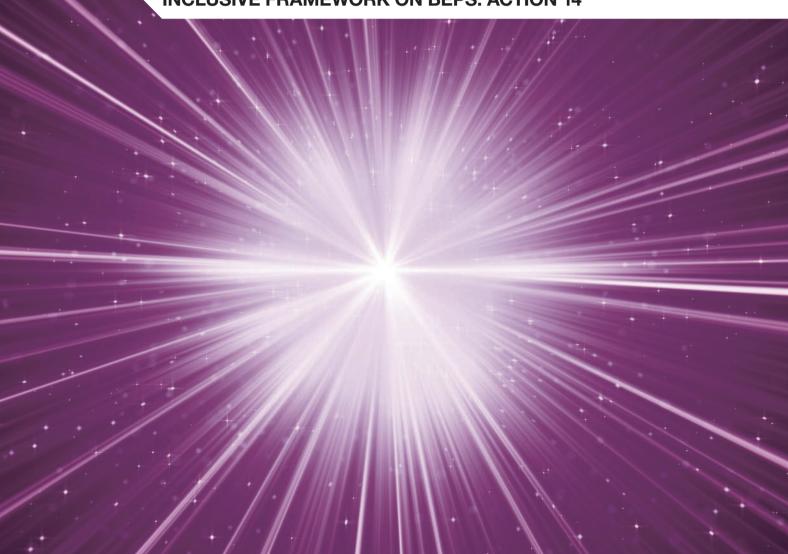
OECD/G20 Base Erosion and Profit Shifting Project



Making Dispute Resolution More Effective – MAP Peer Review Report, Aruba (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14





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Foreword

Digitalisation and globalisation have had a profound impact on economies and the lives of people around the world, and this impact has only accelerated in the 21st century. These changes have brought with them challenges to the rules for taxing international business income, which have prevailed for more than a hundred years and created 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.

In 2013, the OECD ramped up efforts to address these challenges in response to growing public and political concerns about tax avoidance by large multinationals. The OECD and G20 countries joined forces and developed an Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions aimed at 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, including those published in an interim form in 2014, were consolidated into a comprehensive package and delivered to G20 Leaders in November 2015. The BEPS package represents the first substantial renovation of the international tax rules in almost a century. As the BEPS measures are implemented, 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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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. As a result, they created the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and its subsidiary bodies. With over 140 members, the Inclusive Framework monitors and peer reviews the implementation of the minimum standards and is completing the work on standard setting to address BEPS issues. In addition to its 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.

Although implementation of the BEPS package is dramatically changing the international tax landscape and improving the fairness of tax systems, one of the key outstanding BEPS issues – to address the tax challenges arising from the digitalisation of the economy – remained unresolved. In a major step forward on 8 October 2021, over 135 Inclusive Framework members, representing more than 95% of global GDP, joined a two-pillar solution to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate and generate profits in today's

digitalised and globalised world economy. The implementation of these new rules is envisaged by 2023.

This report was approved by the Inclusive Framework on 25 August 2022 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
TMCB	Tax Matters Co-ordination Board

Executive summary

Aruba has a small tax treaty network with four tax treaties. Aruba has limited experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and no cases pending on 31 December 2020. Overall Aruba meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Aruba worked to address most of them, which has been monitored in stage 2 of the process. In this respect, Aruba solved most of the identified deficiencies.

All of Aruba's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention (OECD, 2017). Its treaty network is mostly consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that two of its four tax treaties do not contain the equivalent of Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2017) 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 order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Aruba needs to amend and update two tax treaties. Aruba reported that it has contacted one treaty partner to request the initiation of bilateral negotiations. However, the treaty partner has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment. In addition, the other treaty has terminated on 1 January 2022 and therefore there is no need for a bilateral modification of this treaty at this stage for the purpose of this peer review.

As Aruba has no bilateral APA programme in place, there are no further elements to assess regarding the prevention of disputes.

Aruba in principle meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2018 not received any MAP request concerning transfer pricing cases or cases where there has been an audit settlement. Furthermore, Aruba has in place a documented bilateral notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Lastly, Aruba has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice.

Concerning the average time needed to close MAP cases, the MAP statistics for Aruba for the period 2018-20 are as follows:

2018-20	Opening inventory 1/1/2018	Cases started	Cases closed	End inventory 31/12/2020	Average time to close cases (in months)*
Attribution/allocation cases	0	0	0	0	n.a.
Other cases	0	4	4	0	5.52
Total	0	4	0	0	5.52

^{*} The average time taken for resolving MAP cases for post-2017 cases follows the MAP Statistics Reporting Framework.

Aruba closed all MAP cases started in the period 2018-20 and therefore there are no cases in its MAP inventory on 31 December 2020. During these years, MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2017), as the average time to close those four cases was 5.52 months, following which Aruba's competent authority is considered to be adequately resourced.

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

Lastly, Aruba does not meet the Action 14 Minimum Standard as regards the implementation of MAP agreements. Aruba does not monitor the implementation of MAP agreements. In addition, Aruba has a domestic statute of limitation for implementation of MAP agreements, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Reference

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

Introduction

Available mechanisms in Aruba to resolve tax treaty-related disputes

Aruba has entered into four tax treaties on income (and/or capital), which are all in force. These four treaties are being applied to seven jurisdictions. All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. Three of Aruba's four treaties have a limited scope of application.

In Aruba, the competent authority function to conduct mutual agreement procedure ("MAP") is delegated to the Tax Matters Co-ordination Board ("TMCB"). The competent authority of Aruba currently has no employees as Aruba has only received a few MAP requests.

Aruba has issued guidance on the governance and administration of MAP titled "Policy Mutual Agreement Procedure" ("**MAP guidance**") in May 2020, which is available (in Dutch and English) at:

https://www.impuesto.aw/map

Developments in Aruba since 1 January 2020

Developments in relation to the tax treaty network

The stage 1 peer review report of Aruba noted that it was not conducting any tax treaty negotiations while negotiations were coming up for a new tax arrangement between Aruba and the Netherlands. Since the adoption of Aruba's stage 1 peer review report, the treaties with Denmark and Finland were terminated on 1 June 2021. In addition, with respect to the treaty that concerns an internal regulation within the Kingdom of the Netherlands and that applies to the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius), Curaçao, the Netherlands and St. Maarten, Aruba reported that it has a draft tax agreement with the Netherlands and the Caribbean Part of the Netherlands, which is in line with the Action 14 Minimum Standard, whereas for Curaçao and St. Maarten a separate tax agreement in line with the minimum standard will be entered in.

For those tax treaties that were in the stage 1 peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard, it is stated in the stage 1 peer review report that Aruba had no plans to amend the tax treaties bilaterally with its treaty partners, as the treaties that need to be modified to comply with the Action 14 Minimum Standard have a limited scope and very little practical effect, and was therefore recommended to put a plan in place and bilaterally work on the renegotiation of these treaties. In total, two of Aruba's four tax treaties need a bilateral modification in order to be in line with the requirements under the Action 14 Minimum Standard. With respect to these treaties, Aruba reported that it has contacted one treaty partner

to initiate negotiations on an amending protocol to update the existing treaty. However, Aruba indicated that the treaty partner concerned has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment. For the other treaty, Aruba reported that it terminates on 1 January 2022. Therefore, there is no need for a bilateral modification of this treaty at this stage for the purpose of this peer review.

