 16(4)(a)(i) of that instrument, a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Korea's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state in which it is a resident, Korea opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Korea listed 63 of its 95 treaties under the Multilateral Instrument and made, pursuant to Article 16(6)(a) of the Multilateral Instrument, for all 63 tax treaties the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14.

32. In total, 15 of 63 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas three have not listed their treaty with Korea as a covered tax agreement under that instrument and 19 reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. The remaining 26 treaty partners listed their treaty with Korea as having a provision that is equivalent of 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. At this stage therefore, these 26 treaties will, upon entry into force, be modified via the Multilateral Instrument to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015) as it read after the adoption of the final report on Action 14.

33. In view of the above and in relation to the three treaties identified in paragraphs 22 and 24 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14, two are part of the 26 treaties that will be modified via the Multilateral Instrument. The third treaty partner is one of the 22 jurisdictions that made the reservation on the basis of Article 16(5)(a) of the Multilateral Instrument.

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

34. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. This, however, only if both contracting parties to the applicable treaty have listed this treaty as

a covered tax agreement under the Multilateral Instrument and insofar both notified the depository of the fact that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

35. In regard of the five tax treaties identified in paragraph 26 above that contain a filing period for MAP requests of less than three years, Korea listed four treaties as a covered tax agreement under the Multilateral Instrument and made for all of them, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). Regarding the four relevant treaty partners, two are not a signatory to the Multilateral Instrument. The remaining two partners also listed their treaty with Korea as not having a time limit for filing of MAP requests of at least three years. At this stage therefore, the Multilateral Instrument will, upon entry into force, modify two of the five treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

#### *Bilateral modifications*

36. Korea reported that when tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14, will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. In this respect, Korea is in the process of analysing, for those treaties for which no negotiations are pending or scheduled, whether and how to update them with a view to be in line with the Action 14 Minimum Standard. In addition, Korea reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read after the adoption of the final report on Action 14, in all of its future treaties or future amending protocols.

#### *Peer input*

37. Almost all peers that provided input reported that their tax treaty with Korea meets the requirements under element B.1, including two peers for which the treaty with Korea actually does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

38. Three peers reported that its treaty with Korea does not meet the requirements under element B.1, but did not further specify the reason hereof. This concerns those peers for which the treaty with Korea was identified as not being in line with element B.1. These peers noted that they recently signed the Multilateral Instrument with a view to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). One of these peers thereby specified that when it is not possible that the relevant treaty be modified, it will strive to update the treaty with Korea via bilateral negotiations. Another peer noted that there are no ongoing negotiations with Korea to amend the treaty with a view to incorporate the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a), as it will be modified via the Multilateral Instrument. However, differently than for the other two peers, for this specific peer the Multilateral Instrument will only modify its treaty with Korea to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a), not the first sentence.

39. Further to the above, one peer mentioned that its treaty with Korea does not contain a filing period for MAP requests, but did not further note whether actions were undertaken or whether it was contacted by Korea to update the treaty with a view to incorporate the required provision under element B.1.

## Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Seven out of 95 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those seven tax treaties:</p> <ul style="list-style-type: none"> <li>• one tax treaty does not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter 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> <li>• two tax treaties do not contain the equivalent to Article 25(1), first sentence.</li> <li>• four tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty (two years).</li> </ul>	<p>Korea should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. 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 final report of Action 14 (OECD, 2015b); or</li> <li>b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision.</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>For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Korea should request the inclusion of the required provision via bilateral negotiations. To this end, Korea should, following the outcome of its analysis on which treaties need modification in light of the Action 14 Minimum Standard, put a plan in place on how it envisages updating these treaties to include such equivalent.</p> <p>In addition, Korea 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).

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

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

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

41. As discussed under element B.1, out of Korea’s 95 treaties, none currently 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. However, as was also discussed under element B.1, 26 of these 95 treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

42. Korea reported that when its competent authority denies access to MAP, including those situations in which it considers an objection raised by the taxpayer in a MAP request as not being justified, it will, pursuant to Article 39(7) EDAITA, inform the taxpayer and the other competent authority concerned of this decision. Article 39(7) stipulates:

Where a request for commencing mutual agreement procedure is denied, the Minister of Strategy and Finance or the Commissioner of the National Tax Service shall notify the applicant and the Contracting State of the fact.<sup>2</sup>

43. In view of the above, Korea did not have to introduce a separate notification/consultation process following the adoption of the Action 14 Minimum Standard, as such process is already provided for in Korea’s domestic legislation.

### ***Practical application***

44. Korea reported that as from 1 January 2014 its competent authority for none of the MAP requests it received decided that the objection raised by taxpayers in such request as being not justified. It therefore did not have to apply Article 39(7) EDAITA nor did it had to notify/consult the other competent authority concerned.

45. All peers that provided input indicated not being aware of any cases for which the Korean competent authority denied access to MAP since 1 January 2014. They also reported not having been consulted/notified of a case where the Korean competent authority considered the objection raised in a MAP request as not justified, which is logical following the fact that no such cases arose.

### ***Anticipated modifications***

46. As previously discussed under element B.1, Korea has recently signed the Multilateral Instrument following which, upon entry into force, 26 of its 95 treaties will be modified to allow taxpayers to submit a MAP request to the competent authority of either treaty partner. Specifically regarding element B.2, Korea reported that were tax treaties will not be modified via the Multilateral Instrument, it will apply its notification process for those situations in which its competent authority considers the objection raised in a MAP request not to be justified.

### ***Conclusion***

	Areas for improvement	Recommendations
[B.2]	Korea has in place a formal process to notify the other competent authority in cases where the Korean competent authority considered the objection raised in the MAP request as not justified. However, it was not possible to assess whether the notification process is applied in practice because no such cases have occurred since 1 January 2014.	

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

Jurisdictions should provide access to MAP in transfer pricing cases.

47. 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***

48. Out of Korea's 95 tax treaties, 62 contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the other treaty partner. Furthermore, 32 treaties do not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). The remaining treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but deviate from this provision because granting of corresponding adjustments is only allowed through the mutual agreement procedure.

49. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Korea's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Korea reported that it will always provide access to MAP for transfer pricing cases. Paragraph 2.3 of the recently issued MAP guidance (see element B.8) stipulates that cases concerning transfer pricing adjustments are within the scope of MAP.

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

50. Korea reported that it has since 1 January 2014 not denied access to MAP on the basis that the case concerned a transfer pricing case.

51. Peers have indicated not being aware of a denial of access to MAP by Korea for transfer pricing cases since 1 January 2014.

***Anticipated modifications***

52. Korea 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 and that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties. In that regard, Korea recently signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). This, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Furthermore, Article 17(2) of the Multilateral Instrument does not take effect if one or both of the signatory states to the tax treaty reserved, pursuant to Article 17(3), the right not to apply Article 17(2) for those tax treaties that already contains the equivalent of Article 9(2)

of the OECD Model Tax Convention (OECD, 2015a), or not to apply Article 17(2) in the absence of such equivalent, on the basis that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partners have made such a reservation, or only for a specific number of tax treaties, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification of whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). Where such a notification is made by both of them the Multilateral Instrument will modify this treaty to replace that provision. If not all treaty partners made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention [OECD, 2015a]).

53. Korea has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). In regard of the 33 treaties identified in paragraph 48 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), Korea listed 25 of them as a covered tax agreement under the Multilateral Instrument and included one of them in the list of treaties for which Korea has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Furthermore, Korea did not make a notification on the basis of Article 17(4) for the remaining 24 treaties. Of the relevant 24 treaty partners, four are not a signatory to the Multilateral Instrument, whereas one has not listed its treaty with Korea as a covered tax agreement under that instrument and one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with Korea already contains the equivalent of Article 9(2). At this stage therefore, Article 17(1) of the Multilateral Instrument will, upon entry into force, supersede the remaining 18 treaties only to the extent that the provision included in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

### *Conclusion*

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

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

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

54. 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***

55. None of Korea's 95 tax treaties allows the competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Korea do not contain a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

56. Article 22(2) AITA stipulates that upon receipt of any MAP request submitted concerning the (possible) taxation not in accordance with the provisions of the tax treaty, the Korean competent authority (either the Ministry of Strategy and Finance or the National Tax Service) will request the competent authority of the treaty partner to commence the mutual agreement procedure, except in four specified circumstances.<sup>3</sup> One of these circumstances concern "where it is recognised that the taxpayer intends to utilise the mutual agreement procedure for tax avoidance". It is not specified in Article 22(2) whether this circumstance also concerns the question on whether a treaty anti-abuse provision applies or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In this respect, Korea noted that this provision is not interpreted as constituting a ground to preclude access to MAP in relation to element B.4.

### ***Practical application***

57. Korea reported that it has since 1 January 2014 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 conflict with the provisions of a tax treaty.

58. Peers have indicated not being aware of a denial of access to MAP by Korea in relation to the application of treaty and/or domestic anti-abuse provisions since 1 January 2014.

### ***Anticipated modifications***

59. Korea indicated that, although being hypothetical, the provision included in Article 22(2) AITA discussed above should be retained as a last resource for the competent authority to prevent MAP to be misused for the purposes of tax avoidance. Nevertheless, it considers taking possible measures, including issuing an interpretative statement or similar measures, with a view to clarify in what situations Korea considers that access to MAP should be granted or denied in cases of tax avoidance.

## Conclusion

	Areas for improvement	Recommendations
[B.4]	Domestic law allows the competent authority not to initiate a MAP where it is recognised that MAP is utilized for purposes of tax avoidance, which bears the risk that in cases where anti-abuse provisions are being applied, access to MAP will not be granted.	<p>Relating to the provision included in Article 22(2) AITA, Korea should follow-up its stated intention to take an appropriate measure to ensure that the article would not limit access to MAP in cases concerning the application of anti-abuse provisions.</p> <p>Nevertheless, as Korea has thus far granted access to 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.</p>

### [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.

60. 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 MAP in such cases, unless they were already resolved via an administrative or statutory disputes settlement/resolution process that functions independent from the audit and examination function and which is only accessible through a request by taxpayers.

### *Legal and administrative framework*

#### *Audit settlements*

61. Korea reported that the National Tax Service and the taxpayer cannot enter into a settlement agreement during the course of or after an audit has been concluded. In practice, after an audit has been concluded, the National Tax Services can make an adjustment on the basis of Article 16(3) of the Framework on National Taxes and issue a pre-assessment notice accordingly. In such situation, the taxpayer has, pursuant to Article 81(15) of the Framework on National Taxes, the possibility to request for a review of such pre-assessment notice with the head of a local tax office or the commissioner of the regional tax office. Such request should be made within 30 days upon receipt of the pre-assessment notice. This review process, however, does not constitute an audit settlement system.

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

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

*Practical application*

63. As it is in Korea not possible that the National Tax Service and the taxpayer enter into an audit settlement, Korea reported that since 1 January 2014 it has not denied access to MAP for cases where the issue presented by the taxpayer has already been resolved through an audit settlement between the taxpayer and the tax administration.

