

OECD/G20 Base Erosion and Profit Shifting Project

# **Manual on Effective Mutual Agreement Procedures (2026 Edition)**

Inclusive Framework on BEPS



OECD/G20 Base Erosion and Profit Shifting Project

# **Manual on Effective Mutual Agreement Procedures (2026 Edition)**

Inclusive Framework on BEPS



This work was approved and declassified by the Inclusive Framework on BEPS on 18/12/2025.

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

**Please cite this publication as:**

OECD (2026), *Manual on Effective Mutual Agreement Procedures (2026 Edition): Inclusive Framework on BEPS*, OECD Publishing, Paris, <https://doi.org/10.1787/076ac4bd-en>.

**Photo credits:** © metamorworks/Shutterstock.com

Corrigenda to OECD publications may be found at: <https://www.oecd.org/en/publications/support/corrigenda.html>.

© OECD 2026



Attribution 4.0 International (CC BY 4.0)

This work is made available under the Creative Commons Attribution 4.0 International licence. By using this work, you accept to be bound by the terms of this licence (<https://creativecommons.org/licenses/by/4.0/>).

**Attribution** – you must cite the work.

**Translations** – you must cite the original work, identify changes to the original and add the following text: *In the event of any discrepancy between the original work and the translation, only the text of original work should be considered valid.*

**Adaptations** – you must cite the original work and add the following text: *This is an adaptation of an original work by the OECD. The opinions expressed and arguments employed in this adaptation should not be reported as representing the official views of the OECD or of its Member countries.*

**Third-party material** – the licence does not apply to third-party material in the work. If using such material, you are responsible for obtaining permission from the third party and for any claims of infringement.

You must not use the OECD logo, visual identity or cover image without express permission or suggest the OECD endorses your use of the work.

Any dispute arising under this licence shall be settled by arbitration in accordance with the Permanent Court of Arbitration (PCA) Arbitration Rules 2012. The seat of arbitration shall be Paris (France). The number of arbitrators shall be one.

# Preface & Status of the MEMAP

The *Manual on Effective Mutual Agreement Procedures* (“**MEMAP**”) has been developed to serve as a comprehensive guide for navigating the Mutual Agreement Procedure (“**MAP**”) and especially its practical application. Its purpose is to provide both tax administrations and taxpayers with valuable insights, without imposing binding rules or requirements.

In 2023, the Forum on Tax Administration (“**FTA**”) MAP Forum agreed to undertake a revision of the 2007 MEMAP. The objective of this project was to update and enhance the MEMAP with a greater practical focus, providing comprehensive guidance to both competent authorities and taxpayers on the effective conduct of the MAP process. The revised MEMAP aims to highlight not only good practices identified by the FTA MAP Forum based on years of experience in dealing with questions that arise in MAP, but also common challenges and evolving issues, based on input received from both competent authorities and the business community.

Accordingly, a Focus Group of 17 jurisdictions was formed to lead this work. This group held its first meeting in February 2024. At this meeting, the Focus Group discussed launching a comprehensive survey aimed at gathering feedback from both competent authorities and business stakeholders. Early discussions indicated that while the existing MEMAP continued to serve as a useful reference tool, particularly for jurisdictions newer to MAP, there was consensus that the Manual should be modernised to reflect practical developments since its publication, incorporate the work under the BEPS Action 14 Minimum Standard and introduce more detailed, practical guidance for the day-to-day handling of MAP cases.

Following the initial meeting, survey documents were circulated in February 2024 to all competent authorities in the FTA MAP Forum as well as to business stakeholders. These survey documents set out the proposed themes for the revised MEMAP and included specific questions covering each step of the MAP process. Focus Group members were invited to submit their responses by April 2024.

The response to the surveys was substantial. Over 50 competent authorities and more than ten business respondents, including representative bodies for multinational enterprises and large tax advisory firms, provided detailed feedback. These responses offered a wide range of insights into the current functioning of MAP, including areas where existing guidance was working well, where difficulties frequently arise and where practical improvements could be made.

Based on the analysis of this input, and as agreed by the Focus Group, this revised MEMAP builds upon the content of the original document but introduces a new structure and significant enhancements. It provides updated and practical guidance that reflects current practice and experiences in MAP, identifies key issues that may arise at each stage of the process and outlines good practices developed by competent authorities and business alike. In particular, the revised MEMAP incorporates aspirational best practices aimed at improving the efficiency, effectiveness and timeliness of the MAP process. The MEMAP does not alter, restrict, or expand any rights or obligations established under existing tax treaties. Instead,

it is designed to complement, rather than replace, the established criteria, procedures and guidance outlined in the *Model Tax Convention on Income and on Capital (Full Version)* (OECD, 2019<sup>[1]</sup>) ("OECD Model Tax Convention") and the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022* (OECD, 2022<sup>[2]</sup>) (the "OECD Transfer Pricing Guidelines"). It is important to note that jurisdictions are not subject to any review or monitoring concerning the adoption of the best practices or guidance set forth in the MEMAP.

The MEMAP also aligns with the principles and practices set forth in the *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report* (OECD, 2015<sup>[3]</sup>) of the OECD/G20 Base Erosion and Profit Shifting Project ("BEPS") series (the "BEPS Action 14 final report,") without modifying the Minimum Standard, best practices, or procedures established therein. In the event of any conflict or inconsistency between the MEMAP and other authoritative documents, such as tax treaties, domestic guidance, the OECD Model Tax Convention, its Commentary, the OECD Transfer Pricing Guidelines, or the BEPS Action 14 final report, those authoritative documents will take precedence. Likewise, even where the MEMAP illustrates potential improvements in the practical application of issues addressed by the Action 14 Minimum Standard, this does not prejudice future discussions on revising the commitments under that Standard. In this regard, the inclusion of a best practice in the MEMAP does not indicate that jurisdictions agree that it should be incorporated into the stronger and broader commitments under BEPS Action 14.

The MEMAP is a practical guide to MAP, prepared by competent authorities within the FTA MAP Forum to address practical issues encountered in MAP and does not reflect any binding commitments. It does not necessarily represent all of the current or future policy choices of their jurisdictions. In this context, the word "should" as used in the best practices and the text in the MEMAP is intended to express an aspiration or objective, not a binding commitment. The best practices in the MEMAP are based on approaches already followed by a number of jurisdictions. While taxpayers and tax administrations should consider them when engaging with the MAP process, jurisdictions should assess their implementation in light of domestic law and policy, existing MAP programmes and processes and the specific features of each case, considering whether their implementation would result in improvements.

Recognising the diversity of jurisdictions and their varying levels of adherence to the OECD Model Tax Convention, the MEMAP acknowledges that references to OECD documents outside the context of BEPS Action 14 may hold differing degrees of relevance for certain jurisdictions. This is especially the case where the provisions or paragraphs of the OECD Model Tax Convention or Commentary concerned are subject to reservations or observations by OECD member jurisdictions or positions expressed by non-member jurisdictions. The MEMAP is primarily intended to address MAP under tax treaties that follow Article 25 of the OECD Model Tax Convention, although some best practices may also be useful for MAP under other instruments where their application is otherwise consistent with the provisions of those instruments. While aspirational, the timeframes suggested for various steps in the MAP process, highlighted in the best practices and Annex D, are not obligatory, acknowledging that meeting these timeframes may currently not be possible for all competent authorities, but represent an ideal scenario to strive toward. Finally, where appropriate, jurisdictions may consider adapting, referencing, or incorporating aspects of the MEMAP into their domestic guidance, thereby providing greater clarity and consistency in MAP procedures.

# Table of contents

Preface & Status of the MEMAP	3
<b>1 Background and pre-MAP phase</b>	<b>6</b>
1.1. What is MAP?	6
1.2. Dispute prevention in the context of MAP	12
1.3. The Competent Authority function in MAP	16
1.4. Types of Cases Covered in MAP	22
1.5. Timeline for MAP, monitoring of MAP Inventory and reporting MAP Statistics	23
1.6. Pre-MAP consultations	26
1.7. Published information on MAP	27
1.8. Expectations from and towards taxpayers in MAP	30
<b>2 Unilateral Phase of MAP</b>	<b>34</b>
2.1. Step 1: Submission of a MAP request	34
2.2. Step 2: Checking the eligibility of a MAP request	39
2.3. Step 3: Determination whether the objection is justified	48
2.4. Step 4: Unilateral Relief	53
<b>3 Bilateral Phase of MAP</b>	<b>57</b>
3.1. Step 5: Endeavours to resolve the case, position papers and discussion	57
3.2. Step 6: Finalisation and implementation of MAP agreements	67
3.3. Step 7: MAP arbitration	73
<b>4 Considerations for low-capacity jurisdictions</b>	<b>91</b>
Annex A. List of best practices in the MEMAP	93
Annex B. BEPS Action 14 Minimum Standard and best practices	116
Annex C. Templates for the MAP process	120
Annex D. Ideal Timeframe for the MAP Process	147
Annex E. The steps of an ideal MAP Process	148
References	150

## FIGURES

Figure A E.1. The steps of an ideal MAP process	149
---	-----

# 1

# Background and pre-MAP phase

## 1.1. What is MAP?

1. Double taxation conventions or tax treaties typically include a specific provision dedicated to resolving disputes regarding the interpretation or application of their provisions. This provision is usually based on Article 25 of the OECD Model Tax Convention, which outlines the Mutual Agreement Procedure or MAP. The MAP offers taxpayers a means of recourse when they believe they have been taxed in a manner inconsistent with the terms of the tax treaty. For eligible cases filed under MAP by taxpayers, designated representatives from each contracting jurisdiction, referred to as the competent authorities, work together in a Government-to-Government process with the aim to find a mutually acceptable solution that eliminates taxation not in accordance with the treaty.
2. The MAP provision is of fundamental importance to taxpayers as it ensures that the tax treaty is applied correctly by both jurisdictions and provides a mechanism to achieve bilaterally agreed solutions for tax treaty disputes, rather than requiring them to pursue parallel processes through domestic dispute resolution mechanisms in an uncoordinated manner. Since competent authorities generally have a specialised knowledge of tax treaties and transfer pricing in terms of policy as well as practice, taxpayers can expect a broadly principled as well as pragmatic resolution to the dispute, which may not always be the case under domestic dispute resolution mechanisms. Furthermore, as MAP tends to be more flexible and less procedurally burdensome than litigation, it can reduce both the cost and duration of dispute resolution processes. While MAP does not replace domestic remedies and is meant to co-exist with them, its early availability and potential to address matters affecting both jurisdictions make it a particularly valuable tool for preventing or resolving instances of double taxation.
3. The MAP provision in Article 25 generally includes two types of MAP processes: a specific case MAP under paragraphs 1 and 2 and a general MAP under paragraph 3<sup>1</sup>. The specific case MAP provision addresses the submission of a MAP request by the taxpayer in paragraph 1 and the handling of the request as well as the resolution of the case by the relevant competent authorities in paragraph 2.
4. Article 25(1) allows a taxpayer to present their case to a competent authority if they consider that they have been or will be subject to taxation not in accordance with the tax treaty due to an action of one or both jurisdictions, irrespective of whether domestic remedies are ongoing or have been concluded regarding those actions. Any “person” as defined under a tax treaty is eligible to present a MAP request so long as they reasonably believe based on established facts that the action in question results or will result in taxation not in accordance with the tax treaty, without the need to provide evidence to prove the existence or probability of the same. In this regard, it may be concluded that an action “will result” in taxation

---

<sup>1</sup> Paragraph 3 is described more in detail under section 2.2.

not in accordance with the tax treaty so long as that consequence is probable and not merely possible.

5. As to the meaning of “an action of” one or both jurisdictions, any act or decision, whether legislative, regulatory or administrative and whether general or specific to the individual case, can be considered an “action”, so long as the actual or probable taxation not in accordance with the treaty complained of is a direct and necessary consequence of that act or decision. While the most commonly seen example of an “action” by one or both of the contracting jurisdictions is an audit adjustment or assessment by a tax administration that creates a tax liability directly, other examples such as the filing of a return in a self-assessment system or the active examination of a specific taxpayer reporting position in the course of an audit would also be considered an “action” where it creates the probability of taxation not in accordance with the treaty.<sup>2</sup> Further, the MAP provision covers all situations involving taxation contrary to the treaty and not just cases of double taxation (e.g. an action contrary to the non-discrimination provisions).<sup>3</sup>

6. Where these conditions are satisfied, the taxpayer may present the MAP request in the format prescribed by the competent authority before which the MAP request is submitted. Where there is no prescribed format, the MAP request can be submitted in the format followed under domestic law for submitting objections to a tax assessment.<sup>4</sup> The competent authority before which a MAP request should be submitted differs from treaty to treaty. MAP provisions generally follow the 2017 version of the OECD Model Tax Convention that allows a MAP request to be filed before either competent authority or the 2014 version that requires a MAP request to be filed before the competent authority of the taxpayer’s residence jurisdiction, or nationality jurisdiction in nationality non-discrimination cases. If a treaty contains the former type of provision, the taxpayer may file before either competent authority at first and if the MAP case does not move forward, file before the other competent authority where still eligible, or file before both competent authorities at the outset.

7. Finally, under Article 25(1), a MAP request should be submitted within three years from the first notification of the action resulting in the taxation not in accordance with the treaty. The three-year time limit for initiating the MAP begins from the first notification of the action leading to taxation not in accordance with the tax treaty and must be interpreted in the way most favourable to the taxpayer. This typically means the notification of the specific individual action, such as a notice of assessment or liability, rather than a general legal change or filing of a return. The timing of this notification is governed by domestic rules or where absent, by when the taxpayer could reasonably be expected to have become aware of the taxation. In cases involving withholding taxes, the time-limit would generally start when the income is paid unless the taxpayer proves that they were aware of the deduction only later. However, in jurisdictions where “taxation not in accordance with” the tax treaty is understood to arise only when a request for a refund of withholding tax under domestic law is denied, the three-year period may be considered to begin from the date of that denial. Where both jurisdictions contribute to the taxation not in accordance with the treaty, the time limit starts from the latest relevant notification. The period continues during domestic proceedings, which may require taxpayers to initiate MAP and domestic remedies simultaneously.<sup>5</sup>

8. Keeping in mind the spirit and objectives of the tax treaty, taxpayers should not be unduly

---

<sup>2</sup> More examples for an “action” are also referred to in paragraph 14 of the Commentary on Article 25 of the OECD Model Tax Convention. As mentioned in the Preface, please also note the observations and non-member positions taken by jurisdictions with respect to the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>3</sup> Paragraph 13 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>4</sup> Paragraph 16 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>5</sup> Paragraphs 21-25 of the Commentary on Article 25 of the OECD Model Tax Convention.

prevented from obtaining assistance via MAP due to overly strict interpretations of the time limits for requesting MAP in a tax treaty and taxpayers should receive the benefit of the doubt in borderline cases. While the onus for making a timely request in order to preserve access to the MAP may rest with the taxpayer and taxpayers should take all reasonable steps to ensure that time limits do not expire, it would be helpful for a tax administration making an adjustment or assessment to advise the taxpayer of their rights under the applicable tax treaty, including information about any time limitations in the tax treaty for initiating MAP. This written notice or advice could be included at the time of formal notification of a proposed adjustment and could include general guidance on the availability of MAP and how to go about protecting the availability of access to this mechanism. Some jurisdictions have implemented this practice of informing taxpayers of both their domestic and tax treaty rights and obligations at the time of the proposed adjustment, with successful feedback and results.

9. In certain cases, a taxpayer may consider it prudent to file a MAP request under the equivalent of Article 25(1) of the OECD Model Tax Convention in the relevant tax treaty on a protective basis. This approach is appropriate in circumstances where the taxpayer, while reserving the right to MAP assistance, elects to pursue domestic remedies in the first instance. In such instances, the taxpayer presents the MAP request within the time limits prescribed by the tax treaty, typically three years from the first notification of the action alleged to result in taxation not in accordance with the tax treaty, in order to preserve access to MAP. However, the request should explicitly state that it is submitted protectively and should generally not be considered substantively by the competent authority unless and until the taxpayer provides further notification to that effect.<sup>6</sup>

10. Paragraph 2 of Article 25 stipulates that, if the taxpayer's objection appears justified to the competent authority receiving the MAP request and it cannot unilaterally provide the taxpayer with a satisfactory solution, the competent authority is required to endeavour to resolve the case through mutual agreement with the competent authority of the other jurisdiction. In this regard, the competent authority must make a preliminary assessment to determine whether the taxpayer's objection is reasonably justified by identifying actual or potential taxation in either jurisdiction that is inconsistent with the tax treaty.<sup>7</sup> Further, the competent authority should, where possible, provide unilateral relief to avoid the taxation not in accordance with the treaty, such as by reversing the action of its own tax administration or providing relief for the other tax administration's action using the authority granted under the treaty.

11. However, where the objection is considered justified and where the competent authority cannot provide unilateral relief, it is obliged under paragraph 2 to initiate the bilateral phase of the mutual agreement procedure without delay. Although paragraph 2 does not create an obligation on the competent authorities to resolve the MAP case, it still imposes a duty to discuss the case in good faith and put in best efforts for this purpose. This duty to resolve cases in good faith reflects a core commitment under a tax treaty and requires that competent authorities strive to settle disputes fairly, objectively and in accordance with the tax treaty and relevant international law. In pursuing a mutual agreement, competent authorities must base their positions on their domestic tax laws and the tax treaty, but where strict application of these rules prevents agreement, they may also consider equitable factors to provide relief.<sup>8</sup>

12. Finally, Article 25(2) also provides that any agreement reached in MAP shall be implemented notwithstanding domestic time limits, creating an obligation on the jurisdictions concerned to implement

---

<sup>6</sup> These cases would not be assigned a Start Date under the MAP Statistics Reporting Framework until the taxpayer indicates that they wish the competent authorities to begin substantive consideration of the request.

<sup>7</sup> Paragraph 31.1 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>8</sup> Paragraphs 5.1, 33, 37 and 38 of the Commentary on Article 25 of the OECD Model Tax Convention.

MAP agreements irrespective of the fact that the competent authorities may not be directly involved in implementation and legally overcoming domestic time-limits to ensure implementation.

13. The exchange of information during the course of MAP is subject to the standards set out in Article 26 of the OECD Model and its Commentary.<sup>9</sup> This means that any exchange of taxpayer-specific information during the MAP process or details about competent authority practices applied to MAP cases must meet the "foreseeable relevance" standard outlined in Article 26.<sup>10</sup> This allows the sharing of such information internally within a jurisdiction as required for the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered, including with courts and administrative bodies. Furthermore, such information, whether specific or general, must not be disclosed to individuals or authorities beyond those explicitly listed in paragraph 2 of Article 26 unless the domestic law of both countries allows and the providing competent authority agrees to such use. This restriction applies even if domestic laws such as legislation on freedom of information would otherwise permit wider disclosure.<sup>11</sup> This would also mean that any communications from one competent authority intended solely for the other competent authority as part of the MAP case, including those setting out the competent authority position such as position papers, cannot be provided to the taxpayer as, in this context, they would not be considered a person described in paragraph 2 of Article 26. Accordingly, many jurisdictions would also not be able to share information about their MAP inventory beyond what is reported under the MAP Statistics Reporting Framework and/or its domestic reporting framework.

14. Although the global inventory of MAP cases had been growing even before 2013, several challenges affected the effectiveness of MAP during that time, such as the absence of effective MAP provisions in many tax treaties, restrictions on access to MAP in certain situations, delays due to limited resources in or lack of functional independence of competent authorities and the inability of some jurisdictions to implement MAP agreements because of domestic legal constraints. To address these issues, particularly considering the growing demand for tax certainty amid the implementation of the other BEPS measures, the BEPS Action Plan introduced Action 14, aimed at strengthening dispute resolution mechanisms and especially MAP.

15. The BEPS Action 14 final report sought to improve tax treaty dispute resolution by establishing a Minimum Standard based on the following three core objectives:

- Ensuring that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner.
- Ensuring the implementation of administrative processes that promote the prevention and timely resolution of treaty-related disputes.
- Ensuring that taxpayers can access the MAP when eligible.

16. These objectives have been translated into 21 elements comprising the Action 14 Minimum Standard, which broadly require jurisdictions that are members of the BEPS Inclusive Framework to:

- Include complete and effective MAP provisions in their tax treaties.
- Ensure that jurisdictions provide for the roll-back of bilateral Advance Pricing Arrangements ("APAs") in appropriate cases under their existing bilateral APA programmes.
- Ensure that where a MAP request is not allowed to be filed before either competent authority under

---

<sup>9</sup> Paragraph 4 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>10</sup> Paragraph 5.4 of the Commentary on Article 26 of the OECD Model Tax Convention.

<sup>11</sup> Paragraph 12 of the Commentary on Article 26 of the OECD Model Tax Convention.

the tax treaty, a documented bilateral consultation or notification process is put in place and applied in practice, for situations where that competent authority decides that the objection raised by the taxpayer is not justified.

- Ensure that access to MAP is granted in all eligible cases under a tax treaty in terms of policy as well as practice.<sup>12</sup>
- Facilitate access to MAP for taxpayers by ensuring transparency with regard to their MAP regimes and providing information on how to access MAP in a clear and easily accessible manner through a published MAP guidance<sup>13</sup> and a MAP profile.<sup>14</sup>
- seek to resolve MAP cases within an average timeframe of 24 months, based on statistics reported under the agreed MAP Statistics Reporting Framework
- Ensure that their competent authority functions have adequate resources, based on the number of personnel in the competent authority function, their training, funding and other relevant factors.
- Ensure that competent authorities are granted 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.
- 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.
- Provide transparency with respect to their positions on MAP arbitration, which information is generally shared through its MAP profile or MAP guidance.
- Ensure that all MAP agreements entered into are implemented in a timely manner.

17. Similarly, 11 best practices with a particular emphasis on MAP were also included in the BEPS Action 14 final report, which jurisdictions are encouraged but not required to follow.

18. The 21 elements of the Action 14 Minimum Standard, along with the 11 best practices stemming

---

<sup>12</sup> Specific reference is made that access to MAP should be granted in transfer pricing cases, cases concerning the application of anti-abuse provisions, cases involving audit settlements and cases where the taxpayer has provided all the required information. However, it is noted that access to MAP may be restricted where 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. Nevertheless, the Action 14 final report clarifies that the commitment under elements 1.2 and 2.6 of the Minimum Standard, dealing with cases concerning the application of anti-abuse provisions and cases involving audit settlements respectively, deals only with access to MAP, which is distinct from any obligation to endeavour to resolve the case pursuant to paragraph 2 of Article 25 and from any obligation to submit an issue to arbitration that may arise under treaties that contain an arbitration provision.

<sup>13</sup> The Action 14 Minimum Standard requires that a MAP guidance includes the manner and form in which taxpayers should make their MAP request as well as the contact details of the jurisdiction's competent authority in charge of handling MAP requests and cases

<sup>14</sup> In an effort to make published information on MAP more accessible to all stakeholders, the FTA MAP Forum agreed in December 2022 to summarise and consolidate published information concerning MAP for all Inclusive Framework Members in a single publication, titled Consolidated Information on Mutual Agreement Procedures ("CIM"). The objective behind the CIM is to give a concise picture of each Inclusive Framework Member's MAP programme and to further highlight the ongoing efforts in the FTA MAP Forum to make the MAP more timely, effective and efficient. The 2024 edition of the CIM is available at: <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/dispute-resolution/consolidated-information-on-mutual-agreement-procedures-2024.pdf>.

from Action 14, are set out in **Annex B**. It is important to clarify that the best practices outlined in MEMAP are distinct from those in Action 14. The MEMAP focuses on administrative practices. Since the best practices in MEMAP are intended to be comprehensive, covering each step involved in the MAP process, they incorporate and build upon the elements of the Minimum Standard and the Action 14 best practices. However, they are not intended to conflict with them. In line with the approach adopted throughout MEMAP that lays out aspirational administrative best practices in the view of competent authorities, it is acknowledged that some jurisdictions may not be in a position to adopt some of these best practices.

19. In addition, references to “access to MAP” in the MEMAP, including in Step 2: Checking the eligibility of a MAP request, relate to allowing the taxpayer into the MAP process in procedural terms, based on the conditions in treaty provisions based on Article 25(1) of the OECD Model Tax Convention. The substantive examination of the case, including whether the taxpayer has been subject to taxation not in accordance with the tax treaty and whether sufficient information has been provided to resolve the issue, is addressed separately under Step 3: Determination whether the objection is justified, and in the steps that follow.

20. Section 2 of the MEMAP and the sections that follow provide a detailed, step-by-step explanation of the MAP process. Two charts showing the steps of an ideal MAP process, along with the aspirational timelines, is included in **Annex E**.

### **Best practices**

- 1 Best practice 1.** Jurisdictions should incorporate the full and complete text of paragraphs 1 to 4 of Article 25 of the OECD Model Tax Convention (the 2017 version as amended following the BEPS Action 14 final report) into their tax treaties, either on its own or together with treaty provisions that limit the time during which a jurisdiction may make an adjustment pursuant to Article 9(1) or Article 7(2). Jurisdictions should also ensure that provisions equivalent to paragraphs 1 to 4 of Article 25 in their tax treaties are interpreted and applied in practice as interpreted in the Commentary on Article 25 of the OECD Model Tax Convention, as amended following the BEPS Action 14 final report.<sup>15</sup>
- 2 Best practice 2.** Jurisdictions should uphold their obligations under tax treaties concerning the proper application of the MAP provision in good faith. Where the provisions of a tax treaty limit the taxation rights otherwise available to a jurisdiction under domestic law, those domestic law provisions should not then be an impediment for that jurisdiction to provide access to MAP (as detailed under **Best practice 27**) or to undertake endeavours to resolve the case (as detailed under

---

<sup>15</sup> It must be noted that elements 1.1, 3.1 and 3.3 of the BEPS Action 14 Minimum Standard require jurisdictions to include the equivalent of paragraphs 1 through 3 of Article 25 in their tax treaties, as interpreted in the Commentary, subject to the fact that jurisdictions are allowed to:

retain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (the 2014 version as it read prior to the adoption of the BEPS Action 14 Final Report) so long as they implement for those treaties a bilateral notification or consultation process for cases in which the competent authority to which the MAP case was presented does not consider the taxpayer’s objection to be justified; and

not include Article 25(2), second sentence, of the OECD Model Tax Convention in their tax treaties so long as they are willing to accept alternative treaty provisions that limit the time during which a Contracting State 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.