Basis for the peer review process

Outline of the peer review process

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

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Aruba's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 28 October 2020. This report identifies the strengths and shortcomings of Aruba in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.³ Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Aruba. In this update report, Aruba reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

For the purpose of this report and the statistics below, in assessing whether Aruba is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the treaties as modified by a protocol were taken into account, even if it concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the former internal regulation for the Kingdom of the Netherlands to the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius, being special municipalities of the Netherlands), Curaçao, the Netherlands and St. Maarten. Reference is made to Annex A for the overview of Aruba's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process for Aruba was launched on 20 December 2019, with the sending of questionnaires to Aruba and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Aruba in September 2020, with the subsequent approval by the BEPS Inclusive Framework on 28 October 2020. On 28 October 2021, Aruba submitted its update report, which initiated stage 2 of the process.

The period for evaluating Aruba's implementation of the Action 14 Minimum Standard ranges from 1 January 2018 to 31 December 2019 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2020 and depicts all developments as from that date until 31 October 2021.

No peers have provided input during both stage 1 and stage 2 on Aruba's implementation of the Action 14 Minimum Standard.

Input by Aruba and co-operation throughout the process

During stage 1, Aruba provided extensive answers in its questionnaire. Aruba was responsive in the course of the drafting of the peer review report by responding to requests for additional information, and provided further clarity where necessary. In addition, Aruba has provided the following information:

- MAP profile4
- MAP statistics⁵ for 2019 and 2020 according to the MAP Statistics Reporting Framework (see below).

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

Finally, Aruba is a member of the FTA MAP Forum and has shown good co-operation during the peer review process.

Overview of MAP caseload in Aruba

The analysis of Aruba's MAP caseload for stage 1 relates to the period starting on 1 January 2018 and ending on 31 December 2019. For stage 2 the period ranges from 1 January 2020 to 31 December 2020. Both periods are taken into account in this report for analysing the MAP statistics of Aruba. The analysis of Aruba's MAP caseload therefore relates to the period starting on 1 January 2018 and ending on 31 December 2020 ("Statistics Reporting Period"). According to the statistics provided by Aruba, its MAP caseload during this period was as follows:

2018-20	Opening inventory 01/01/2018	Cases started	Cases closed	End inventory 31/12/2020
Attribution/allocation cases	0	0	0	0
Other cases	0	4	4	0
Total	0	4	0	0

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ("**Terms of Reference**"). Furthermore, the report depicts the changes adopted and plans shared by Aruba to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements has been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Aruba relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Aruba should continue 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.

Reference

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

Notes

- 1. The tax treaties Aruba has entered into are available at: https://verdragenbank.overheid.nl/en. Reference is made to Annex A for the overview of Aruba's tax treaties.
- 2. One of the four treaties concerns an internal regulation within the Kingdom of the Netherlands, which is called "Belastingregeling voor het Koninrijk" (Internal tax regulation for the Kingdom of the Netherlands) and which applied between Aruba and the Netherlands Antilles Islands. On 10 October 2010 the Netherlands Antilles were dissolved, whereby some of the islands became municipalities of the Netherlands, while others enjoy internal self-government within the Kingdom of the Netherlands. Aruba continues to apply the internal tax regulation for the Kingdom of the Netherlands in relation to the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius), Curaçao, the Netherlands and St. Maarten. Both regulations are considered reciprocal legislation which is applied between these jurisdictions instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands, because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation functions in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the OECD Model Tax Convention (OECD, 2017).
- 3. Available at: https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-aruba-stage-1-6b75f20f-en.htm.
- 4. Available at https://www.oecd.org/tax/dispute/aruba-dispute-resolution-profile.pdf.
- 5. The MAP statistics of Aruba are included in Annex B and C of this report.
- 6. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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.

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

Current situation of Aruba's tax treaties

- Out of Aruba's four tax treaties, two contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) 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. Of the remaining two tax treaties, one does not contain the term "doubts" and one does not contain the term "interpretation" and its scope is limited to transfer pricing cases. For this reason, two treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). In that regard. Aruba reported that it considers itself able to enter into general MAP agreements in the absence of the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).
- No peer input was provided during stage 1.

Recent developments

Bilateral modifications

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

Other developments

5. With respect to the two treaties that do not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Aruba reported that it has contacted one treaty partner to initiate negotiations on an amending protocol to update the existing treaty. However, Aruba indicated that the treaty partner concerned has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment.

Peer input

6. No peer input was provided.

Anticipated modifications

- 7. For the remaining treaty that does not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Aruba reported that it terminates on 1 January 2022. Therefore, there is no need for modifications for this treaty at this stage.
- 8. In addition, Aruba reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	Two out of four tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). With respect to these two treaties: • For one Aruba has reached out its treaty partner to request the initiation of bilateral negotiations. However, the treaty partner has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment.	For the treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Aruba should, upon receipt of a response from the relevant treaty partner agreeing to engage in the process of initiating such negotiations, work towards updating the treaty to include this provision.
	 For one no actions have been taken, but this treaty does not require any actions since it terminates on 1 January 2022. 	

[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.

9. 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.² 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.

Aruba's APA programme

Aruba does not have an APA programme, by which there is no possibility for providing roll-back of bilateral APAs to previous years.

Recent developments

There are no recent developments with respect to element A.2. 11.

Practical application of roll-back of bilateral APAs

Period 1 January 2018-31 December 2019 (stage 1)

- Aruba reported in the period 1 January 2018-31 December 2019 it received no requests for bilateral APAs, which is logical given that Aruba does not have such a programme in place.
- 13. No peer input was provided.

Period 1 January 2020-31 October 2021 (stage 2)

- Aruba reported that since 1 January 2020 it has also not received any bilateral APA requests, which is logical given that Aruba still does not have such a programme in place.
- 15. No peer input was provided.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

References

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

OECD (2017b), OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017, https://dx.doi.org/10.1787/tpg-2017-en.

Notes

- 1. These two treaties include the internal tax regulation of the Kingdom of the Netherlands that Aruba applies to the Caribbean part of the Netherlands, Curação, the Netherlands and St. Maarten.
- 2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).