64. All peers that provided input indicated not being aware of a denial of access to MAP by Korea since 1 January 2014 in cases where there was an audit settlement between the taxpayer and the tax administration.

*Anticipated modifications*

65. Korea 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.

66. 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*

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

68. Korea reported that when taxpayers do not include all the required information and documentation in their MAP request, the National Tax Service will, pursuant to Article 39(5) EDAITA, not accept the request and deem that no such request has been filed.<sup>4</sup> Taxpayers then have the opportunity to submit a new MAP request that includes all the required information and documentation, which subsequently will be accepted into MAP, as long as the new request is filed within three years as from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty. In this respect, Korea stressed that an earlier filed MAP request, which was denied access, does not deter the submission of a subsequent MAP request by the taxpayer for the same case.

69. The above described system used in Korea is different from the system used when a case is already accepted into MAP and whereby during the course of the proceeding additional information is requested from taxpayers. The National Tax Service is, pursuant

to Article 26(1) AITA, allowed to request such additional information.<sup>5</sup> It will then discuss with the taxpayer a specific timeframe to submit the requested information. When a taxpayer does not provide the information within the given timeframe, the National Tax Service will again ask for this information. Where a taxpayer does then still not provide the information, the National Tax Service is, pursuant to Article 26(2) of that act, allowed to terminate MAP.<sup>6</sup> In that regard, Korea reported that during the Review Period no cases were closed due to the fact that taxpayers did not provide the requested additional information.

### *Practical application*

70. Korea reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements. It further reported that since 1 January 2014 its competent authority has not denied access to MAP for cases where the taxpayer had not complied with documentation requirements under Korean domestic law.

71. All peers that provided input indicated not being aware of a limitation of access to MAP by Korea since 1 January 2014 in situations where taxpayers complied with information and documentation requirements set out in its MAP guidance.

### *Anticipated modifications*

72. Korea did not indicate that it anticipates any modifications in relation to element B.6.

### *Conclusion*

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

73. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties contain the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015a), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties

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

74. Out of Korea's 95 tax treaties, 85 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. Furthermore, nine treaties do not contain a provision that is based on or is the equivalent of Article 25(3), second sentence, of the OECD

Model Tax Convention (OECD, 2015a). The remaining tax treaty contains a provision similar to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), but this provision refers to the “consultation regarding cases not provided for in the convention”, whereas the second sentence of Article 25(3) refers to the consultation “for the elimination of double taxation in cases not provided for in the convention”. As the particular tax treaty provides for a scope of application that is at least as broad as the second sentence of Article 25(3), it is considered to be in line with element B.7.

### *Anticipated modifications*

#### *Multilateral Instrument*

75. Korea recently signed the Multilateral Instrument. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depository of the fact that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

76. In regard of the nine tax treaties identified above, Korea listed seven of them as a covered tax agreement under the Multilateral Instrument and for all of them did it, pursuant to Article 16(6)(d)(ii), make a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant seven treaty partners, one is not a signatory to the Multilateral Instrument. All remaining six treaty partners also made the notification that their treaty with Korea does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify six of the nine tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

#### *Bilateral modifications*

77. Korea reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.7. In this respect, Korea is in the process of analysing, for those treaties for which no negotiations are pending or scheduled, whether and how to update them with a view to be in line with the Action 14 Minimum Standard. In addition, Korea reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties.

#### *Peer input*

78. Almost all peers that provided input reported that their treaty with Korea meets the requirements under element B.7.

79. For the ten treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), only four treaty partners provided peer input. All these four peers mentioned that their treaty with Korea does not contain the required provision. Three of these peers envisaged that the Multilateral Instrument will modify their treaty with Korea with a view to incorporate the equivalent of Article 25(3), second sentence. For two of these three peers the applicable treaty will indeed be modified via the Multilateral Instrument. The fourth peer only mentioned that its treaty with Korea does not contain the required provision, but did further specify whether actions were undertaken or whether it was contacted by Korea to update the treaty with a view to incorporate the required provision under element B.7.

### *Conclusion*

	Areas for improvement	Recommendations
[B.7]	Nine out of 95 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>Korea should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those six treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the three remaining treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Korea should request the inclusion of the required provision via bilateral negotiations. To this end, Korea should, following the outcome of its analysis on which treaties need modification in light of the Action 14 Minimum Standard, put a plan in place on how it envisages updating these treaties to include such equivalent.</p> <p>In addition, Korea 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.

80. 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.

## *Korea's MAP guidance*

### *Guidance included in domestic legislation*

81. Until recently, Korea had not issued separate guidance relating to the availability of MAP and the MAP process in Korea. The rules relating to MAP, including the MAP function and the process, are laid down in Korea's domestic law, more specific in chapter 6 of the Adjustment of International Taxes Act (“**AITA**”) and chapter 6 of the Enforcement Decree of the Adjustment of International Taxes Act (“**EDAITA**”). Furthermore, Article 3 of the Binding Administrative Guidance for International Taxation also includes rules for conducting the mutual agreement procedure.

82. Chapter 6 of the AITA includes the following rules on the MAP process:

Provision	Content
Article 22	<ul style="list-style-type: none"> <li>• Description of cases that are eligible for MAP</li> <li>• The government authorities that perform the competent authority function</li> <li>• Grounds for denying access to MAP</li> <li>• Possibility to ex-officio initiation of MAP cases</li> </ul>
Article 23	Determination of the opening and closing date of MAP cases
Article 24	<ul style="list-style-type: none"> <li>• Interrelation with domestic available remedies</li> <li>• Possibility of suspension of tax collection during the period a MAP is pending</li> </ul>
Article 25	Exception to the application of statute of limitations in case a MAP agreement has been concluded
Article 26	<ul style="list-style-type: none"> <li>• Co-operation of taxpayers during the MAP process, including providing of additionally requested information</li> <li>• Possibility to terminate MAP in case of no compliance by taxpayers during the process</li> </ul>
Article 27	Process for implementing MAP agreements
Article 27-2	Possibility to grant roll-on effect of MAPs to future fiscal years

83. Chapter 6 of the EDAITA includes the following additional rules on the MAP process in Korea:

Provision	Content
Article 39	<ul style="list-style-type: none"> <li>• Basis for a MAP request</li> <li>• Information to be included in a MAP request</li> <li>• Consideration of the request, review of the possibility of unilateral relief and initiation of bilateral discussions</li> <li>• Process to follow when denying access to MAP</li> <li>• Progress reports on pending MAP cases</li> </ul>
Article 40	Suspension of tax collection during the period a MAP is pending
Article 41	Calculation of interest in relation to MAP
Article 41-2	Procedural rules in relation to suspension of tax collection and interest charges
Article 42	Rules in relation to the closure of MAP cases
Article 42-2	Process in relation to the possibility to grant roll-on effect of MAPs to future tax years

*Newly introduced MAP guidance*

84. During the Review Period, Korea worked on MAP guidance, which was issued by the National Tax Service in August 2017 and which was made public in September 2017. Korea's MAP guidance does not replace the rules discussed above as laid down in Korea's domestic law, but are intended to provide information on how the MAP process is conducted in Korea. In this respect, the following rules are included in the MAP guidance:

- a. General outline of the mutual agreement procedure
- b. Application of MAP:
  - Taxes covered in MAP
  - Persons eligible to submit MAP requests
  - Cases eligible for MAP
  - Outline of the governmental agencies acting as Korea's competent authority
  - Cases for which access to MAP may be denied
  - Filing period for MAP requests
  - Information and documentation to be included in a MAP request
  - Consideration and acceptance of a MAP request.
- c. Proceedings and closing of MAP:
  - Start date of MAP proceedings
  - Conducting the MAP process
  - Closing of MAP
  - Relationship with domestic available remedies
  - Availability of and rules for the suspension of tax collection
  - Position on arbitration.
- d. Implementation of MAP outcome and period for implementation
- e. Documentation:
  - Application form for commencing MAP
  - Application form for suspension of tax collection
  - Application form for special cases of income calculation
  - Notice of closing MAP.

85. The FTA MAP Forum agreed on what information 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>7</sup> The above-described MAP guidance of Korea meets both requirements. Furthermore, the information included in Korea's MAP guidance is logically structured, detailed and comprehensive, especially as regards the various stages in the MAP. However, some subjects are not specifically discussed in this MAP guidance, although some of them being described in Korea's domestic law. This concerns whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral

disputes and (iii) bona fide foreign-initiated self-adjustments; (iv) whether taxpayers can request for the multi-year resolution of recurring issues through MAP; and (v) the consideration of interest and penalties in MAP.

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

86. Article 39(2) EDAITA includes rules on what information and documentation taxpayers should include in their MAP request.<sup>8</sup> This concerns:

- a. A written application for commencing MAP in the form prescribed by the Ministry of Strategy and Finance.
- b. Financial statements and tax returns that are relevant for the MAP request.
- c. An appeal, if the taxpayer submitting the MAP request, or its foreign related party, lodges such appeal.

87. In addition to the above, paragraph 2.7 of Korea's MAP guidance, with a reference to Article 39(2), sets further rules on what information and documentation taxpayers should submit in their MAP request. This concerns:

- i. Any document that the competent authority may be able to identify the details of tax assessment including an advance notice of taxation, a notice of tax payment, and a notice of refusal disposition with a request of correction (where the applicant refused a request for correction);
- ii. Any document providing information on the applicable tax treaty including the provisions which the taxpayer considers incorrectly applied by either one or both contracting states;
- iii. Any document providing information on the summary of tax assessment being imposed on the applicant, whether the statute of limitation of the covered transaction is expired in the Contracting State, the facts and circumstances of the transaction, the basis for making a claim that the provision of the specific tax treaty is not correctly applied by either one or both Contracting States, and the analysis of the applicant or his/her foreign related party concerning the tax assessment;
- iv. Any document certifying tax payment where the applicant already paid the tax amount which is covered by the application for MAP;
- v. A copy of submission including all documentations filed with that submission where the applicant submitted or will submit a MAP application to the competent authority of the other contracting state;
- vi. A copy of submission or written decision including other relevant documentations filed where the applicant submitted or will submit an appeal to another authority under a mechanism to resolve treaty-related disputes, other than the mutual agreement procedure, that is provided to taxpayers in/out of Korea; and
- vii. A copy of submission, written decision, or other relevant documentations filed where the case was previously dealt or is currently being dealt by any other advanced dispute resolution process in/out of Korea.

88. Further to above, the appendixes to Korea's MAP guidance also includes the application form referred to in Article 39(2) EDAITA as discussed in paragraph 86 above. This form sets out in detail what information taxpayers should include in their MAP request, including the basis of the request, the years under review and taxpayer-specific information.