**Best practice 39**), in eligible cases under the treaty.<sup>16</sup> A competent authority relying upon a domestic law impediment as the reason for not allowing a taxpayer to initiate MAP or for not initiating MAP should inform the other competent authority of this and duly explain the legal basis of its position.

3 **Best practice 3.** Jurisdictions should ensure that all information necessary to consider and resolve a case is exchanged between competent authorities and that such exchanges of information during the MAP process comply with the standards set out in the equivalent of Article 26 of the OECD Model Tax Convention, as interpreted in the Commentary on that provision. In this regard, information may be disclosed to any person or authority concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered, including courts and administrative bodies. In the context of MAP, while the taxpayer should be updated on the progress of the case on request and informed of the final proposed resolution agreed between the competent authorities, communications from one competent authority intended solely for the other competent authority as part of the MAP case, including those setting out the competent authority position such as position papers, should not be disclosed to the taxpayer.

Where disclosure to persons or authorities is permitted under Article 26(2), and particularly where the information may be considered sensitive or relates to the MAP discussions themselves, the competent authority concerned should consult with the other competent authority and take their view on board prior to disclosure. Information should not be disclosed to any other person or in any other circumstance beyond those listed above, regardless of any domestic information disclosure legislation, such as freedom of information laws or other provisions allowing broader access to government-held documents.

4 **Best practice 4.** Jurisdictions should ensure that taxpayers are informed of their right to access MAP when notified of audit adjustments or assessments in international tax or transfer pricing matters that would be covered by a tax treaty. This communication should aim to clearly share information on the filing period for requesting MAP under the tax treaty and direct the taxpayer on where to find the concerned jurisdiction's published MAP guidance.

## 1.2. Dispute prevention in the context of MAP

21. Both competent authority and business respondents to the survey noted several reasons that create more MAP cases, lead to cases involving double taxation not going to MAP or affect the efficient, effective and timely resolution of MAP cases. Competent authority respondents highlighted that differences in treaty interpretation or transfer pricing policy between jurisdictions as well as an overreliance on domestic law rather than treaty obligations are frequent sources of MAP cases and lead to MAP cases remaining unresolved. Business respondents noted that increasing the global awareness and training specific to international tax and transfer pricing matters in the audit and examination functions of tax administrations would prevent recurring adjustments that lead to MAP cases. They noted that better feedback processes between the competent authority function and the audit/examination function could result in preventing repeated adjustments on issues that have been previously reversed in MAP. They also

<sup>16</sup> Noting that questions that do not involve the tax treaty and only matters of domestic law are not meant to be covered by a MAP provision. See paragraph 43.

pointed to the impact of tax administration culture and the use of incentive structures tied to the amount of revenue raised in audits as reasons for high-value adjustments that lead to MAP cases. Business respondents to the survey also reported that many taxpayers remain unaware of their rights to access MAP under tax treaties or have not built sufficient trust with their competent authorities, often relying instead on domestic remedies. Competent authorities also noted that well-reasoned and detailed audit adjustments would allow them to consider these adjustments better in MAP. In addition, both competent authority and business respondents cited inconsistencies in MAP procedures across jurisdictions, such as differences in filing mechanisms and information requirements, as practical barriers to the smooth and timely resolution of cases.

22. Some competent authorities highlighted that they organise regular meetings with auditors to generally discuss whether some audit positions would hold in the MAP process, with an emphasis put on recurring issues. One competent authority noted that it has put in place, for this purpose, a transfer pricing steering group where the auditors need to convince other transfer pricing experts within the administration, including a representative of the competent authority, that the adjustment should be made. Such efforts are supplemented in many responding jurisdictions by dedicated training offered to their auditors which can include but is not necessarily limited to the Global Awareness Training Module. Further, there is broad consensus that ample information can lead to easier dispute prevention and resolution, which is why some jurisdictions are exploring avenues to allow taxpayers to cooperate more efficiently with the tax administration, including through horizontal monitoring projects, co-operative compliance or the OECD International Compliance Assurance Program (“**ICAP**”). In addition, some jurisdictions highlighted that they are making efforts to oblige their auditors to make well-documented and substantiated tax adjustments that should be clear and contain all the necessary information leading to the adjusted amounts, as well as to follow the OECD Transfer Pricing Guidelines in their audits.

23. In terms of broader approaches to dispute prevention, some responding jurisdictions have indicated encouraging taxpayers to apply for APAs for their most complex transfer pricing issues such as intangibles or that they are endeavouring to conduct joint audits to avoid having to handle the issue in MAP later on. Allowing taxpayers to easily challenge tax adjustments at the level of tax administration which may avoid the case escalating to MAP is also favoured by some jurisdictions with one reporting having put in place a mechanism to allow a taxpayer to directly request a corresponding adjustment (unilateral relief) to the local tax inspector. A number of jurisdictions have agreed on “best practices” arrangements in their approach to MAP with their main treaty partners to ensure a smooth-running the MAP process, with one responding competent authority indicating having developed standardised benchmarking sets for transfer pricing cases that it shares with its treaty partners to allow for expediting the resolution of some MAP cases. Finally, a few jurisdictions have entered into general agreements based on Article 25(3) of the OECD Model Tax Convention with some of their treaty partners, generally their main MAP partners, and consider it useful for the prevention of future disputes.

24. Article 25(3) of the OECD Model Tax Convention contains the general MAP provision, the first sentence of which states that the competent authorities shall resolve by mutual agreement any difficulties or doubts regarding the interpretation or application of the relevant tax treaty. This provision allows competent authorities to, at their discretion, enter into general MAP agreements that reflect their common understanding of tax treaty provisions so as to prevent future MAP cases or provide a clear basis to easily resolve MAP cases. Paragraph 3 does not specify any conditions or guidance regarding the timing or manner in which a MAP case under that paragraph should be initiated. In practice, this provision is used for resolving issues of a general nature and usually not specific issues arising from a taxpayer request as under paragraph 1, such as matters that apply to a category of taxpayers, the clarification of ambiguous terms in a treaty, the establishment of procedures for implementing tax treaty provisions etc. This provision may also serve as the basis for framework agreements between competent authorities aimed at

addressing common substantive issues arising across multiple MAP cases pending within a bilateral relationship. Such agreements could not only provide a consistent foundation for resolving these existing cases but also help to prevent future protracted disputes in the same area.<sup>17</sup> Many competent authorities also publish agreements concluded under Article 25(3) to promote transparency and enable taxpayers to clearly understand agreed approaches to issues, except where the nature of an agreement would render publication detrimental to its administrative purpose, such as those involving compliance procedures in criminal cases or agreed compromises in framework agreements that if published would risk abuse. However, in some jurisdictions, competent authorities may be required to publish these agreements under their domestic law to ensure they have legal effect or can be applied in practice.

25. In addition, this provision is seen to be the legal basis for competent authorities to enter into bilateral or multilateral APAs<sup>18</sup> in many jurisdictions and for multilateral MAP cases in some jurisdictions.<sup>19</sup> APAs are designed to provide taxpayers and competent authorities with “advance” tax certainty regarding the tax treatment of specific covered transactions over a defined period of fiscal years. By addressing transfer pricing issues in advance, APAs serve as a preventive mechanism that complements traditional administrative, judicial and treaty-based dispute resolution processes. They are particularly valuable in circumstances where these traditional mechanisms may be difficult to access, are likely to prove ineffective, or where there is a clear expectation that a transfer pricing dispute may arise. In this regard, promoting the use of APAs and using them proactively while suspending ongoing audit activity may lead to the prevention of MAP cases and disputes. However, any decision to suspend an audit would follow careful case-by-case consideration, so as to avoid APA applications (particularly including roll-back years) being used as a means for taxpayers to seek the suspension of audits.

26. The second sentence of Article 25(3) also allows competent authorities at their discretion to consult one another to eliminate double taxation in cases not provided for in the tax treaty. This authority might allow the competent authorities to address, for example, a case where a third country resident has permanent establishments in each of the two treaty countries and they disagree about the amount of profits attributable respectively to each of the two locations with respect to dealings between the two permanent establishments.<sup>20</sup> However, it must be noted that the second sentence only allows competent authorities to consult on the elimination of double taxation in accordance with the domestic laws of their jurisdictions or where this is authorised by the provisions of other applicable tax treaties concluded by one of the jurisdictions and a third jurisdiction.<sup>21</sup>

27. In some cases, a MAP request about a particular adjustment or assessment may involve matters

---

<sup>17</sup> This approach proved particularly effective in the context of the India–United States tax treaty, where within a year of its conclusion, a framework agreement signed in January 2015 enabled the resolution of over 100 cases relating to software development and IT-enabled services. See <https://www.pib.gov.in/newsite/PrintRelease.aspx?relid=153710>.

<sup>18</sup> See the Bilateral Advance Pricing Arrangement Manual (“BAPAM”) for best practices on the handling and resolution of bilateral APAs, available at: [https://www.oecd.org/en/publications/bilateral-advance-pricing-arrangement-manual\\_4aa570e1-en.html](https://www.oecd.org/en/publications/bilateral-advance-pricing-arrangement-manual_4aa570e1-en.html).

<sup>19</sup> See paragraph 30 of the Manual on the Handling of Multilateral MAPs and APAs (MoMA), which notes that many jurisdictions follow the “Article 25(3) Approach” to multilateral MAP cases where one MAP request is filed by a taxpayer under one bilateral treaty and those competent authorities then use Article 25(3) to initiate MAP discussions with other competent authorities, available at: [https://www.oecd.org/en/publications/manual-on-the-handling-of-multilateral-mutual-agreement-procedures-and-advance-pricing-arrangements\\_f0cad7f3-en.html](https://www.oecd.org/en/publications/manual-on-the-handling-of-multilateral-mutual-agreement-procedures-and-advance-pricing-arrangements_f0cad7f3-en.html).

<sup>20</sup> See paragraph 55 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>21</sup> See paragraph 55.1 of the Commentary on Article 25 of the OECD Model Tax Convention.

that are not confined to one tax year but instead recur in future years as well. These recurring issues can often lead to the same dispute being pending over multiple periods, although the underlying facts and circumstances remain the same. In these circumstances, jurisdictions may allow a taxpayer to submit one MAP request covering all the covered years if they demonstrate that the facts and circumstances are substantially similar, instead of waiting for a formal adjustment or assessment followed by a MAP request for each of those years. This enhances the efficiency of the audit/examination as well as the MAP process and also enables competent authorities to consider the issue in a more comprehensive manner, which may lead to more consistent outcomes and reduce the likelihood of future disputes. This policy not only offers taxpayers greater certainty but also helps competent authorities manage their workloads more effectively. This is also considered a best practice under BEPS Action 14. In situations where a jurisdiction determines that there is no specific “action” of the other contracting jurisdiction that would give rise to an eligible MAP request under the equivalent of Article 25(1) of the OECD Model Tax Convention as incorporated in the applicable treaty, it should consider whether the use of Article 25(3) may be appropriate. Where the use of Article 25(3) is not possible or appropriate due to the legal framework, administrative policy, or established practice of a jurisdiction and the competent authority does not consider that a probability of taxation not in accordance with the treaty arises from adjustments or assessments in previous years, but the jurisdiction nevertheless seeks to facilitate the multi-year resolution of recurring issues through MAP, alternative approaches may be considered. For example, in cases where the relevant facts and circumstances are expected to remain consistent in future years, some jurisdictions have found it feasible to issue a notice or letter to the taxpayer indicating that, based on the adjustment or assessment made in one tax year, similar adjustments or assessments are probable in subsequent years, thereby providing a possible basis for the taxpayer to request for MAP under Article 25(1).

#### **Best practices**

**5 Best practice 5.** Jurisdictions should take proactive measures to prevent disputes leading to MAP cases, with a particular focus on ensuring that the audit/examination functions avoid adjustments or assessments that are clearly contrary to the terms of the tax treaty or are consistently and commonly relieved in MAP. To achieve this, jurisdictions should work towards:

- 5.1 Enhancing global awareness in audit/examination functions
  - 5.1.1 Providing training to relevant personnel on international tax and transfer pricing matters, including the FTA’s “Global Awareness Training Module.”
  - 5.1.2 Supplementing this training with insights from past MAP cases to identify and address recurring issues that are frequently relieved in MAP.
  - 5.1.3 Building awareness in the audit/examination function of tax treaty obligations in international tax and transfer pricing matters.
- 5.2 Ensuring well-reasoned and well-substantiated audit adjustments or assessments
  - 5.2.1 Strengthening the quality of audit adjustments or assessments by ensuring that they are well-supported by facts, legal reasoning and relevant treaty provisions, which are clearly recorded in writing and included in the audit report.
  - 5.2.2 Encouraging audit teams to request all necessary information from the taxpayer at the earliest possible time and produce robust documentation that can serve as a reliable foundation for potential MAP cases, reducing the need for extensive fact-finding during the MAP phase.
- 5.3 Enhancing periodic engagement and communication between the audit/examination and competent authority functions by establishing independent governance or feedback processes. This should enable the competent authority to provide input where appropriate and feasible, especially in high-value or complex cases, to help prevent repeated adjustments or assessments that have been consistently and commonly relieved in MAP. However, this should be done while respecting the audit/examination function’s

5.4	<p>independence to assert adjustments or raise assessments and while maintaining the competent authority's independence from the approval or direction of personnel that make adjustments leading to MAP cases (as discussed in <b>Best practice 9</b>).</p>
6	<p><b>6 Best practice 6.</b> Jurisdictions should take proactive measures to minimise the need for dispute resolution and prevent MAP cases by:</p>
6.1	<p>Engaging in agreements under the equivalent of Article 25(3) of the OECD Model Tax Convention contained in their tax treaties. These may include agreements on the interpretation of treaty terms, the application of treaty provisions, or general framework agreements outlining how cases involving specific issues, sectors, or groups of taxpayers will be resolved. Publishing these mutual agreements is also encouraged to improve guidance and proactively resolve future disputes, unless the nature of the agreement means that its publication would undermine its administrative goal.</p>
6.2	<p>Where available and appropriate, entering into bilateral or multilateral advance pricing arrangements (APAs) under the equivalent of Article 25(3) of the OECD Model Tax Convention contained in their tax treaties for specific cases requested by taxpayers, to provide certainty and prevent disputes before they arise. In this regard, where appropriate and possible, ongoing audits concerning the same taxpayer and issues covered by the APA request that may lead to MAP cases for previous years may even be suspended while a bilateral or multilateral APA is being actively discussed and progressed with the cooperation of the taxpayer, while at the same time recognising that any decision to suspend an audit would follow careful consideration on a case-by-case basis.</p>
6.3	<p>Implementing procedures to allow, in appropriate cases, taxpayer requests for the multi-year resolution of recurring issues through MAP, where the relevant facts and circumstances are the same and are subject to the verification of such facts and circumstances on audit, to prevent the repetition of MAP cases in future years. Jurisdictions should also, where appropriate, explore the coordination of MAP with bilateral or multilateral APA cases to achieve prospective and efficient resolutions for recurring disputes.</p>

### 1.3. The Competent Authority function in MAP

28. While Article 25 of the OECD Model Tax Convention provides the legal foundation for MAP, its practical implementation depends heavily on how jurisdictions organise and resource their competent authority functions. The definition of a "competent authority" in tax treaties is derived from Article 3(1)(f) of the OECD Model Tax Convention and is typically broad, allowing jurisdictions flexibility to designate this role within their governmental structure. In practice, this authority is often officially provided to the Minister of Finance and delegated to a specific office within the Ministry of Finance or the tax administration. However, the mere delegation of authority is not sufficient to ensure that the competent authority function is conducted in a robust manner. The organisation and structure of and the resources provided to the competent authority function is in practice of equal, if not greater importance.

29. The Action 14 Minimum Standard requires Inclusive Framework member jurisdictions to ensure that adequate resources are provided to the competent authority function. This means that the competent authority function should have adequate staff with sufficient training as well as the funding and should be organised in a way that allows the staff to undertake MAP in an efficient, effective and timely manner.

30. The number of personnel in a competent authority function should be proportionate to the inventory

of MAP cases, taking into account both the volume and complexity of the matters under consideration as well as any expected growth in the case inventory. Staff assigned to MAP must not only have technical expertise in substantive tax treaty interpretation and transfer pricing but also be well-versed in the practical handling of MAP cases, including bilateral discussions in an international environment and case management. In all cases, the competent authority must be adequately funded to perform its role, including access to legal and technical resources, databases, secure communications platforms and the ability to host or participate in face-to-face or virtual meetings where needed. It was noted by many competent authorities responding to the survey that the use of technology has increased in the past years, most notably through the organisation of virtual meetings to replace or supplement costly and time-intensive physical meetings that are not always the most appropriate choice. Accordingly, while a jurisdiction with a more limited MAP inventory could in turn have a more limited competent authority function as well, they should still ensure that the staff members assigned the role have the time and capacity to undertake MAP whenever it arises. Where staff carry MAP responsibilities alongside other roles, appropriate safeguards must be in place to ensure that MAP duties are not deprioritised or delayed due to competing demands. With regard to the hiring of staff members, it was noted by some competent authorities responding to the survey that, although it is usually relatively simple to hire tax law specialists, competent authorities generally face more difficulties to hire appropriately trained transfer pricing specialists and economists.

31. While most competent authorities delegate the full powers of the function (in other words, the legal authority to conclude a MAP agreement) to the required personnel who carry out, or are involved in, the day-to-day functioning of the MAP programme, it is advisable to have key personnel who will ultimately make the important decisions on a file remaining closely involved. In doing so, competent authorities will alleviate one common constraint to the success of any type of resolution process, which is having decision-makers too far removed from the information. In order to administer tax treaties as effectively and efficiently as possible, it is beneficial to have a competent authority that is readily accessible to taxpayers and has the authority to complete its mandate.

32. Another key feature of an effective competent authority function is the mindset of the staff members who carry out this role. Regardless of where they sit in the government, staff appointed to the competent authority act under the authority of the treaty and their primary responsibility is to uphold the treaty in good faith. This demands a solution-oriented approach: one that values consistency, fairness and trust-building with treaty partners. Accordingly, staff should be encouraged to propose and accept reasonable outcomes, to be pragmatic where appropriate and to compromise where necessary in order to achieve resolution, while always grounding their approach in the legal framework of the treaty itself.

33. Training and capacity-building are also essential to support this mindset and to ensure technical competence in the staff that undertake the competent authority function. Such personnel should receive structured onboarding and continuous training that covers both the legal and procedural dimensions of MAP. In particular, training in the area of soft skills such as conflict resolution and consensus building, with a focus on the “win-win” proposition, would promote the concept of joint problem-solving and can be helpful in achieving amicable resolutions in MAP cases. Since MAP requires working in an international environment, the staff in the competent authority function should also be trained to be able to discuss and resolve MAP cases in English. In addition, jurisdictions should take care to ensure that staff transitioning from audit or examination roles are retrained in the specific mindset and principles of MAP. Exposure to ongoing cases under the guidance of experienced MAP personnel can help build confidence and reinforce the neutrality expected in their new role. For this purpose, some competent authorities responding to the survey indicated having put in place specific training programs for new staff members aimed to supplement their theoretical knowledge in tax with specific soft skills useful in conducting MAP as well as increased collaboration between junior and senior members as it can be considered as a way to yield better results.

34. Competent authorities often have areas of expertise within their offices to handle the wide range

of MAP cases. Ideally, the competent authority staff should be able to draw on individuals with the following areas of expertise:

- Legal analysis: knowledge in the interpretation and application of the relevant tax treaty. This would include knowledge of the relevant laws, regulations, case law and of generally accepted international standards such as the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines.
- Economic analysis: knowledge and understanding (in particular in transfer pricing cases) of the economic aspects of the transaction as well as knowledge of market, industry and commercial practices.
- Accounting and statistical data analysis: knowledge of accounting standards and practices adopted by large taxpayers and in particular cases (e.g. for complex transfer pricing issues), knowledge in analysing statistical data.
- Expertise in examination processes: since the examination records are often the main information resource in the MAP case, knowledge of the examination process (documentation requirements, burden of proof etc.) and techniques (e.g. comparability searches.)

35. Jurisdictions adopt various organisational models for their competent authority functions. A competent authority function with the necessary authority and independence to undertake their tasks may exist within either the Ministry of Finance or the tax administration. However, some competent authorities are of the view that their positioning in the Ministry of Finance adds to their independence from the audit/examination function and gives them more authority to reverse decisions taken in audits or provide downward adjustments.

36. Some jurisdictions operate a centralised model for their competent authority function, with a dedicated team responsible for handling all MAP cases, which is fully independent from all other functions in the Ministry of Finance and the tax administration and where the staff members work on MAP (and/or APA cases) on a full-time basis. However, this may not be feasible for all jurisdictions, particularly those with resource constraints and may not even be necessary for jurisdictions that do not have a significant MAP inventory. Accordingly, in many jurisdictions, the competent authority function is carried out by staff who undertake other functions as well, typically related to tax treaties, transfer pricing or the exchange of information. A few jurisdictions also follow a decentralised approach, assigning MAP responsibilities across regional offices, in which case caution must be had to ensure that all staff members in these offices undertake MAP with the right mindset and independence consistently. Where case volumes justify it, jurisdictions may also establish distinct teams within the competent authority function, for example, separating those dealing with transfer pricing attribution or permanent establishment allocation cases (“**attribution/allocation cases**”) from those handling other cases on treaty interpretation or application (“**other MAP cases**”). In some cases, it is helpful to group teams based upon geographical regions or industry specialisation, depending upon the competent authority’s MAP inventory. Industry specialisation may be advisable to strengthen industry knowledge or technical expertise, whereas geographical emphasis may assist in enhancing relationships between competent authorities if cases are discussed with the same counterparts over a period of time.

37. In all of these models, it is critical that the competent authority is positioned at an appropriate level and organised in a manner that ensures it is not unduly influenced by the audit/examination function, since MAP cases involve reviewing audit adjustments or assessments made by that very function. Accordingly, the Action 14 Minimum Standard requires Inclusive Framework member jurisdictions to 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. In practice, this would mean that the staff

members who work on or directly supervise a MAP case should not have been involved in the same case at the audit level in any capacity, including a supervisory capacity. This includes situations where personnel at a higher level may be actively involved both at the audit level and during MAP for the same case in a way exceeding the usual involvement of a high-level superior. This ensures the autonomy of the competent authority and enables it to carry out its mandate without becoming overly reliant upon other areas of a tax administration which do not share the competent authorities' primary objective, namely relieving taxation not in accordance with the tax treaty.

38. A truly independent competent authority function is essential to enable a standard of best endeavours in resolving cases, particularly where the competent authority is required to evaluate the appropriateness of an adjustment made by its own audit function and determine whether unilateral relief should be granted under the unilateral phase of MAP. While the Action 14 Minimum Standard sets the foundation by requiring separation from audit decision-making, competent authorities should ensure that this independence extends to all staff members who had more than a peripheral role in the audit process, including staff members who performed or assisted in the economic analysis at the audit stage.

39. Nevertheless, it is acknowledged that the staff in the audit/examination function who performed the adjustment or assessment that is the subject of a MAP case would be best placed to provide factual clarifications. Accordingly, the competent authority function may obtain any factual clarifications necessary concerning the taxpayer or the adjustment or assessment during the MAP process (including during meetings between the competent authorities in MAP, with the consent of the other competent authority, as noted in section 3.1).

40. The Action 14 Minimum Standard also requires Inclusive Framework member jurisdictions to 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 without being influenced by considerations of the policy that the country would like to see reflected in future amendments to the treaty. This means that a competent authority should resolve a MAP case on the basis of the terms of the current tax treaty, irrespective of whether those terms are sought to be changed in the future. For example, where two jurisdictions have entered into a tax treaty in line with the OECD Model Tax Convention and the jurisdictions are engaged in discussions as to whether they should revise the treaty to expand the scope of the permanent establishment ("PE") provision contained therein, a MAP case under the current treaty should follow the terms of that treaty and not the expanded scope being discussed for the future. However, while competent authorities must remain independent of future tax treaty policy choices when resolving current cases, their practical experience gained from MAP can provide valuable insights for future treaty negotiations. Recurring interpretive issues or procedural obstacles identified through MAP can be communicated to treaty policy teams to help inform improvements to treaty language or negotiation positions going forward.

41. To protect the integrity of the MAP process, jurisdictions should also ensure that performance evaluations of competent authority staff are not tied to the revenue sustained in MAP cases, which is also an obligation for Inclusive Framework Member jurisdictions stemming from the Action 14 Minimum Standard. Instead, the performance of a staff member should be assessed based on objective and subjective indicators that reflect the quality, timeliness and consistency of their work, focusing on actions within their control. It is important to note that despite the best efforts of a competent authority function, a MAP case may not be resolved in a timely manner owing to a variety of factors such as the lack of cooperation from the taxpayer concerned, lack of timely responses from the other competent authority, ongoing litigation etc. Keeping this in mind, the timeliness, quality and constructiveness of a staff member's positions as well as communication and engagement with other competent authorities, supported by feedback from supervisors and relevant peer competent authorities, may be viewed as key components to performance evaluation.