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

Current situation of Aruba's tax treaties

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

None of Aruba's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state. In addition, none of Aruba's four tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (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. The four treaties can in this respect be categorised as follows:

Provision	Number of tax treaties
A variation 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), whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	3
A variation 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), whereby taxpayers can only submit a MAP request for transfer pricing adjustments, whereas the scope of the treaty also covers certain items of income concerning individuals.	1

- 20. The three treaties mentioned in the first row of the table are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 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 all of those three treaties are considered to be in line with this part of element B.1:
 - The relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the states (two treaties).
 - The treaty concerns a treaty with a jurisdiction that is part of the Kingdom of the Netherlands, whereby residents of both jurisdictions hold the Dutch nationality (one treaty).
- 21. The treaty in the second row of the table concerns an "agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments". The scope of MAP is limited to cases concerning transfer pricing adjustments not in accordance with the arm's length principle. However, as the scope of application of the treaty is broader than just transfer pricing cases, it is considered not to be equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

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

- 22. Out of Aruba's four tax treaties, three contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.
- 23. The remaining tax treaty includes a three-year filing period for MAP requests, but MAP is only open to transfer pricing cases whereas the scope of the treaty is broader. The limitation of the filing period to the date of a transfer pricing adjustment is therefore considered not to be in line with this element.

Peer input

24. No peer input was provided during stage 1.

Practical application

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

In all of Aruba's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Aruba reported that taxpayers are allowed to request MAP assistance and simultaneously seek to resolve the same dispute via domestically available judicial and administrative remedies. In addition, Aruba's competent authority is able to derogate in MAP from decisions of domestic courts. Conclusively, Aruba's competent authority can still enter into MAP agreements even if the issue under dispute has already been decided via domestic judicial and administrative remedies and where the agreement deviates from such court decisions. The finalisation of court proceedings thus has no influence on the ability of Aruba's competent authority to resolve MAP cases. Aruba's MAP guidance clarifies that point. In addition, Aruba's MAP profile clearly states that the competent authority is not legally bound to follow a domestic court decision in the MAP and can deviate from a court decision. In this respect, Aruba reported that the same would be the case regarding an administrative appeal.

Recent developments

Bilateral modifications

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

Other developments

With respect to the treaty that does not contain a provision equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), Aruba reported that it has contacted one treaty partner to initiate negotiations on an amending protocol to update the existing treaty. However, Aruba indicated that the treaty partner concerned has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment.

Peer input

No peer input was provided during stage 2.

Anticipated modifications

Aruba 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 Action 14 final report (OECD, 2015b), in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
	One out of four tax treaties does not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). With respect to this treaty, Aruba has reached out the treaty partner to request the initiation of bilateral negotiations. However, the treaty partner has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment.	For the treaty that does not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), Aruba should, upon receipt of a response from the relevant treaty partner agreeing to engage in the process of initiating such negotiations, work towards updating the treaty to include this provision. This concerns both:
ID 41		a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either:
[B.1]		a. as amended by the Action 14 final report (OECD, 2015b); or
		b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
		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.

[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).

- 30. 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

31. As discussed under element B.1, out of Aruba's four treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

Aruba reported that it has introduced a bilateral consultation or notification process that allows the other competent authority concerned to provide its views on the case when Aruba's competent authority considers the objection raised in the MAP request not to be iustified.

Recent developments

Aruba reported that it has introduced a documented bilateral consultation or notification process for those situations where its competent authority would consider the objection raised in a MAP request as not being justified, and the staff in charge of MAP cases has been informed of the process.

Practical application

Period 1 January 2018-31 December 2019 (stage 1)

- Aruba reported that in the period 1 January 2018-31 December 2019 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified.
- No peer input was provided. 35.

Period 1 January 2020-31 October 2021 (stage 2)

- Aruba reported its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified.
- 37. No peer input was provided.

Anticipated modifications

Aruba did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

- 40. None of Aruba's four tax treaties contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, three do not contain Article 9 at all. The remaining treaty does not contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017).²
- 41. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Aruba'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, Aruba indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties.

Recent developments

Bilateral modifications

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

Application of legal and administrative framework in practice

Period 1 January 2018-31 December 2019 (stage 1)

- 43. Aruba reported that in the period 1 January 2018-31 December 2019, it has not received MAP requests concerning a transfer pricing case and therefore has not denied access to MAP in transfer pricing cases.
- 44. No peer input was provided.

Period 1 January 2020-31 October 2021 (stage 2)

- 45. Aruba reported that since 1 January 2020, it has also not received MAP requests concerning a transfer pricing case and therefore has not denied access to MAP in transfer pricing cases.
- 46. No peer input was provided.

Anticipated modifications

47. Aruba reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

There is no general rule denying access to MAP in cases of perceived abuse. In order 48. 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

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

Recent developments

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

Practical application

Period 1 January 2018-31 December 2019 (stage 1)

- Aruba reported that in the period 1 January 2018-31 December 2019 it has not received any MAP requests for cases concerning the application of anti-abuse provisions and therefore has not denied access to MAP in any cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.
- 52. No peer input was provided.

Period 1 January 2020-31 October 2021 (stage 2)

- Aruba reported that since 1 January 2020 it has received one MAP request for cases concerning the application of anti-abuse provisions and that for this case access to MAP has been granted.
- 54. No peer input was provided.

Anticipated modifications

55. Aruba did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

[B.5] Provide access to MAP in cases of audit settlements

Jurisdictions should not deny access to MAP in cases where there is an audit settlement between tax authorities and taxpayers. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, jurisdictions may limit access to the MAP with respect to the matters resolved through that process.

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

Legal and administrative framework

Audit settlements

- 57. Aruba reported that under its domestic legislation it is possible that taxpayers and the tax administration enter into an audit settlement during the course of or after an audit has been finalised. Aruba further reported that in case of uncertainties in the application of its tax laws (which may arise in result of a tax audit), taxpayers and the tax authorities may enter into a settlement agreement. In this respect, Aruba reported that entering in such settlement agreements does not restrict MAP access and/or resolution of MAP cases, and that its competent authority can deviate from the decision taken in an audit settlement.
- 58. The guidance that explains the relationship between access to MAP and audit settlements can be found in paragraph 3 in Aruba's MAP guidance and is discussed in element B.10.

Administrative or statutory dispute settlement/resolution process

59. Aruba reported it does not have an administrative or statutory dispute settlement/ resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Recent developments

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

Practical application

Period 1 January 2018-31 December 2019 (stage 1)

- Aruba reported that in the period 1 January 2018-31 December 2019 it has not received any MAP requests for cases where the issue presented by the taxpayer had already been resolved through an audit settlement between the taxpayer and the tax administration.
- 62. No peer input was provided.

Period 1 January 2020-31 October 2021 (stage 2)

- Aruba reported that since 1 January 2020 it has also not received any MAP requests for cases where the issue presented by the taxpayer had already been resolved through an audit settlement between the taxpayer and the tax administration.
- 64. No peer input was provided.

Anticipated modifications

Aruba did not indicate that it anticipates any modifications in relation to element B.5. Aruba reported that it will follow its policy and grant access to MAP when it receives MAP requests relating to cases for which an audit settlement was entered into.

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 publicly available.

Legal framework on access to MAP and information to be submitted

- The information and documentation Aruba requires taxpayers to include in a request for MAP assistance are discussed under element B.8.
- Aruba reported that taxpayers must comply with requests for information within a reasonable period set by the TMCB while no specific timelines is applicable. In this respect, Aruba's MAP guidance, under the heading "Handling a Petition to Start a Mutual Agreement Procedure" describes that taxpayers will be notified about the missing information within two months after the request from the taxpayer and need to submit within a period set by the TMCB. It further reported that a MAP request may be denied if the taxpayer does not comply with the request for information.