It also gives an explanation how to fill in the form and what additional documentation should be attached to the MAP application form, which concerns the items discussed in paragraphs 86 and 87 above.

89. 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>9</sup> In light of this list, the requirements in Korea 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
- 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.

### *Anticipated modifications*

90. As Korea recently introduced MAP guidance, it does not anticipate any further modifications in relation to element B.8.

### *Conclusion*

	Areas for improvement	Recommendations
[B.8]	-	<p>Although not part of the Action 14 Minimum Standard, in order to further improve the level of clarity, Korea 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) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments.</li> <li>• Whether taxpayers can request for the multi-year resolution of recurring issues through MAP.</li> <li>• The consideration of interest and penalties in MAP.</li> </ul>

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

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

91. 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>10</sup>

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

92. As discussed in element B.8, Korea recently issued MAP guidance. This guidance is made publically available and can be found at (in English):

[www.nts.go.kr/eng/resources/resour\\_21.asp?mbsinfokey=MBS20170825105756920&minfoKey=MINF7420080211223143&type=V](http://www.nts.go.kr/eng/resources/resour_21.asp?mbsinfokey=MBS20170825105756920&minfoKey=MINF7420080211223143&type=V)

93. As regards its accessibility, information on MAP can easily be found on the website of the National Tax Service in Korea, both in Korean and English. For example, when on the website of the National Tax Service a search is made for mutual agreement or mutual agreement procedure, the search result will directly show Korea's MAP guidance.

***MAP profile***

94. Korea's MAP profile is published on the website of the OECD.<sup>11</sup> This MAP profile is almost complete and very often with detailed information. It is also supplemented with an excerpt of the relevant legislation on mutual agreement procedures, to which is being referred to in the profile. Korea's MAP profile also includes external links which provide extra information and guidance.

95. Two peers provided input in relation to Korea's MAP profile. The first peer noted that the e-mail contacts of the Korean competent authority is not included in the profile, for which it consideration that it may be useful to do so. The second peer mentioned that in its understanding – as will be further discussed under element C.3 – that under Korea's domestic law pending mutual agreement procedures will be closed if after a period of five years no agreement is reached (whereby an extension to eight years as from the start of the procedure is possible). In relation to the MAP profile, this peer noticed that to the best of its knowledge information hereon is not included in Korea's MAP profile and suggested that Korea should mention this with a view to make stakeholders aware of it.

96. The issues identified by both peers are indeed not included in Korea's MAP profile. The excerpt of the relevant legislation on mutual agreement procedures annexed to the MAP profile does not include the relevant section on the possibility to close MAP cases after a five-year period.

***Anticipated modifications***

97. Korea did not indicate that it anticipates any modifications in relation to element B.9.

### Conclusion

	Areas for improvement	Recommendations
[B.9]	-	<p>Korea should ensure that future updates of its MAP guidance are made publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.</p> <p>In addition, although its MAP profile is almost complete, Korea could consider, as suggested by a peer, include information on the unilateral allowance in its domestic law to close MAP cases if after five years no agreement has been reached. To this end, it could also refer to the relevant sections of its domestic law and could attach an excerpt of such sections to its MAP profile, like Korea did for the other relevant sections of its domestic law. Furthermore, Korea could also consider adding an e-mail address of its competent authority in the general information section of its MAP profile.</p>

### [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.

98. 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*

99. As previously discussed under B.5, Korea has no system in place that allows audit settlements between the National Tax Service and taxpayers. In that regard, there is no need to address in Korea's MAP guidance that audit settlements do not preclude access to MAP.

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

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

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

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

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

***Anticipated modifications***

103. Korea did not indicate it anticipates any modifications in relation to element B.10.

***Conclusion***

	Areas for improvement	Recommendations
[B.10]	-	-

## Notes

1. Reference is also made to paragraphs 2.4 and 2.6 of Korea’s MAP guidance.
2. As mentioned in the Introduction, the competent authority function in Korea is performed at two governmental agencies, being the Ministry of Strategy and Finance and the National Tax Services. Reference is made to element C.3 for a more in-depth discussion of Korea’s competent authority function.
3. This is also set out in Article 85(2) of the Binding Administrative Guidance.
4. This is also set out in Article 85(7) of the Binding Administrative Guidance.
5. This is also set out in Article 88(1) of the Binding Administrative Guidance.
6. Ibid Article 88(2).
7. 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).
8. These rules are also set out in Article 85(5) of the Binding Administrative Guidance.
9. 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).

10. 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).
11. Available at: [www.oecd.org/tax/dispute/Korea-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/Korea-Dispute-Resolution-Profile.pdf).

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## *Part C*

### **Resolution of MAP cases**

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

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

104. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also contain the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015a), 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 Korea's tax treaties***

105. Out of Korea's 95 tax treaties, 93 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) 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. The remaining two treaties do contain a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), but does not incorporate several of its elements. For one treaty this concerns the fact that it includes additional language that limits the possibility to discuss cases bilaterally, as this additional language reads: "... provided that the competent authority of the other Contracting State is notified of the case within four and a half years from the due date or the date of filing of the return in that other State, whichever is later". For the other treaty inter alia the part of the sentence reading "... of the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution ..." is missing. Both provisions therefore are considered not being the equivalent of Article 25(2), first sentence.

## *Anticipated modifications*

### *Multilateral Instrument*

106. Korea recently signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depository of the fact that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

107. In regard of the two tax treaties identified above, Korea listed one treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner also made such notification that its treaty with Korea does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify one of the two treaties identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

### *Bilateral modifications*

108. Korea reported that when the tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element C.1. In this respect, Korea is in the process of analysing, for those treaties for which no negotiations are pending or scheduled, whether and how to update them with a view to be in line with the Action 14 Minimum Standard. In addition, Korea reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties.

### *Peer input*

109. All peers that provided input reported that their treaty with Korea meets the requirements under element C.1. For the two treaties identified in paragraph 105 that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), only one peer provided input and considered its treaty with Korea to be in line with element C.1.

## Conclusion

	Areas for improvement	Recommendations
[C.1]	Two out of 95 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Korea should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the one treaty that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Korea should request the inclusion of the required provision via bilateral negotiations. To this end, Korea should, following the outcome of its analysis on which treaties need modification in light of the Action 14 Minimum Standard, put a plan in place on how it envisages updating this treaty to include such equivalent.</p> <p>In addition, Korea should maintain its stated intention to include the required provision in all future treaties.</p>

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

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

110. 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

111. Statistics regarding all tax treaty related disputes concerning Korea are published on the website of the OECD as of 2007.<sup>1</sup>

112. 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. Korea provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Korea and of which its competent authority was aware. The statistics discussed below include both pre-2016 and 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 Korea’s MAP caseload.<sup>2</sup> With respect to post-2015 cases, Korea reported that it contacted its MAP partners with a view to have their MAP statistics matching. It noted that such matching was successful with all its MAP partners that report their MAP statistics under the MAP Statistics Reporting Framework. For two MAP partners, who do not report their statistics under this framework, Korea used its own method to record MAP cases.

### *Monitoring of MAP statistics*

113. Korea reported having an internal monitoring system in place concerning pending MAP cases. The directors of the MAP/APA team and the International Cooperation Division within Korea's competent authority receive on a periodic basis reports on progress of cases. The directors further keep track of the progress of each individual case and, where necessary, take actions to speed up its resolution. Furthermore, Korea reported that the director or deputy-director may on the basis of the monitoring system decide to re-allocate cases to other examiners.

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

#### *Global overview*

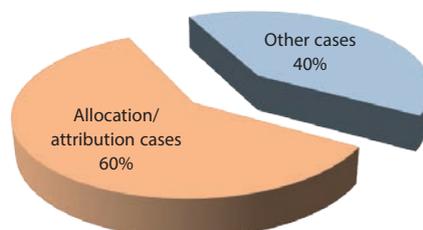
114. The following graph shows the evolution of Korea's MAP caseload over the Statistics Reporting Period.

Figure C.1. Korea's MAP inventory



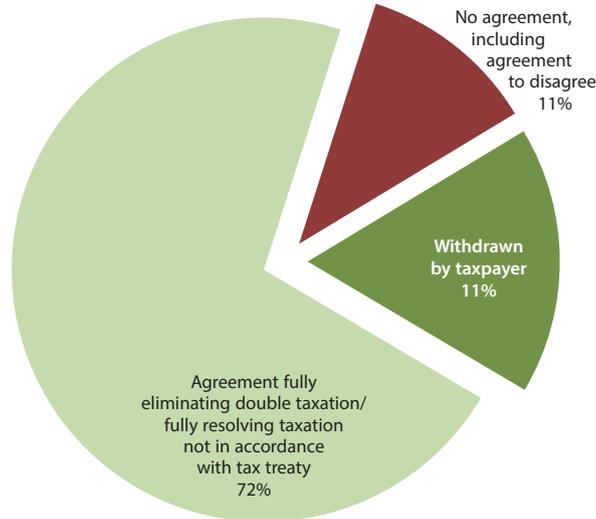
115. At the beginning of the Statistics Reporting Period, Korea had 144 pending MAP cases, of which 86 were attribution/allocation cases and 58 other MAP cases.<sup>3</sup> At the end of the Statistics Reporting Period, Korea had 131 MAP cases in its inventory, of which 78 are attribution/allocation cases and 53 are other MAP cases. The number of cases closed is approximately 60% higher than new cases started. Additionally, Korea's MAP caseload was reduced with 10% during the Statistics Reporting Period, with an equal reduction for attribution/allocation cases and other MAP cases. The breakdown of the end inventory can be illustrated as follows:

Figure C.2. End inventory on 31 December 2016 (131 cases)



116. During the Statistics Reporting Period Korea in total closed 35 MAP cases for which the following outcomes were reported:

Figure C.3. Cases closed during the Statistics Reporting Period (35 cases)



117. This chart indicates that during the Statistics Reporting Period, 25 out of 35 cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

#### *Pre-2016 cases*

118. At the beginning of the Statistics Reporting Period, Korea's MAP inventory of pre-2016 consisted of 144 cases, of which were 86 attribution/allocation cases and 58 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 110 cases, consisting of 61 attribution/allocation cases and 49 other cases. This decrease concerns 24% of the opening inventory, which can be broken down in a decrease by 29% of the number of attribution/allocation cases and a decrease by 16% of the number of other cases. In total, 25 of the 34 closed pre-2016 cases concerned attribution/allocation cases and nine concerned other MAP cases. The outcomes reported are:

- Withdrawn by taxpayers (six cases)
- Agreement that fully eliminated double taxation/fully resolved taxation not in accordance with the tax treaty (24 cases)
- No agreement including an agreement to disagree (four cases).