### ***Best practices***

**7 Best practice 7.** Jurisdictions should ensure that the competent authority function is structured in a manner that enables staff members to effectively fulfil each jurisdiction's obligations under their tax treaties. This includes:

- 7.1 Appropriate structure: Positioning the competent authority function within the appropriate department to ensure it can independently and effectively carry out its MAP responsibilities, including overseeing the timely implementation of MAP agreements.
- 7.2 Adequate staffing: Allocating a sufficient number of suitably experienced staff members to manage the MAP caseload effectively, taking into account both the volume and complexity of cases and monitoring and adjusting the staffing of the function depending on change in MAP inventory. Where staff members are assigned to MAP on a part-time basis, care should be taken to ensure that they are not pressured to prioritise other responsibilities at the expense of their MAP-related duties.
- 7.3 Ongoing training: Providing staff with thorough training in substantive tax treaty and/or transfer pricing matters, depending on the type of cases they will handle, as well as the practical handling of MAP cases, on an ongoing basis, including effective training and handover for new staff brought into the team to ensure a smooth transition.
- 7.4 Sufficient budget: Ensuring adequate funding to support the effective preparation and exchange of positions, as well as organisation of and participation in meetings between the competent authorities in MAP. This includes planning for logistical and operational costs by:
  - 7.4.1 Establishing outline agreements with treaty partners regarding the timing and location of meetings.
  - 7.4.2 Preparing an annual budget to forecast the costs of overseas travel or for hosting meetings, including venue expenses and necessary provisions, to allow allocation of adequate funds, while ensuring flexibility to allocate additional funds during the year where required.

**8 Best practice 8.** Jurisdictions should ensure that the staff members in its competent authority function follow a treaty-first approach, to uphold the treaty in good faith (as described in **Best practice 2**) without regard to the revenue involved in a case, including:

- 8.1 Handling and resolving the MAP case based on the merits of the case, without reperforming the audit at the MAP stage<sup>22</sup>.
- 8.2 Acting autonomously in MAP cases, without requiring approval outside the competent authority function.
- 8.3 Granting unilateral relief where appropriate.
- 8.4 Adopting a pragmatic, solution-oriented stance in bilateral discussions.
- 8.5 Proposing and accepting reasonable solutions.
- 8.6 Being principled and fair in positions taken in MAP.
- 8.7 Being willing to compromise where appropriate.
- 8.8 Ensuring that personnel transitioning from the audit/examination function to the competent authority function do not allow their previous experience to negatively influence their approach and mindset in MAP cases, receive specialised training on the required MAP mindset and are initially exposed to MAP cases by observing a few MAP cases being conducted by more experienced team members.

<sup>22</sup> See paragraph 116 for more details.

**9 Best practice 9.** Jurisdictions should ensure that personnel in the competent authority function operate independently of the audit/examination team responsible for the original adjustment or assessment and only consult them for factual clarifications where necessary. This can be achieved by:

- 9.1 In jurisdictions with meaningful MAP experience, structurally separating the competent authority function from audit/examination functions to ensure that any staff member that has previously worked in the audit/examination function and was involved in the adjustment or assessment (including economic analysis) does not participate in the handling and resolution of the same case at the MAP stage. In this regard, the competent authority function should ideally be fully independent from the audit/examination function. Nevertheless, current or former staff members in the audit/examination function may provide factual clarifications relevant to the case as noted in Best practice 44 and staff members with relevant expertise may be transitioned from the audit/examination function to the competent authority function subject to training with respect to the difference in approach as noted in Best practice 8.8.
- 9.2 In jurisdictions with limited MAP experience, where staff in the competent authority function have various tasks, ensuring that any staff member involved in the audit adjustment or assessment (including economic analysis) does not participate in the handling and resolution of the same case at the MAP stage.
- 9.3 Preventing active involvement of a supervisor in the same case at both the audit and MAP levels, beyond routine signoffs by high-level functionaries in the tax administration.

**10 Best practice 10.** Jurisdictions should ensure that MAP cases are resolved based solely on the applicable tax treaty and not influenced by future treaty policy considerations. In this regard, endeavours to resolve MAP cases (as described in **Best practice 39**) should not be ceased on the basis that there may be a change in the treaty or a different policy position in the future. However, feedback from MAP cases on difficulties or doubts that may arise concerning the interpretation or application of tax treaty provisions should be systematically shared with the treaty negotiation team to inform potential future amendments to the treaty or future treaty negotiations, where not already sought to be addressed through a competent authority agreement under the equivalent of Article 25(3) of the OECD Model Tax Convention in the concerned treaty.

**11 Best practice 11.** Jurisdictions should ensure that the performance assessment of the staff in the competent authority function, including supervisory personnel, is not based on the revenue sustained through a case. Instead, assessments should focus on tracking progress against specific milestones for each stage of a MAP case in their own jurisdiction, assessing whether required actions under that competent authority's control have been carried out effectively, efficiently and within appropriate timeframes, including communicating with and responding to the other competent authority and taxpayer in a timely manner, as well as through:

- 11.1 Objective performance indicators such as the number of cases resolved and the timeliness of case resolution including the sharing of position papers and responses, taking into account where the number of cases resolved and timeliness of case resolution are affected by factors attributable to the treaty partner or taxpayer, or to the complexity of the issues in dispute more broadly and the concerned staff member has taken necessary actions in a timely manner.
- 11.2 Subjective performance indicators such as consistency in positions taken (particularly in similar fact patterns, regardless of the jurisdiction's role in the case) and feedback on the quality of relationships maintained by a staff member with treaty partners to promote constructive international cooperation.

## 1.4. Types of Cases Covered in MAP

42. The following are some typical examples where taxation not in accordance with a tax treaty might occur, where a taxpayer might make a MAP request to obtain assistance or relief via the MAP process:

- *Transfer pricing cases*: This involves a situation where a taxpayer is subject to additional tax in one jurisdiction because of a transfer pricing adjustment to the price of goods or services transferred to or from a related party in the other jurisdiction. The taxpayer may request that the competent authority of the first jurisdiction reduce or withdraw the adjustment and/or that the competent authority of the second jurisdiction allow a corresponding adjustment to the income of the related party to prevent economic double taxation.
- *Dual residence cases*: This involves a situation where a taxpayer is considered to be a resident of two jurisdictions under each jurisdiction's domestic law and each jurisdiction asserts that the taxpayer is a resident of its jurisdiction for purposes of the tax treaty between them. If unresolved, the taxpayer could be subject to taxation not in accordance with a treaty and therefore liable for tax on the same income in both jurisdictions. A request to the competent authorities would initiate discussions between the competent authorities regarding the proper application of the tiebreaker rules contained in the residency article of the treaty. The taxpayer should approach the competent authority of the jurisdiction in which the taxpayer asserts residency and, in some cases, where it is incorporated.
- *Withholding tax cases*: This involves a situation where a withholding tax is levied beyond what is allowed within an applicable tax treaty by one treaty partner jurisdiction on a payment to a resident of the other jurisdiction. The taxpayer may request a competent authority to address the taxation not in accordance with the tax treaty with the other competent authority.<sup>23</sup>
- *Permanent establishment cases*: This involves a situation where a taxpayer resident in one jurisdiction is taxed on its worldwide income, including income from carrying on business in the treaty partner jurisdiction, and is also taxed in that other jurisdiction on the business income earned there. The case may raise questions as to whether the taxpayer has a permanent establishment in the source jurisdiction under the equivalent of Article 5 of the OECD Model Tax Convention in the relevant tax treaty and, if so, how much income should be attributed to that permanent establishment under the equivalent of Article 7. The taxpayer may file a MAP request to resolve taxation not in accordance with the tax treaty.
- *Characterisation cases*: This involves a situation where a taxpayer is taxed in one jurisdiction in a manner that one jurisdiction considers consistent with a provision of the tax treaty, while the other jurisdiction believes the matter falls under a different provision and should either be taxed only in the other jurisdiction or taxed differently in the first jurisdiction. The resulting mismatch may lead to taxation not in accordance with the treaty and in such cases, a MAP request may be filed to address the differing interpretations and resolve taxation not in accordance with the treaty.
- *Non-discrimination cases*: This involves a situation where a domestic law provision is being applied in a discriminatory way in violation of the non-discrimination article of a tax treaty. The taxpayer may request the competent authorities to resolve the taxation that has occurred that is not in accordance with the tax treaty.
- *Cross-border worker cases*: This involves a situation where a taxpayer engaged in cross-border

---

<sup>23</sup> It should be noted that some jurisdictions take the view that there is no taxation not in accordance with the tax treaty concerned where a taxpayer has not completed domestic refund procedures. See paragraph 96.

employment is taxed in the host jurisdiction based on the number of days worked, while asserting that the conditions under the equivalent of Article 15(2) of the OECD Model Tax Convention contained in a tax treaty are met. In such cases, a MAP request may be made to resolve the differing interpretations. These cases, particularly among bordering jurisdictions in Europe, account for a large proportion of the other MAP cases reported in the MAP Statistics.

43. There could be disagreements between two competent authorities as to whether a particular action creates taxation not in accordance with a tax treaty or whether the taxation is purely a matter of domestic law. For example, because Article 9 of tax treaties applies only with respect to the allocation of profits and not the determination of taxable income, a MAP regarding the same should apply only to questions concerning the former and not the latter.<sup>24</sup> There can be disagreements, however, about whether the application of certain domestic law provisions that are concerned with determining taxable income (i.e. domestic law rules separate and apart from the transfer pricing rules) pre-empt discussions about income allocations under transfer pricing rules that should take place through the MAP.<sup>25</sup> Competent authorities should consult each other to try and find common ground on the applicability of the treaty before deciding whether the objection raised by the taxpayer is justified, in the interest of avoiding double taxation where possible.

**Best practice**

**12 Best practice 12.** For issues where the two jurisdictions concerned may have different views on whether the adjustment or assessment raises treaty issues or is purely a matter of domestic law, the competent authority receiving the MAP request should not decide on its own to not substantively consider the case in MAP without first consulting the other competent authority and making endeavours in good faith to reach a shared understanding on whether the MAP request presents issues within the scope of the treaty.<sup>26</sup>

## 1.5. Timeline for MAP, monitoring of MAP Inventory and reporting MAP Statistics

44. As noted above, the BEPS Action 14 Minimum Standard requires Inclusive Framework member jurisdictions to seek to resolve all MAP cases within an average timeframe of 24 months. The progress toward meeting such target is periodically reviewed on the basis of statistics prepared in accordance with the agreed reporting framework. Consequently, a MAP Statistics Reporting Framework (“**Reporting Framework**”) was developed based on which jurisdictions have been reporting annual MAP statistics since 2016.

45. The Reporting Framework distinguishes between MAP cases initiated prior to 1 January 2016 (or the year of accession to the BEPS Inclusive Framework for newer members) (“**Pre-Cases**”) and cases initiated thereafter (“**Post-Cases**”). For Pre-Cases, jurisdictions apply their own definitions and

<sup>24</sup> Domestic law rules for the determination of taxable income are, however, subject to the non-discrimination requirements of Article 24.

<sup>25</sup> Business respondents to the survey have noted that this issue has arisen in practice.

<sup>26</sup> Element 3.1 of the Action 14 Minimum Standard already requires all Inclusive Framework member jurisdictions to implement a documented bilateral notification or consultation process for cases in which the competent authority to which the MAP case was presented does not consider the taxpayer’s objection to be justified, where a treaty does not permit a MAP request to be made to either Contracting State.

computational rules especially concerning the classification of cases and the measurement of average time. These cases are not required to be matched with the treaty partner and may result in double counting in the aggregate data. In contrast, the reporting of Post-Cases is subject to standardised definitions and rules as to the definition of a MAP case, the computation of average time and the classification of outcomes as defined in the Reporting Framework.

46. For both Pre-Cases and Post-Cases, the Reporting Framework requires jurisdictions to provide detailed annual MAP statistics divided into two categories: attribution/allocation cases and other MAP cases. For each category, jurisdictions report five key data points: the number of cases in the inventory at the beginning of the year, the number of new cases started during the year, the number of cases closed during the year (further broken down by specified outcomes), the number of cases remaining in the inventory at the end of the year and the average time taken to close cases.

47. The computation of average time for Post-Cases is standardised and broken down into several stages, including the time from MAP request to start date, from start date to Milestone 1 (the earliest position paper exchanged between the competent authorities) and from Milestone 1 (if any) to the end date. Rules are provided to determine the Start and End dates, with specific provisions to extend the Start Date where the information provided by the taxpayer along with the MAP request is incomplete. In addition, all closed cases, whether Pre-Cases or Post-Cases must be categorised into one of ten outcomes, ranging from access denial, the objection raised by the taxpayer being considered not justified or withdrawal by the taxpayer to full or partial resolution through MAP, unilateral relief, or domestic remedies. Additional outcomes include a finding of no taxation not in accordance with the treaty, failure to reach agreement, or other outcomes. Definitions and further details are provided in the Reporting Framework and accompanying annexes.

48. Jurisdictions are required to coordinate with treaty partners to ensure matching and consistency in the reporting of Post-Cases, thereby allowing most double counting to be eliminated in the published statistics. While Pre-Cases are published in an aggregated manner, for Post-Cases, jurisdictions should disclose treaty partner names for those cases where five or more cases exist in a shared inventory, while smaller case volumes and cases with treaty partners that are not Inclusive Framework member jurisdictions are reported under a *de minimis* category.

49. While the Action 14 Minimum Standard only requires all MAP cases on average to be resolved within a timeframe of 24 months, competent authorities should generally aim to resolve each of their MAP cases within 24 months, with MAP cases closed in the unilateral phase of MAP ideally taking four months or less. An ideal timeframe for the MAP process from start to end is provided in **Annex D**.

50. With respect to managing MAP inventories, jurisdictions should put in place processes for inventory management depending on the size of their inventory to ensure cases are handled efficiently and within reasonable timeframes. For jurisdictions with medium to large inventories showing more meaningful MAP experience<sup>27</sup>, this may involve assigning dedicated case handlers and supervisors to each case, supported by a comprehensive internal manual as well as creating an organised and regularly updated digital MAP case database that supports case tracking and management through categorisation by issue type or economic sector. This can be supported by periodic review meetings, milestone-based updates and practices for seamless handover.

51. For jurisdictions with smaller MAP inventories, there may be no need for an internal manual or a

---

<sup>27</sup> For instance, meaningful MAP experience can be seen as an average of at least ten MAP cases in a jurisdiction's inventory over the previous three years on average, also seen as part of the definition agreed by the FTA MAP Forum under the BEPS Action 14 Assessment Methodology.

sophisticated database for MAP inventory management. However, they should designate at least one staff member to receive and prioritise MAP requests, even where individuals perform multiple functions. Even for these jurisdictions, more basic inventory tracking as well as monitoring and oversight are recommended.

52. It is also important to “risk-assess” MAP cases at the earliest possible stage to enable the competent authority or the responsible high-level official to assign the MAP case in the most effective way. For example, when a case is highly complex and large amounts are at stake, or when a case involves the interpretation of a tax treaty article which may have wider implications on the jurisdiction’s tax policy, it should be assigned to a high-ranking senior officer or to qualified and experienced staff. On the other hand, routine cases involving limited amounts may be assigned to less experienced staff, assuming they are properly supervised. By adopting this approach, qualified and experienced staff can focus on the complex and difficult cases. At the same time, this approach reduces the risk of small cases being shelved over a long period of time.

53. Among the competent authorities that responded to the survey, those with a larger MAP inventory often reported having invested in a dedicated IT tool to monitor their MAP caseload that allows the tracking of the steps pertaining to each MAP case and can issue reminders when no progress has been made for some time to ensure that most MAP cases can be resolved within the set deadlines or time targets. Further, these tools also allow for easier reporting, including of the MAP Statistics. Responding competent authorities with smaller MAP inventories generally reported using a spreadsheet instead, until it becomes unwieldy, where they then switch to more appropriate dedicated case management tools. Lastly, some respondents reported that these tools can also be used for monitoring APAs after minor modifications as well.

### ***Best practices***

**13 Best practice 13.** Jurisdictions should aim to resolve each MAP case at the earliest possible time and within a timeframe of 24 months from the Start Date as established under the MAP Statistics Reporting Framework. If a case is expected to exceed this timeframe due to factors such as case complexity, competent authorities should continue discussions where a resolution remains feasible and provide taxpayers with regular updates on progress where requested. However, it is acknowledged that the time taken to resolve a MAP case may exceed this timeframe owing to factors attributable to the taxpayer as well, such as delays in the taxpayer providing the requested information or the taxpayer actively pursuing litigation alongside the MAP process with respect to the same issues.

In situations where a MAP case has been open for 18 months and is likely to exceed a reasonable period beyond the 24-month timeframe, it is advisable for senior officials in the competent authority functions of the concerned jurisdictions to review the case, identify the reasons for the delay and agree on an approach to ensure its efficient resolution as promptly as possible.

While it is recognised that complex cases, especially certain attribution/allocation cases, may take more than 24 months to resolve, competent authorities should aim to resolve their remaining MAP cases in a quicker manner to ensure that all cases are closed within 24 months on average.

**14 Best practice 14.** Jurisdictions should implement structured inventory management processes, using technology where possible, to ensure the efficient and timely handling of MAP cases. This includes:

14.1 For jurisdictions with medium to large inventories (e.g. at least ten MAP cases in its MAP inventory on average over the previous three years):

- 14.1.1 Assigning dedicated case handlers and supervisors to each case (which could include designated experts in the team for the sector involved), issuing regular updates and reminders to case handlers and prioritising cases where necessary to maintain efficiency.
- 14.1.2 Establishing a clear and comprehensive internal practice manual for staff in the competent authority function which provides details on the actions required to be performed and the associated timelines for each step of the MAP process.
- 14.1.3 Maintaining a well-organised database that includes key details such as the treaty partner, start date, issue under MAP, a high-level description of the case, the steps undertaken in the MAP process and the date of the last competent authority action. This database could split the cases into attribution/allocation cases and other MAP cases and further sub-categories within these main categories depending on issues/sectors. This database should be updated regularly to reflect case progress.
- 14.1.4 Establishing a clear workflow, whereby upon receipt of a MAP request, the case is recorded in the MAP database, assigned to a case handler by the team leader and allocated a supervisor (generally a delegated competent authority). The case handler should then be in charge of updating the database.
- 14.1.5 Implementing milestone-based case updates, conducting regular meetings between case handlers and supervisors to review progress and ensuring closer monitoring by the supervisor and the delegated competent authority's team for cases that exceed 18 months in duration.
- 14.1.6 Ensuring seamless transition and handover between a new case handler taking over a case from a previous case handler.

14.2 For jurisdictions with small MAP inventories (e.g. less than ten MAP cases in its MAP inventory on average over the previous three years):

- 14.2.1 Ensuring that at least one staff member is always available to receive and prioritise MAP requests as well as their handling and resolution when multiple functions are being performed by staff assigned to the competent authority function.
- 14.2.2 Assigning responsibility for tracking ongoing MAP cases, including key details such as the treaty partner involved, the Start Date, the issue in MAP, a high-level description of the issue and the date of the last competent authority action.
- 14.2.3 Monitoring the progress of MAP cases to identify where action is needed, ensuring proactive case management.
- 14.2.4 Overseeing the competent authority function to confirm that tasks are performed efficiently, effectively and in a timely manner, preventing delays or inefficiencies.

## 1.6. Pre-MAP consultations

54. Jurisdictions may consider offering taxpayers the opportunity for pre-MAP consultations, allowing taxpayers to engage with the competent authority before submitting a formal MAP request. This engagement can help taxpayers better understand eligibility conditions, documentation requirements and procedural aspects of the MAP process. While the competent authority must not engage in substantive discussions on the merits of a case or pre-agree any position, early consultations can help clarify the scope of information needed and set expectations for the taxpayer regarding formal requirements, timelines and process. Such consultations can be particularly helpful in complex or novel cases where procedural clarity may prevent delays or issues later on in the MAP process.

55. A significant number of competent authorities responding to the survey reported allowing or even

encouraging meetings before the filing of MAP requests as they can help smoothen the MAP process afterwards by avoiding errors and ensuring that the required information is provided. While it was most generally acknowledged that such meetings are informal, in some jurisdictions a formal request is required. However, most competent authorities acknowledged that it could put a strain on their resources and therefore, generally restrict these meetings to the most complicated MAP cases such as attribution/allocation cases, noting, nonetheless that using the phone or emails in lieu of a physical meeting can allow for a more efficient use of their resources. Lastly, some jurisdictions warned that these meetings should not lead to an agreement with only one competent authority on a unilateral position, nor should the taxpayer try using them to influence the MAP process.

56. Pre-MAP consultations may improve the quality of MAP requests in general and ensure that submissions are complete, well-structured and aligned with the competent authority's procedural requirements. It also provides an opportunity for the competent authority to inform taxpayers of any gaps or to guide them on areas where further clarification or analysis may be necessary. Importantly, such discussions may also allow the competent authority to provide a realistic indication of whether the issue raised appears suitable for MAP, without making any binding commitments.

57. However, care must be taken to ensure that pre-MAP consultations do not become overly burdensome or duplicative of the formal MAP process, which could then delay MAP proceedings or disincentivise legitimate requests. Moreover, pre-MAP consultations must not be used to pressure taxpayers into accepting positions or outcomes in advance, nor should it be a forum for resolving issues unilaterally. Competent authorities should therefore retain discretion over when and how to offer such consultations, ensuring resources are used effectively while maintaining the integrity of the MAP process.

#### ***Best practice***

**15 Best practice 15.** Jurisdictions should be open to taxpayers seeking guidance before submitting a MAP request to understand the required filing format, documentation requirements as well as formal and procedural aspects around eligibility conditions in general. While taxpayers should not expect the competent authority to provide a formal position on eligibility or substantive positions on the case before a MAP request is filed, the competent authority may, at its discretion, discuss the general prospects of pursuing MAP in a given situation. Nevertheless, competent authorities should not engage with the taxpayer at this stage to unilaterally agree any position that will be covered in the taxpayer's MAP request.

## **1.7. Published information on MAP**

58. While the need for a well-resourced, structured and independent competent authority function has been well recognised, it is equally important that taxpayers are provided with clear, comprehensive and consistent guidance on how to file a MAP request and navigate the MAP process within a jurisdiction. This is particularly crucial given the potential overlap with domestic remedies and the procedural complexities that may arise.

59. Accordingly, the Action 14 Minimum Standard requires Inclusive Framework member jurisdictions to publish rules, guidelines and procedures to access and use the MAP, take appropriate measures to make such information available to taxpayers and to ensure that their MAP guidance is clear and easily accessible to the public. The Action 14 Minimum Standard provides that the MAP guidance should meet two minimum conditions, the contact details of the competent authority and the manner and form for submitting a MAP request.

60. In general, jurisdictions should ensure that clear, accessible and comprehensive MAP guidance is publicly available, ideally published on the website of the Governmental body where the competent authority function is located i.e. usually the Ministry of Finance or the tax administration. This guidance should be written in plain language, preferably with an accompanying English version, and tailored to help both taxpayers and other competent authorities understand how MAP operates in the jurisdiction. Making this information publicly available supports effective access to MAP and reduces delays by helping taxpayers prepare complete and properly framed MAP requests. Additionally, clear guidance improves coordination with treaty partners by establishing shared expectations about the jurisdiction's MAP policy and practices. Jurisdictions should ensure that this guidance is updated regularly and reflects current practice, including any relevant legal or procedural changes. It should also be sufficiently detailed to enable taxpayers to understand whether their case is eligible for MAP and what documentation and steps are required to initiate and support a request. Finally, the guidance should be easily accessible to anyone seeking it. It should be straightforward to locate on the hosting website, ideally retrievable through a simple search using terms such as “[Jurisdiction name] mutual agreement procedure” in English or the jurisdiction's official language. The guidance should also appear prominently in results from general internet search engines using similar search terms.

61. The MAP guidance can be in any format – while some jurisdictions have published the guidance as a regulation or practice manual issued by the Ministry of Finance or tax administration<sup>28</sup>, others have published the guidance in less formal formats such as a detailed website section<sup>29</sup> or a slide deck<sup>30</sup>. When determining the format for publishing MAP guidance, it is important to ensure that the chosen medium allows for easy and frequent updates, such as changes to the contact details of the competent authority, without requiring legislative approval or parliamentary consideration.

62. In addition to meeting the Action 14 requirements, jurisdictions are encouraged by the FTA MAP Forum under the Action 14 peer reviews to include information on the following items in their MAP guidance:

- How the MAP operates in a jurisdiction, the timing and rules for accessing MAP.
- The role of the competent authorities and how the competent authority applies the process in practice.
- The availability of arbitration.
- The relationship with available domestic remedies.
- Whether MAP is available in cases concerning: (i) transfer pricing, (ii) audit settlements, (iii) the application of anti-abuse provisions, (iv) multilateral disputes and (v) bona fide foreign-initiated self-adjustments.
- Whether taxpayers can request for the multi-year resolution of recurring issues through MAP.

---

<sup>28</sup> See for example, Ireland's MAP guidance, which is part of the Tax and Duty Manual published by the tax administration, available at: or Canada's MAP guidance, which was published as a circular, but reproduced on the website of its tax administration, available at: <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic71-17/guidance-on-competent-authority-assistance-under-canada-s-tax-conventions.html>.

<sup>29</sup> See, for example, New Zealand's MAP guidance, available at: <https://www.ird.govt.nz/international-tax/double-tax-agreements/mutual-agreement-procedure>.

<sup>30</sup> See, for example, Portugal's MAP guidance, available at: [https://info.portaldasfinancas.gov.pt/pt/informacao\\_fiscal/convocoess\\_eitar\\_dupla\\_tributacao/Documents/Procedimento\\_Amigavel\\_Guia\\_Pratico.pdf](https://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convocoess_eitar_dupla_tributacao/Documents/Procedimento_Amigavel_Guia_Pratico.pdf).

- the steps of the MAP process and the timing of such steps, including actions to be taken by taxpayers (if any).
- The implementation of MAP agreements, including actions to be taken by taxpayers (if any).
- The rights and role of taxpayers in the process.
- The possibility of suspension of tax collection during the course of a MAP.
- The consideration of interest and penalties in the MAP.

63. While a large number of jurisdictions in the Inclusive Framework, particularly those with meaningful MAP experience, have published comprehensive MAP guidance covering most or all of the above topics, some jurisdictions may consider also providing simplified guidance tailored for individual taxpayers, published separately and linked to the more detailed version. This approach can make the process more accessible for taxpayers without a detailed understanding of tax treaties and help them follow the steps for submitting a MAP request more easily, especially if the simplified guidance is made available prominently on the website of the Ministry of Finance or tax administration. Jurisdictions may also consider developing simple digital tools to accompany this guidance, enabling individual taxpayers to submit MAP requests by responding to a series of straightforward questions.