Recent developments

69. Aruba reported that its newly issued MAP guidance clarifies a timeline regarding requesting additional information to process a MAP request where a taxpayer has not included all required information in its MAP request. This has been reflected above.

Practical application

Period 1 January 2018-31 December 2019 (stage 1)

- 70. Aruba reported that in the period 1 January 2018-31 December 2019 it has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.
- 71. No peer input was provided.

Period 1 January 2020-31 October 2021 (stage 2)

- 72. Aruba reported that since 1 January 2020 it has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.
- 73. No peer input was provided.

Anticipated modifications

74. Aruba did not indicate that it anticipates any modifications in relation to element B.6. Aruba reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

75. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Aruba's tax treaties

76. Out of Aruba's four tax treaties, one contains a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for

in their tax treaties.³ The remaining three tax treaties do not contain a provision that is based on or the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

- For those three treaties this can be clarified by the fact that they have limited scope of application. This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention (OECD, 2017) are not followed. As these treaties were intentionally negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, therefore, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) for those three treaties with a limited scope of application.
- No peer input was provided during stage 1. 78.

Recent developments

Bilateral modifications

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

Peer input

80. No peer input was provided.

Anticipated modifications

Aruba reported that it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties, unless the treaties concerned are limited in scope, such that there is justification for them not to contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Conclusion

	Areas for improvement	Recommendations
[B.7]	-	-

[B.8] Publish clear and comprehensive MAP guidance

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

Information on a jurisdiction's MAP regime facilitates the timely initiation and 82. 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.

Aruba's MAP guidance

83. Aruba has issued guidance on the MAP process and how it applies that process in practice. This guidance was published in May 2020 on the website of the Aruba Tax Authorities and is available (in Dutch and English) at:

https://www.impuesto.aw/map

- 84. Aruba's MAP guidance sets out in detail how taxpayers can access the mutual agreement procedure and what rules apply during that procedure under tax treaties Aruba entered into, and is divided into seven sections titled as follows:
 - 1. Introduction
- 2. Legal Framework
- 3. Petition to Start a Mutual Agreement Procedure
- 4. Handling a Petition to Start a Mutual Agreement Procedure
- 5. Course of the Mutual Agreement Procedure
- 6. Outcome and Implementation of the Mutual Agreement Procedure
- 7. Entry into Effect
- 85. This document includes information on:
 - a. contact information of the competent authority or the office in charge of MAP cases
 - b. the manner and form in which the taxpayer should submit its MAP request
 - c. the specific information and documentation that should be included in a MAP request (see also below)
 - d. how the MAP functions in terms of timing and the role of the competent authorities
 - e. relationship with domestic available remedies
 - f. access to MAP in transfer pricing cases, audit settlements, anti-abuse provisions, multilateral disputes, bona fide foreign-initiated self-adjustments and for multi-year resolution of cases
 - g. implementation of MAP agreements (including the steps of the process and the timing of such steps for the implementation of MAP agreements, and any actions to be taken by taxpayers)
 - h. rights and role of taxpayers in the process
 - i. suspension of tax collection
 - j. Interest charges and penalties.
- 86. The above-described MAP guidance of Aruba contains detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.

Information and documentation to be included in a MAP request

- To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.⁴ Aruba reported that the items that must be included in a request for MAP assistance are checked in the following list:
 - ☑ Identity of the taxpayer(s) covered in the MAP request
 - ☑ The basis for the request
 - ✓ Facts of the case
 - ☑ Analysis of the issue(s) requested to be resolved via MAP
 - Whether the MAP request was also submitted to the competent authority of the other treaty partner
 - Whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
 - ☑ Whether the issue(s) involved were dealt with previously
 - A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner

Recent developments

88 Aruba has published its MAP guidance in May 2020 as reflected above.

Anticipated modifications

89. Aruba did not indicate that it anticipates any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

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

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

90. 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.⁵

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

91. The MAP guidance of Aruba is published and can be found at:

https://www.impuesto.aw/map

92. As regards its accessibility, Aruba's MAP guidance can easily be found on the website of the Aruba Tax Authorities by searching for "MAP" or "MAP guidance" in the search box.

MAP profile

93. The MAP profile of Aruba is published on the website of the OECD and was last updated in January 2022. This MAP profile is complete and with detailed information.

Recent developments

94. As discussed under element B.8, Aruba published its MAP guidance in May 2020, which is easily accessible as reflected above. Further, Aruba has last updated its MAP profile in January 2022 to reflect the MAP guidance published and to add an email address as contact details. Therefore, the recommendation made in the stage 1 report has been addressed.

Anticipated modifications

95. Aruba did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP

Jurisdictions should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, and jurisdictions limit access to the MAP with respect to the matters resolved through that process, jurisdictions should notify their treaty partners of such administrative or statutory processes and should expressly address the effects of those processes with respect to the MAP in their public guidance on such processes and in their public MAP programme guidance.

96. 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

- As previously discussed under element B.5, it is under Aruba's domestic law possible that taxpayers and the tax administration enter into audit settlements. As further discussed under element B.5, in case of uncertainties in the application of Aruba's tax laws (which may arise in result of a tax audit), taxpayers and the tax authorities may enter into a settlement agreement, and settlement agreements do not restrict MAP access and/or resolution of MAP cases. The relationship between access to MAP and audit settlements is described in paragraph 3 of Aruba's MAP guidance. Paragraph 3 describes that a MAP request will not be prevented by any pre-existing settlement agreement such as a settlement agreement that was entered into following an audit.
- No peer input was provided.

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

- As previously mentioned under element B.5, Aruba 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 the effects of such process with respect to MAP in Aruba's MAP guidance.
- 100. No peer input was provided.

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

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

Recent developments

102. As discussed under element B.8, Aruba has published its MAP guidance and clarified that taxpayers have access to MAP in cases of audit settlements. Therefore, the recommendation made in stage 1 has been addressed.

Anticipated modifications

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

	Areas for improvement	Recommendations
[B.10]	-	-

References

- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264239081-en.
- OECD (2015b), "Making Dispute Resolution Mechanisms More Effective, Action 14 2015 Final Report", in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264241633-en.
- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, https://dx.doi.org/10.1787/g2g972ee-en.

Notes

- 1. These three treaties include the internal tax regulation of the Kingdom of the Netherlands that Aruba applies to the Caribbean part of the Netherlands, Curação, the Netherlands and St. Maarten.
- 2. The one treaty concerns the internal tax regulation of the Kingdom of the Netherlands that Aruba applies to the Caribbean part of the Netherlands, Curação, the Netherlands and St. Maarten.
- 3. The one treaty concerns the internal tax regulation of the Kingdom of the Netherlands that Aruba applies to the Caribbean part of the Netherlands, Curação, the Netherlands and St. Maarten.
- 4. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
- 5. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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

Current situation of Aruba's tax treaties

105. Out of Aruba's four tax treaties, three contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring its competent authority to endeavour - when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty. 1 The remaining treaty does not contain such equivalent at all.