#### *Post-2015 cases*

119. In total 22 MAP cases were started on or after 1 January 2016, 18 of which are attribution/allocation cases and four other cases. At the end of the Statistics Reporting Period the total post-2015 inventory had decreased to 21 cases, consisting of 17 attribution/allocation cases and four other cases. Conclusively, Korea closed one post-2015 case, which reflects 4.55% of the total post-2015 cases. The closure of the case resulted is an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

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

#### *Pre-2016 cases*

120. For pre-2016 cases Korea reported that on average it needed 41.68 months to close 25 attribution/allocation cases and 29.99 months to resolve nine other cases. This resulted in an average time needed of 38.59 months to close 34 pre-2016 cases.

121. For the purpose of computing the average time needed to resolve pre-2016 cases, Korea used the rules laid down in Article 23 AITA.<sup>4</sup> This concerns:

- *Start date:*
  - Where a MAP request is filed in Korea, the date on which the Korean competent authority receives a notification from the other competent authority concerned of its intention to accept the request; or
  - Where a MAP request is filed in the other contracting state concerned, the date on which the Korean competent authority notifies this other competent authority of its intention to accept the request
- *End date:*
  - *MAP agreement:* the date on which an agreement is reached between the Korean competent authority and the other competent authority concerned, or the date on which Korea closes the case unilaterally if after five years of the start date no agreement is reached
  - *No agreement reached:* the date of exchange of closing letters
  - *Unilateral relief:* the date of notification to the taxpayer of the National Tax Service's intent to provide for unilateral relief
  - *Termination of MAP due to non-co-operation by taxpayers:* the date of notification to the taxpayer of such termination
  - *Domestic remedies:* the date of the final court ruling, or when relief is granted via administrative proceedings (e.g. examination or adjudgment), the date of the subsequent withdrawal of a MAP request by the taxpayer; or
  - *Withdrawal by taxpayers:* the date of withdrawal of the MAP request.

#### *Post-2015 cases*

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

123. During the Statistics Reporting Period, Korea closed one attribution/allocation case, which represents 4.55% of newly received post-2015 cases during the Statistics Reporting Period and which was closed within 4.18 months, resulting in an agreement that fully eliminated double taxation or fully resolving the taxation not in accordance with the provisions of the applicable tax treaty.

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

124. The average time needed to close MAP cases during the Statistics Reporting Period was 37.60 months, which can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	26	40.24
Other cases	9	29.99
<b>All cases</b>	<b>35</b>	<b>37.60</b>

### *Peer input*

125. Most peers that provided input to Korea’s implementation of the Action 14 Minimum Standard reported a good working relationship with its competent authority, which is further discussed under element C.3 below. This concerns both jurisdictions that have a large MAP inventory with Korea, as also peers that have a moderate caseload. Most of these peers also appreciated the easiness of contacts with the Korean competent authority and scheduling of face-to-face meetings at regular intervals. A number of peers also reported positive experiences in the resolution of their MAP cases with Korea. Some peers, however, raised criticism, on the functioning of the Korean competent authority which in their view slowed down the timely resolution of their mutual cases. The criticism put forward concerns several points, but mainly focused on frequent changes of personnel within the Korean competent authority, the difficulties in effectively conducting face-to-face meetings and transmission of position papers only closely before such meeting, insufficient preparation for meetings, less willingness to reach an agreement, and a limited authority for the National Tax Service to enter into MAP agreements due to the fact that it concerned a matter of treaty interpretation, for which competence is at the level of the Korean Ministry of Strategy and Finance, which in the peers’ view that raised these points, impede a timely and principled resolution of MAP cases.

### *Anticipated modifications*

126. Korea reported that delays in resolving of MAP cases can occur if the Korean competent authority has not enough opportunities to discuss pending cases in face-to-face meetings with other competent authorities. To avoid this type of delay, Korea envisages scheduling more teleconferences with its MAP partners. Apart from that Korea did not indicate that it anticipates any modifications in relation to element C.2.

### *Conclusion*

	Areas for improvement	Recommendations
[C.2]	<p>Korea submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework. Based on the information provided by Korea’s MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.</p> <p>Korea’s MAP statistics point out that during the Statistics Reporting Period it closed 4.55% (one out of 22 cases) of its post-2015 cases in 4.18 months on average. In that regard, Korea is recommended to seek to resolve the remaining 95.45% of the post-2015 cases pending on 31 December 2016 (21 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.</p>	

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

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

127. 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 Korea's competent authority******Organisational structure***

128. Article 22(1) AITA stipulates that taxpayers can apply for the mutual agreement procedure with the following governmental agencies:<sup>5</sup>

- *Ministry of Strategy and Finance*: cases concerning the application and interpretation of tax treaties.
- *National Tax Service*: cases concerning taxation not in accordance with the treaty.

***Ministry of Strategy and Finance***

129. Within the Ministry of Strategy and Finance, the competent authority is delegated to the Director General for International Tax and Customs Affairs and in practice performed by the Director of the Tax Treaties Team. This division employs 12 persons, which concern one director, three deputy directors, one assistant deputy director and one English advisor. The three deputy directors are responsible for handling MAP cases of a general nature, whereby each case handler is responsible for certain treaty partners.

***National Tax Service***

130. Within the National Tax Service, the designated competent authority for Korea is the Assistant Commissioner for International Taxation, which delegated it to the Director of the International Cooperation Division and the Director of the MAP/APA team, under the International Taxation Bureau. This bureau consists of four divisions, two of which handle MAP cases, namely the *International Cooperation Division* and the *MAP/APA team*. The specifications of both divisions is as follows:

- a. *International Cooperation Division*: this division consists of 16 persons and a director. The division handles MAP and APA cases with Asian countries (primarily China, Indonesia, Japan, Malaysia and Viet-Nam). Next to this function, the division is also engaged in international co-operative activities, such as holding commissioners' meetings, conducting global outreach programmes, provide training to foreign countries and international training programmes for tax officials.
- b. *MAP/APA team*: this team was established in 2015 and consists of 11 persons and a director. It handles all MAP and APA cases not being dealt with by the International Cooperation Division, which mainly concerns cases with Canada, France, Germany, Singapore, Sweden, the United Kingdom and the United States. Next to handling MAP and APA cases, this team is also responsible for attending meetings of OECD's WP6 and the FTA MAP Forum, and, occasionally, providing international outreach or training programmes for foreign tax officials.

131. Concerning informing treaty partners of contact details of the Korean competent authority, Korea reported it provides such information through its MAP profile as also on the website of the National Tax Service (only in Korean). When a new Assistant Commissioner for International Taxation is appointed, the National Tax Service also notifies this person's name to the relevant treaty partners via an official letter. Furthermore, for each individual MAP case, Korea reported that its competent authority informs its treaty partner with the contact details of individual case handlers, such via a signed notification letter of the MAP request.

132. Furthermore, regarding available resources for the MAP function, Korea reported that it increased its staff with six new persons in 2016 and one in 2017. In that regard Korea noted that it is continuously making efforts to have an adequate number of personnel available, as also that it is in a negotiation process with the relevant government agency (see below) to obtain more staff for the MAP function.

133. Where additional recourses are required, for example within the MAP/APA team, Korea mentioned that the team should make a request to the division within the National Tax Service that is in charge of personnel resources. The responsible division in turn submits a request to the Ministry of the Interior and enters into a negotiation process with this ministry, in which the MAP/APA team then also participates. All participants will determine the number of additional personnel, which process usually takes about four months. If an agreement is reached, the division within the National Tax Service that is in charge of personnel resources and the MAP/APA team then will enter into negotiations with the Ministry of Strategy and Finance on the budget for these additional resources agreed upon, which process takes usually one month. If agreement on the budget is reached, the Budget Committee of the Korean Assembly will review it, after which the final notice is made to the National Tax Service.

134. In terms of resources available to perform its MAP function, apart from staffing, Korea reported that the relevant division prepares a budget plan, which is being negotiated with the Ministry of Strategy and Finance and which takes usually four months. The budget so negotiated is being reviewed by the budget committee of the Korean Assembly. In that regard, Korea reported it has no difficulties in receiving budget to hold face-to-face meetings with other competent authorities.

#### *Ending of MAP after a certain time-period*

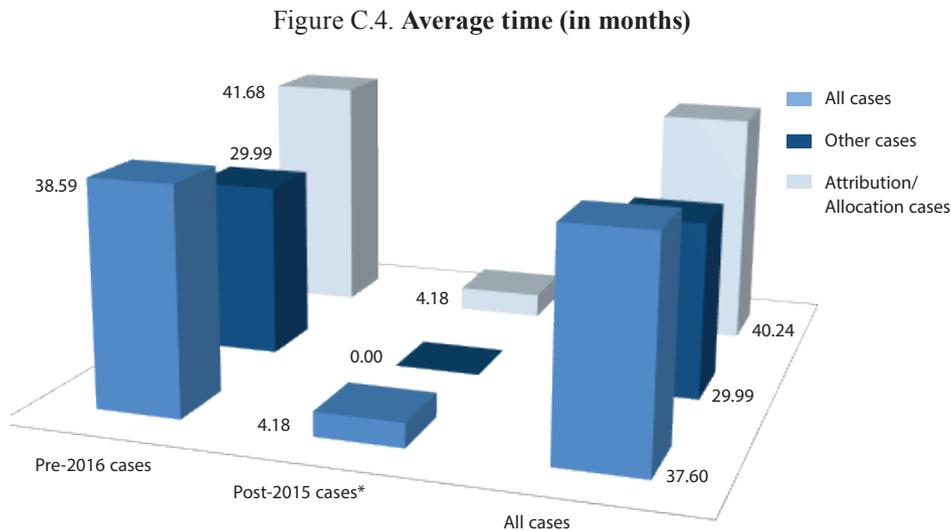
135. Under element C.2 it was discussed what dates Korea considers as the start and end date for pre-2016 MAP cases. As mentioned there, the relevant rules relating hereto in Article 23 AITA. Article 23(2) stipulates that the closing date of a MAP case in the situation no agreement is reached is five years after the start date of such a case.<sup>6</sup> In other words, Korea can unilaterally decide to close a MAP case if no agreement is reached within five years after its initiation. Pursuant to Article 23(3), it is possible to extend this period to eight years if both the Korean competent authority and the other competent authority concerned agree to continue discussions.<sup>7</sup>

136. In view of the above, Korea reported that during the Review Period one case was closed (in 2014) on the basis of Article 23(2) AITA.

## Practical application

### MAP statistics

137. As discussed under element C.2, Korea has not closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. The average time taken to solve attribution/allocation cases is thereby significantly higher than the average time to resolve other cases. This can be illustrated by the following graph:



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

138. Based on these figures, it follows that on average it took Korea 37.60 months to resolve MAP cases. The average to close attribution/allocation cases is thereby significantly higher (40.24 months), which may indicate that additional resources specifically dedicated to handling this type of MAP cases may be necessary to accelerate their resolution.