64. In addition, the Action 14 Minimum Standard requires all Inclusive Framework member jurisdictions to publish their country MAP profiles on a shared public platform, following a standardised template developed in coordination with the FTA MAP Forum. Since 2016, MAP profiles for member jurisdictions have been published on the OECD website.<sup>31</sup> This requirement seeks to promote a uniform and clear mechanism for sharing important details regarding the access and functioning of MAP in each jurisdiction. The MAP profile acts as a public resource that highlights vital information, such as the contact details for the competent authority, a link to the jurisdiction's MAP guidance and fundamental aspects of how MAP operates within that jurisdiction.

65. This requirement contributes to the broader goal of enhancing transparency with respect to MAP by allowing both taxpayers and other competent authorities to access information on policies, procedures and requirements with respect to MAP in different jurisdictions. In this regard, it is essential for jurisdictions to maintain their MAP profiles as complete, detailed and regularly updated, including links to their MAP guidance and/or other documents that offer additional information. A profile that is outdated, where the information provided no longer aligns with actual practice or current contact points, can result in inefficiencies and delays in the MAP process.

#### ***Best practices***

**16 Best practice 16.** Jurisdictions should publish clear and accessible guidance on the MAP, including the relevant rules, guidelines and procedures for accessing and using the MAP and take appropriate measures to ensure that this guidance is publicly available, easily accessible to taxpayers and updated regularly to reflect any changes. This guidance should contain comprehensive information on the following:

- Contact details of the competent authority or the office handling MAP cases.
- The manner and form in which taxpayers should submit a MAP request, including the information that is required to be submitted along with the MAP request.
- How the MAP operates in the jurisdiction, including timing and rules for access under tax treaties and other similar instruments (e.g. the EU Arbitration Convention or the EU Dispute Resolution

<sup>31</sup> Available at: <https://www.oecd.org/tax/dispute/country-map-profiles.htm>.

Directive).

- The role of the competent authorities and how they apply the process in practice.
- The availability of arbitration under tax treaties and other similar instruments.
- The relationship between MAP and domestic remedies, including whether access to MAP is available for cases pending or resolved in such remedies, any available recourse where access to MAP is denied or the objection raised by the taxpayer is considered not justified, any restrictions on endeavours in MAP (e.g. if the competent authority is bound by a decision), the taxpayer's right to choose between MAP and domestic remedies and any policy clarifying the prioritisation of MAP relative to domestic remedies, including potential requirements to suspend one while actively pursuing the other.
- How the competent authority considers protective MAP requests.
- Whether MAP is available in cases of: (i) transfer pricing, (ii) audit settlements (including whether the competent authority is bound by such a settlement), (iii) the application of anti-abuse provisions (including whether the competent authority can substantively consider such cases), (iv) multilateral disputes and (v) bona fide foreign-initiated self-adjustments.
- The possibility of multi-year resolution of recurring issues through the MAP.
- The steps of the MAP process and the timing of each step, including any actions required from taxpayers.
- The implementation of MAP agreements, including any necessary taxpayer actions.
- The rights and role of taxpayers in the process.
- The possibility of suspending tax collection during a MAP.
- The consideration of interest and penalties within the MAP.

**17 Best practice 17.** Jurisdictions should publish their MAP profiles on the shared public platform of the OECD website, following the agreed template. They should ensure that the information is complete, detailed and up to date, accurately reflecting their MAP policies, guidance and practices. Where appropriate, profiles should include external links to additional information and guidance.<sup>32</sup>

## 1.8. Expectations from and towards taxpayers in MAP

66. While MAP remains a government-to-government process, the role of taxpayers remains essential to its smooth functioning. While taxpayers are not involved in the actual discussions between the competent authorities, taxpayers are expected to support the process by sharing accurate and complete information early on and maintaining open communication with the competent authorities. This includes being clear about how they intend to use MAP alongside or in place of other remedies (including as to whether the MAP request is being filed on a protective basis) and when a MAP outcome is offered, indicating whether they are prepared to accept it and assist with its implementation. Even though the taxpayer is excluded from parts of the MAP process (e.g. the taxpayer does not take part in the discussions

<sup>32</sup> Element 2.2 of the Action 14 Minimum Standard already requires all Inclusive Framework member jurisdictions to publish their MAP profiles on a shared public platform and the FTA MAP Forum reviews whether the information contained therein is detailed and in line with a jurisdiction's MAP policy, guidance and practices as part of the BEPS Action 14 peer review process.

between the competent authorities or receive copies of communications or position papers exchanged between them), its participation and effort will have a considerable effect on the time it takes to complete a case. In the long-term, the taxpayer would be well served by providing information to the competent authorities in a timely manner.

67. A cooperative approach from the outset, beginning with the audit or examination stage, is essential. A fundamental feature of the MAP process is that it is intended to provide a remedy where taxation is not in accordance with the provisions of the treaty, typically following a completed action by a jurisdiction that gives rise to such taxation. MAP is not intended to serve as a means to circumvent the audit process or to pre-emptively seek relief before the audit has been properly concluded. In practice, however, competent authorities responding to the survey have noted that some cases have arisen in which taxpayers have either declined to cooperate fully with audit teams, refusing to provide the information necessary for the enquiring tax administration to reach a conclusion on a well-evidenced basis, or have agreed to an adjustment during the audit solely to expedite the closure of proceedings and move directly into MAP.

68. In the first scenario, competent authorities have encountered situations where audit teams have exercised available statutory information gathering powers to obtain relevant information but due to a lack of cooperation from the taxpayer, were unable to obtain such information. This resulted in best-judgement assessments, which were later challenged by the other competent authority in MAP on the grounds of insufficient evidentiary support. In some cases, competent authorities responding to the survey noted that the taxpayer has even provided this information to the other competent authority instead. This strategy creates a significant risk of double taxation, as the assessing jurisdiction should not be expected to re-perform the audit at the MAP stage, while the other jurisdiction may be unwilling to grant relief due to insufficient supporting evidence or concern that the adjustment lacks a sound basis. In the second scenario, taxpayers have agreed to or even proposed an adjustment during audit proceedings, representing it as an arm's length outcome, only to later signal to the competent authority of the other jurisdiction in MAP that they did not consider the adjustment justified. Taxpayers adopting such inconsistent positions undermine the integrity of both audit and MAP processes. To mitigate these risks, tax authorities are encouraged to have appropriate governance measures in place to ensure that all adjustments or assessments can be clearly documented and supported and to make full use of domestic information-gathering powers, particularly in cases where MAP may be likely, to ensure that they are clearly supported in both principle and quantum. At the same time, taxpayers should engage consistently and in good faith across both audit and MAP stages, recognising that pursuing divergent strategies or declining to cooperate at the audit stage may not only lead to unresolved disputes but also increase the risk of unrelieved double taxation. However, it should also be highlighted that a lack of cooperation should not be confused with the taxpayer disagreeing with the tax administration's position, which they are entitled to do in MAP. This should also not be confused with a taxpayer that disputes the volume of information or documents requested, which may in fact be disproportionate or unreasonable.

69. Taxpayers should also clearly indicate in their MAP request whether it is being submitted on a protective basis and set out their expectations regarding the priority of MAP in relation to other available remedies. Taxpayers are expected to proceed consistently with their stated position and should not alternate between available remedies based on perceived advantages at different stages of the process. Some competent authorities have observed that, even where MAP is allowed to proceed in parallel with domestic remedies, some taxpayers file MAP requests on a protective basis while pursuing domestic remedies, request that the MAP case not be considered actively and later seek to engage once again in MAP only when the outcome of the domestic procedure appears unfavourable. In some instances, taxpayers have even requested to revert back to domestic remedies after initiating substantive MAP discussions because MAP may be developing unfavourably in their view as well, which has been noted by

competent authorities to be a poor use of competent authority resources.<sup>33</sup> Taxpayers may be engaging in these practices in an attempt to secure the most favourable outcome, while weakening the integrity of both processes and at times, misusing associated benefits such as the suspension of tax collection. Although MAP is intended to proceed independently of domestic remedies, this form of strategic switching imposes considerable strain on administrative time and resources, often without meaningfully advancing the resolution of the case. It may also undermine mutual trust between competent authorities and taxpayers, leading to delays or a reduced willingness to accommodate parallel proceedings in future cases. It is therefore important that MAP is not inappropriately used as a means to selectively pursue whichever process appears more advantageous at a given time.

70. The taxpayer has every interest and advantage in keeping the competent authorities as up-to-date as possible on all material changes in the information or documentation previously submitted as part of, or in connection with, a MAP request, as well as new information or documentation relevant to the issues under consideration. Without proper information and documentation, competent authorities may be unable to resolve disputes expeditiously and the risk of unrelieved double taxation increases. Once a MAP request is accepted, taxpayers should continue updating the competent authorities with any new information or changes to the request that could affect the case. It is especially important to provide consistent documentation to both competent authorities to avoid each competent authority starting work on the basis of different facts, which may in turn lead to delays. When necessary, competent authorities may seek further input from the taxpayer and may even invite the taxpayer to provide information jointly to both competent authorities, especially in complex cases. In some instances, taxpayers may also offer suggestions for resolving the matter, although these are not binding and should not be seen as limiting the options available to the competent authorities. Crucially, taxpayers should be ready to accept MAP resolutions that are offered to them that fully address taxation not in accordance with the treaty complained of by them and when required, take reasonable measures to help implement such resolutions in both jurisdictions.

71. On the other hand, while there are clear expectations for taxpayers to cooperate and provide information in good faith, taxpayers also have expectations that competent authorities will act with diligence, transparency and fairness throughout the MAP process. Competent authorities should always actively review and consider information submitted by taxpayers in good faith in MAP and avoid making undue information requests. Further, once the MAP process commences, competent authorities are encouraged to maintain ongoing communication with taxpayers. Although the specifics of bilateral discussions in MAP are confidential, offering regular updates about the status of the case enables taxpayers to better understand how their case is progressing. This, in turn, equips taxpayers to cooperate more effectively, including providing additional information or clarifications when requested. This will also foster a more productive relationship with taxpayers and will help to avoid misunderstandings regarding the acceptance, stage of work, or completion of their case.

72. Business respondents to the survey generally reported valuing the transparency of competent authorities and also noted considering their “track record” in providing effective relief before engaging in MAP as this process is seen as more efficient when competent authorities have a pragmatic approach and aim to solve cases effectively. Further, business respondents indicated appreciating regular updates from competent authorities as well as pre-MAP consultations and considered that an open and trustful working relationship allows for greater results, including on the breadth and accuracy of the information shared, as such taxpayers value the independence of competent authorities from the auditors and do not wish for the

---

<sup>33</sup> A taxpayer may nevertheless always choose to withdraw a MAP request if they believe the proposed solution is unlikely to be one they would accept.

information transmitted to the competent authorities to be used in audits. In this regard, there is no restriction on the sharing of information provided to competent authorities by taxpayers with other areas of the tax administration. However, it is clear that each case must be resolved on its own merits, through principled and objective discussions between the competent authorities, without reference to outcomes in other cases and without the taxpayer having to fear any form of retaliatory action.<sup>34</sup>

### ***Best practices***

**18 Best practice 18.** Taxpayers should approach and engage with the MAP process, including all steps leading up to it at the tax administration level, in good faith, by acting transparently and cooperatively first at the audit/examination stage and when a case reaches the MAP stage, supporting the competent authorities to find an efficient, effective and timely solution. In this regard, taxpayers should:

- 18.1 Actively engage during the audit/examination stage by providing all necessary and requested information, rather than withholding it for the MAP stage or using the audit process solely as a means to obtain an adjustment or assessment that facilitates access to competent authorities in MAP.
- 18.2 Submit MAP requests in a timely and complete manner, having proactively reviewed the published MAP guidance of the relevant jurisdictions to understand all requirements and sharing all necessary information at the time of submission of the MAP request to facilitate a smooth resolution.
- 18.3 Maintain a cooperative and transparent approach throughout the process, being available to provide necessary additional information or clarifications, to the extent this is within their ability to provide, and to do so promptly when requested.
- 18.4 Understand that all information provided to a competent authority in MAP will be shared with the other competent authority as both competent authorities should work on the basis of the same set of facts and equally, not request to withhold specific information shared with one competent authority from the other.
- 18.5 Clearly state whether the MAP request is being filed as a “protective” request and their expectations regarding the priority of MAP over other available remedies (or vice versa) and act accordingly, without asking for these remedies interchangeably depending on perceived benefits at each point.
- 18.6 Be willing to accept MAP agreements that in their view fully resolve taxation not in accordance with the treaty and to provide any reasonable information or undertake any reasonable actions to assist with implementation of the MAP outcome in both jurisdictions.

**19 Best practice 19.** Jurisdictions should ensure that taxpayers, as stakeholders in a MAP case, receive updates from the competent authority that received the MAP request regarding the progress of the case, upon their request. While taxpayers should not be informed of the substance of discussions during the bilateral phase or privy to communications between the competent authorities including position papers, they should be kept informed whether progress is being made. Competent authorities may also choose to engage with taxpayers regarding their analysis before sharing their positions with the other jurisdiction(s) involved or invite taxpayers to jointly clarify facts to or share views with both competent authorities. Regular communication with taxpayers, such as providing additional information when required, enhances the transparency of the MAP process and fosters cooperation.

<sup>34</sup> Paragraph 4.41 of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*.

# 2 Unilateral Phase of MAP

## 2.1. Step 1: Submission of a MAP request

73. As noted in section 1.7 above, jurisdictions should publish detailed MAP guidance that includes the manner and form in which taxpayers should request for MAP. This guidance, which Inclusive Framework member jurisdictions are required to issue in accordance with their commitments under the Action 14 Minimum Standard, typically sets out the procedural steps to be followed and the information and documentation to be submitted by taxpayers along with the MAP request. While the Action 14 Minimum Standard does not mandate the use of a uniform list of information and documentation to accompany MAP requests, the FTA MAP Forum has encouraged the jurisdictions to include in their MAP guidance certain key elements that are regarded as desirable for taxpayers to submit when making MAP requests.<sup>35</sup> These elements are reproduced below:

- **Identity of the taxpayer(s) covered in the MAP request** – the identity of the taxpayer(s) covered in a MAP request must be sufficiently specific to allow the competent authority to identify and contact the taxpayer(s) involved. The information provided should include the name, address, taxpayer identification number or birth date, contact details and the relationship between the taxpayers covered in the MAP request (where applicable).
- **The basis for the request** – the MAP request should state the specific tax treaty including the provision(s) of the specific article(s) which the taxpayer considers is not being correctly applied by either one or both Contracting Party (and to indicate which Party and the contact details of the relevant person(s) in that Party).
- **Facts of the case** – the MAP request should contain all the relevant facts of the case including any documentation to support these facts, the taxation years or period involved, and the amounts involved (in both the local currency and foreign currency).
- **Analysis of the issue(s) requested to be resolved via MAP** – the taxpayer should provide an analysis of the issue(s) involved, including its interpretation of the application of the specific treaty provision(s), to support its basis for making a claim that the provision of the specific tax treaty is not correctly applied by either one or both Contracting Party. The taxpayer should support its analysis with relevant documentation (for example, documentation required under transfer pricing legislative or published guidance, copies of tax assessments, audits conducted by the tax authorities leading to the incorrectly application of the tax treaty provision).
- **Whether the MAP request was also submitted to the competent authority of the other Contracting Party** – if so, the MAP request should make this clear, together with the date of such submission, the name and the designation of the person or the office to which the MAP request

<sup>35</sup> Available at: <http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.

was submitted. A copy of that submission (including all documentations filed with that submission) should also be provided unless the contents of both MAP submissions are exactly the same.

- **Whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes** – if yes, the MAP request should clearly state so and the date of such submission, the name and the designation of the person or the office to which the MAP request was submitted, should be provided. A copy of that submission (including all documentations filed with that submission) should also be provided unless the contents of both MAP submissions are exactly the same.
- **Whether the issue(s) involved were previously dealt with** – the request should state whether the issue(s) presented in the MAP request has been previously dealt with, for example, in an advance ruling, advance pricing arrangement, settlement agreement or by any tax tribunal or court. If yes, a copy of these rulings, agreements or decisions should be provided.
- **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** – the request for any other information or documentation should be well-targeted and responses to the request should be complete and be submitted within the time stipulated in the request for such information or documentation.

74. While the information items listed above may be useful for jurisdictions to request from taxpayers when submitting a MAP request, applying a rigid requirement for all such items to be provided in every case may not be appropriate. Some competent authorities, for example, permit taxpayers to submit only the essential information needed to assess procedural eligibility at the outset and then request additional details later in the process.<sup>36</sup> This approach depends on the taxpayer remaining actively engaged and responsive throughout the MAP process as otherwise, delays may occur.<sup>37</sup>

75. In general, information requirements should take into account the circumstances of the taxpayer as well. This consideration is relevant particularly in cases involving individual taxpayers who do not have business income but earn other types of cross-border income, such as pensions. In such cases, competent authorities generally do not expect the same level of detail as would be required from corporate or business taxpayers. These individuals should also not be expected to provide complex legal arguments regarding why the treaty has not been followed in the adjustment or assessment, particularly as they are often not represented by specialised tax advisors. Several competent authorities responding to the survey noted that, for such cases, they typically request only a letter outlining the relevant facts with supporting documentation. As noted above, some jurisdictions have even introduced digital tools, such as online forms, to simplify the process for individual taxpayers filing MAP requests. In practice, a number of jurisdictions that allow for simplified submissions for individual taxpayers seek to retrieve additional background information internally or from the other jurisdiction, where this is available from existing

---

<sup>36</sup> See for example, Ireland's MAP guidance, that under section 2.1.2, only requires the taxpayer's MAP request under a tax treaty to indicate the tax period(s) concerned, the nature of the action giving rise, or expected to give rise, to taxation not in accordance with the tax treaty; and the full names and addresses of the parties to which the MAP relates, available at: <https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-35/35-02-08.pdf>.

<sup>37</sup> It should, however, be noted that some instruments such as the EU Dispute Resolution Directive include a mandatory list of information that the taxpayer should provide along with a MAP request.

records.

76. Jurisdictions increasingly accept MAP requests submitted by taxpayers electronically. Submissions may be made through encrypted email or, where available, through secure digital portals. Where email is used, a dedicated generic mailbox for MAP requests is recommended to ensure continuity in receipt, especially during staff reassignments or absences. Several competent authorities responding to the survey have noted that the use of such centralised mailboxes has proven effective in maintaining timely acknowledgement of receipt. Where digital infrastructure of a jurisdiction permits, cloud-based platforms may be used to facilitate the secure transfer of voluminous supporting material, particularly in complex attribution/allocation cases.

77. Since MAP cases involve more than one competent authority, it is not uncommon for them to operate in different official languages. In such circumstances, and absent a different agreement between them, competent authorities should generally allow MAP requests and supporting materials to be submitted in English or accompanied by an English translation. The provision of a translation of not only the MAP request but also all relevant supporting information at the time of submission may also help to avoid delays later in the process. Alternatively, another language may be used if accepted by both competent authorities, especially if both competent authorities follow the same common language. For example, while MAP requests for cases between the Netherlands and Belgium are typically in Dutch, the competent authority of the Netherlands would typically accept MAP requests from taxpayers in other jurisdictions in English or with an English translation. If the domestic law of a jurisdiction requires MAP requests to be submitted in the national language(s), competent authorities should accept a brief request in that language or those languages to meet formal requirements, with a translation of the request as well as further details, including all supporting information and documentation provided in English or the common, agreed language of both jurisdictions.

78. With respect to the filing period for MAP requests, several business respondents to the survey highlighted that jurisdictions may not have the same understanding on when the start date for the three-year filing period under Art. 25(1) of the OECD Model Tax Convention is, with some jurisdictions having a more liberal, taxpayer-favourable approach while others require more formal notifications, noting that in those cases business would appreciate having access to precise guidance with examples to avoid missing the deadline.

79. Taxpayers are encouraged to present a MAP request to the competent authority as soon as it appears likely that an action will result or has resulted in taxation contrary to the applicable tax treaty, rather than waiting until the final stages of the filing period. This approach promotes earlier case identification and can assist in ensuring the applicable time limits are satisfied. Notifying or presenting a case as soon as possible following a formal action giving rise to taxation not in accordance with the tax treaty will help to ensure that the time limits for requesting MAP under a tax treaty are met and that the other competent authority is notified in a timely manner as well. Where complex issues are involved, the taxpayer should take particular care to provide comprehensive supporting materials, including translations where appropriate, as these may significantly expedite the assessment and resolution of the request. The completeness and accuracy of the information included in a request has a direct impact on the time required for the competent authorities to carry out the MAP process and find a solution.

80. Corporate taxpayers or individual taxpayers that earn cross-border business income should consider submitting MAP requests to the competent authorities of both jurisdictions, as is encouraged by several competent authorities at present. This can be achieved by having enterprises in each jurisdiction lodge separate MAP requests with their respective competent authorities or by submitting a formal request in one jurisdiction and simultaneously providing a full copy to the competent authority of the other jurisdiction. However, where the applicable tax treaty requires that a MAP request be submitted only to the

competent authority of the taxpayer's jurisdiction of residence, that competent authority should not condition its substantive consideration of a transfer pricing case on formal submission of a separate request by its associated enterprise to the other competent authority. Imposing such a requirement (as opposed to allowing the provision of a copy of the MAP request to the other competent authority) may not reflect the treaty interpretation of the other jurisdiction and could place an undue burden on the taxpayer where the process involves materially different procedural or documentation requirements. In general, competent authorities encourage corporate or business taxpayers, especially in complex cases that require voluminous submissions, to provide supplementary materials such as a checklist demonstrating how the information provided meets the respective jurisdiction's requirements. Where the taxpayer is represented, the competent authorities should be clearly informed of the identity of such representatives in both jurisdictions.

81. In general, to avoid unnecessary delays in processing, the MAP request should be prepared in a clear and concise format. Taxpayers should limit their submissions to the essential documents necessary to support their position. Where voluminous documentation is critical to the taxpayer's analysis, it should be included in Annexes clearly referenced within the main body of the request. In complex or multi-issue cases, an Executive Summary should be provided to assist competent authorities in gaining an immediate overview of the issues in dispute. Where documentation is voluminous, some competent authorities consider that a description of the material may be acceptable, with references to full documents if further review becomes necessary.

82. Taxpayers may also choose to present MAP requests on a protective basis as noted in section 1.1. In these cases, the request is submitted solely to safeguard the applicable time limits under the relevant tax treaty and is not intended to be substantively considered unless or until the taxpayer provides express notification to the competent authority to commence such review. It is advisable for taxpayers to take all reasonable steps to ensure that time limitations do not expire without appropriate protective measures. Where this approach is adopted, taxpayers must clearly identify the MAP request as being filed on a protective basis to protect themselves from the expiration of the prescribed filing period and promptly notify both competent authorities once they wish for the matter to proceed to the substantive phase. Delay or failure to notify may result in the case remaining inactive or being closed without resolution. Nevertheless, competent authorities may take a more flexible approach with respect to individual taxpayers who do not have business income but earn other types of cross-border income and proactively seek to understand whether the taxpayer would like to prioritise domestic remedies ahead of MAP when a MAP request is filed. While the choice between MAP and domestic remedies generally rests with the taxpayer, if a taxpayer submits a MAP request on a protective basis and later informs the competent authorities that substantive discussions may begin, any subsequent request to pause the MAP process again in favour of pursuing domestic remedies may not be accepted by the competent authorities. This is particularly the case where it is evident that the taxpayer is selectively shifting between processes as a matter of strategy as noted in paragraph 69.

83. While the above description generally captures current practice, both competent authorities and business have noted that there is scope for improvements. In instances where MAP requests are submitted to both competent authorities involved, each must independently evaluate whether the taxpayer's objection is well-founded and whether the procedural threshold for initiating MAP has been met. In practice, differences in MAP request formats and documentation standards between jurisdictions can give rise to challenges. It has occurred that one competent authority has considered a request admissible and moved the case forward, while the other has declined to do so on the grounds that the documentation was incomplete or insufficient. Such outcomes can result in administrative deadlock, delay or in effect, the denial of access to the MAP mechanism, despite the willingness of both competent authorities to address the case.

84. To address these issues and to promote a more coordinated approach, a suggested format for a MAP request including a standardised list of information and documentation that can be requested has been developed in **Annex C.1**, with different formats depending on whether the case is an attribution/allocation case or an other MAP case.<sup>38</sup> While the information included in this template only sets a common threshold for considering a MAP request and does not preclude competent authorities from seeking additional clarification or supporting documentation at a later stage, adopting this template as a starting point may help avoid misalignments and reduce procedural uncertainty.

### **Best practices**

**20 Best practice 20.** Jurisdictions should ensure that the process for taxpayers to file a MAP request is streamlined, secure and easily accessible. In particular:

- 20.1 Jurisdictions should allow electronic submission of MAP requests via emails or secure digital cloud platforms on a secure server. Where email is used, a generic mailbox should be provided to ensure requests will always be received by the relevant people and are not impacted by personnel transitions. Digital platforms should also support the secure transfer and storage of large volumes of information, which can be particularly relevant for transfer pricing cases.
- 20.2 Jurisdictions should generally adopt a flexible approach regarding the language of MAP request and the supporting documentation, provided they are submitted in English or the common language of both jurisdictions. If the domestic law of a jurisdiction requires MAP requests to be submitted in the national language(s), the competent authority of that jurisdiction should be willing to accept a brief MAP request in that language (or those languages) to meet formal requirements, and accept a translation of the request as well as all further details, including all supporting information and documentation in English or the common language of both jurisdictions.