106. No peer input was provided during stage 1.

Recent developments

Bilateral modifications

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

Other developments

108. With respect to the treaty that does not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Aruba reported that it has contacted one treaty partner to initiate negotiations on an amending protocol to update the existing treaty. However, Aruba indicated that the treaty partner concerned has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment

Peer input

109. No peer input was provided.

Anticipated modifications

110. Aruba reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[C.1]	One out of four tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to this treaty, Aruba has reached out the treaty partner to request the initiation of bilateral negotiations. However, the treaty partner has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment.	For the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Aruba should, upon receipt of a response from the relevant treaty partner agreeing to engage in the process of initiating such negotiations, work towards updating the treaty to include this provision.

[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).

111. 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

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. Aruba joined in the Inclusive Framework in 2018. For this reason the statistics referred to are pre-2018 cases for cases that were pending on 31 December 2017, and post-2017 cases for cases that started on or after 1 January 2018. Aruba provided its MAP statistics for 2019-20, but not for 2018, pursuant to the MAP Statistics Reporting Framework

within the given deadline. The statistics discussed below include both pre-2018 and post-2017 cases and they are attached to this report as Annex B and Annex C respectively² and should be considered jointly for an understanding of the MAP caseload of Aruba.

113. With respect to post-2017 cases, Aruba reported having reached out to its MAP partner with a view to have their MAP statistics matching and that it could match its post-2017 MAP statistics with its MAP partner. In that regard, based on the information provided by Aruba's MAP partner, its post-2017 MAP statistics actually match those of its treaty partner as reported by the latter.

Monitoring of MAP statistics

114. Aruba does not have a system in place with its treaty partners that communicates, monitors and manages the MAP caseload. Aruba however reported that it has a case management system called JOIN, which is used for various processes in the Aruba Tax Authority including MAP. It further reported that staff in charge of MAP register MAP cases in that system with the relevant information such as the taxpayer's information, description of the case, the received/closing dates and the name of the staff member in charge of the case to monitor and manage the MAP caseload.

Analysis of Aruba's MAP caseload

- 115. The analysis of Aruba's MAP caseload relates to the period starting on 1 January 2018 and ending on 31 December 2020.
- 116. Figure C.1 shows Aruba's MAP caseload over the Statistics Reporting Period.



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

117. As of 1 January 2018 Aruba had no pending MAP cases in its inventory. During the Statistics Reporting Period, four other cases started and these were all closed in 2020. Therefore, Aruba has no MAP cases in its end inventory.

Pre-2018 cases

118. Aruba did not have any pre-2018 MAP cases during the Statistics Reporting Period.

Post-2017 cases

119. Figure C.2 shows the evolution of Aruba's post-2017 MAP cases over the Statistics Reporting Period.

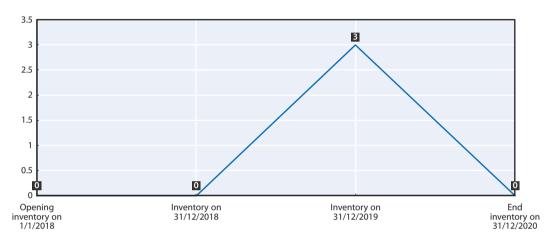


Figure C.2. Evolution of Aruba's MAP inventory – Post-2017 cases

120. As mentioned above, four cases started during the Statistics Reporting Period, all of which concerned other cases. All of those four cases were closed in 2020 and therefore there are no MAP cases in the end inventory.

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

121. During the Statistics Reporting Period, Aruba closed four post-2017 other MAP cases with the outcome "agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty".

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

122. The time needed to close four MAP cases during the Statistics Reporting Period was 5.52 months.

Peer input

123. No peer input was provided.

Recent developments

- 124. Aruba was in the stage 1 peer review report under element C.2 recommended to report its MAP statistics in accordance with the MAP Statistics Reporting Framework since MAP statistics for 2018 were not submitted. In this respect, Aruba submitted its 2019 and 2020 MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline. Therefore, the recommendation made in stage 1 has been addressed.
- 125. Furthermore, it was concluded in the stage 1 peer review report that as Aruba closed no cases during the period under review, it was not possible to evaluate whether Aruba's competent authority seeks to resolve MAP cases within an average time frame of 24 months. With respect to this conclusion, from the statistics discussed above, it follows that Aruba has in the period 2018-20 closed all of its post-2017 MAP cases in its inventory within the pursued average of 24 months. Further, Aruba's newly published MAP guidance, under the heading "Handling a Petition to Start a Mutual Agreement Procedure" stipulates that the competent authorities will aim to complete the mutual agreement procedure within two years.
- 126. No peer input was provided during stage 2.

Anticipated modifications

127. Aruba did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

128. 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 Aruba's competent authority

129. Under Aruba's tax treaties, the competent authority function is assigned to the Minister of Finance and Economic Affairs or an authorised representative of the Minister. This has been delegated to the TMCB. Aruba's competent authority currently has no staff and in the meantime the tax specialists and the Competent Authority for the Exchange Of Information (EOI) in general of the Aruba Tax Authorities who are not involved in tax audits are assisting the TMCB until new staff is acquired. The TMCB is in the Ministry of Finance, Economic Affairs and Culture and is in charge of advising, preparing for, drafting and explaining tax and customs policies and legislation; assisting the Minister and the departments in covering the tax interests of Aruba in the Kingdom of the Netherlands in international and regional context; and participating in collaboration with the Tax Authorities and the Import and Excise duties Authorities in multilateral consultations and development, co-ordination of activities.

130. The process to handle MAP cases is stipulated in Aruba's MAP guidance, under the heading "Handling a Petition to Start a Mutual Agreement Procedure". When a MAP request is received, the TMCB will first assess whether it is complete and then will assess the MAP request based on the information, facts and circumstances presented, including whether the request was filed in a timely way and is valid as well as whether a unilateral solution is possible. The TMCB will inform the taxpayer of whether access to MAP is granted or denied within two months of receiving all required information. Where a MAP access is granted, the TMCB will notify the other competent authority that the request was filed within the applicable time limit. Further, the TMCB will send a position paper to the other competent authority as soon as possible but in any case within four months from the date Aruba's taxpayer has submitted a complete MAP request.

Monitoring mechanism

131. Aruba reported that based on its MAP caseload and the average time to close its MAP cases, it considers the current resources available are sufficient but is willing to increase them when needed.

Recent development

132. Aruba reported that in 2021 the Aruba Tax Authority has announced a vacancy for a policy officer for tax law and international relations, who will be part of the Aruba Tax Authority and assist the TMCB with MAP among other tasks.

Practical application

MAP statistics

133. As discussed under element C.2, during the Statistics Reporting Period, Aruba closed four MAP cases within the pursued 24-months average. These four cases concerned post-2017 other cases and were closed within 5.52 months on average.

Peer input

134. No peer input was provided during stage 1 (1 January 2018-31 December 2019) and stage 2 (1 January 2020-31 October 2021).