139. Korea reported there being a variety of reasons why on average it took the Korean competent authority on average longer than 24 months to close MAP cases. In particular it could find for 23 cases the following reasons for overstepping the 24-month average:

- Gaps between initial positions of both competent authorities, for which a long time was necessary to reconcile and negotiate between them (17 cases).
- Delays in replies by the Korean Ministry of Strategy and Finance following a consultation by the Korean competent authority<sup>8</sup> (three cases).
- No frequent competent authority meetings (two cases).
- Large MAP inventory at the level of the treaty partner (one case).

140. Korea further provided the median for resolving pre-2016 and post-2015 cases. The median was 40.27 months for attribution/allocation cases and 36.66 months for other MAP cases. The median for all resolved MAP cases on or after 1 January 2016 was 39.42 months.

## *Peer input*

### *General*

141. In total 14 of the 17 peers that provided input, provided details in relation to their contacts with the Korean competent authority and their experiences in resolving MAP cases during the Review Period. The other three peers had no MAP cases during the Review Period and for that reason did not provide specific input. Most of these 14 peers considered their MAP relationship with Korea to be important and their MAP caseload with Korea significant as compared to their total MAP inventory.

### *Contacts and correspondence with the Korean competent authority*

142. Most peers, which consider their MAP relationship with Korea as important, reported having good contacts with the Korean competent authority. One peer, for example, mentioned that it has regular contacts and negotiations with the Korean competent authority over the past years. Another peer noted that it meets regularly with the Korean competent authority, as also having frequent discussions by e-mail or during face-to-face meetings. A third peer addressed that it has a long and well-established relationship with the Korean competent authority on the resolution of MAP cases, whereby contacts are generally easy and frequent via letters, e-mail, conference calls and face-to-face meetings. The easiness of contacts has been echoed by other peers, thereby pointing out that there were no difficulties being encountered. One of these peers in particular noted that the cooperation and communication between the competent authorities is good and prospering, whereas another peer appreciated the prompt acknowledgment of receipt of MAP requests.

143. Peers with a more moderate MAP caseload with Korea generally also provided positive input on their contacts with Korea. One peer mentioned that during the Review Period various communications took place, including a face to face meeting in November 2016 during which good progress was made on a transfer pricing case. With respect to a non-transfer pricing case, this peer reported having one open case with Korea, which was initiated in 2012 and is still pending, as it awaits a position paper from the Korean competent authority. Another peer reported that contacts with the Korean competent authority normally take place via e-mail, to which is quickly responded. One peer, however, reported difficulties in resolving MAP cases with Korea, which experiences is further discussed in paragraph 153 below.

### *Organisation of face-to-face meetings*

144. A significant number of peers pointed out that they hold at regular intervals face-to-face meetings with the Korean competent authority and at least once a year. One of these peers reported organising such meetings twice a year, generally for three to four days. Another peer mentioned that face-to-face meetings are scheduled once a year, but on an ad-hoc basis, and that information communications also occur outside of scheduled face-to-face meetings.

### *Resolving MAP cases – major MAP partners*

145. Those peers that have a large MAP caseload with Korea generally reported positive experiences with the Korean competent authority in resolving MAP cases. One peer mentioned that it found the Korean competent authority to be open and readily available to discussions regarding MAP cases. A second peer reported that the Korean competent

authority endeavours to resolve MAP cases in a reasonable timeframe, whereby written position papers are provided. This peer also reported the regular scheduling of face-to-face meetings and the frequent conference calls to prepare the discussions during such meetings. Similar input was given by another peer, who specified that both competent authorities have provided increasing input (in terms of working hours, negotiations and personnel) to improve the resolution of MAP cases. As new cases frequently arise, for which progress was made, the peer also noted it is awaiting Korea's official position on these cases. In that regard it hopes that both parties continue to work closely together and put increasing effectiveness and efficiency in resolving these cases.

146. Furthermore, one peer addressed that discussions with the Korean competent authority are frequent and also that they provide for a cordial setting for resolving complex issues. This peer, however, also noticed frequent personnel changes within the Korean competent authority, which in this peer's view causes a slowing down of the resolution of MAP cases. Apart from this, the peer did not identify any particular obstacles in the context of resolving MAP cases. This latter input was also reported by two other peers, who specifically mentioned that no impediments have been noticed so far.

147. Other peers raised some criticism regarding the resolution of MAP cases with Korea. For example, one peer mentioned that it is difficult to organise more face-to-face meetings with Korea and that the Korean competent authority insufficiently prepares for such meetings. It thereby specifically referred to the late transmission of position papers before these face-to-face meetings. This peer considered that this may indicate that the available resources in Korea in relation to the MAP function are limited. As the number of MAP cases with Korea is increasing, this peer expressed the expectation that improvement could be made in this area. Korea responded to this input, in particular to the conducting of face-to-face meetings. It reported that in 2016 approximately 20 face-to-face meetings were held with more than ten treaty partners. For 2017 approximately also 20 meetings have been scheduled. Korea believes that the number of face-to-face meetings is sufficient. Specifically relating to the peer input, Korea responded that with this peer also at regular occasions face-to-face meetings are held and at least twice a year, which it considered sufficient to effectively resolve pending MAP cases. Korea added that they already strive at scheduling an additional face-to-face meeting. As regards the preparation for such meetings, Korea mentioned that itself and the peer strives at conducting well-prepared meetings, including the sending of position papers in advance. It may be that for certain cases, the preparation is not satisfactory due to the number of cases to be discussed, but in Korea's view this occurs at both levels, not only at the level of the Korean competent authority.

148. Specifically concerning the approach by Korea to negotiate MAP agreements on certain issues, two peers provided input. One peer reported that for two pending MAP cases it was informed by the taxpayers concerned that Korea is currently in MAP discussions with another treaty partner on similar issues, whereby the Korean competent authority would only be ready to discuss the case with this peer once these discussions are (nearly) finalised. Although this partner expressed its appreciation for taking such approach, it also considered that this delays the resolution of its own pending MAP cases with Korea. Korea responded to this input by mentioning that in the meantime the relevant MAP discussions have been initiated with this peer.

149. The second peer reported that its experience in resolving MAP cases with Korea has been marked by success and challenges, particularly since a number of cases proved difficult to resolve. This peer provided several examples in relation hereto. This concerns:

- a. *Disagreement on technical and substantial issues*: the peer pointed out that it has expressed its concerns to the Korean competent authority over the application of its treaty with Korea, in particular the precedence Korean domestic law takes over the terms of the treaty and the effect that taxpayer-favourable judicial precedents take in relation to resolving MAP cases on similar issues.
- b. *Alteration of common understandings*: the peer referred to experiences that after reaching a common understanding on the scope and limitations of governing Korean judicial precedents, the Korean competent authority altered its theories and negotiation positions to make new arguments.
- c. *Handling and resolving of MAP cases by different governmental agencies*: the peer has put forward criticism on the assigning of competence to handle MAP cases to different Korean government entities in relation to resolving such cases. This specifically concerns the situation in which negotiations take place with the National Tax Services, which in the peer's view has only authority to make factual determinations and not to enter into MAP agreements on matters that are of an interpretative nature, as the competence in relation hereto has been assigned to the Korean Ministry of Strategy and Finance. In the peer's view this situation impedes the timely and principled resolutions of MAP cases when the National Tax Services cites a lack of authority as a reason for not being able to resolve such cases.
- d. *Closure of MAP cases after a certain period*: the peer indicated that the reported challenges have been compounded by a provision in Korea's domestic law (reference is made to paragraphs 135-136 for a description hereof) that limits the Korean competent authority to enter into MAP agreement if the case has been pending for more than five years, with a potential discretionary three-year extension. This peer concluded that this limitation is contrary to the obligations Korea entered into under its treaty with this peer and also contrary to the Action 14 Minimum Standard; and
- e. *Timely receiving position papers*: the peer reported having experienced some difficulties obtaining position papers from the Korean competent authority in a timely manner.

150. Korea responded to the specific input given by this peer. In a general sense Korea mentioned that most of the comments of this peer relate to one individual issue while there are many pending MAP cases for which the Korean competent authority and the peer's competent authority hold a different view. Also for some of the input presented, Korea mentioned that some of the delays encountered by this peer in the resolution of MAP cases is not due to an inefficient allocation of resources or the other reasons cited by the peer, but merely caused by the complexity and the importance of the case under review. Concerning aspects a), c) and d) of the input given by the peer, Korea responded as follows:

a) *Disagreement on technical and substantial issues*: concerning the possible treaty override, Korea mentioned that it has repeatedly given an explanation to the peer that it does not share the peer's view on this point. On the effect of taxpayer-favourable judicial precedents, Korea mentioned that it also has delivered the fact that the judicial decision is not directly applicable to the MAP cases that are being negotiated.

c) *Handling and resolving of MAP cases by different governmental agencies*: Korea responded that the division of handling MAP cases between the Korean Ministry of Strategy and Finance and the National Tax Services (as described in paragraphs 129-131) has its basis in Korea's domestic law and has been decided so on historical and institutional grounds. Further to this, Korea also mentioned that

in its view the interrelation between the Ministry of Strategy and Finance and the National Tax Services is well-functioning.

*d) Closure of MAP cases after a certain period:* Korea reported that the purposes of the specific law provision is to avoid that cases remain in the inventory, while they are in a standstill state and the chances of being resolved via a MAP agreement are little. To this end, a period of five years that can be extended to eight years should be considered as reasonable and in Korea's view does not impede the timely and effective resolution of MAP cases, all the more since the provision included in Article 23(2) AITA in relation hereto is rarely used.

151. Lastly, one peer mentioned that even though face-to-face meetings are organised on a regular basis, the resolution of MAP cases tend to be lengthy. This peer, however, also noted that the latter has definitely improved over the last years.

#### *Resolving MAP cases – other MAP partners*

152. Also peers with a more moderate caseload with Korea reported mixed experience with the Korean competent authority in resolving MAP cases. For example, one peer reported that it held a face-to-face meeting with the Korean competent authority in 2016, during which the case under review was resolved. This peer mentioned that this experience was positive, whereby the dialogue was constructive and based on facts. Other peers reported no impediments in resolving of MAP cases, whereby one mentioned that during the Review Period progress has been made on the pending MAP cases.

153. Two peers, however, raised specific criticism on the resolution of MAP cases with the Korean competent authority. One of these peers mentioned that sometimes it occurred that Korea did not provide all the relevant documentation to properly evaluate the case under review. Korea responded to this input by mentioning that in the said case there were no documents available to properly evaluate the case, as the peer imposed the tax for which a MAP request was being submitted. Korea added that it later identified that it did not provide a notification letter to this peer on the receipt of MAP request by the Korean taxpayer. The other peer reported that during the Review Period it had in total resolved four cases with Korea, whereby two were closed without any solution found, for which the financial amount can be substantial. The period to close these cases was for three of the four cases longer than two years. This peer in particular noted that during the Review Period it had two face-to-face meetings with the Korean competent authority. This peer has experienced such negotiations as a slow process, a challenge to achieve progress and that most cases on the agenda remain unresolved. Although this peer considers scheduling regular competent authority meetings an efficient manner to resolve MAP cases, its experience learns that achieving progress with the Korean competent authority remains a challenge, even with regular face-to-face meetings.