**21 Best practice 21.** Jurisdictions should tailor their expectations and requirements of taxpayers based on their size and sophistication (e.g. individual taxpayers v corporate / business taxpayers) and generally not require the same level of detail (such as in-depth analysis) from individual taxpayers as from business taxpayers. Jurisdictions should, especially for individual taxpayers, create a simple format for digital submissions, accept unofficial translations and adopt a proactive approach to sourcing missing information internally or from the other competent authority where feasible.

**22 Best practice 22.** Taxpayers should submit MAP requests as soon as possible for them after receiving notification of an action they believe results or will result in taxation not in accordance with the tax treaty, rather than waiting until the end of the prescribed filing period. In this regard, taxpayers should provide all necessary information, especially in complex cases where additional context may aid faster resolution and provide translations of relevant documentation where useful to facilitate efficient processing.

**23 Best practice 23.** Business taxpayers should provide a MAP request to both jurisdictions concerned, either by having enterprises resident in each jurisdiction formally submitting it before each competent authority or by having only one MAP request submitted formally to the competent authority of the taxpayer's state of residence as required under the treaty, while providing a copy to the other, so as to ensure that both competent authorities receive the same or substantially similar

<sup>38</sup> This format is designed for use in bilateral MAP cases and is not intended for multilateral MAP cases. A separate template for MAP requests in multilateral cases will be incorporated into the Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements in due course.

information and documentation. In this regard, business taxpayers should also consider providing checklists that demonstrate how the information provided corresponds to the information requirements in both jurisdictions. Business taxpayers represented by advisors should also clearly inform the competent authorities of the identity of their representatives in each relevant jurisdiction.

**24 Best practice 24.** Taxpayers should provide the required information in a MAP request in a simple and understandable format to avoid delays in processing. Where extensive documentation is provided and relied upon in the taxpayer's analysis, the request should include a clear and concise main body with annexes. In such cases, the main body should contain clear references to relevant pages in the annexes to support key positions taken by the taxpayer. Where several issues are covered and the analysis provided is complex, an Executive Summary should also be provided by the taxpayer. Where competent authorities do not share a common language, taxpayers should submit MAP requests and supporting documents with an English translation or another mutually agreed language.

**25 Best practice 25.** Taxpayers submitting protective MAP requests should clearly inform the competent authority receiving the request that it is intended solely to preserve the time limits prescribed under the relevant tax treaty and is in general not to be examined or substantively considered until express notice is given. Where examination or substantive consideration is later sought, the taxpayer should provide such notice clearly and without delay to both competent authorities. As noted in **Best practice 18**, the taxpayer should be permitted to ask for a MAP request to be considered protectively only once, at the time of submission, or subsequently where domestic processes are initiated. Once the taxpayer requests that the competent authorities begin substantive consideration of the case, the taxpayer should generally not request the suspension of the MAP process at a later point so as to resume or pursue domestic remedies. If the taxpayer makes such a request after substantive MAP discussions have begun, the competent authorities will generally continue their substantive MAP discussions with an aim to resolve the case, until the MAP request is withdrawn.

## 2.2. Step 2: Checking the eligibility of a MAP request

85. In general, the competent authority receiving a MAP request is expected to promptly notify the taxpayer and the other competent authority of its decision on whether the request meets the conditions for access to MAP under the relevant treaty or whether additional information is needed to make that determination. The competent authority should clearly explain the basis for any decision to deny access or to request additional information, and communicate this to both the taxpayer and the other competent authority. The communication to the other competent authority should also include a Start Date for the case in line with the MAP Statistics Reporting Framework where applicable and identify any applicable domestic law time limitations that may impact the process (in the absence of the equivalent of Article 25(2) of the OECD Model Tax Convention in the concerned tax treaty). In this regard, if access is denied, the competent authority could outline to the taxpayer and the other competent authority any possible avenues to challenge this decision, where such avenues are clearly available under domestic law. If access is granted, the other competent authority may be informed of the reasons the case was considered eligible if requested for by the other competent authority. If access is denied, the communication should include the proposed outcome and End Date. The other competent authority should have an opportunity to respond, particularly where it has also received the MAP request or intends to seek further information to assess eligibility and should likewise indicate any relevant domestic law constraints. Where additional information from the other competent authority is needed to determine the eligibility of the MAP request, the decision on whether to grant access should only be made following consultation between the two

competent authorities.

86. Providing direct contact information for the case handlers relevant to the case in these notifications helps ensure timely and effective communication. Competent authorities have noted that, in some cases, messages that they have left on general voicemail systems or sent to general email addresses belonging to the larger organisation of the competent authority function were not returned as the message may perhaps have not reached the intended recipients, resulting in delays and inefficiencies. Competent authorities have also observed situations where one competent authority has requested information from a taxpayer with specific instructions not to share it with the other authority. Such practices undermine the integrity of the MAP process and are discouraged, as they prevent both competent authorities from working with a consistent set of facts. In addition, competent authorities have emphasised the importance of adhering to established protocols for the secure transmission of information. The use of unprotected email has raised concerns, and authorities are encouraged to use secure channels to maintain the confidentiality and integrity of taxpayer information. A template that can generally be used for notifications to the other competent authority is attached as **Annex C.2**.

87. In accordance with Article 25(1) of the OECD Model Tax Convention, jurisdictions should ensure that access to MAP is available in all cases where the conditions for presenting a request have been satisfied. Access may be denied only in clearly defined instances where the request is considered procedurally ineligible for MAP i.e. (i) where the request has not been submitted by the appropriate taxpayer or under a tax treaty in force<sup>39</sup>, (ii) where it has not been submitted to the appropriate competent authority under the tax treaty or (iii) where it has not been filed within the time limits provided in the tax treaty. Where the treaty does not specify a time limit, while jurisdictions can theoretically apply no filing period, time-limits under domestic law should not lead to a consequence that a MAP request is required to be filed earlier than three years from the first notification of the action resulting in taxation not in accordance with the tax treaty. These limitations should be narrowly construed and not used to deny access to MAP inappropriately.<sup>40</sup>

88. The Action 14 Minimum Standard requires Inclusive Framework member jurisdictions to provide access to MAP in all eligible cases and this includes all situations where in practice, the conditions described above, stemming from the equivalent of Article 25(1) of the OECD Model Tax Convention contained in a tax treaty are met. In addition, the Action 14 Minimum Standard also provides that access to MAP should particularly be given in four circumstances where a denial of access was previously commonly seen: (i) transfer pricing cases, irrespective of whether the tax treaty involved contains the equivalent of Article 9(2) of the OECD Model Tax Convention<sup>41</sup>, (ii) cases in which there is a disagreement

---

<sup>39</sup> In cases involving fiscal consolidation, a MAP request should still be submitted by the relevant group entity in its own name where applicable to avoid the risk of a competent authority denying access to MAP on formal grounds.

<sup>40</sup> However, it is acknowledged that a competent authority that has received a MAP request may consider the objection raised in a MAP request not justified under the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention contained in the concerned treaty. As opposed to a denial of access to MAP, the objection would be considered not justified usually in situations where the taxpayer did not provide the required information in its MAP request, the request concerns an issue that is not covered by the treaty or where there is no taxation not in accordance with the tax treaty, there was no “action” of a jurisdiction covered by the tax treaty (as interpreted in paragraph 14 of the Commentary on Article 25 of the OECD Model Tax Convention as discussed in section 1.1) or where the taxpayer could not reasonably underpin its position based on the facts. This issue will be discussed more in detail in section 2.3 below.

<sup>41</sup> Including the equivalent of Article 9(2) of the OECD Model Tax Convention in a jurisdiction’s tax treaties is only considered a best practice under BEPS Action 14.

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, (iii) cases in which there has been an audit settlement between the taxpayer and the tax administration<sup>42</sup>, which position should also be documented in its MAP guidance and (iv) cases in which taxpayers have provided the required information and documentation as set out in a jurisdiction's MAP guidance. The only situation where the Action 14 Minimum Standard allows access to MAP to be restricted in eligible cases under the treaty as described above is where an issue has already been resolved through 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.<sup>43</sup>

89. While improvements with respect to access to MAP following the implementation of BEPS Action 14 have been widely noted by business, in the input received from the survey, a number of business respondents raised concerns regarding continuing difficulties in accessing MAP in specific contexts. Notably, some competent authorities also reported similar challenges or restrictions that taxpayers in their jurisdictions have faced from other competent authorities.

90. First, with respect to transfer pricing cases, both business and competent authority respondents flagged the need for greater clarity and fairness in the treatment of *bona fide* taxpayer-initiated adjustments and noted that access to MAP is often not allowed where a taxpayer adjusts their filings for subsequent years to reflect the outcome of an audit from a previous year, either voluntarily or even where there is a requirement under the domestic law of a jurisdiction, failing which they would face penalties. While most jurisdictions consider that a *bona fide* taxpayer-initiated adjustment made by a taxpayer through the amendment of a previously filed tax return in order to report a price in a controlled transaction, or an attribution of profits to a permanent establishment, that is, in the taxpayer's opinion, in accordance with the arm's length principle, would constitute an "action" of one or both jurisdictions for the purposes of MAP, some jurisdictions disagree. These jurisdictions take the position that when a taxpayer makes a self-initiated upward adjustment in a jurisdiction, the taxpayer or its associated enterprise should file a request for a downward adjustment in either the same jurisdiction (where the adjustment was only to comply with domestic law) or the other jurisdiction (as a corresponding adjustment) and await a decision on its acceptance or rejection. These jurisdictions believe that MAP should only be available if the request is denied by the tax administration of one of the jurisdictions.

91. However, the competent authorities of most of these jurisdictions have generally reviewed their policies and now allow access to MAP where a taxpayer is legally obliged under the domestic law of the other jurisdiction to adjust their filings for subsequent years to reflect the outcome of an audit from a previous year, and would otherwise face penalties for failing to do so, so long as the competent authority of that other jurisdiction issues a confirmation that the adjustments have been made pursuant to that obligation. In addition, with respect to competent authorities that previously did not provide access to MAP for *bona fide* taxpayer-initiated adjustments, some of them now provide access to MAP if the adjustment

---

<sup>42</sup> As reflected in the BEPS Action 14 peer review reports, the FTA MAP Forum has agreed that this includes situations where taxpayers are required to mandatorily waive the right to access MAP as part of a settlement agreement or by implication, as distinct from cases where a taxpayer voluntarily chooses to not go to MAP following a settlement for any reason which is not currently governed by the Action 14 Minimum Standard.

<sup>43</sup> As reflected in the BEPS Action 14 peer review reports, the FTA MAP Forum has agreed that this would only include settlements or processes where the taxpayer is voluntarily given the opportunity to accept or reject the decision and not for regular domestic remedies in a jurisdiction's appellate chain where the decision would be implemented irrespective of taxpayer consent and the taxpayer is then required to file an appeal to challenge such a decision.

is made with a view to comply with a position previously taken by the tax administration of that jurisdiction or if the adjustment would result in an upward adjustment in their own jurisdiction that could create taxation not in accordance with the treaty and the other jurisdiction operates a self-assessment system where downward adjustments are usually possible only through MAP.

92. Irrespective, as noted under the BEPS Action 14 final report, granting access to MAP in these cases and documenting this position in a jurisdiction's MAP guidance is a best practice, even if currently not followed by all jurisdictions. It should be clarified that once access to MAP is granted following this best practice, the competent authority may request additional information as they deem fit so as to establish the existence of taxation not in accordance with the treaty owing to a taxpayer-initiated adjustment. Further, taxpayer-initiated adjustments should be made as early as possible to ensure that competent authorities have the opportunity to implement MAP agreements in situations where the concerned treaty does not contain the equivalent of the second sentence of Article 25(2) of the OECD Model Tax Convention.

93. Second, with regard to audit settlements, although the Action 14 Minimum Standard requires access to MAP to be granted if a MAP request is filed following an audit settlement, responses to the surveys indicated that taxpayers may be deterred from pursuing MAP due to perceived or actual implications attached to these settlements. For instance, it was noted that some tax administrations have informally encouraged taxpayers to waive their right to MAP as a condition of settlement, even where this is not part of the settlement agreement. In other instances, informal pressures were reported, such as the threat of larger adjustments, increased penalties, criminal prosecution or additional future audits if the taxpayer elected to proceed with MAP. Even outside of the context of a formal audit settlement, it was noted that business has the experience that some tax administrations have offered reduced adjustments or assessments if the taxpayer can already agree to not go to MAP, as compared to a larger adjustment where the taxpayer cannot agree. In addition, business noted that some tax administrations offered to withdraw ongoing criminal proceedings or prosecution only where an audit settlement is accepted that is conditioned on giving up the right to access MAP.

94. Third, with regard to domestic remedies, the survey responses noted that some competent authorities still denied access to MAP while other domestic remedies are ongoing or finalised. Business respondents noted that access to MAP has often been made contingent on the taxpayer taking actions with respect to ongoing domestic remedies or collection processes (i.e. withdrawal of ongoing processes, requirement to initiate domestic processes, requirement to pay taxes before initiating MAP etc.) In particular, concerns were raised regarding unilateral APAs limiting access to MAP. While unilateral APAs may be appropriate in specific contexts, they should not be interpreted as limiting a taxpayer's ability to access MAP in case subsequent double taxation arises. If a foreign adjustment is made to a transaction concerning an issue addressed by a unilateral APA, and a MAP request is submitted to contest that adjustment, the issue should be fully considered in MAP without the competent authority being bound by the unilateral APA.

95. Finally in relation to anti-abuse cases or criminal proceedings, it was noted in the surveys that access to MAP was denied in some jurisdictions solely due to the presence of an abusive arrangement or criminal sanctions, even where the sanctions were unrelated to the case at hand. In the absence of a special provision in the concerned tax treaty, the general rule is that access to MAP should be granted in eligible cases even where the adjustment or assessment arises from a domestic or treaty-based anti-abuse rule. The simple fact that a charge of tax is made under an anti-abuse provision of domestic law should not be a reason to deny access. Where there is a disagreement between the taxpayer and the competent authority to which its MAP case is presented as to whether the conditions for the application of a treaty anti-abuse rule (e.g. a treaty-based rule such as the principal purpose test) have been met or whether the application of a domestic anti-abuse rule conflicts with the provisions of a treaty, taxpayers should be provided access to MAP where they meet the requirements of the equivalent of paragraph 1 of Article 25

of the OECD Model Tax Convention contained in the specific tax treaty. Any limitations to access to MAP should only be based on limitations expressly agreed with the treaty partner in the wording of the treaty.<sup>44</sup> This is confirmed in element 1.2 of the Action 14 Minimum Standard as well.<sup>45</sup> Similarly, jurisdictions should not threaten or commence criminal proceedings to deter MAP requests or to seek to avoid granting access to MAP.

96. An additional issue relevant to this section concerns whether access to MAP can be provided in withholding tax cases where taxpayers are also expected to follow domestic procedures to claim a refund. Some jurisdictions take the position that the tax treaty is called into question in withholding tax cases only after these domestic procedures have been completed.<sup>46</sup> Consequently, the competent authorities of these jurisdictions may only consider an issue in MAP if the taxpayer follows such domestic processes and that request is rejected. In such cases, it is useful to distinguish between business taxpayers and individual taxpayers. Business taxpayers may usually have access to professional advice and are generally equipped to navigate domestic procedures for refunds, including identifying the right authority, completing necessary forms and meeting filing deadlines. However, individual taxpayers receiving cross-border payments such as pensions or employment income may not be in a similar position and may accidentally overlook a procedural requirement or miss a deadline, which could lead to the domestic refund procedure being unavailable by the time of the MAP request. In these situations, it would be appropriate for competent authorities to take a more flexible approach, if permitted by the tax treaty, which would help ensure that genuine claims that end up in MAP owing to a lack of other avenues are not dismissed due to procedural issues.

97. Another issue noted in the input received from business was whether access to MAP can be provided in case of secondary adjustments. Transfer pricing adjustments under domestic law may result in secondary adjustments, such as treating the income adjustment as a deemed dividend subject to withholding tax. Relief from such secondary adjustments generally follows if the primary adjustment is reversed or if correlative relief is granted and the taxpayer repatriates an equivalent amount. In such situations, MAP agreements between competent authorities typically include mutually agreed terms for repatriation, which may involve direct reimbursement or inter-company account offsets, usually within a reasonable period and free from withholding tax or additional taxation. While interest is normally not waived on the portion of the tax liability retained after MAP, competent authorities may agree to exclude an interest component in repatriation payments to reduce complexity. A repatriation agreement concluded during audit should not prevent the taxpayer from requesting MAP and should not imply agreement with the audit outcome. Where MAP results in a change to the adjustment, the repatriation terms should be amended accordingly, including any waiver of an interest component. If no repatriation agreement was concluded at audit, competent authorities may negotiate the repatriation terms during the MAP process. Where repatriation can still be done in the year the adjustment arises, it may be addressed within the same MAP request. However, if repatriation is required in a later year, that year may fall outside the scope of the existing MAP request and could require that the taxpayer file a separate MAP request.

98. While not directly related to a denial of access to MAP, business respondents also noted that

<sup>44</sup> Paragraph 26 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>45</sup> Also note paragraphs 13 to 17 of the Action 14 final report. Separately, where arbitration is available under a treaty for unresolved MAP cases, jurisdictions may agree to not provide access to arbitration for certain categories of cases, including cases that involve the application of an anti-abuse rule. These issues are dealt with in more detail under paragraph 107, 108, 180 and Best practice 32.

<sup>46</sup> Paragraph 109 of the Commentary on Article 1 of the OECD Model Tax Convention.

access to MAP is discouraged where there is no suspension of tax collection during the course of a MAP case. Providing suspension of collection procedures during the period a MAP case is pending at a minimum, under the same conditions as apply to a person pursuing a domestic administrative or judicial remedy, is a best practice under BEPS Action 14. There are several reasons why suspension of the collection of tax pending resolution of MAP is a desirable policy. Any requirement to pay a tax assessment specifically as a condition of obtaining access to MAP in order to get relief from that very tax would generally be inconsistent with the policy of making MAP broadly available to resolve such disputes. Even if a MAP agreement ultimately eliminates any double taxation or other taxation not in accordance with the tax treaty, the requirement to pay tax prior to the conclusion of the MAP may permanently cost the taxpayer the time value of the money represented by the amount inappropriately imposed for the period prior to the MAP resolution, at least in the fairly common case where the respective interest policies of the relevant jurisdictions do not fully compensate the taxpayer for that cost. Thus, this means that in such cases the MAP would not achieve the goal of fully eliminating, as an economic matter, the burden of the double taxation or other taxation not in accordance with the tax treaty. This may be complicated even further where exchange rate fluctuations over years can lead to a loss of value of money for cross-border taxpayers that have to wait for refunds of tax already paid following the conclusion of a MAP case. Moreover, even if that economic burden is ultimately removed, a requirement on the taxpayer to pay taxes on the same income to two jurisdictions can impose cash flow burdens that are inconsistent with the goals of the tax treaty to eliminate barriers to cross-border trade and investment. Finally, another unfortunate complication may be delays in the resolution of cases if a country is less willing to enter into good faith MAP discussions when a probable result could be the refunding of taxes already collected.

99. If the tax in question is in jeopardy of being lost due to bankruptcy or due to the taxpayer becoming a flight risk, then collection practices allowing for immediate recovery seem appropriate. Collection practices generally assess risk and therefore one would expect that a similar assessment could be made of the MAP applicants. If risk assessment is not a possibility for some tax administrations, then allowing for the provision of security or the payment of interest by the tax administration on refund balances (if current laws or policies do not allow this already) could minimise this detrimental effect of double taxation. This provision is less desirable than outright suspension, since a taxpayer's working capital and therefore liquidity is normally affected by the encumbrance of an asset or the provision of the type of security required by a tax administration. While most jurisdictions allow for the suspension of collection of taxes pending MAP only where the MAP request has been filed before the taxes have been collected, some jurisdictions are also willing to repay taxes already paid as part of this suspension.

100. Many jurisdictions are able to provide full suspension of tax collection during the pendency of the MAP process without any added conditions. However, some jurisdictions have expressed reservations regarding the automatic or unconditional suspension of tax collection in all MAP cases. In particular, concerns have been raised about the potential misuse of suspension mechanisms, especially in cases where MAP requests are filed solely to defer payment without a genuine underlying dispute. Moreover, it is recognised that indefinite suspension can undermine revenue certainty and some jurisdictions may be more amenable to apply time-bound suspension periods, such as 24 months from the start date of the MAP case, with extensions granted where justified.

### ***Best practices***

**26 Best practice 26.** The competent authority receiving a MAP request should, within four to eight weeks of receipt<sup>47</sup>, notify the taxpayer and communicate its decision on whether the request is eligible for access to MAP (i.e. whether the conditions set out in the provision governing the filing of a MAP request in the relevant tax treaty (typically equivalent to or based on Article 25(1) of the OECD Model Tax Convention) are met, as interpreted in the Commentary on Article 25 of the OECD Model Tax Convention) or where additional information is required for determining whether these conditions are met. Where applicable, the competent authority should outline any domestic law limitations that may affect the MAP process.

The competent authority receiving a MAP request should, within four to eight weeks of receipt, also notify the other competent authority of the MAP request along with a copy of the request and communicate its decision on whether it is eligible for access to MAP or whether additional information is required for determining whether these conditions are met. The notification should include a proposed Start Date in accordance with the MAP Statistics Reporting Framework where applicable. Where additional information is to be requested from the taxpayer, the notification should also outline the details of the request along with an assessment of its impact on the Start Date. In addition, in cases where access to MAP is denied or further information is requested, the reasoning behind such decision or request should also be shared. If access to MAP is denied, it should also specify the proposed outcome and End Date. Where applicable, the competent authority should also outline any domestic law limitations that may affect the MAP process. Where additional information from the other competent authority is needed to determine the eligibility of the MAP request, the decision on whether to grant access should only be made following consultation between the two competent authorities.

The other competent authority should have the opportunity to respond to the decision on whether the request is eligible for access to MAP within two to four weeks if it so wishes. A response should always be provided if the other competent authority has also received the MAP request, as this may affect the determination of the Start Date, or where additional information is sought to be requested by the other competent authority to determine the eligibility of the MAP request. Where applicable, the other competent authority should also outline any domestic law limitations that may affect the MAP process.

Any communication to the other competent authority should include clear contact information, such as the phone number and email address of the staff assigned to the case, to facilitate direct and efficient discussions. Competent authorities should also share a copy of all information received from the taxpayer with the other competent authority to ensure that both sides are working with the same facts. Furthermore, the transmission of information should follow the agreed protocols for secure communication and avoid the use of unprotected email.

**27 Best practice 27.** Jurisdictions should grant access to MAP in all cases where the conditions set out in the provision governing access to MAP in the relevant tax treaty (typically equivalent to or based on Article 25(1) of the OECD Model Tax Convention) are met, as interpreted in the Commentary on Article 25 of the OECD Model Tax Convention. For provisions equivalent to or based on Article 25(1) of the OECD Model Tax Convention, a MAP request may only be denied in three circumstances (noting that this does not cover substantive issues where the taxpayer's

<sup>47</sup> This decision should take up to eight weeks only where the decision is accompanied by a decision as to whether the objection raised by the taxpayer is justified.

objection may be considered not justified, as detailed in section 2.3 below):

- The request has not been submitted to the appropriate competent authority under the relevant treaty.
- The request has not been submitted within the deadline specified in the MAP article of the relevant treaty.
- The request has not been submitted by an eligible taxpayer or relates to fiscal years in which the relevant treaty was not or is no longer in force.

While access to MAP should be granted for all eligible cases under the tax treaty, some notable examples of situations where access to MAP should be granted are:

27.1 Transfer pricing cases. In this regard,

27.1.1 Jurisdictions should ensure that, in the case of *bona fide* taxpayer-initiated adjustments, access to MAP is granted<sup>48</sup>, provided that:

- They are authorised under the domestic law of the jurisdiction and permit or require the taxpayer, under appropriate circumstances, to amend a previously filed tax return in order to report a price in a controlled transaction, or an attribution of profits to a permanent establishment that is in the taxpayer's opinion in accordance with the arm's length principle; and
- It is at least probable that such adjustments, in the taxpayer's view, will result in taxation not in accordance with the applicable tax treaty and the taxpayer is clearly acting with the *bona fide* intent to resolve such taxation.<sup>49</sup>

27.2 Cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment or assessment 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. In this regard, ongoing or finalised criminal proceedings against a taxpayer should not, in themselves, be a reason to deny access to MAP, while noting that substantive consideration of a case may be suspended while a court is actively considering criminal proceedings connected to the adjustment or assessment in question that may result in the adjustment or assessment being made final (as noted in **Best practice 40**) and that once a decision is issued, a competent authority may be bound by law to follow such decision in MAP (as noted in **Best practice 41**).

27.3 Cases where audit settlements have been entered into to settle the taxation action in question between tax authorities and taxpayers. In this regard:

27.3.1 Taxpayers should not be required, either explicitly or implicitly, to waive their right to MAP in order to obtain an audit settlement, noting that it is the choice of the taxpayer to request for MAP or not following such a settlement.

27.3.2 There should be no informal agreements or pressure from the audit/examination function discouraging taxpayers from accessing MAP, including:

- The threat of a higher audit adjustment, assessment or settlement amount if MAP is pursued.

<sup>48</sup> As noted under paragraph 90 above, some jurisdictions have noted that they do not consider this as best practice for all cases.

<sup>49</sup> It is understood that taxpayer-initiated adjustments that are considered to be retroactive tax planning or abusive may not be considered appropriate.

- The threat of future audits as a consequence of requesting MAP.
  - The imposition or revocation of (criminal) penalties or criminal prosecution being contingent on whether MAP is accessed.

27.3.3 Jurisdictions should ensure that audit practices and settlement procedures do not undermine taxpayers' treaty rights or create undue deterrents to accessing MAP.

27.4 Cases where the taxpayer has provided the required information as prescribed in a jurisdiction's MAP guidance.

27.5 Cases where taxpayers have initiated available domestic remedies along with a MAP request simultaneously, irrespective of whether such remedies are pending or have been finalised. In this respect, access to MAP should also not be made contingent on the taxpayer taking actions with respect to ongoing domestic remedies or collection processes (i.e. withdrawal of ongoing processes, requirement to initiate processes, requirement to pay taxes before initiating MAP etc.).