Anticipated modifications

135. Aruba did not indicate that it anticipates any modifications in relation to element C.3.

	Areas for improvement	Recommendations
[C.3]	-	-

[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.

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

Functioning of staff in charge of MAP

- 137. Aruba reported that when the TMCB receives a MAP request, it will handle the request and ask further details if necessary from the taxpayer and the staff member of the Aruba Tax Authorities that made the adjustment. Aruba further reported that the TMCB will take appropriate next steps (e.g. request further details, contact the tax treaty partner, etc.) in accordance with the MAP guidance and provides advice to the Minister on the outcome of the MAP.
- 138. In addition, Aruba reported that the TMCB is not involved in tax audits as tax audits are handled by an audit team that is part of the Aruba Tax Authorities. Aruba further reported that as the TMCB is currently without staff, the tax specialists and the Competent Authority for the Exchange Of Information (EOI) in general of the Aruba Tax Authorities who are not involved in tax audits are assisting the TMCB until new staff is acquired.
- 139. In regard of the above, Aruba reported that staff in charge of MAP in practices operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations that Aruba would like to see reflected in future amendments to the treaty.

Recent developments

140. There are no recent developments with respect to element C.4.

Practical application

141. No peer input was provided during stage 1 (1 January 2018-31 December 2019) and stage 2 (1 January 2020-31 October 2021).

Anticipated modifications

142. Aruba did not indicate that it anticipates any modifications in relation to element C.4.

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

143. 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 Aruba

- 144. As Aruba has only received a few MAP requests, it reported that performance indicators have not yet been set for the staff in charge of MAP given its small MAP caseload. Aruba, however, reported that it has general indicators for the staff of the Ministry of Finance, Economic Affairs and Culture that would apply to the staff of the competent authority.
- 145. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below in bullet form:
 - 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).
- 146. Further to the above, Aruba also reported that it does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue. In other words, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions.

Recent developments

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

Practical application

148. No Peer input was provided during stage 1 (1 January 2018-31 December 2019) and stage 2 (1 January 2020-31 October 2021).

Anticipated modifications

149. Aruba reported that targets for evaluating work performance of MAP staff will be set in the future if necessary.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

150. 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

151. Aruba's MAP profile clearly states that they have no domestic law limitations for including MAP arbitration in their tax treaties and its treaty policy allows to include MAP arbitration in its tax treaties

Recent developments

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

Practical application

153. Aruba has not incorporated an arbitration clause in any of its four tax treaties as a final stage to the MAP.

Anticipated modifications

154. Aruba indicated that it intends to incorporate an arbitration clause, based on Article 25(5) of the OECD Model Tax Convention (OECD, 2017), in its tax treaties.

	Areas for improvement	Recommendations
[C.6]	-	-

References

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

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

Notes

- 1. The three treaties include the internal tax regulation of the Kingdom of the Netherlands that Aruba applies to the Caribbean part of the Netherlands, Curação, the Netherlands and St. Maarten.
- 2. For post-2017 cases, if the number of MAP cases in Aruba'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, Aruba reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).

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.

155. 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

- 156. Aruba reported that upward adjustments resulting from MAP can be taken into consideration without limitations if tax assessments have yet to be imposed, while it can be formalised only by means of an additional tax assessment if tax assessments have been imposed already. In that regard, Article 13(3) and 16(1) of the General Tax Code stipulates that such assessment can generally only be imposed within five years from the end of the year unless the taxpayer agrees to waive that period. However, Article 13(4) and 13(5) of the General Tax Code stipulates that for taxes levied by assessment, this period is extended to 10 years if the taxpayer failed to file a tax return or if he acted in bad faith and it is extended to 12 years with respect to foreign income items. In addition, Article 16(2) of the General Tax Code stipulates that for taxes levied by self-assessment, the Aruba Tax Authorities can impose additional tax assessments within 10 years from the end of the year (instead of general five years) if the taxpayer acted in bad faith. Aruba reported that if necessary, the Aruba Tax Authorities will rely on this extended period for purposes of implementing MAP agreements.
- 157. On downward adjustments resulting from MAP, Aruba reported that the Aruba Tax Authorities can take into consideration it without limitation if either the tax assessments have yet to be imposed or if objections or appeals are still pending, while any adjustments resulting from the MAP must be made ex officio ("ambtshalve") if no objections or appeals are pending (i.e. the assessment is final). Aruba further reported that the general rule is that a request for lowering tax assessments ex officio must be filed within 5 years from the end of the year (article 32(3) General Tax Code), however the domestic statute of limitation of downward adjustments does not apply when the tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).
- 158. Aruba's MAP guidance contains a section on outcome and implementation of the mutual consultation procedure. It describes that the taxpayer will be informed in writing as soon as possible about the outcome of the mutual consultation procedure, and if the mutual consultation procedure has led to an agreement between the competent authorities involved, then the taxpayer concerned in principle has the option of accepting or rejecting the result entirely.

159. Aruba reported that it does not have a tracking mechanism in place to ensure that MAP agreements are implemented.

Recent developments

160. There are no recent developments with respect to element D.1.

Practical application

Period 1 January 2018-31 December 2019 (stage 1)

- 161. As Aruba closed no MAP cases in the period 1 January 2018-31 December 2019, it was not possible to assess the implementation of MAP agreements by Aruba.
- 162. No peer input was provided.

Period 1 January 2020-31 October 2021 (stage 2)

- 163. Aruba reported that since 1 January 2020 its competent authority has entered into four MAP agreements. These agreements, however, did not require implementation by Aruba.
- 164. No peer input was provided.

Anticipated modifications

165. Aruba indicated that it intends to introduce a tracking mechanism.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Aruba's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to time limits in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in an Aruba's relevant tax treaty, prevent the implementation of a MAP agreement, Aruba should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Aruba should for clarity and transparency purposes notify the treaty partner thereof without delay.

[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.

166. 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

167. As discussed under element D.1. Aruba reported that there is no theoretical timeframe for implementation of mutual agreements reached but its tax authorities will generally follow up within two months.

Recent developments

168. There are no recent developments with respect to element D.2.

Practical application

Period 1 January 2018-31 December 2019 (stage 1)

- 169. As Aruba closed no MAP cases in the period 1 January 2018-31 December 2019, it was not possible to assess the timely implementation of MAP agreements by Aruba.
- 170. No peer input was provided.

Period 1 January 2020-31 October 2021 (stage 2)

- 171. As described under element D.1, since 1 January 2020 Aruba has entered into four MAP agreements, which did not require implementation by Aruba.
- 172. No peer input was provided.

Anticipated modifications

173. Aruba did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties or alternative provisions in Article 9(1) and Article 7(2)

Jurisdictions should either (i) provide in their tax treaties that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law, or (ii) be willing to accept alternative treaty provisions that limit the time during which a Contracting Party may make an adjustment pursuant to Article 9(1) or Article 7(2), in order to avoid late adjustments with respect to which MAP relief will not be available.