#### *Suggestions for improvement*

154. A number of peers provided suggestion for improvements. One peer mentioned that better communication could contribute to improve the timeliness for resolving MAP cases in a principled manner. Other peers also referred to the communication with the Korean competent authority. One of these peers mentioned that apart from face-to-face negotiations, both competent authority could resort to regular exchange of positions via e-mail or letters with a view to improve the resolution of MAP cases. A second peer also mentioned that more frequent exchange of written position papers could speed up the

process. Another peer stressed that Korea may consider to engage in concurrent MAP discussions to arrive at a more quick resolution of cases. Lastly, one peer reported that it would be beneficial if the Korean competent authority would improve their focus on the resolution of MAP cases.

155. Furthermore, one peer provided detailed input on the resolution of MAP cases. This peer recommended that both competent authorities continue to have consistent communication at each level of their organisations (e.g. analysts, managers and senior management/executives), both on procedural and substantive matters. In the peer's experience, consistency of communication at all levels facilitates the resolution of MAP cases and further that robust channels of communication between analysts and managers ensure that cases are efficiently developed, discussed and resolved. To this the peer added that with respect to routine cases that where they need to be elevated to higher levels within the organisation, although they ideally should be resolved at operational levels within the competent authority organisations, frequent and fulsome discussions between senior management and executives can help ensure that principled and practical resolutions for MAP cases can be reached efficiently. With respect to the first suggestion made, Korea responded that it in principle can agree with this proposal, but also that at each level discussions need to be coordinated and supervised by a person that is competent to make decisions, such that the discussions on the technical content of the case can indeed be dealt with at an operational level.

### *Anticipated modifications*

156. Korea indicated that, in order to resolve MAP cases in a timely manner, the National Tax Service aims at increasing staff in charge of MAP. In this respect, it is in discussion with the Ministry of the Interior and Safety with a view to consider the personnel resources available for the MAP function, such on the basis of quantitative indicators as the number of pending MAP cases per staff member and the average time to resolve MAP cases.

### *Conclusion*

	Areas for improvement	Recommendations
[C.3]	As Korea closed MAP cases in 37.60 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. This indicates that Korea's competent authority is not adequately resourced, especially because of the fact that the governance within its competent authority is not conducive to ensure that post-2015 cases are resolved within the pursued average.	Korea should ensure that the governance within its competent authority enables that the resources available are adequate in order to resolve MAP cases in a timely, efficient and effective manner. This, as also suggested by peers, in particular concerns: (i) avoiding that the frequent change in personnel does not affect progress of pending cases, (ii) position papers are issued in due time and ahead of face-to-face meetings, (iii) its competent authority at the level of the National Tax Services endeavours to discuss and resolve MAP cases in a timely, efficient and effective manner when a case is being handled by the Ministry of Strategy and Finance that is of an interpretative nature.

#### [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.

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

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

158. With respect to handling and resolving MAP cases, Korea reported that there are four level of officials within the National Tax Service: (i) examiners, (ii) deputy-director, (iii) director and (iv) the assistant commissioner. Both the examiners and the deputy-directors prepare a position paper. After having prepared this paper, it is being reviewed by the director, which subsequently needs to be approved by the assistant commissioner of the International Taxation Bureau within the National Tax Service. The assistant commissioner eventually takes a decision on the Korean position, which decision is independently made from the Tax Audit Bureau of the National Tax Service. With respect to the resolution of MAP cases, Korea reported that prior to entering into negotiations, for example during face-to-face meetings, the Korean delegates are given a mandate for finding solutions on a case. The delegates can enter into MAP agreements that are within this range without any approval afterwards by the assistant commissioner. Furthermore, it reported that since the International Tax Bureau and the Tax Audit Bureau function independently from one and another, the preparation of the Korean position, as the decision to enter into a MAP agreement is solely taken at the level of the competent authority.

159. Concerning handling of MAP cases of a general nature, Korea reported that within the Ministry of Strategy and Finance, the Director of the Tax Treaty Team and subsequently the Director General for International Tax and Customs Affairs will approve all MAP agreements.

160. Concerning the relationship with local tax offices, Article 90 of Korea's Binding Administrative Guidance includes rules for conducting the mutual agreement procedure in this respect. Article 90(1) stipulates that after submission of a MAP request, the head of Korea's competent authority will notify the relevant directors of the regional tax offices of the National Tax Services, which imposed, or is likely to impose, the taxation that is deemed by the taxpayer not to be in accordance with the provisions of the tax treaty. It will in turn request the regional tax office to submit the following documents:

- Documents related to the imposition of taxes relating to the MAP request
- Documents to provide the grounds of the imposition of taxes relating to the MAP request
- Copies of written decisions, appeals (or court petitions), written defences and other relevant documents concerning the imposition of taxes that relate to the MAP request, and a specification on whether consultation on factual judgment of

a tax assessment, pre-assessment review, objection, examination by the National Tax Services or adjudgment by the Tax Tribunal, a request for examination by the Board of Audit and Inspect, or litigation has been process or is under review.

161. Article 90(2) of Korea’s Binding Administrative Guidance further stipulates that the local tax office has to provide the requested information within seven days as from the date of receipt of the relevant request. During the course of a MAP a further explanation may be necessary of the documents submitted by the local tax office to Korea’s competent authority. In such case, Article 90(3) allows Korea’s competent authority to request the local tax office to provide its opinion in writing or to attend a competent authority meeting. Pursuant to Article 90(4) the local tax office should provide this written opinion within one month from the request made. Furthermore, Article 90(5) determines that the local tax office shall designate an official that has been involved in the relevant tax audit alongside another official to handle requests under Article 90(3).

### ***Practical application***

162. Korea reported that the decision making process for MAP cases is, both at the level of the National Tax Service and the Ministry of Strategy and Finance, neither dependent on approval/direction by the audit department of the tax administration that is directly involved in the adjustment at issue, nor of any policy consideration. In other words, it reported that its competent authority can enter into MAP agreements 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.

163. Peers reported no impediments in Korea 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. One peer specifically mentioned that they are not being aware that staff in charge of the MAP in Korea is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment at issue or being influenced by considerations of the policy.

### ***Anticipated modifications***

164. Korea 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, Korea 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 and absent of any policy considerations that Korea would like to see reflected in future amendments to the treaty.

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

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

165. 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 Korea***

166. Korea reported that it uses a two-tier performance indicator system. This concerns (i) an evaluation of the organisation and (ii) an evaluation of individual staff members.

167. With respect to the evaluation of the organisation, Korea reported that within the National Tax Service both divisions involved in MAP are being evaluated (the International Cooperation Division and the MAP/APA team). The used performance indicators are thereby divided into two parts: (a) a quantitative indicator, such as the increased rate of held face-to-face meetings as compared to previous years and (b) a qualitative indicator, such as the endeavour by both divisions to resolve MAP cases. For fiscal year 2017, the number of increased face-to-face meetings is set at 130% of the average number over the past three fiscal years.

168. With respect to the evaluation of individual staff members, Korea reported that the used performance indicators are also divided into two parts; a quantitative indicator and a qualitative indicator. The quantitative indicator is thereby the same as the one used for the evaluation of the organisation. The qualitative indicators used are the endeavour to resolve MAP cases, integrity and work completeness.

169. In view of the above, Korea mentioned that no performance indicators are used concerning the amount of sustained adjustments or maintaining of tax revenue.

170. The Final Report on Action 14 includes examples of performance indicators that are considered appropriate. From the above analysis it follows that Korea uses the following indicators:

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

***Practical application***

171. Peers provided no specific input relating to this element of the Action 14 Minimum Standard, but one peer noted that they are not aware of the use of performance indicators by Korea that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

*Anticipated modifications*

172. Korea 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, Korea 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.

173. 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*

174. In Korea there are no domestic law limitations for including MAP arbitration in its tax treaties. Inclusion of MAP arbitration, however, is not part of Korea's tax treaty policy. This is reflected in Korea's MAP profile. Furthermore, Korea's recently issued MAP guidance stipulates in paragraph 3.7 that MAP arbitration is not provided for in Korea's tax treaties. In addition, in the Commentary to Article 25 of the OECD Model Tax Convention (OECD, 2015a), Korea reserved the right not to include the arbitration provision of Article 25(5) in its tax treaties.

*Practical application*

175. Korea has not incorporated an arbitration clause in its tax treaties as a final stage to the MAP. However, one of its treaties includes a most-favoured nation clause on arbitration. This provision stipulates that if Korea includes an arbitration provision in one of its tax treaties, it shall enter into negotiations with its treaty partner with whom the most-favoured nation clause was agreed on with a view to include an arbitration provision in that treaty as well.

*Anticipated modifications*

176. Korea did not indicate that it anticipates any modifications in relation to element C.6.

*Conclusion*

	Areas for improvement	Recommendations
[C.6]	-	-

## Notes

1. 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.
2. For post-2015 cases, if the number of MAP cases in Korea’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five for any treaty partner, Korea reported its MAP caseload for such a treaty partner on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
3. Korea reported that for pre-2016 cases for determining whether a case is considered an attribution/allocation MAP case cases it followed the rules contained in Annex D of the MAP Statistics Reporting Framework. Annex D of MAP Statistics Reporting Framework defines such case as: “a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention [OECD, 2015a]); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention [OECD, 2015a]), which is also known as a transfer pricing MAP case”.
4. Reference is also made to paragraph 3.1 and 3.3 of Korea’s MAP guidance. The start and end date are also set out in Article 86 of the Binding Administrative Guidance.
5. For a description see also paragraph 2.4 of Korea’s MAP guidance and Article 85(1) of the Binding Administrative Guidance.
6. This is also set out in Article 86(2) of the Binding Administrative Guidance.
7. Ibid Article 86(3).
8. In Korea it is possible that the Korean competent authority consult the Korean Ministry of Strategy and Finance for certain MAP cases, but there is not requirement to do so.

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## *Part D*

### **Implementation of MAP agreements**

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

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

177. 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***

178. In Korea MAP agreements are implemented regardless of any domestic statute of limitations for implementing MAP agreements. Article 27 AITA includes rules in relation to the implementation of MAP agreements. In this respect, Article 27(2) stipulates that when the Korean competent authority enters into a MAP agreement with the competent authority of its treaty partner, it shall notify relevant governmental agencies (e.g. the tax authorities) and the taxpayer of this agreement, including the terms and conditions of that agreement. Such notification has to be given within 15 days as from the date of entering into the MAP agreement. In relation hereto, Article 42(2) EDAITA determines that for such notification a standard form is to be used. This form is included in the appendixes to Korea's MAP guidance and includes information on: (i) the taxpayer, (ii) its associated enterprise(s), (iii) the start and end date of the MAP (in accordance with the rules in Article 23 AITA), (iv) details of the MAP request and (v) details of the MAP agreement.