27.6 Cases where taxpayers have entered into unilateral rulings or unilateral advance pricing arrangements with the tax authorities or where the taxpayer has benefited from other similar domestic dispute prevention mechanisms that provide for a unilateral resolution or settlement.

27.7 Cases where there is no double taxation, but there is taxation not in accordance with the concerned tax treaty.

**28 Best practice 28.** Jurisdictions should ensure that where there is ambiguity, the time limit for filing a MAP request is interpreted in a manner that is favourable to the taxpayer, balancing the competent authority's need for reasonable limitations with the taxpayer's entitlement to treaty benefits in eligible cases. In case of ambiguity, taxpayers should not be unduly prevented from accessing MAP due to overly strict interpretations of time limits where there is room for an interpretation favourable to the taxpayer in appropriate circumstances. In borderline cases, the benefit of the doubt should be given to the taxpayer to ensure fair and effective access to MAP.

**29 Best practice 29.** Jurisdictions should provide access to MAP in eligible cases under the tax treaty where a taxpayer files a MAP request concerning the payment of withholding taxes in the source jurisdiction that it considers to not be in accordance with the treaty. This access should be granted at a minimum to ensure that the prescribed filing period does not expire, regardless of whether the taxpayer is procedurally required to apply for a refund of withholding taxes under domestic law, without requiring them to wait for a rejection of a request under such a procedure. However, where jurisdictions have implemented such domestic procedures for the refund of withholding taxes at source, competent authorities should consider MAP requests arising from these cases as follows:

29.1 In general, if domestic procedures remain available at the time of submission of the MAP request or notification by the other competent authority, the competent authority may postpone its consideration of the MAP request's validity or defer substantive discussions in the bilateral phase of MAP until the rejection of a request under the appropriate domestic procedure. In such cases, the competent authority should promptly notify the taxpayer and the other competent authority of the specific requirements the taxpayer must fulfil under the appropriate domestic procedure and the prescribed timeframe for doing so. If the refund request is denied due to the taxpayer not having met processual requirements, such as filing within the prescribed deadline, the MAP case may be closed.

29.2 For individual taxpayers, where domestic procedures are no longer available at the time of notification or where they may lack the expertise or resources to navigate domestic procedures, the competent authorities should, where appropriate, assist the taxpayer with domestic procedures where possible and substantively consider eligible cases under Article 25(1). Where possible and appropriate, they should consider using Article 25(3) proactively

to resolve the issue for the taxpayer.

**30 Best practice 30.** Jurisdictions should take appropriate measures to provide for the suspension of collection procedures while a MAP case is pending, at least with respect to adjustments or assessments that are the subject of a MAP request where taxes have not been collected. The suspension should commence upon the filing of the MAP request and remain in effect until the MAP case is closed by both jurisdictions, whether or not the offered outcome is accepted by the taxpayer (i.e. until the “end date” as defined in the MAP Statistics Reporting Framework). Jurisdictions may require taxpayers to provide adequate security proportionate to the suspended taxes, such as a bank guarantee, escrow account, or similar mechanism.

Suspension may be limited to cases where the taxpayer has expressly requested it and to not exceed the tax amount at stake. Jurisdictions may also withdraw the suspension for business taxpayers, provided they notify the taxpayer of the reasons, if:

- The objection raised in the MAP request is found to not be justified.
- The taxpayer requested for MAP only for suspension of collection, while actively pursuing other domestic remedies, keeping discussions in MAP suspended.
- The competent authority of the jurisdiction suspending collection believes that there is a material risk to the collection of the relevant tax, the basis for which has been agreed with the other competent authority.

### 2.3. Step 3: Determination whether the objection is justified

101. Under tax treaties that follow Article 25(2) of the OECD Model Tax Convention, once access to MAP is granted, competent authorities are obliged to consider whether a taxpayer's objection is justified by primarily evaluating whether the case concerns taxation not in accordance with the provisions of the applicable tax treaty. The objection raised by the taxpayer could be considered not justified because of the substantive position taken by the jurisdiction or because the taxpayer did not provide the required minimum information in its MAP request, there was no “action” of a jurisdiction covered by the tax treaty (as interpreted in paragraph 14 of the Commentary on Article 25 of the OECD Model Tax Convention, as discussed in section 1.1) or where the taxpayer could not reasonably underpin its position based on the facts. As clarified in paragraph 31.1 of the Commentary on Article 25 of the OECD Model Tax Convention, the competent authority must make a preliminary assessment to determine whether the taxpayer's objection is reasonably justified by identifying actual or potential taxation in either jurisdiction that is inconsistent with the tax treaty. This evaluation serves as a preliminary measure and should not be seen as a justification to arbitrarily refuse additional examination of the case.

102. Business respondents to the survey noted that there were cases in which competent authorities had exercised discretion in a manner perceived as excessive. Some competent authorities were reported to have issued multiple or overly burdensome information requests that went beyond the requirements for a preliminary assessment or declined to proceed with MAP based on broad, pre-determined treaty interpretations or policy positions that effectively closed off the process.

103. Responding competent authorities generally reported considering the objections in a MAP request as not justified when, following a *prima facie* analysis of the request, the taxpayer is unable to prove that double taxation or taxation not in accordance with the treaty has occurred or will occur, while noting that this usually relates to a lack of information provided. Therefore, competent authorities will generally ask for further information from the taxpayer in those cases and may then close the case with the outcome

objection not justified only if no further information is provided or if this information does not prove that there is or will be taxation not in accordance with the tax treaty. It was noted that such incomplete or invalid MAP requests occur more frequently for individual taxpayers due to a more limited understanding of the tax treaties. While there is no general time limit granted to the taxpayer to provide information, it is usually 30 to 60 days with extensions possible owing to specific circumstances. Further, some competent authorities indicated offering the possibility to the taxpayer to file a recourse when access to MAP was not granted.

104. Many responding competent authorities also reported having notified or consulted their treaty partners before closing a MAP case on the grounds that the taxpayer's objection was not justified. The process is widely viewed as useful, but some competent authorities indicated that it may sometimes fall short as jurisdictions can still choose to unilaterally close the MAP case despite having received a contrary opinion from the other competent authority or because, in some cases, the notification was provided only after the case had been closed. In addition, competent authorities noted that they usually do not notify taxpayers of their use of the consultation/notification process and, most of the time, the taxpayer is notified only of the receipt of the case and of its rejection when applicable.

105. The decision by a competent authority to conclude that an objection is not justified on the basis that there is no taxation not in accordance with the treaty should only be through a *prima facie* analysis. This is not equivalent to a full determination of the case on the merits but should reflect a clear and objective conclusion that, even accepting the facts as presented, the treaty is not affected in substantive terms. As a general principle, the receiving competent authority should not request more information than required under its published MAP guidance for the purpose of this preliminary analysis. Where uncertainty exists or the matter turns on the interpretation of treaty provisions open to reasonable disagreement (for example, whether a permanent establishment exists or the attribution of profits to it), it is more appropriate for the case to proceed to the bilateral phase rather than be closed on the basis that the objection is not justified.

106. Under the Action 14 Minimum Standard, where a treaty does not permit a MAP request to be made to either competent authority, Inclusive Framework member jurisdictions are required to implement a bilateral notification or consultation process for cases in which the competent authority to which the MAP case was presented does not consider the taxpayer's objection to be justified. From a practical perspective, jurisdictions should ideally establish a process for bilateral consultation with the other competent authority before reaching a final decision that the objection is not justified in all cases. This consultation should be conducted within a reasonable timeframe and involve sharing the grounds for the proposed conclusion, allowing the other competent authority to present its views. A format that can be followed for this consultation is provided in **Annex C.3**. In addition, this bilateral consultation process should be documented internally for reference of the staff in the competent authority function and should set out procedural rules, including the steps to be followed, the timeline for the process and the responsibilities of the concerned case handlers. This internal document could also include general substantive principles on when an objection raised by the taxpayer may be considered not justified (in line with the best practices under this section.) This is to ensure that the process is applied correctly under the treaty and continues to be followed even if there are staff transitions or changes. Where a competent authority maintains a larger MAP inventory, these rules and procedures should be integrated into the internal guidance applicable to all staff members involved in the competent authority function. Staff should be expected to adhere to this guidance in practice. For competent authorities with a smaller MAP inventory, and consequently a smaller competent authority function, these requirements may be set out as part of case-specific instructions provided by the delegated competent authority. In such cases, these instructions should be recorded in a checklist or other internal control document that staff are required to follow when assessing the eligibility of a MAP request and whether the objection raised by the taxpayer is justified.

107. Business respondents to the survey have noted that in cases involving the application of anti-

abuse provisions, some competent authorities have chosen to not proceed substantively in a MAP case owing to treaty policy reasons, by only giving access to MAP in the procedural sense.

108. In this regard, the Commentary on Article 1 of the OECD Model Tax Convention provides the following: “*....it is agreed that States do not have to grant the benefits of a double taxation convention where arrangements that constitute an abuse of the provisions of the convention have been entered into....A guiding principle is that the benefits of a double taxation convention should not be available where a main purpose for entering into certain transactions or arrangements was to secure a more favourable tax position and obtaining that more favourable treatment in these circumstances would be contrary to the object and purpose of the relevant provisions.*”<sup>50</sup> So, it is recognised that a competent authority may conclude that the application of a domestic anti-abuse provision does not give rise to taxation not in accordance with the treaty, based on its domestic law and treaty interpretation. However, there may be cases where it is debatable whether the guiding principle, namely, whether the application of the domestic rule conflicts with the treaty, is met. In such situations, granting access to MAP in principle and then not giving any substantive consideration to whether there is an issue under the tax treaty would undermine the very purpose of providing access to MAP. Therefore, competent authorities should not make a unilateral determination that the objection is not justified in these cases without having a discussion with the other competent authority. While there is no obligation for a competent authority to engage in a general discussion on the design or scope of a domestic anti-abuse rule with another competent authority, it is beneficial that, once a MAP case is granted access, both competent authorities consult and seek to reach a common view on whether the application of the domestic rule in the specific case aligns with the guiding principle and whether, as a result, treaty benefits should be granted. This approach mirrors the practice applied in MAP cases involving treaty-based anti-abuse provisions such as the principal purpose test.

109. To allow for an efficient, effective and timely MAP process, each competent authority should ensure that any additional information requests issued to a taxpayer after a case is admitted are necessary to resolve the issues in dispute. Such information requests may particularly be necessary if key information was requested but not provided during the audit. Where possible, and particularly in attribution/allocation cases, jurisdictions are encouraged to coordinate and issue joint requests for additional information to the taxpayer, provided that this does not introduce undue delays. In particularly complex transfer pricing matters, joint functional interviews or site visits may be appropriate so long as these are not relied on by the competent authority of the adjusting jurisdiction to re-perform the audit as noted above. Requests for additional information should allow the taxpayer a reasonable timeframe to respond, while allowing the flexibility to extend this timeframe, where warranted by the complexity of the information requested. On the other hand, taxpayers should also always ensure that they provide complete and timely responses to requests for additional information. Since business taxpayers are likely represented by advisors and in many cases in both jurisdictions, they should provide the same information to both competent authorities at the same time to avoid any confusion or delay caused by differences in information received.

110. Competent authorities should aim to consult with their counterparts regarding a potential decision that the objection raised by the taxpayer is not justified soon after receiving all information necessary to make that assessment. Where the receiving competent authority maintains its position after consultation, it should promptly notify both the taxpayer and the other competent authority of its final decision. In this regard, if the objection is considered not justified, the competent authority could also outline to the taxpayer and the other competent authority any avenues for this decision to be challenged under domestic law, where such avenues are clearly available under domestic law. This communication to the other competent authority should include any changes to the agreed Start Date, the End Date and proposed outcome for

---

<sup>50</sup> Paragraphs 60 and 61 of the Commentary on Article 1 of the OECD Model Tax Convention.

MAP Statistics purposes. Where additional information is required from the taxpayer at any point, both the taxpayer and the other competent authority should be informed simultaneously, with an indication provided to the other competent authority of the expected impact on the Start Date. Some competent authorities responding to the survey reported agreeing Start and End Dates during the notification or consultation process or providing all the necessary information for the purpose of filing the MAP Statistics in a letter sent to the other competent authorities. Similarly, if the competent authority receiving the MAP request determines that the taxpayer's objection is justified, it should promptly communicate its decision to both the taxpayer and the other competent authority. In cases where the competent authority of the jurisdiction that did not make the original adjustment or assessment considers the objection justified, it should also share the rationale supporting the decision with the other competent authority.

### **Best practices**

**31 Best practice 31.** Jurisdictions should ensure that a taxpayer's objection is considered not justified by a competent authority only where a *prima facie* preliminary analysis demonstrates that there was no or will not be taxation not in accordance with the tax treaty. This provision should not be interpreted as granting the competent authority receiving the MAP request the full discretion to decline moving the case forward to the bilateral phase.

In making this determination, the competent authority receiving the MAP request should in principle not request more information than prescribed under its MAP guidance for this *prima facie* analysis at this stage. While competent authorities should follow their jurisdiction's tax treaty policy in determining treaty applicability, this should remain within a reasonable scope. Competent authorities should also avoid assessments that the objection raised is not justified in cases where they only have a difference of opinion with the taxpayer, but where there is no clear conclusion that there was no or will not be taxation not in accordance with the tax treaty.

**32 Best practice 32.** Jurisdictions should ensure that, where there is a disagreement between the taxpayer and the tax authorities making the adjustment or assessment regarding whether the conditions for applying a treaty anti-abuse provision have been met, once access to MAP is granted, the competent authority receiving the MAP request should consult with the other competent authority before deciding as to whether the objection raised by the taxpayer is justified. Although the receiving competent authority retains the discretion to make its own decision as to whether the objection raised is justified and is not obliged to adopt the position of the other competent authority, it should make a genuine effort, in good faith, to reach a common understanding as to whether the conditions for applying the treaty anti-abuse provision are met.

Similarly, jurisdictions should ensure that in cases where there is a disagreement as to whether the application of a domestic law anti-abuse provision conflicts with the provisions of a treaty, once access to MAP is granted, the receiving competent authority should consult with the other competent authority before deciding as to whether the objection raised by the taxpayer is justified. Although the receiving competent authority retains the discretion to make its own decision as to whether the objection raised is justified and is not obliged to adopt the position of the other competent authority, it should make a genuine effort, in good faith, to reach a common understanding as to whether there is taxation not in accordance with the treaty or whether the main purpose of the relevant transactions or arrangements concerned by the application of the domestic law anti-abuse provision was to obtain a more favourable tax position and the granting such treatment would be contrary to the object and purpose of the relevant treaty provisions.

**33 Best practice 33.** Jurisdictions should establish a consultation process between the competent authorities for cases where their competent authority considers the objection raised in a MAP

request to not be justified, which is documented in the internal guidelines that staff in the competent authority must follow. This document should set out procedural rules such as the steps to be followed for the consultation and the timeline for each of those steps. This document could also contain broad principles that outline when a case handler should consider the objection raised by the taxpayer justified. In all such cases, the competent authority receiving the MAP request should apply this process to consult with the other competent authority and consider its views before making a final decision that the objection is not justified.<sup>51</sup>

**34 Best practice 34.** Jurisdictions should request only the additional information that they consider necessary to resolve a MAP case and for business taxpayers, should require the taxpayer to provide this information to both competent authorities involved at the same time. Where possible and particularly for attribution/allocation cases, the two competent authorities should issue joint information requests, provided this does not cause delays due to the need for both competent authorities to agree on the required additional information. For particularly complex attribution/allocation cases, joint functional interviews or site visits may be considered if needed. Competent authorities should set a reasonable timeframe, such as a minimum of 30 to 60 days, for taxpayers to respond to requests for additional information, with the possibility of extension based on the complexity of the request. If the taxpayer does not respond within the deadline, a follow-up reminder should be issued and reasonable extensions should be granted upon request before considering closing the case.

**35 Best practice 35.** The competent authority receiving the MAP request should aim to consult with the other competent authority regarding a possible decision that the objection is not justified within two months of receiving a MAP request including all necessary information for this determination. The other competent authority should aim to provide its views on the matter within one month of receiving the consultation request. After considering the views of the other competent authority, if the receiving competent authority maintains its decision that the objection is not justified, it should aim to inform both the taxpayer and the other competent authority of its final decision and propose to the other competent authority a confirmation of the Start Date, the End Date and outcome of the case for MAP Statistics purposes within three months of receiving a complete MAP request and all necessary information. If additional information is requested from the taxpayer, the other competent authority should be informed at the same time as the taxpayer, along with an assessment of the impact on the Start Date.

Similarly, where the objection raised by the taxpayer is considered justified by the competent authority receiving the MAP request, it should aim to inform both the taxpayer and the other competent authority of its decision within three months of receiving a complete MAP request and all necessary information. Where the objection raised by the taxpayer is considered justified by the competent authority of the jurisdiction that did not make the adjustment or assessment in question, the reasoning that forms the basis for finding the request justified should also be provided to the other competent authority.

<sup>51</sup> Element 3.1 of the Action 14 Minimum Standard already requires all Inclusive Framework member jurisdictions to implement a documented bilateral notification or consultation process for cases in which the competent authority to which the MAP case was presented does not consider the taxpayer's objection to be justified, where a treaty does not permit a MAP request to be made to either Contracting State.

**36 Best practice 36.** Taxpayers should ensure that they provide timely and full responses to requests for additional information during the MAP process, with business taxpayers providing the same details to both competent authorities without delay.

## 2.4. Step 4: Unilateral Relief

111. Once the receiving competent authority has granted access to MAP and determined that the taxpayer's objection is justified, that competent authority is required, under the provision equivalent to Article 25(2) of the OECD Model Tax Convention in the treaty, to consider whether it can itself provide a satisfactory resolution to the case before initiating bilateral discussions. This step is commonly referred to as the provision of unilateral relief.

112. When considering a MAP request, competent authorities have to apply the treaty independently of the initial decision and impartially. As a first step in any MAP case, this competent authority is expected to consider whether the issue raised can be resolved through unilateral relief, without the need for bilateral discussions. This may be possible where either the jurisdiction of the receiving competent authority has made the adjustment or assessment and the competent authority agrees that it is not in accordance with the treaty or where the other jurisdiction has made the adjustment or assessment, the competent authority accepts that the adjustment is in line with treaty provisions and accordingly, provides relief. Unilateral relief is only considered to be granted where the resulting position fully eliminates the taxation not in accordance with the treaty. An offer from the receiving competent authority to provide partial relief to the taxpayer that may lead to or sometimes even require the taxpayer withdrawing the MAP request is not considered a "satisfactory solution" under the terms of the treaty.

113. The ability to resolve MAP cases through unilateral relief is fundamental to the effectiveness as well as the credibility of the MAP process and reflects a jurisdiction's commitment to apply treaty provisions objectively. Providing unilateral relief fosters trust and builds the relationship between competent authorities, demonstrating independent application of the treaty and a willingness from the competent authority to forgo revenue assessed or collected by its own tax administration, where the treaty has been incorrectly applied.

114. The wording of the treaty should grant the competent authority the power and basis to reverse unjustified positions taken by the audit/examination function in its jurisdiction through unilateral relief. However, business respondents to the survey have noted that some competent authorities are hesitant to provide unilateral relief as the authority is not clearly specified under domestic law. In this regard, it is clear that the competent authority should not be restricted in its ability to provide unilateral relief through a full and independent review of the audit position, coordinating with audit/examination staff as needed but without relying upon or deferring to their conclusions.

115. Despite the clear role of unilateral relief in the MAP process, experience indicates that relatively few MAP cases are resolved at this stage. Competent authorities responding to the survey noted that in many cases and particularly in attribution/allocation cases, MAP cases proceed to the bilateral phase and position papers merely restate audit findings, with no apparent attempt to review the merits of the case independently. This suggests that the unilateral phase of MAP is often overlooked or underutilised, despite being clearly envisioned as the first and equally important phase in the MAP process under Article 25 of the OECD Model Tax Convention. The result is a heavier burden on the bilateral phase, often unnecessarily so. Some competent authorities responding to the survey pointed out that not all competent authorities endeavour to assess whether unilateral relief can be provided, and some competent authorities immediately wish to go to the bilateral phase, sometimes resulting in the competent authority withdrawing

the adjustment in full in the bilateral phase instead of the unilateral phase, leading to a waste of resources and time. Further, one competent authority indicated that sometimes, competent authorities are not even granted the authorisation to provide relief at the unilateral phase which goes against treaty obligations.

116. Furthermore, competent authorities noted the risk of MAP being used, in effect, to revisit or repeat the audit process, referred to as “re-performing” or “re-doing” the audit. While competent authorities must verify whether an adjustment or assessment aligns with the tax treaty, including seeking factual clarification or economic analysis where needed, this must be balanced against the principle that the competent authority function is not resourced or mandated to conduct fresh audits. Distinguishing between verifying an assessment and conducting an independent audit is essential. In some instances, jurisdictions have found themselves forced to reconstruct the audit groundwork of another jurisdiction due to a lack of substantive audit analysis in the original assessment, work that should have been completed before MAP was started. A notable example raised in the survey concerned a transfer pricing adjustment by a tax administration that applied to multiple entities, where only a handful had been effectively audited, where in MAP, the competent authority of that jurisdiction granted unilateral relief for the entities where no adequate audit analysis had been conducted. Conversely, it was also observed that some competent authorities persist in defending audit positions that lack substantiation, requiring the other competent authority to effectively complete the audit for the purposes of MAP, which may be an unfortunate necessity in these cases should the case proceed to the arbitration stage. However, there may be situations where the competent authority undertakes additional analysis to verify the adjustment or assessment, such as refining the comparables. This may be appropriate, for example, where the adjustment or assessment is grounded in principle, but further analysis is needed for the competent authority to confirm its own position. Separately, where there is disagreement between the competent authorities as to whether the adjustment or assessment should be maintained and MAP arbitration looks likely, the competent authority of the other jurisdiction may request additional information to allow it to prepare its position in the MAP arbitration stage. The competent authority of the assessing jurisdiction may also request additional information that was requested but not provided during the audit/examination stage.<sup>52</sup>

117. Competent authorities responding to the survey answered that they usually grant unilateral relief when the taxpayer provided unequivocal evidence that their jurisdiction had no taxing rights according to the treaty. Some competent authorities indicated discussing with their audit function to understand why there was an adjustment before taking the decision to provide unilateral relief. Reflecting on what happens in practice, competent authorities reported that, for attribution/allocation cases, they would usually only provide unilateral relief at the unilateral phase for adjustments initiated in their jurisdiction while, for foreign adjustments, they would wait to discuss in the bilateral phase before potentially deciding to provide a corresponding adjustment. Further, one competent authority stated that in multi-country attribution/allocation MAP cases, it would consider granting unilateral relief for some smaller adjustments to focus bilateral discussions on the main transactions.

118. Competent authorities also reported having put in place different systems favourable to taxpayers. For instance, one competent authority stated remaining very flexible regarding treaty-interpretation cases and offering unilateral relief where appropriate even when the taxpayer would have filed its request too late or in the other state. Other competent authorities reported allowing for the possibility of obtaining a corresponding adjustment outside of MAP subject to domestic statute of limitations.

119. As a matter of practice, competent authorities generally reported informing the other competent authority upon granting unilateral relief, noting that it can also help to avoid double non taxation. Further, most competent authorities do not have a timeline for granting such unilateral relief but some explained

---

<sup>52</sup> See paragraph 68 and Best practice 18.

that they try to do it within six months or less, with one competent authority having the same internal target of eight weeks as for assessing whether an objection is justified or not as it considers the granting of a unilateral relief as part of its *prima facie* analysis of the MAP request.

120. There are several practical situations that can be highlighted where the competent authority should consider providing unilateral relief. Business respondents to the survey have noted that several transfer pricing adjustments that only move from a lower point in an arm's length range to a higher point go into MAP and the taxpayer has to wait several years before a solution even in simple cases. In these cases, early unilateral relief could avoid a protracted dispute on a filing that was arm's length already. Further, where the taxpayer is actively pursuing MAP as well as domestic remedies, providing unilateral relief in clear cases as opposed to suspending any consideration of the MAP request would resolve the issue for the taxpayer and allow them to withdraw domestic proceedings as well.<sup>53</sup>

121. Finally, some competent authorities may be restricted by their domestic law or regulations from granting unilateral relief where domestic time-limits have expired, unless the bilateral phase of MAP is initiated, and an agreement is reached with the other competent authority. This is often based on an interpretation of the second sentence of Article 25(2) of the OECD Model Tax Convention, under which implementation notwithstanding domestic time-limits is viewed by them as being limited to agreements reached between two competent authorities during the bilateral phase of MAP. Where possible, this position should be avoided or a broader interpretation of this provision should be adopted, allowing the term "agreement" to encompass any resolution that eliminates taxation not in accordance with the treaty, such as unilateral relief, which the other competent authority would be expected to accept by implication. However, where such an interpretation is not feasible, a streamlined process should be implemented to seek official agreement from the other competent authority with respect to the full unilateral relief that will be provided by the receiving competent authority.

122. The competent authority receiving the MAP request should make a timely determination as to whether unilateral relief can be granted and once that determination is made, inform the taxpayer and the other competent authority accordingly. In doing so, the competent authority should also communicate to the other competent authority the proposed Start Date, End Date and outcome of the case for MAP Statistics purposes.

### Best practices

**37 Best practice 37.** Jurisdictions should ensure that the competent authority receiving a MAP request fulfils its role as an appointee under the treaty, recognising its obligation and duty to apply the treaty independently and determine whether unilateral relief can be granted with respect to an action causing taxation not in accordance with the treaty. The competent authority should conduct a thorough and early review of the action, receiving any factual information required from the audit/examination team as needed, and verify whether it is well-founded and meets necessary standards, failing which unilateral relief should be granted. In this regard:

37.1 Where the adjustment or assessment originates in the jurisdiction of the receiving competent authority and the correct treaty application is straightforward, jurisdictions should not restrict the competent authority's authority under the treaty to correct its own tax administration's actions and the competent authority should exercise this authority in practice.