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

Legal framework and current situation of Aruba's tax treaties

- 175. As discussed under element D.1, Aruba's domestic legislation includes a statute of limitations of five years that may be extended if necessary for implementing MAP agreements, unless overridden by tax treaties.
- 176. Out of Aruba's four tax treaties, three contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Furthermore, none of tax treaties contain such equivalent and also the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments. Additionally, one does not contain such equivalent or the alternative provisions.
- 177. No peer input was provided during stage 1.

Recent developments

Bilateral modifications

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

Other developments

179. With respect to the treaty that does not contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternative provisions in Articles 9(1) and 7(2), Aruba reported that it has contacted one treaty partner to initiate negotiations on an amending protocol to update the existing treaty. However, Aruba indicated that the treaty partner concerned has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment.

Peer input

180. No peer input was provided during stage 2.

Anticipated modifications

181. Aruba reported that it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives in all of its future tax treaties.

	Areas for improvement	Recommendations
[D.3]	One out of four tax treaties contains neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). With respect to this treaty, Aruba has reached out the treaty partner to request the initiation of bilateral negotiations. However, the treaty partner has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment.	For the treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternative provisions, Aruba should, upon receipt of a response from the relevant treaty partner agreeing to engage in the process of initiating such negotiations, work towards updating the treaty to include this provision or be willing to accept the inclusion of both alternative provisions.

Reference

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

Note

1. The three treaties include the internal tax regulation of the Kingdom of the Netherlands that Aruba applies to the Caribbean part of the Netherlands, Curação, the Netherlands and St. Maarten.

Summary

	Areas for improvement	Recommendations
	Part A: Preventin	g disputes
[A.1]	Two out of four tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). With respect to these two treaties: • For one Aruba has reached out its treaty partner to request the initiation of bilateral negotiations. However, the treaty partner has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment. • For one no actions have been taken, but this treaty does not require any actions since it terminates on 1 January 2022.	For the treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Aruba should request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations.
[A.2]	-	-
	Part B: Availability and	d access to MAP
[B.1]	One out of four tax treaties does not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). With respect to this treaty, Aruba has reached out its treaty partner to request the initiation of bilateral negotiations. However, the treaty partner has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment.	For the treaty that does not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), Aruba should request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision. • 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.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	-	-
[B.8]	-	-

	Areas for improvement	Recommendations				
[B.9]	-	-				
[B.10]	-	-				
	Part C: Resolution of	of MAP cases				
[C.1]	One out of four tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to this treaty, Aruba has reached out its treaty partner to request the initiation of bilateral negotiations. However, the treaty partner has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment.	For the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Aruba should request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations.				
[C.2]	-	-				
[C.3]	-	-				
[C.4]	-	-				
[C.5]	-	-				
[C.6]	-	-				
	Part D: Implementation of MAP agreements					
[D.1]	As will be discussed under element D.3 not all of Aruba's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to time limits in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in an Aruba's relevant tax treaty, prevent the implementation of a MAP agreement, Aruba should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Aruba should for clarity and transparency purposes notify the treaty partner thereof without delay.				
[D.2]	-	-				
[D.3]	One out of four tax treaties contains neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). With respect to this treaty, Aruba has reached out its treaty partner to request the initiation of bilateral negotiations. However, the treaty partner has informed Aruba that it could not initiate discussions on a protocol for this treaty for the moment.	For the treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternative provisions, Aruba should request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations or be willing to accept the inclusion of both alternative provisions.				

Tax treaty network of Aruba

Article 25(1) of the OECD Model Tax Convention B.1 B.1 B.3 B.4 C.1 Column 3 Column 4 Column 5 Column 5 Column 5 Column 6 Column 6 Column 7 Column 7 Column 7 Column 6 Column 7 Column 6 Column 7 Column 7 Column 6 Column 7 Inclusion Art. 25(1) Inclusion Art. 25(1) Sentence? (Note 1) Inclusion to either competent fino, will your CA accept first to MAP in relation to such sentence? (Note 3) (Note 3)
B.1 B.3 Column 4 Column 5 Tence? (Note 1) Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP case state reasons cases?
("MTC") B.1 Column 4 Column 4 sentence? (Note 1) Inc, please state reasons
Column 2 DTC in force?

			Article 25(1) of the OECD Model Tax Convention ("MTC")	OECD Model Tax ("MTC")	c Convention	Article 9(2) of the OECD MTC	Anti-abuse	Article 25()	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1	_	B.3	B.4	C.1	D.3	A.1	B.7	9.0
Column 1	Column 2	2	Column 3	Column 4	nn 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 9 Column 10 Column 11	Column 11
			Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	25(1) second (Note 1)		Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence? (Note 4)			
			If yes, submission to either competent authority? (new			- 2 ₹ 8		Inclusion Art. 25(2) first	If no, alternative	Inclusion Art. 25(3) first	Inclusion Art. 25(3) second	Inclusion
Treaty partner	DTC in force?	rce?	Arr. 23(1), Illist sentence)	If no, please state reasons	tate reasons	cases?	MAP in relation to such cases?	(Note 3)	OECD MTC? (Note 4)	(Note 5)	(Note 6) provision?	arbitration provision?
Curaçao	>	N/A	0	>-	N/A			>	>	>-	>-	z
Iceland	>-	N/A	0	>	N/A	N/A		>	>	z	z	z
Netherlands	\	N/A	0	\	N/A	: <u>-</u>		\	Ь	\	>	z
St. Maarten	>-	N/A	0	>	N/A			>	>	>	>	z
Sweden	>-	N/A	0	>	N/A	N/A		\	>	>	z	z

MAP Statistics Reporting for the 2018, 2019 and 2020 Reporting Periods (1 January 2018 to 31 December 2020) for pre-2018 cases

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

		Average time taken (in months) for closing pre-2018 cases during the reporting period	Column 14	n.a.	n.a.	n.a.	
		No. of pre-2018 cases (in months) for remaining in on cases during the MAP inventory on reporting period	Column 13	0	0	0	
		Any other outcome	Column 12	0	0	0	
		No agreement, including agreement to disagree	Column 10 Column 11 Column 12	0	0	0	
	by outcome	Agreement that there is no taxation not in accordance with tax treaty	Column 10	0	0	0	
2019 MAP Statistics	reporting period	Agreement partially eliminating double that there is taxation/partially resolving taxation not in accordance with tax treaty	Column 9	0	0	0	
2019 MAF	Number of pre-2018 cases closed during the reporting period by outcome	2018 cases closed during th	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Column 8	0	0	0
			Resolved via domestic remedy	Column 7	0	0	0
		Unilateral relief granted	Column 6	0	0	0	
		Objection Withdrawn is not by justified taxpayer	Column 5	0	0	0	
		Objection is not justified	Column 4	0	0	0	
		Objectio Denied MAP is not access justified	Column 1 Column 2 Column 3 Column 4 Column 5 Column 6 Column 7	0	0	0	
	No of	pre-2018 cases in MAP inventory on 1 January De	Column 2	0	0	0	
		Category of cases	Column 1	Attribution/ Allocation	Others	Total	