179. Concerning the implementation of MAP agreements, Korea makes a distinction between MAP cases whereby the underlying taxation is imposed in Korea and or at the level of its treaty partner. In the first situation, the National Tax Service will automatically implement the MAP agreement on the basis of an ex-officio tax assessment. In relation hereto, Korea reported that under its domestic law, an ex-officio tax assessment can be imposed when an initial tax assessment has been imposed in Korea. If the taxation under review is made at the level of the treaty partner, there is no corresponding legal action in Korea, for which an ex-officio assessment cannot be imposed. The relevant rules are detailed in Article 27(3) of the AITA, which stipulates that the tax authority or the head of a local government shall assess taxes, determine to make a rectification, or take other necessary action to implement such MAP agreement. In the second situation, a MAP agreement will not be automatically implemented, but implementation is subject to the taxpayer requesting the National Tax Service to rectify the tax assessment within two months as from the date of notification of the MAP agreement. In this respect, Article 17(1) of the EDAITA requires taxpayers, who received a notification of the outcome of a MAP

on the basis of Article 27(2) of the AITA, to request for a rectification of the tax assessment within a period of three months with the head of a tax office.

180. Further to the above, under Korean domestic law, taxpayers are allowed to initiate domestic available remedies alongside requesting for the mutual agreement procedure. When a tax assessment is issued, taxpayers have three options: (i) formally protest to the National Tax Service, (ii) lodge an appeal to the (administrative) Tax Tribunal, or (iii) formally protest to the Board of Audit and Inspection. In all three options, the government authority has to take a decision within 90 days. Afterwards, the taxpayer can initiate domestic court proceedings. In any case, initiating one of these three options is a prerequisite for initiating a domestic court procedure.<sup>1</sup> As long as the domestic court procedure is still pending, the case can also be dealt with in MAP. However, where the domestic court issues a ruling on the case, MAP proceedings will, pursuant to Article 23(4) AITA, be put to an end. Furthermore, Article 27(4) of this act stipulates that if a final decision is made after conclusion of a MAP agreement, which deviates from the terms and conditions of such agreement, the MAP agreement is deemed non-existent, even where it was already implemented. This bears the risk that even when a MAP agreement is implemented, the effect hereof is made redundant due to a deviating court decision afterwards. This is reinforced by the fact that taxpayers are not asked approval of the said agreement alongside withdrawing any pending appeals in relation to the same case, if the MAP was initiated in Korea. In this respect, Korea, however, reported that it has not experienced any cases where a final court ruling was issued after a MAP agreement has been entered into and/or was implemented.

### ***Practical application***

181. Korea reported that all MAP agreements that were reached on or after 1 January 2014 have or will be implemented. Article 42(3) EDAITA stipulates that tax authority or the head of a local government has to inform Korea's competent authority of such implementation within 15 days as from the date of implementing the MAP agreement. In this respect, Korea noted that such reporting has to be done via official letters, following which track is being kept of the actual implementation of MAP agreements.

182. All peers that provided input reported that they were not aware of any MAP agreements reached on or after 1 January 2014 that were not implemented by Korea.

### ***Anticipated modifications***

183. Korea indicated that it is considering to take possible legislative measures including the requesting of taxpayer approval as a prerequisite of implementing MAP agreements, such with a view to avoid that an already implemented MAP agreement is revoked due to a later court decision for the same case as for which a MAP agreement was entered into.

## Conclusion

	Areas for improvement	Recommendations
[D.1]	There is a risk that not all MAP agreements will be implemented because of the requirement for taxpayers to request a rectification of the tax assessment within a period of three months as a prerequisite for having a MAP agreement implemented, when the other jurisdiction concerned initiated the MAP.	As it has done thus far, Korea should continue to implement all MAP agreements if the conditions for such implementation are fulfilled. Additionally, Korea should closely monitor whether the requirements for taxpayers to request for a rectification of the tax assessment within a period of three months results in obstructions in practice concerning the implementation of MAP agreements, where the underlying tax assessment was made by the other jurisdiction concerned. Where this is the case, Korea should consider amending this process with a view to enable the implementation of all MAP agreements.
	Implemented MAP agreements may be annulled due to rulings of domestic courts.	Furthermore, Korea should ensure that implemented MAP agreements are not annulled by domestic court rulings after such implementation, for which it could consider amending its domestic law in line with its stated intention.

### [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.

184. 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*

185. Further to the system in place in Korea for implementing MAP agreements discussed under element D.1, Korea's domestic law also include timing rules for implementing such agreements. In a general sense, Article 25 AITA stipulates that a MAP agreement has to be implemented within one year as from the date the MAP agreement was entered into, even if Korea's domestic statute of limitation already has expired. Where the MAP was initiated by the treaty partner, the taxpayer has to, as discussed under element D.1, request for a rectification of the tax assessment within two months as from the date of notification of the MAP agreement. Upon receipt of such request, the head of the relevant regional tax office should, pursuant to Article 17(3) of the EDAITA make such rectification within a period of two months from the date of receipt.

#### *Practical application*

186. Korea reported that all MAP agreements that were reached on or after 1 January 2014 have been or will be implemented on a timely basis.

187. All peers that provided input have not indicated experiencing any issues with Korea regarding the implementation of MAP agreements reached on a timely basis.

*Anticipated modifications*

188. Korea 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, Korea 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.

189. 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 Korea's tax treaties*

190. Out of Korea's 95 tax treaties, 68 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. Furthermore, 24 treaties do not contain such equivalent or the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments.

191. For the remaining three treaties the following analysis can be made:

- In one treaty a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is included, but this provision also includes wording that a MAP agreement may be implemented within six years from the date of presentation of the MAP request to the competent authority. As this bears the risk that MAP agreements cannot be implemented due to time constraints in domestic law of the treaty partners, this treaty therefore is considered not containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).
- In one treaty a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is included, but a MAP agreement can only be implemented if the competent authority of the other contracting state is notified of a MAP request within four and a half years from the due date, or if later, the date of filing of a tax return in that other state. In that situation a MAP agreement shall be implemented within ten years from one of these dates, or a longer period if permitted under the domestic laws of that other state. As this

provision also bears the risk that MAP agreements cannot be implemented due to time constraints in domestic law of the treaty partners, this treaty therefore is also considered not containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

- In one treaty a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is included, but the implementation of MAP agreements is made subject to time limits as included in the domestic laws of the contracting states. As this treaty actually puts a time limit on the implementation of MAP agreements, the treaty considered not containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

### *Anticipated modifications*

#### *Multilateral Instrument*

192. Korea recently signed the Multilateral Instrument. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depository of the fact that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Furthermore, Article 16(4)(b)(ii) of the Multilateral Instrument does not take effect if one or both of the signatory states to the tax treaty has, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

193. In regard of the 27 tax treaties above that are considered not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), Korea listed 17 as covered tax agreements under the Multilateral Instrument, but only made for 16 of them, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii) of the Multilateral Instrument. Of the relevant 16 treaty partners, three are not a signatory to the Multilateral Instrument. Of the remaining 13 treaty partners, one made a reservation on the basis of Article 16(5)(c) and one did not list its tax treaty with Korea as a covered tax agreement, whereas the other 11 also made a notification that their treaty with Korea does not contain such provision. At this stage therefore, 11 of the 27 treaties will, upon entry into force, be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

#### *Bilateral modifications*

194. Korea reported that when the tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations

with a view to be compliant with element D.3. In this respect, Korea is in the process of analysing, for those treaties for which no negotiations are pending or scheduled, whether and how to update them with a view to be in line with the Action 14 Minimum Standard. In addition, Korea reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future treaties.

### *Peer input*

195. Almost all peers that provided input reported that their treaty with Korea meets the requirements under element D.3. This includes also those peers for which its treaty with Korea actually does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Additionally, one peer reported being in the process of renegotiating the treaty with Korea with a view to *inter alia* bring it in line with the requirements under the Action 14 Minimum Standard, which also regards element D.3, as the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is currently not contained in its tax treaty with Korea.

196. Furthermore, four peers specifically mentioned that their treaty with Korea does not meet the requirements under element D.3. Three of the four peers reported that there are no ongoing contacts or negotiations with Korea, nor were they contacted by Korea, to amend the treaty with a view to incorporate the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), as they envisage modifying it via the Multilateral Instrument. At this stage, only two of the four relevant treaties will indeed be modified via the Multilateral Instrument. One of these three peers further mentioned that where the treaty with Korea will not be modified to incorporate the equivalent of Article 25(2), second sentence, it will discuss possible solutions bilaterally. Additionally, the fourth peer noted that it will seek to update the treaty when it meets with Korea for bilateral discussions.

### *Conclusion*

	Areas for improvement	Recommendations
[D.3]	27 out of 95 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>Korea should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those 11 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 16 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force to include such equivalent, Korea should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, Korea should, following the outcome of its analysis on which treaties need modification in light of the Action 14 Minimum Standard, put a plan in place on how it envisages updating these treaties to include such equivalent.</p> <p>In addition, Korea should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future treaties.</p>

## Note

1. This rule is laid down in Article 56(2) of Framework Act on National Taxes.

## *Bibliography*

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## Summary

	Areas for improvement	Recommendations
<b>Part A: Preventing disputes</b>		
[A.1]	<p>Three out of 95 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).</p>	<p>Korea should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Korea should request the inclusion of the required provision via bilateral negotiations. To this end, Korea should, following the outcome of its analysis on which treaties need modification in light of the Action 14 Minimum Standard, put a plan in place on how it envisages updating this treaty to include such equivalent.</p> <p>In addition, Korea should maintain its stated intention to include the required provision in all future treaties.</p>
[A.2]	-	<p>Korea should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far.</p>
<b>Part B: Availability and access to MAP</b>		
[B.1]	<p>Seven out of 95 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those seven tax treaties:</p> <ul style="list-style-type: none"> <li>• one tax treaty does not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter 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> <li>• two tax treaties do not contain the equivalent to Article 25(1), first sentence.</li> <li>• four tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty (two years).</li> </ul>	<p>Korea should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. 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 final report of Action 14 (OECD, 2015b); or</li> <li>b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision</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>For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Korea should request the inclusion of the required provision via bilateral negotiations. To this end, Korea should, following the outcome of its analysis on which treaties need modification in light of the Action 14 Minimum Standard, put a plan in place on how it envisages updating these treaties to include such equivalent.</p> <p>In addition, Korea should maintain its stated intention to include the required provision in all future treaties.</p>