<sup>53</sup> See paragraphs 34 and 42 of the Commentary on Article 25 of the OECD Model Tax Convention that notes that the obligation to consider whether unilateral relief can be granted is not suspended owing to an ongoing litigation and that only discussions of any depth at the bilateral phase can be suspended.

- 37.2 Where the adjustment or assessment is made by the other jurisdiction and the receiving competent authority considers it to be in line with the treaty, the competent authority should have the authority to grant full relief of taxation not in accordance with the treaty and should do so in practice.
- 37.3 Even when the taxpayer is pursuing domestic remedies alongside the MAP request and the taxpayer has not filed the MAP request on a protective basis, the competent authority receiving the MAP request should, where possible, grant unilateral relief to fully address the taxation not in accordance with the treaty, thereby resolving the taxpayer's issue, allowing them to withdraw their domestic case.
- 37.4 In attribution/allocation cases, where the competent authority receiving the MAP request is of the view that the taxpayer's reported position is at one point of the arm's length range in the competent authority's view and the adjustment made by its tax administration only moves the value to a different point within that range, that competent authority should generally grant unilateral relief.
- 37.5 Where the adjustment or assessment in its own jurisdiction is not well-substantiated by adequate evidence to support it in the view of the competent authority of that jurisdiction, that competent authority should not re-perform the audit<sup>54</sup> in an attempt to build support for the adjustment or assessment, but generally provide unilateral relief to avoid taxation not in accordance with the treaty when a MAP request concerning that adjustment or assessment is presented before it, subject to the taxpayer having been cooperative and providing the requested information at the audit/examination stage as noted in **Best Practice 18**.
- 37.6 Ideally, a jurisdiction's treaty policy should allow for unilateral relief to be granted notwithstanding domestic time-limits even if a bilateral MAP agreement is not entered into with the other treaty partner. Where this is not possible, a streamlined process should be implemented to seek official agreement from the other competent authority with respect to the full unilateral relief that will be provided by the receiving competent authority.

**38 Best practice 38.** The competent authority receiving the MAP request should aim to decide whether it can provide unilateral relief and inform the taxpayer and the other competent authority thereof and propose to the other competent authority the Start Date, End Date and outcome of the case for MAP Statistics purposes within four months from receiving a complete MAP request and all necessary information for this determination.

<sup>54</sup> See paragraph 116 for more details.

# 3 Bilateral Phase of MAP

## 3.1. Step 5: Endeavours to resolve the case, position papers and discussion

123. Under the equivalent of Article 25(2) of the OECD Model Tax Convention, once a taxpayer's objection is found to be justified and unilateral relief cannot be provided by the receiving competent authority, the competent authority that received the MAP request is obligated to start the bilateral phase of MAP by starting discussions with the other competent authority. Paragraph 31 of the Commentary on Article 25 of the OECD Model Tax Convention states that once a competent authority receives a MAP request, it is under an obligation to consider whether the objection is justified and, if it appears to be justified, take action on it in one of the two forms provided for in paragraph 2, i.e. by providing unilateral relief or by initiating the bilateral phase of MAP. Once the objection raised by the taxpayer is considered justified and the case is in the bilateral stage of MAP, both competent authorities have the obligation to endeavour to resolve the case. This obligation includes engaging in discussions on the merits of the case in good faith and in a timely manner, following a pragmatic and solution-oriented approach, with the objective of eliminating taxation not in accordance with the provisions of the treaty.

124. The first sentence of Article 25(2) of the OECD Model Tax Convention stipulates that competent authorities have an obligation to endeavour to resolve MAP cases with a view to avoiding taxation not in accordance with the provisions of the tax treaty. In this respect, paragraph 5.1 of the Commentary on Article 25 of the OECD Model Tax Convention notes that this obligation requires competent authorities to seek to resolve the case in a fair and objective manner, on its merits, in accordance with the terms of the tax treaty and applicable principles of international law on the interpretation of treaties. Further, paragraph 37 of the Commentary states that although Article 25(2) does not place a duty on competent authorities to achieve a result in a MAP case, it no doubt entails a duty to negotiate.

125. During the BEPS Action 14 peer reviews and in responses from competent authorities to the survey, several instances have been noted where jurisdictions have adopted policy positions not to make genuine endeavours to resolve certain types of cases. In some of these cases, access to MAP has been granted only in a formalistic manner, without any intention of further substantive consideration of the MAP request once admitted. This has also particularly been the case where domestic remedies are pending or finalised. Examples include:

- Jurisdictions that provided access to MAP in all transfer pricing cases irrespective of whether their treaties included Article 9(2) but that did not amend their domestic law or policy to allow any discussion/resolution of such cases once access was granted.
- Jurisdictions with domestic law or administrative guidance that requires the cessation of discussions in a MAP case where a court decision has been rendered, without granting an opportunity to the other jurisdiction to provide relief in MAP even where they agree with the decision.
- Jurisdictions that are not allowed by law or policy to adjust downward the income declared on a

tax return in a MAP case, even where this is the only possibility to agree to avoid taxation not in accordance with the tax treaty.

- Jurisdictions that require the taxpayer to withdraw all pending domestic remedies within a specified time period, failing which all MAP discussions would be terminated.
- Jurisdictions that require each MAP case to be closed without agreement after a particular time-limit, irrespective of whether further endeavours are appropriate to reach an agreement on the case.

126. If a jurisdiction only provides formal access to MAP in some cases, and does not endeavour to resolve such cases in MAP, this undermines the objective of MAP and would not be in line with fulfilling treaty obligations in relation to MAP in good faith. Therefore, once all necessary information has been provided by the taxpayer, the policy and practice of jurisdictions should not allow MAP discussions to be discontinued except in limited cases. These include: (i) where both competent authorities agree that continued discussion would not be useful; or (ii) in exceptional cases where one competent authority determines that resolution is impossible or highly unlikely after a prolonged period. When it is recognised by the competent authorities that there is no purpose to continue discussing a MAP case as no solution can be found, it may be preferable to formally conclude the case rather than keep it open in the inventory. Overall, this is in line with the approach followed by the FTA MAP Forum for peer reviews under the Action 14 Minimum Standard.

127. When a taxpayer submitting a MAP request is also pursuing domestic remedies, both processes may in principle proceed at the same time under the treaty, but measures can be adopted to promote an efficient use of resources, while ensuring that access to MAP is not denied in eligible cases. Where permitted under domestic law, the taxpayer may request the suspension or stay of ongoing domestic procedures in order to give priority to MAP discussions, which in many jurisdictions requires express approval from the court in judicial proceedings. Suspension of MAP discussions may also occur where judicial proceedings covering the same issues and taxpayer are actively ongoing and have not been stayed, whether for the same fiscal year as the MAP case or for other fiscal years.<sup>55</sup> However, if court proceedings are only initiated to protect domestic time limits for such proceedings or are inactive, MAP discussions should ideally continue as the taxpayer has made the choice to give precedence to MAP. In other MAP cases, typically involving a single taxpayer, suspension may be considered where that taxpayer is actively litigating the same issue before a court, whether for the relevant fiscal year or for another fiscal year that could affect the outcome of the MAP case. For withholding tax cases, suspension may apply even where a withholding agent is pursuing litigation on behalf of the taxpayer on the same issue (such as an employer on behalf of an employee), and the taxpayer is engaged in MAP proceedings. In transfer pricing cases, discussions may be suspended where an associated enterprise involved in the MAP case is before a court on the same transaction with the other enterprise in MAP or on the same issue with respect to an identical transaction with another associated enterprise, but only where the outcome of such litigation could materially affect the transfer pricing position that the competent authority can adopt in MAP. In all such cases, suspension should occur only if at least one of the competent authorities considers it

---

<sup>55</sup> Paragraph 42 of the Commentary on Article 25 of the OECD Model Tax Convention states that "...a view that competent authorities might reasonably take is that where the taxpayer's suit is ongoing as to the particular issue upon which mutual agreement is sought by that same taxpayer, discussions of any depth at the competent authority level should await a court decision. If the taxpayer's request for a mutual agreement procedure applied to different tax years than the court action, but to essentially the same factual and legal issues, so that the court outcome would in practice be expected to affect the treatment of the taxpayer in years not specifically the subject of litigation, the position might be the same, in practice, as for the cases just mentioned."

appropriate. Suspension should not apply where the litigation concerns unrelated matters, involves taxpayers not addressed by the MAP case under consideration (unless the outcome would be directly binding for them) or addresses only broadly similar issues that do not directly affect the case. Even where active discussions in MAP are suspended, the competent authority should provide regular updates to the other competent authority on the status of the judicial proceedings while they are ongoing rather than waiting for final adjudication before communicating with the other competent authority.<sup>56</sup>

128. Similarly, competent authorities should ideally retain the ability to independently evaluate the merits of the case and endeavour to find the most appropriate solution that eliminates taxation not in accordance with the treaty. However, paragraph 35 of the Commentary on Article 25 of the OECD Model Tax Convention recognises that a competent authority may be bound by a decision of a court that finally adjudicates a claim, where this is required by law or may choose not to depart from such a decision as a matter of administrative policy or established practice. In such cases, the competent authority should present the decision to the competent authority of the other Contracting State by providing a full translation or clear summary of the court decision as well as explaining its implications for the MAP case and thereby seek agreement in MAP on full or partial correlative relief in line with that decision. In doing so, the competent authority should also explain how the judicial proceedings legally restrict consideration of the substantive issue in MAP, as in some cases, although there are proceedings pending, these proceedings may only concern procedural matters that do not necessarily preclude MAP discussions on the underlying issue.

129. Some competent authority respondents to the survey have observed a growing trend among jurisdictions to treat any decision from a domestic dispute resolution process as binding in the context of MAP. In their view, when combined with a suspension of MAP proceedings during the active pursuit of such remedies by the taxpayer, this approach can be seen to effectively undermine access to MAP. To ensure that MAP remains a viable dispute resolution mechanism, competent authorities should, where possible, be bound only by court decisions. In this regard, competent authorities should ideally not be bound by any decision except for a decision of a court that finally adjudicates a claim (i.e. a decision that cannot be or has not been appealed further), and that cannot be deviated from under their law.

130. This approach also means that competent authorities should ideally not be bound by decisions from other domestic remedies, such as administrative appellate processes, administrative or quasi-judicial tribunal decisions, audit settlements, unilateral APAs or other similar alternative dispute resolution mechanisms. In such cases, after MAP has been initiated, the receiving competent authority should in principle be able to independently consider whether the domestic remedy or settlement process would result for the taxpayer in taxation not in accordance with the provisions of the tax treaty, recognising the fundamental role of the competent authority in ensuring the proper application and interpretation of a jurisdiction's tax treaties.

131. It should be clarified that this does not mean that competent authorities are not authorised under the treaty to agree with the decisions in any of these remedies in their positions. Competent authorities

---

<sup>56</sup> Under the current MAP Statistics Reporting Framework, the time during which a MAP case is suspended because the taxpayer is pursuing judicial remedies is still counted towards the total time taken to resolve the case. As a result, several MAP cases appear in the statistics as having taken significantly longer than 24 months to close, even though the delay was due to factors beyond the control of the jurisdiction. In such cases, the jurisdiction may include a note in the statistics to clarify this point. While these delays have always been treated as justified and excluded from the calculation of the 24-month average resolution time in the Action 14 peer review reports, the FTA MAP Forum will consider whether the Framework should be modified in future to record and report the time taken for such cases separately.

may still review such decisions on their merits and may choose to not depart from them unless there is a clear error of fact or law or where new information or materially different facts justify an alternative analysis under the provisions of the tax treaty. The sole objective of this guidance is to ensure that, except where clear and justifiable legal constraints exist, competent authorities remain free to reverse or correct unilaterally applied decisions in MAP that they consider to be inconsistent with the provisions of the applicable tax treaty.

132. Some competent authorities have observed that, in practice, many MAP cases cannot move forward because the taxpayer fails to provide the necessary information, despite multiple follow-ups or requests. In such situations, it is clarified that competent authorities are considered to have fulfilled their obligation to endeavour to resolve the case by requesting the required information within reasonable terms. Without this information, they are unable to engage in substantive discussions or reach a resolution, which may ultimately result in the case being closed.

133. The bilateral phase of MAP typically begins with a comprehensive and structured exchange of positions between the competent authorities. For simple cases, the informal sharing of positions by e-mail, with a few follow-up calls, could already lead to agreed solutions. Some competent authorities responding to the survey indicated that in some cases, it may be sufficient to share only a very brief position paper or simply an email. This may occur when the case is inherently simple, such as issues relating to residence, when the factual circumstances have already been addressed in a previous MAP agreement between the competent authorities or even when a competent authority meeting is already scheduled, and a straightforward MAP case is received shortly beforehand.

134. However, in most MAP cases, a more formal exchange of position papers is necessary, with each competent authority clearly articulating its position based on a thorough analysis of the relevant facts and circumstances. In practice, the first position paper is typically prepared by the jurisdiction that made the adjustment or assessment in attribution/allocation cases. For other MAP cases, practices vary and either competent authority could prepare the first position paper, but it is advisable for the competent authority with the most relevant information about the taxpayer and the case to prepare it. When a competent authority receives a MAP request for other cases, if that competent authority has sufficient information to prepare the first position paper, they should do so. If they do not, they should write to the other competent authority to request that they share the first position paper. If the adjusting or assessing jurisdiction has limited MAP experience or capacity, the other competent authority may offer to draft the first position paper to avoid delays. Some competent authorities that responded to the survey indicated that, provided they have enough information available, they do not necessarily wait for the position paper of their treaty partner where the adjustment originated to share their own position paper.

135. Position papers should provide sufficient detail to enable the other competent authority to clearly understand the case and the position taken, while avoiding excessive or unfocused information that may obscure the key issues, striking an appropriate balance between clarity and completeness. As a general structure, the position paper should include the following:

- Clear identification of the taxpayer and, where applicable, any related persons in the other jurisdiction.
- Relevant tax years and a summary of key information from the original return.
- Contact details of the competent authority official handling the case.
- Details of the adjusted or assessed amounts.
- A concise overview of the issue, the transactions and business context where relevant.
- The basis for the adjustment or assessment.
- Applicable domestic law and treaty provisions.

- An analysis of the case and a proposed solution.
- Relevant calculations and numerical data, where appropriate.
- Relevant financial or economic data, where appropriate.

136. To maintain conciseness and clarity, supporting documentation that is not directly essential to the main position should be placed in Annexes, with clear and specific cross-references in the main text to facilitate easy navigation and review. Executive summaries may be added for complex matters and in attribution/allocation cases, a short-form position paper may be used focusing on economic analysis and the proposed solution. Most competent authorities that responded to the survey noted that they tailor their position papers to the MAP case at hand and do not follow a one-size-fits-all approach even though they start with one or several templates. Some competent authorities further indicated that the level of detail in the position paper is also directly related to the working relationship with the other competent authority.

137. A response position paper is typically prepared where the other competent authority has significant disagreements with the initial position or wishes to propose alternative solutions. The response position paper should follow the same structure and principles as the first paper. However, it should always include:

- An indication of whether the views, proposed solutions or relief suggested in the initial position paper can be accepted.
- A clear identification of areas of agreement and disagreement between the competent authorities.
- Any requests for additional information or clarification needed to better understand specific issues.
- Any other relevant information not addressed in the initial paper but considered pertinent to the case.
- Proposals or alternative views aimed at resolving the issue.

138. Some competent authorities that responded to the survey stated that they always issue response position papers. In contrast, others indicated that they only do so when sufficient information is available to support a counter-proposal. When such information is lacking, they may prefer to wait for bilateral discussions during a meeting before deciding whether to submit a response position paper.

139. In all cases, a position paper as well as a response position paper should be principled, clearly reasoned and reflect a position that the competent authority issuing it would consider acceptable if it were presented by the other competent authority if the roles were reversed. Competent authorities must also ensure that their positions in MAP are consistent across cases and not dependent on whether their jurisdiction is where the adjustment or assessment originated or the plausible relieving party. Positions should be reasonable and avoid extremities that could stand in the way of a mutual agreement. This principle is particularly important for maintaining credibility and trust between jurisdictions. Several competent authorities responding to the survey noted that they make a deliberate effort in their position papers to demonstrate a good faith understanding of the circumstances and relevant treaty provisions. They emphasised the importance of presenting the facts objectively, including accurate references to primary documents. Any subjective interpretation should be limited to the views of the competent authority preparing the position paper. If the competent authority agrees with the position taken in the adjustment or assessment, the position paper should do more than simply repeat the findings of the disputed tax audit. It should also provide an analysis from the competent authority that supports that position.

140. To ensure productive meetings between the competent authorities in MAP, position papers should be prepared and shared promptly once sufficient information has been received to allow for substantive consideration of the case. Among the competent authorities that responded to the survey, some reported having established time targets for the preparation of position papers, typically ranging from four to six months following receipt of the MAP request, the required information or the initial position paper, while

noting that this timeframe may vary depending on the complexity of the case. Additionally, many competent authorities indicated that receiving position papers well in advance, generally around one month prior to competent authority meetings, helps to optimise the efficiency of those meetings. Several competent authority respondents to the survey have noted challenges where position papers were received too close to the scheduled meeting, leaving insufficient time to review and understand the other side's position, thereby limiting the effectiveness of the discussions. This is particularly important for face-to-face meetings, as competent authorities often travel without their official IT equipment or full access to the same for confidentiality reasons and may be unable to access documents sent at the last minute. The travel schedule of the visiting competent authority should also be taken into account, particularly in cases where, for example, a competent authority from Asia travels to Europe and has arranged multiple meetings with different competent authorities. In such cases, position papers and responses should be provided well in advance to allow adequate preparation time before travel begins.

141. A suggested format for a position paper, including a standardised structure and list of recommended contents, has been developed in **Annex C.4**, with different templates for attribution/allocation issues and other MAP cases. While the structure template serves as a common foundation for position papers, it does not preclude competent authorities from including additional information or tailoring their analysis based on the specifics of the case.

142. Some MAP cases are resolved entirely through only an exchange of e-mails or position papers. However, more typically, these exchanges need to be followed by meetings between the competent authorities where the case is discussed and resolved. These meetings are a central component of bilateral engagement and should be scheduled as needed to facilitate timely and effective resolution of MAP cases. Following the exchange of position papers, if agreement cannot be reached through written communications, competent authorities should arrange a meeting, whether face-to-face, via telephone or through videoconferencing, to discuss the case in further detail. The increased availability and use of virtual communication tools have made competent authority meetings more accessible and frequent, especially for jurisdictions with differing levels of capacity or for jurisdictions situated in different parts of the world. Virtual meetings are particularly effective for inventory management, for advancing cases with treaty partners where the shared MAP inventory is limited, for resolving smaller, less complex cases or for making progress on more complex cases. However, face-to-face meetings remain valuable for addressing and resolving complex cases due to the advantages of direct interaction, real-time clarification and a more pragmatic and less legalistic environment. In-person meetings also encourage better mutual understanding, thereby facilitate pragmatic solutions, encouraging constructive dialogue and providing an opportunity to discuss multiple cases efficiently. Historically, competent authorities often concentrated all MAP discussions into a single annual meeting, a practice that both business and competent authority respondents to the survey noted frequently led to delays and procedural inefficiencies. Instead, competent authorities should adopt a more modern approach by holding face-to-face meetings as often as needed to manage the inventory effectively, supported by virtual meetings to resolve simpler cases and advance more complex cases in between. Discussions during meetings between the competent authorities in MAP should first prioritise agreement on the relevant facts to avoid misunderstandings and then follow this with a discussion and resolution of the applicable treaty issues or in attribution/allocation cases, issues such as the appropriate transfer pricing method, functional analysis and pricing or range determinations.

143. Before meetings, competent authority teams should prepare thoroughly, be familiar with the case facts and positions, assign roles and be clear on acceptable outcomes. Some competent authority respondents to the survey noted that this is especially important where there is a substantial staff turnover. During meetings, competent authorities should create a constructive and professional environment by beginning with clear introductions of all participants and their respective roles. A structured agenda should be established in advance, including the order in which cases will be discussed and the designation of a

lead jurisdiction for each matter. Unless otherwise agreed, meeting minutes will be recorded and shared between the competent authorities. Discussions should be conducted respectfully and grounded on the positions of the competent authorities. Some competent authorities responding to the survey stressed that the MAP process should be undertaken in a non-adversarial manner. Competent authorities should remain open to reasonable compromise, including identifying common ground within an acceptable range, even where there are principled differences in how that range is determined. However, any compromise should be in line with the concerned tax treaty, must be defensible within that jurisdiction and should not create an unintended precedent. Finally, the meeting should conclude with a clear outline of next steps, including indicative timelines for case closure, the matching of MAP Statistics where an outcome has been reached, required correspondence and planned communication with the taxpayer, particularly in situations where MAP requests have been filed in both jurisdictions for the same issue.

144. Auditors or examination officials involved in the original case should not participate in meetings between the competent authorities in MAP. However, if both competent authorities agree, such officials may be invited to attend limited portions of the meeting for the sole purpose of factual clarification as discussed in section 1.3. In such cases, the competent authority of the jurisdiction inviting the official from the audit/examination function should clearly inform the other competent authority at the outset which participants are from the audit/examination function, and which are part of the competent authority.

145. In multilateral MAP cases i.e. MAP cases involving more than two jurisdictions, competent authorities should ensure coordination to determine the appropriate legal basis for discussion and to achieve a consistent and efficient resolution of the case. In practice, such cases may be initiated either through a single MAP request filed under the equivalent of paragraph 1 of Article 25 of the OECD Model Tax Convention with one jurisdiction, followed by coordination with other concerned competent authorities under the equivalent of paragraph 3 of Article 25 or through the filing of separate MAP requests under the equivalent of paragraph 1 of Article 25 with each jurisdiction involved. Regardless of the approach, where the MAP requests are found to be eligible and proceed to the discussion phase, competent authorities may conduct either joint multilateral discussions or coordinated bilateral discussions aimed at achieving a coherent and comprehensive resolution. The objective in either scenario should be to conclude a single multilateral agreement or a set of coordinated bilateral agreements that collectively ensure the elimination of taxation not in accordance with all the relevant treaties. Competent authorities seeking further guidance on legal and procedural aspects of multilateral MAPs may refer to the Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements (“MoMA”), as applicable and subject to the domestic law and procedural requirements of the jurisdictions concerned.<sup>57</sup> In any case, where two competent authorities are engaged in MAP discussions concerning a bilateral aspect of a multilateral case that may materially affect a third jurisdiction or MAP cases involving that third jurisdiction and the concerned jurisdictions, the competent authorities must always keep the third competent authority informed of the progress of the case.

146. As noted previously in section 1.5, competent authorities should ideally resolve each MAP case within a period of 24 months from the Start Date of that case as recorded under the MAP Statistics Reporting Framework. However, endeavours should continue to resolve the case beyond this period as well if needed with closer supervision from senior supervisory staff.

---

<sup>57</sup> See the *Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements*, available at: [https://www.oecd.org/en/publications/manual-on-the-handling-of-multilateral-mutual-agreement-procedures-and-advance-pricing-arrangements\\_f0cad7f3-en.html](https://www.oecd.org/en/publications/manual-on-the-handling-of-multilateral-mutual-agreement-procedures-and-advance-pricing-arrangements_f0cad7f3-en.html).

### ***Best practices***

**39 Best practice 39.** Jurisdictions should ensure that, where the competent authority receiving a MAP request considers that an objection is justified and unilateral relief is not possible with respect to an eligible MAP request where the necessary information has been submitted, the bilateral phase of MAP is initiated and both competent authorities endeavour to resolve the case in line with their obligation under the tax treaty. This obligation includes initiating or having discussions on the merits of the case in good faith and in a timely manner, following a pragmatic and solution-oriented approach. The aim should be to reach an agreement that avoids taxation not in accordance with the tax treaty. In this regard, where all necessary information has been provided by the taxpayer, jurisdictions should continue endeavours in MAP, except as provided in **Best practice 40** and **Best practice 41**, until both competent authorities agree that further endeavours would not result in an agreement and would thus no longer be useful in their considered view or in exceptional cases where one competent authority determines that resolution is impossible or highly unlikely after a prolonged period.

**40 Best practice 40.** Jurisdictions should ensure that a suspension of discussions in the bilateral phase of MAP occurs only if the taxpayer is actively pursuing judicial proceedings and those proceedings have not been stayed or stopped. If a taxpayer files in court solely to protect domestic time limits and the court proceedings are paused or no hearing is requested for a prolonged period, the issue should continue to be considered in MAP. Suspension of MAP discussions should apply only where the same issue is actively before a court in at least one of the concerned jurisdictions, involving either the same taxpayer as in the MAP case or, in withholding tax cases, a withholding agent litigating on behalf of the taxpayer, or where the court's decision will be directly binding under law for the taxpayer concerned by the MAP case. In transfer pricing cases, suspension may also be acceptable where an associated enterprise involved in the MAP case is actively before a court on the same issue for an identical transaction, either with the other associated enterprise involved in the MAP case or with another associated enterprise, provided the court's decision may materially affect the substantive position that the competent authority can adopt in the MAP proceedings and at least one of the competent authorities considers it appropriate to suspend discussions during the ongoing litigation.

**41 Best practice 41.** Jurisdictions should ensure that a competent authority is not bound by a decision in a domestic remedy when considering a case under MAP, except where it is legally impossible for them to deviate from that decision. This would include amongst other processes, administrative rulings, settlements, or other decisions under domestic law. In this regard, competent authorities should ideally not be bound by any decision except for a decision of a court that finally adjudicates a claim (i.e. a decision that cannot be or has not been appealed further), and that cannot be deviated from under their law. The competent authority should remain free from policies or practices that would prevent it from independently assessing the correct application of the treaty. This does not preclude the competent authority from reviewing such decisions and determining, on their merits, whether to follow them and competent authorities may choose to deviate only where there is an error of fact or law, or where new information or differing facts necessitate a different analysis.