		Average time taken (in months) for closing pre-2018	cases during the reporting period	Column 14	n.a.	n.a.	n.a.							
		No. of pre-2018 cases (in months) for remaining in on closing pre-2018	- 0	Column 13	0	0	0							
			Any other outcome	Column 12	0	0	0							
		No agreement, including	agreement to disagree	Column 10 Column 11 Column 12	0	0	0							
	by outcome	Agreement that there is no taxation not in	accordance with tax treaty	Column 10	0	0	0							
2020 MAP Statistics	of pre-2018 cases closed during the reporting period by outcome	osed during the reporting period	e reporting period	Agreement partially eliminating double taxation/partially resolving taxation	not in accordance with tax treaty	Column 9	0	0	0					
2020 MAP			Agreement fully eliminating double taxation/fully resolving taxation not in	accordance with tax treaty	Column 8	0	0	0						
	018 cases c	Resolved	domestic remedy	Column 7	0	0	0							
	Number of pre-20	Unilateral	relief granted	Column 6	0	0	0							
		Numb	Withdrawn	by taxpayer	Column 5	0	0	0						
											Objection	is not justified	Column 4	0
			Denied MAP access	Column 1 Column 2 Column 3 Column 4 Column 5 Column 6 Column 7	0	0	0							
	No of	pre-2018 cases in MAP inventory	1 January D 2020	Column 2	0	0	0							
			Category of cases	Column 1	Attribution/ Allocation	Others	Total							

MAP Statistics Reporting for the 2018, 2019 and 2020 Reporting Periods (1 January 2018 to 31 December 2020) for post-2017 cases

		Category of cases	Column 1	Attribution/ Allocation	Others	Total			
	No of	post-2017 cases in MAP inventory on 1 January 2018	Column 2	0	0	0			
		No. of post-2017 cases started during the reporting	Column 2 Column 3 Column 4 Column 5	0	0	0			
		Denied MAP access	Column 4	0	0	0			
		Objection is not justified		0	0	0			
	Number of post-2017 cases closed during the reporting period by outcome	Withdrawn Unilateral by relief taxpayer granted	Column 6 Column 7 Column 8	0	0	0			
		r of post-2017 cases o	r of post-2017 cases	r of post-20		Column 7	0	0	0
20				Resolved via domestic remedy	Column 8	0	0	0	
2018 MAP Statistics		Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Column 9	0	0	0			
w	e reporting period	Agreement partially partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Column 10	0	0	0			
	by outcome	Agreement that there is no taxation agreement, including accordance agreement with tax treaty to disagree	Column 11	0	0	0			
			Column 11 Column 12 Column 13	0	0	0			
		Any other outcome	Column 13	0	0	0			
		No. of post-2017 cases remaining in on MAP inventory on 31 December 2018	Column 14	0	0	0			
		No. of post-2017 Average time cases taken (in months) remaining in on MAP inventory post-2017 cases on 31 December reporting period	Column 15	n.a.	n.a.	n.a.			

		<u> </u>					
		Average time taken (in months) for closing post-2017 cases during the reporting period	Column 15	n.a.	n.a.	n.a.	
		No. of post-2017 Average time cases taken (in months remaining in on MAP inventory post-2017 cases on 31 December reporting perior	Column 11 Column 12 Column 13 Column 14	0	3	3	
		Any other outcome	Column 13	0	0	0	
		No agreement, including agreement to disagree	Column 12	0	0	0	
	by outcome	Agreement No no taxation agreement, not in accordance agreement with tax treaty to disagree	Column 11	0	0	0	
S	e reporting period	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Column 10	0	0	0	
2019 MAP Statistics	closed during the	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Column 9	0	0	0	
2	Number of post-2017 cases closed during the reporting period by outcome	2017 cases	Resolved via domestic remedy	Column 6 Column 7 Column 8	0	0	0
		Unilateral relief granted	Column 7	0	0	0	
		Withdrawn Unilateral by relief taxpayer granted	Column 6	0	0	0	
		Objection is not justified	Column 5	0	0	0	
		Denied MAP access	Column 4	0	0	0	
		No. of post-2017 cases started during the reporting period	Column 2 Column 3 Column 4 Column 5	0	3	3	
	No of	post-2017 cases in MAP inventory on 1 January 2019		0	0	0	
		Category of cases	Column 1	Attribution/ Allocation	Others	Total	

		Average time taken (in months) for closing post-2017 cases during the reporting period	Column 15	n.a.	5.52	5.52		
		No. of post-2017 Average time cases taken (in months remaining in on MAP inventory post-2017 cases on 31 December during the 2020 reporting perior	Column 11 Column 12 Column 13 Column 14	0	က	3		
		Any other outcome	Column 13	0	0	0		
		No agreement, including agreement to disagree	Column 12	0	0	0		
	by outcome	Agreement that there is no taxation agreement, not in including accordance agreement with tax treaty to disagree	Column 11	0	0	0		
S	e reporting period	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Column 10	0	0	0		
2020 MAP Statistics	Number of post-2017 cases closed during the reporting period by outcome	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Column 9	0	0	0		
2(er of post-2017 cases	2017 cases	Resolved via domestic remedy	Column 8	0	0	0
			thdrawn Unilateral by relief xpayer granted	Column 7	0	0	0	
		ta Ki	Column 6	0	0	0		
		Objection Wit is not justified tax	Column 5	0	0	0		
		Denied MAP access	Column 4	0	0	0		
		No. of post-2017 cases started during the reporting	Column 2 Column 3 Column 4 Column 5 Column 6 Column 7 Column 8	0	က	က		
	No. of	post-2017 cases in MAP inventory on 1 January 2020	Column 2	0	0	0		
		Category of cases	Column 1	Attribution/ Allocation	Others	Total		

Glossary

Action 14 Minimum Standard The minimum standard as agreed upon in the final report on Action 14:

Making Dispute Resolution Mechanisms More Effective

MAP guidance Policy Mutual Agreement Procedure

MAP Statistics Reporting

Framework

Rules for reporting of MAP statistics as agreed by the FTA MAP

Forum

OECD Model Tax Convention OECD Model Tax Convention on Income and on Capital as it read on

21 November 2017

OECD Transfer Pricing Guidelines OECD Transfer Pricing Guidelines for Multinational Enterprises and

Tax Administrations

Pre-2018 casesMAP cases in a competent authority's inventory that are pending reso-

lution on 31 December 2017

Post-2017 cases MAP cases that are received by a competent authority from the tax-

payer on or after 1 January 2018

Statistics Reporting Period Period for reporting MAP statistics that started on 1 January 2018 and

ended on 31 December 2020

Terms of ReferenceTerms of reference to monitor and review the implementing of the BEPS

Action 14 Minimum Standard to make dispute resolution mechanisms

more effective

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Aruba (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under BEPS Action 14, members of the OECD/G20 Inclusive Framework on BEPS 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 BEPS Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' Stage 1 peer review report. This report reflects the outcome of the Stage 2 peer monitoring of the implementation of the BEPS Action 14 Minimum Standard by Aruba.



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