	Areas for improvement	Recommendations
[B.2]	Korea has in place a formal process to notify the other competent authority in cases where the Korean competent authority considered the objection raised in the MAP request as not justified. However, it was not possible to assess whether the notification process is applied in practice because no such cases have occurred since 1 January 2014.	
[B.3]	-	As Korea has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	Domestic law allows the competent authority not to initiate a MAP where it is recognised that MAP is utilized for purposes of tax avoidance, which bears the risk that in cases where anti-abuse provisions are being applied, access to MAP will not be granted.	Relating to the provision included in Article 22(2) AITA, Korea should follow-up its stated intention to take an appropriate measure to ensure that the article would not limit access to MAP in cases concerning the application of anti-abuse provisions. Nevertheless, as Korea has thus far granted access to 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 Korea has thus far not limited access to MAP in eligible cases when taxpayers have complied with Korea's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Nine out of 95 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Korea should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those six treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the three remaining treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Korea should request the inclusion of the required provision via bilateral negotiations. To this end, Korea should, following the outcome of its analysis on which treaties need modification in light of the Action 14 Minimum Standard, put a plan in place on how it envisages updating these treaties to include such equivalent. In addition, Korea should maintain its stated intention to include the required provision in all future treaties.
[B.8]	-	Although not part of the Action 14 Minimum Standard, in order to further improve the level of clarity, Korea could consider including in its MAP guidance information on: <ul style="list-style-type: none"> <li>• Whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments</li> <li>• Whether taxpayers can request for the multi-year resolution of recurring issues through MAP</li> <li>• The consideration of interest and penalties in MAP.</li> </ul>

	Areas for improvement	Recommendations
[B.9]	-	<p>Korea 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.</p> <p>In addition, although its MAP profile is almost complete, Korea could consider, as suggested by a peer, include information on the unilateral allowance in its domestic law to close MAP cases if after five years no agreement has been reached. To this end, it could also refer to the relevant sections of its domestic law and could attach an excerpt of such sections to its MAP profile, like Korea did for the other relevant sections of its domestic law. Furthermore, Korea could also consider adding an e-mail address of its competent authority in the general information section of its MAP profile.</p>
[B.10]	-	-
<b>Part C: Resolution of MAP cases</b>		
[C.1]	Two out of 95 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Korea should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the one treaty that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Korea should request the inclusion of the required provision via bilateral negotiations. To this end, Korea should, following the outcome of its analysis on which treaties need modification in light of the Action 14 Minimum Standard, put a plan in place on how it envisages updating this treaty to include such equivalent.</p> <p>In addition, Korea should maintain its stated intention to include the required provision in all future treaties.</p>
[C.2]	<p>Korea submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework. Based on the information provided by Korea's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.</p> <p>Korea's MAP statistics point out that during the Statistics Reporting Period it closed 4.55% (one out of 22 cases) of its post-2015 cases in 4.18 months on average. In that regard, Korea is recommended to seek to resolve the remaining 95.45% of the post-2015 cases pending on 31 December 2016 (21 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.</p>	
[C.3]	As Korea closed MAP cases in 37.60 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. This indicates that Korea's competent authority is not adequately resourced, especially because of the fact that the governance within its competent authority is not conducive to ensure that post-2015 cases are resolved within the pursued average.	<p>Korea should ensure that the governance within its competent authority enables that the resources available are adequate in order to resolve MAP cases in a timely, efficient and effective manner. This, as also suggested by peers, in particular concerns: (i) avoiding that the frequent change in personnel does not affect progress of pending cases, (ii) position papers are issued in due time and ahead of face-to-face meetings, (iii) its competent authority at the level of the National Tax Services endeavours to discuss and resolve MAP cases in a timely, efficient and effective manner when a case is being handled by the Ministry of Strategy and Finance that is of an interpretative nature.</p>
[C.4]	-	As it has done thus far, Korea 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 and absent of any policy considerations that Korea would like to see reflected in future amendments to the treaty.

	Areas for improvement	Recommendations
[C.5]	-	As it has done thus far, Korea should continue to use appropriate performance indicators.
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	There is a risk that not all MAP agreements will be implemented because of the requirement for taxpayers to request a rectification of the tax assessment within a period of two months as a prerequisite for having a MAP agreement implemented, when the other jurisdiction concerned initiated the MAP.	As it has done thus far, Korea should continue to implement all MAP agreements if the conditions for such implementation are fulfilled. Additionally, Korea should closely monitor whether the requirements for taxpayers to request for a rectification of the tax assessment within a period of three months results in obstructions in practice concerning the implementation of MAP agreements, where the underlying tax assessment was made by the other jurisdiction concerned. Where this is the case, Korea should consider amending this process with a view to enable the implementation of all MAP agreements.
	Implemented MAP agreements may be annulled due to rulings of domestic courts.	Furthermore, Korea should ensure that implemented MAP agreements are not annulled by domestic court rulings after such implementation, for which it could consider amending its domestic law in line with its stated intention.
[D.2]	-	As it has done thus far, Korea should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	27 out of 95 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>Korea should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those 11 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 16 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force to include such equivalent, Korea should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, Korea should, following the outcome of its analysis on which treaties need modification in light of the Action 14 Minimum Standard, put a plan in place on how it envisages updating these treaties to include such equivalent.</p> <p>In addition, Korea should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future treaties.</p>

## Annex A

### Tax treaty network of Korea

Treaty partner	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	Y = yes N = signed pending ratification	E = yes, either CA CA N = No	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) of the OECD MTC B.3	Anti-abuse B.4	Article 25(2) of the OECD MTC C.1	Inclusion Art. 25(2) of the OECD MTC D.3	Article 25(3) of the OECD MTC A.1	Arbitration C.6													
Albania	Y	O																					
Algeria	Y	O																					
Australia	Y	O																					
Austria	Y	O																					

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 9(2) of the OECD MTC (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(2) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?	Arbitration									
	B.1	B.3	B.4	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1	C.1
Azerbaijan	Y	O	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Bahrain	Y	O	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Bangladesh	Y	O	Y	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Belarus	Y	O	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Belgium	Y	O*	Y	Y	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Brazil	Y	O	Y	Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Brunei	Y	O	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Bulgaria	Y	O*	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Canada	Y	O	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Chile	Y	O	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
China	Y	O	Y	Y	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Colombia	Y	O*	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Croatia	Y	O	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Czech Republic	Y	O	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Denmark	Y	O*	Y	Y	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Ecuador	Y	O	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Egypt	Y	O*	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Estonia	Y	O	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Ethiopia	N	O	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Fiji	Y	O*	Y	Y	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Finland	Y	O*	Y	Y	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11			
	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons	Inclusion Art. 9(2) of the OECD MTC (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Arbitration												
	B.1	B.3	B.4	B.3	B.4	C.1	D.3	A.1	B.7	C.6												
France	Y	O*	Y	N/A	i	Y	N*	N*	Y	N	N*	N*	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Gabon	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Georgia	Y	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Germany	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Greece	Y	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Hong Kong (China)	Y	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Hungary	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Iceland	Y	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
India	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Indonesia	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Iran	Y	O	ii	2-years	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Ireland	Y	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N*	Y	Y	N	N/A
Israel	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Italy	Y	N	ii**	2-years	i	Y	Y	Y	Y	Y	Y	N*	Y	Y	Y	Y	Y	N*	Y	Y	N	N/A
Japan	Y	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Jordan	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Kazakhstan	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Kenya	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Kuwait	Y	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A
Kyrgyzstan	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N/A

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 9(2) of the OECD MTC (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(2) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC							
	B.1	B.3	B.4	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6										
Laos	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Latvia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Lithuania	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Luxembourg	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Malaysia	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Malta	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Mexico	Y	O*	i	N/A	i**	i	N*	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Mongolia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Morocco	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Myanmar	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Nepal	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Netherlands	Y	N*	i	N/A	i**	i	Y	N*	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
New Zealand	Y	O*	Y	N/A	i**	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Nigeria	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Norway	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Oman	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Pakistan	Y	O*	Y	N/A	i**	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Panama	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Papua New Guinea	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Peru	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A

Treaty partner	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	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		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration			
	B.1	B.3	B.4	C.1	C.3	C.6	C.7	C.8	C.9	C.10	C.11	C.12	C.13	C.14	C.15	C.16	C.17	C.18	C.19	C.20	C.21	C.22
Philippines	Y	O	ii	2-years	i	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Poland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Portugal	Y	O	ii**	2-years	i**	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Qatar	Y	O	ii	2-years	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Romania	Y	O	Y	N/A	Y	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Russia	Y	O*	Y	N/A	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Saudi Arabia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Serbia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Singapore	Y	O	i	N/A	i	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Slovak Republic	Y	O	Y	N/A	i**	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Slovenia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
South Africa	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Spain	Y	O	Y	N/A	i**	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Sri Lanka	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Sudan	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Sweden	Y	O*	Y	N/A	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Switzerland	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Tajikistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Thailand	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Tunisia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Turkey	Y	O	i	N/A	i	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A

Treaty partner	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		
	Column 1	Column 2		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8		Column 9	Column 10
	B.1	B.2	B.3	B.4	C.1	C.2	C.3	C.4	C.5	C.6	C.7	C.8
Turkmenistan	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
United Arab Emirates	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ukraine	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
United Kingdom	Y	O*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
United States	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Uruguay	Y	O*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Uzbekistan	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Venezuela	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Viet-Nam	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

\* Treaties will be modified upon entry into force of the Multilateral Instrument.

\*\* Treaties will be modified upon entry into force of the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of Article 17 of the Multilateral Instrument.

## Annex B

## MAP Statistics: pre-2016 cases

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										Average time taken (in months) for closing pre-2016 cases during the reporting period	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		Column 13
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement including agreement to disagree	Any other outcome	No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	
Attribution/Allocation	86	0	0	1	0	0	20	0	0	4	0	61	41.68
Others	58	0	0	5	0	0	4	0	0	0	0	49	29.99
Total	144	0	0	6	0	0	24	0	0	4	0	110	38.59

## Annex C

## MAP statistics: post-2015 cases

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										average time taken (in months) for closing post-2015 cases during the reporting period		
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement including agreement to disagree	Any other outcome		No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/ Allocation	0	18	0	0	0	0	0	1	0	0	0	0	0	17	4.18
Others	0	4	0	0	0	0	0	0	0	0	0	0	0	4	0.00
Total	0	22	0	0	0	0	0	1	0	0	0	0	0	21	4.18

## *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>Korean competent authority</b>	Minister of Strategy and Finance respectively the Commissioner of the National Tax Service
<b>MAP guidance</b>	Guidance on mutual agreement procedures for taxpayers of August 2017
<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 pending resolution on 31 December 2015
<b>Post-2015 cases</b>	MAP cases received by a competent authority from the taxpayer on or after 1 January 2016
<b>Review Period</b>	Period for the peer review process that started on 1 January 2016 and ended on 31 July 2017
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2016
<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**

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## OECD/G20 Base Erosion and Profit Shifting Project

# Making Dispute Resolution More Effective – MAP Peer Review Report, Korea (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, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The minimum standard is complemented by a set of best practices.

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

Consult this publication on line at <http://dx.doi.org/10.1787/9789264290365-en>.

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