**42 Best practice 42.** If a competent authority is legally bound by a court decision in line with **Best practice 41** and cannot deviate from that decision in MAP, it should communicate this position to the other competent authority and within a reasonable time, provide a translated copy of the decision, along with a clear summary of the decision, including the reasoning behind it, to allow the other competent authority to determine whether correlative relief can be granted in MAP in line with that decision. A MAP case should not be closed unilaterally without allowing the other competent authority adequate time to make such a determination and to provide for relief of taxation not in

accordance with the treaty to the extent possible.

**43 Best practice 43.** Jurisdictions should ensure that clear and comprehensive position papers are prepared and shared in a timely manner to facilitate an efficient and well-informed MAP process. In this regard:

- 43.1 Preparation of the first position paper:
  - 43.1.1 For attribution/allocation cases, the first position paper should typically be prepared by the competent authority of the jurisdiction that asserted the adjustment or raised the assessment<sup>58</sup>, unless otherwise agreed by the competent authorities.
  - 43.1.2 For other MAP cases, either competent authority may prepare the first position paper. However, it is advisable for the competent authority with the most relevant information concerning the taxpayer and the circumstances of the case to do so. If the competent authority that receives the MAP request has sufficient information to prepare the first position paper, it should do so. If not, it should request the first position paper from the other competent authority.
  - 43.1.3 Irrespective, the other competent authority may take the initiative to prepare the first position paper, for example if the adjusting or assessing jurisdiction has limited capacity or experience with MAP.
- 43.2 Content and structure of the position paper:
  - 43.2.1 The position paper should be comprehensive, providing both general information and a detailed analysis of the case. However, in straightforward cases, position papers could be more concise and focused on the central issues.
  - 43.2.2 Where applicable, it should clearly outline points of agreement and disagreement with the audit position, along with the reasoning behind each.
  - 43.2.3 The main position paper should be succinct, with additional supporting information included as Annexes. The paper should reference specific Annexes (with page numbers) to ensure clarity and ease of review.
  - 43.2.4 The positions taken in MAP should be principled and consistent, avoiding differences based on whether a jurisdiction is on one side of a transaction or the other, to build trust between competent authorities and positions that the competent authority preparing it would be willing to accept if offered, avoiding extreme positions as they create large gaps at the outset and hinder effective resolution in MAP cases.
- 43.3 Response position papers:
  - 43.3.1 A response position paper should be provided when a competent authority has a different viewpoint or disagrees with the position of the other competent authority. If provided, the response position paper should be succinct, following the same principles outlined above for position papers and should highlight points of agreement or disagreement as well as propose alternative solutions where there is disagreement.
- 43.4 Timely sharing of position papers:
  - 43.4.1 Position papers should be shared at least two to four weeks before a meeting of the competent authorities to allow sufficient time for review and to ensure a productive and informed discussion. For simple cases, position papers should be shared at least two to three weeks in advance, while for complex cases, the other competent authority should be given at least four weeks.
  - 43.4.2 Position papers should be shared within six to eight months from receiving a

<sup>58</sup> Where the MAP request is filed before the competent authority of the other jurisdiction, this would be subject to that competent authority sharing the reasoning that forms the basis of considering the objection raised by the taxpayer in the MAP request justified as provided in Best Practice 35.

complete MAP request and all necessary information for this determination. Response position papers, if any, should be shared within around four months from the first position paper i.e. ten to twelve months from receiving a complete MAP request and all necessary information for this determination. For simple cases, position papers should be shared within six months and a response should be shared within ten months, while for complex cases, these timelines can be extended to eight and twelve months respectively. However, these timelines may be adjusted where doing so leads to a more efficient and timely process between the two competent authorities.

**44 Best practice 44.** Jurisdictions should ensure that meetings between the competent authorities in MAP are conducted effectively, with a structured approach aimed at reaching an agreement on both factual and technical issues in a collaborative, pragmatic and solution-oriented manner. In this regard:

- 44.1 Meetings can take place either face-to-face or via telephone or videoconferencing. Virtual meetings should be used to discuss status updates on the MAP inventory in general, to resolve smaller and less complex cases quickly and to progress the remaining cases. Face-to-face meetings should be used to discuss and resolve all remaining cases, including particularly complex ones, in a cordial and pragmatic atmosphere. Competent authorities should schedule as many face-to-face meetings as necessary to manage their joint inventory and supplement them with virtual meetings as appropriate rather than rely only on annual meetings.
- 44.2 During the meeting, competent authorities should:
  - 44.2.1 Ensure a welcoming environment, with clear introductions of participants and their roles.
  - 44.2.2 Set a structured agenda, determine the order of cases and assign the lead jurisdiction for each discussion.
  - 44.2.3 Agree that meeting minutes will be recorded and circulated unless decided otherwise.
  - 44.2.4 Maintain respectful discussions, ensuring that all arguments are backed by facts and logical reasoning.
  - 44.2.5 Remain open to reasonable compromises, such as finding common ground within an acceptable range in attribution/allocation cases, even where there are principle-level differences in how that range is determined. However, any compromises should be in line with the concerned tax treaty, defensible within the jurisdiction and should not set a precedent.
  - 44.2.6 Clearly outline next steps, including closure timelines, the matching of MAP Statistics, required letters and communication with taxpayers, particularly in cases involving MAP requests submitted before both competent authorities.
- 44.3 While personnel involved in the relevant case from the audit/examination function should not participate in MAP discussions in principle, with agreement from the other competent authority, they may be invited, similar to the taxpayer, to attend specific allotted times in meetings between the competent authorities in MAP solely for factual clarifications. Competent authorities should ensure that auditors are not present during substantive discussions or decision-making stages of the MAP process, unless agreed otherwise by the competent authorities.

**45 Best practice 45.** Taxpayers should make themselves available for communications, calls and meetings with the competent authorities throughout the MAP process to support the efficient, effective and timely handling and resolution of MAP cases.

**46 Best practice 46.** Jurisdictions should allow taxpayers to file MAP requests for multilateral cases and ensure that such cases are handled and resolved in accordance with the guidance set out in the Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements (MoMA). In this regard, as noted in section 1.7, jurisdictions should clearly specify in their MAP guidance the legal requirements applicable to taxpayers and other competent authorities in the context of multilateral cases. Further, where two competent authorities are engaged in MAP discussions on a bilateral issue within a multilateral case that could affect a third jurisdiction or related MAP cases, they should keep the third competent authority regularly informed of the progress of the case.

### 3.2. Step 6: Finalisation and implementation of MAP agreements

147. Once a MAP case has been resolved through unilateral relief granted by one competent authority or through discussions between the competent authorities through full agreement or a partial agreement, the agreement should be implemented in a timely and effective manner.<sup>59</sup> The Action 14 Minimum Standard requires Inclusive Framework member jurisdictions to implement all MAP agreements and to do so in a timely manner. However, from the tax treaty standpoint, competent authorities have raised concerns that the Minimum Standard does not guarantee implementation in all cases, as it provides flexibility in how jurisdictions incorporate provisions concerning the implementation of MAP cases in tax treaties. Jurisdictions are allowed under the Minimum Standard to either include the equivalent of the second sentence of Article 25(2) of the OECD Model Tax Convention in their treaties or be willing to include both alternative provisions setting time-limits for business profit or transfer pricing adjustments under Articles 7 and 9. These options have materially different implications in practice. The former ensures that MAP agreements can be implemented notwithstanding domestic time limits in all cases. However, where jurisdictions rely on the alternative provisions that create time limitations for adjustments under Articles 7 and 9, even adjustments made within the permitted timeframe may result in MAP agreements that cannot be implemented in practice in both jurisdictions. For example, an adjustment made two to three years after the relevant fiscal year may lead to a MAP request being filed within three years from that adjustment and MAP leading to an agreement only after two further years, by which time domestic time limits may have expired, preventing implementation. While this may be addressed by including time-limits that are broad enough to cover domestic time limits in both jurisdictions, MAP cases falling outside the scope of attribution/allocation adjustments i.e. other MAP cases, may always face implementation challenges, as these alternative provisions do not apply to them. It should be acknowledged that some jurisdictions that have opted to include the alternative provisions in their tax treaties have chosen to include these provisions

---

<sup>59</sup> Since there is no obligation under Article 25(2) of the OECD Model Tax Convention for competent authorities to reach agreement in every MAP case, the process may result in no agreement. In practice, however, it remains uncommon for MAP cases to end without any agreement. The MAP statistics from 2016-23, for instance, indicate that this occurred in only a small minority of cases. In such instances, competent authorities should formally close the case and clearly notify the taxpayer that the MAP process has concluded, enabling the taxpayer to consider other available remedies. Where a taxpayer chooses to pursue domestic remedies following the closure of a MAP case without agreement, competent authorities may later accept a new eligible MAP request submitted after a final court decision to enable corresponding relief in the other jurisdiction. In this regard, some competent authorities adopt a flexible approach by treating the court decision as the starting point for the filing period for a MAP request. Most competent authorities, however, do not consider the decision to constitute an “action” by one or both jurisdictions and would therefore only accept a new MAP request if submitted within the prescribed timeframe under the treaty calculated as from the date of the original adjustment or assessment where still possible.

in the text of the MAP provision, to ensure that the time limits apply to all adjustments or assessments that lead to MAP cases. Some jurisdictions have also accepted the inclusion of the second sentence of 25(2) if coupled with the inclusions of the alternative provisions in the MAP provision itself.<sup>60</sup> However, it is also important to recognise that the Action 14 Minimum Standard considers a jurisdiction to be compliant even if neither the second sentence of Article 25(2) nor the alternative provisions have been included so long as they were both willing to include either option and discussed the same in treaty negotiations. Irrespective, almost 20% of the tax treaties considered under the BEPS Action 14 peer review process do not contain either option envisaged under the Action 14 Minimum Standard. This remains a practical concern from the perspective of many competent authorities for the implementation of MAP agreements.

148. However, several jurisdictions have been able to overcome this concern and introduce changes to their domestic law to ensure that MAP agreements can always be implemented notwithstanding domestic time-limits.<sup>61</sup> Until the treaty network is fully modified, this is the most effective way to ensure that all MAP agreements can always be implemented. Nevertheless, if legislative changes are not possible, appropriate procedures should be adopted to address potential limitations to implementation in MAP cases. Specifically, where a MAP case is initiated and the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in the relevant tax treaty, prevent implementation of a MAP agreement, jurisdictions should establish procedures to ensure that the agreement is nonetheless implemented. Moreover, in situations where domestic limitation periods may expire during the MAP process and thereby affect the possibility to give effect to a future MAP agreement, jurisdictions should, for the sake of clarity and transparency, notify their treaty partners thereof without delay.

149. When a provisional agreement is reached in MAP, the agreement should be clearly documented. Ideally, the competent authorities should agree on which side will document the agreement either in a closing letter shared between them or as part of the minutes of the meeting. The closing letter or minutes should summarise the resolution, its basis and provide practical details on its implementation, particularly with respect to numerical adjustments and currency conversion rates if applicable. The competent authorities would also use the closing letter or minutes to clarify that the resolution does not establish a precedent, particularly where the MAP agreement is a negotiated compromise specific only to that particular case and the concerned fiscal years. A template that can generally be used for a closing letter and/or agreed meeting minutes that can be shared with the other competent authority is attached as **Annex C.5**.

150. Before implementing a MAP agreement, competent authorities should obtain the taxpayer's acceptance of the final proposed resolution and, where applicable, confirmation of the termination or withdrawal of any domestic legal remedies concerning the issues resolved in the MAP case. The terms of the final proposed resolution should be clearly explained to the taxpayer, as competent authorities have encountered cases where less experienced taxpayers did not fully grasp the implications of a final proposed MAP outcome, which subsequently complicated implementation. Although Article 25 of the OECD Model Tax Convention does not expressly require taxpayer consent, the Commentary recognises that, in practice, the mutual agreement reached by the competent authorities should not be implemented until the taxpayer has agreed to the resolution and has renounced the pursuit of any remaining domestic

---

<sup>60</sup> See for example, Canada's recent tax treaties (e.g. with Azerbaijan or Colombia) include such a provision.

<sup>61</sup> See for example, section 124 of the Tax International and Other Provisions Act 2010 in the United Kingdom, section 295 (2a) of the Federal Fiscal Code in Austria, Articles 67 and 146 of the Federal Tax Code in Mexico and Article 869-3 of the Tax Code in Colombia.

remedies.<sup>62</sup> As the taxpayer is not involved in the discussions between the competent authorities during MAP, most jurisdictions give the taxpayer the right to consent to the MAP agreement before it is implemented. This approach also aims to prevent scenarios where a MAP agreement is implemented, but subsequently undermined by a later court decision, potentially resulting in unintended double non-taxation. For example, where the competent authorities of States A and B agree under MAP that the taxpayer has a permanent establishment in State B and that a portion of profits should be attributable to it, State B may tax those profits while State A provides corresponding relief. However, if a domestic court in State B later determines that no permanent establishment existed, State B would be required to refund the tax previously levied. In such a case, State A may be unable to reverse the relief it granted, resulting in profits that are not taxed in either jurisdiction. In any case, as MAP is intended for the benefit of the taxpayer, consent confirms agreement with the resolution and avoids potential legal challenges.<sup>63</sup>

151. A clear and reasonable deadline, such as one to two months from notification, should be provided for the taxpayer to give consent, which may be extended should further action be required from the side of the taxpayer before implementation. However, in certain jurisdictions, domestic law does not permit the taxpayer to unilaterally withdraw ongoing judicial proceedings unless the competent authorities also inform the relevant court of the MAP process. In such cases, competent authorities should provide the necessary support by promptly notifying the court of the MAP outcome as required. Additionally, in jurisdictions where it is not legally possible for the taxpayer to formally waive the right to initiate future domestic remedies, an informal commitment by the taxpayer to refrain from doing so may be accepted. Nonetheless, some competent authorities responding to the survey indicated that taxpayers are sometimes reluctant to waive such rights, especially if they are unsure that the MAP agreement will be implemented correctly. This skepticism can only be overcome through the competent authorities providing clear assurances to the taxpayer that the MAP agreement will be implemented in a timely manner.

152. Where the agreement concerns multiple years or issues, the taxpayer should not be permitted to accept only certain aspects of the agreement unless both competent authorities explicitly agree to such partial acceptance. Modifications proposed to the provisional agreement by a taxpayer that would reopen discussions at this stage should generally not be permitted. In cases where a taxpayer rejects the provisional agreement, the MAP case may be closed through a formal notification provided by the competent authority(ies) that initially received the request. The taxpayer would remain free to pursue any available domestic remedies at that point, subject to applicable time-limits. Conversely, once the taxpayer has accepted the agreement and undertaken any necessary actions to withdraw or waive domestic remedies, the agreement should be considered final, and the jurisdictions can proceed to implement it.

153. Implementation challenges have been a recurring issue identified in survey responses from both business and competent authorities. Some jurisdictions are noted to still not be able to implement MAP agreements despite having the relevant treaty provision, often due to conflicting domestic law. Others are noted to not make efforts to reach agreement or begin discussions where their treaties do not contain the second sentence of Article 25(2), citing soon to expire domestic time-limits as a barrier. In some cases, overly burdensome implementation procedures are required, such as appointing a local representative or fulfilling complex filing formalities.

154. In MAP cases, implementation generally requires coordination between the competent authority and other units within the tax administration, such as those responsible for issuing refunds. As a result, the

---

<sup>62</sup> Paragraph 45 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>63</sup> In some jurisdictions, the taxpayer may be able to challenge a MAP agreement in court if it is implemented without the taxpayer's consent.

implementation of MAP agreements is often handled by departments outside the competent authority function. However, competent authorities responding to the survey noted that depending on the circumstances, the office responsible for implementing MAP agreements may form part of the central tax administration, which typically facilitates the implementation process and subsequent follow-up as such offices are generally accustomed to handling these types of requests. Where there is greater organisational distance between the competent authority function and the office(s) responsible for implementation or where the latter have limited experience with MAP agreements, some competent authorities reported that they provide precise and clear instructions to these offices to ensure smooth and timely implementation. In addition, some competent authorities responding to the survey observed that having multiple points of contact across different jurisdictions during the implementation phase can be challenging for taxpayers. They suggested that competent authorities could agree to designate one authority to centralise all necessary information and act as a single point of contact for the taxpayer, thereby streamlining the process.

155. Accordingly, competent authorities should remain accessible to taxpayers as a point of contact in situations where implementation is delayed. Jurisdictions may also require certain actions from the taxpayer such as submitting a revised return or a refund claim in MAP cases to complete implementation. Competent authorities should clearly communicate the procedural requirements for implementation to the taxpayer in a timely manner, ensure that these requirements are reasonable and achievable within the specified timeframe and continue to monitor their completion to ensure timely implementation as soon as they are completed. If the taxpayer fails to take the necessary actions within the prescribed timeframe and does not respond despite reasonable follow-up requests by the competent authority, implementation of the agreement may no longer be feasible. Competent authorities have reported instances where taxpayers have not filed the required revised tax returns even years after accepting a provisional agreement, despite repeated reminders to do so.

156. To ensure implementation occurs within a reasonable timeframe, competent authorities should follow up regularly with relevant tax administration units, particularly where implementation is not within the direct control of the competent authority. Although the concept of "timely" implementation may vary depending on the facts and complexity of the case, most straightforward cases should be completed within three months from the date taxpayer consent is obtained. More complex cases may take longer, but delays beyond six to eight months should be rare and require justification. One competent authority noted that its team has access to a digital tool which enables them to periodically monitor the implementation status of MAP agreements.

157. It is also important to consider whether and to what extent interest and penalties should be adjusted as part of the implementation of a MAP agreement. At present, jurisdictions differ in their interpretation of whether interest and penalties fall within the scope of their tax treaties. Some competent authorities have noted that they are prohibited by domestic law from waiving or modifying interest and penalties through MAP, even where these charges are functionally tied to the adjusted income. Nevertheless, a number of competent authorities have adopted pragmatic practices, such as indirectly adjusting interest or penalties when they are calculated as a function of the underlying adjustment. Some jurisdictions also consider relief where the original justification for a penalty no longer holds after review in MAP. Where the treaty scope does not include interest, competent authorities have also explored domestic relief mechanisms in situations involving hardship, taxpayer cooperation, or excessive delays.

158. In many MAP cases, the imposition of interest and penalties on tax adjustments can create a substantial economic burden, especially when such amounts accumulate over long periods before the MAP resolution is implemented. This issue is particularly acute when competent authorities reach an agreement that eliminates or reduces the underlying adjustment or assessment, yet the related interest and penalties remain unaltered. In such cases, taxpayers may justifiably question why interest, or penalties

should continue to apply when the adjustment or assessment on which they were based has been reversed or modified through MAP. Accordingly, jurisdictions should ensure that interest charges and administrative penalties that are directly connected to an underlying tax liability covered under Article 2 of the OECD Model Tax Convention are reduced or withdrawn to the same extent that the underlying tax is reduced or withdrawn pursuant to a MAP agreement. While this approach would not extend to aligning interest rates across jurisdictions, it would ensure that penalties and interest charges do not outlast or exceed the taxation they are meant to supplement. It is further clarified that penalties connected to domestic compliance requirements, such as those for late filings, insufficient documentation, or late payment of undisputed tax, or criminal penalties are generally not considered directly linked to the tax at issue in the MAP case and thus would usually not be withdrawn following the MAP agreement. As for interest relief, competent authorities should consider symmetrical approaches to avoid economic double taxation, particularly where the taxpayer in one jurisdiction is required to pay interest during the MAP process while the other does not pay interest on a resulting refund or has already paid interest. In such cases, double payment of interest should be avoided, while recognising that there may be instances where only a single interest payment arises due to one jurisdiction not charging interest on the original assessment. Although MAP may not be the mechanism to harmonise divergent domestic practices, competent authorities should take a flexible and balanced approach, possibly adopting general principles for mitigating undue burdens arising from interest asymmetries or delays beyond a reasonable timeframe.

### ***Best practices***

**47 Best practice 47.** Jurisdictions should ensure that, once a provisional agreement is reached in a MAP case, the resolution is clearly documented, and taxpayer consent is obtained within a reasonable timeframe to facilitate implementation and prevent future disputes. In this regard:

- 47.1 The two competent authorities should agree as to which competent authority would document the details of the agreement in either a closing letter that is shared between the two competent authorities or as part of the minutes of the meeting. The closing letter or minutes should outline the resolution and where possible, the reasoning behind it and clarify that there would be no precedent value to compromises that have been made where necessary. It should also document how the resolution will be implemented in practical terms, particularly in terms of numerical adjustments or assessed tax amount
- 47.2 Each competent authority located in a jurisdiction where the MAP agreement requires implementation or where the taxpayer may undertake domestic remedies should seek taxpayer consent before implementing the agreement. Competent authorities should clearly explain the tax consequences of the provisional agreement to the taxpayer before obtaining their consent, particularly in the case of individual taxpayers to ensure that the taxpayer fully understands the terms and implications of the agreement. A clear and reasonable timeframe such as one-two months after the notification of the provisional MAP agreement should be provided for the taxpayer to give consent, depending on the actions required to be undertaken by the taxpayer.
- 47.3 Along with consent, the taxpayer and where applicable, their associated enterprise, should be asked to withdraw all domestic remedies initiated in both jurisdictions that concern the issue resolved by MAP for the fiscal year concerned and, where possible, waive the right to future remedies for that issue in both jurisdictions. Where domestic law prescribes a deadline for the withdrawal of domestic remedies as a condition for implementing MAP agreements, competent authorities should ensure that such deadlines are clearly communicated to the other competent authority and to the taxpayer in a timely manner. In addition, where competent authorities are required to assist taxpayers to formally withdraw domestic remedies under the domestic law of a jurisdiction, competent authorities should undertake all actions necessary to enable this process.

**48 Best practice 48.** Jurisdictions should ensure that all MAP agreements are implemented in a timely manner, recognising that timely implementation is essential to the effectiveness of MAP. In this regard:

- 48.1 Where a tax treaty contains the equivalent of Article 25(2), second sentence, the treaty should override domestic law and thus all MAP agreements should always be fully implemented notwithstanding domestic time-limits
- 48.2 Where a tax treaty does not contain such a provision, the domestic law and/or administrative rules of jurisdictions should ideally ensure that all MAP agreements can be implemented, along with, where necessary for tax treaties that include no filing period, the introduction in domestic law of a reasonable filing period for MAP requests of at least three years from the first notification of the action resulting in taxation not in accordance with the treaty. Where this is not possible, jurisdictions should inform the taxpayer and the other competent authority early of any potential limitations to implementation.
- 48.3 Taxpayers may be required to take reasonable actions within a reasonable timeframe to facilitate implementation, such as filing a revised tax return or submitting a refund claim. In these situations, the competent authority should provide the taxpayer the specific requirements the taxpayer must fulfil under the appropriate domestic procedure and the prescribed timeframe for doing so.
- 48.4 All MAP agreements where all necessary taxpayer actions have been performed should be implemented at the earliest possible time, avoiding all unnecessary delays, taking into account the complexity of the actions required to be performed by each tax administration to implement the MAP agreement. This should, in most cases, be possible within three months from when the taxpayer has given consent to the provisional agreement and has fulfilled all requirements necessary to facilitate implementation. In this regard, refunds meant to implement MAP agreements should not be artificially delayed in anticipation of potential subsequent adjustments.

**49 Best practice 49.** Once a provisional MAP agreement is shared, taxpayers should confirm agreement or disagreement within the timeframe specified in the notification and provide any reasonable information requested for by the competent authorities, as well as withdraw or waive domestic remedies with respect to the issue resolved in MAP, to allow for implementation in both jurisdictions. Where consent and withdrawal/waiver are not obtained within the prescribed timeframe, despite reasonable follow-up, the case may be closed unless there are extraordinary circumstances where the competent authorities agree to keep the case open to allow for relief in the other jurisdiction in line with the outcome of a court decision.

**50 Best practice 50.** Where interest and penalties are directly connected to taxes covered under a tax treaty, jurisdictions should take appropriate measures to reduce or withdraw such interest or penalties to the same extent as the underlying tax is reduced or withdrawn pursuant to a MAP agreement. In particular, where a jurisdiction has applied interest or an administrative penalty that is computed with reference to an underlying tax liability (or with reference to some other amount relevant to the determination of tax, such as the amount of an adjustment/assessment or an amount of taxable income) and has subsequently agreed pursuant to a MAP agreement to reduce or withdraw that underlying tax liability, that jurisdiction should proportionally reduce the amount of or withdraw such interest or administrative penalty. This may also include making changes corresponding to interest charges in the other jurisdiction, where possible. In contrast, other administrative penalties that concern domestic law compliance issues (such as penalties for failure to maintain proper transfer pricing documentation or for late filings or payment of the undisputed tax amount due) that are not directly connected to a tax liability that is the object of a MAP request (even where they are computed based on that liability) and criminal penalties imposed by a public

prosecutor or a court may be retained regardless of the outcome of the MAP case.

### 3.3. Step 7: MAP arbitration

#### 3.3.1. What is MAP arbitration?

159. While MAP is generally effective in resolving cross-border tax disputes, there are cases in which competent authorities are unable to reach an agreement resolving taxation not in accordance with the treaty in a timely manner. To address such situations, some jurisdictions have supplemented MAP with a mandatory and binding dispute resolution mechanism, arbitration (“**MAP arbitration**”).

160. The guidance and best practices outlined in this chapter are only relevant for jurisdictions that have incorporated MAP arbitration in their tax treaties or other instruments. Nevertheless, the Action 14 Minimum Standard requires all Inclusive Framework member jurisdictions to be transparent as to their positions concerning MAP arbitration. Jurisdictions that have opted for MAP arbitration under their tax treaties or the BEPS Multilateral Instrument are required to make their general treaty policy clear in this regard. However, it is important for jurisdictions that have not opted for MAP arbitration in any of their treaties to also ensure transparency regarding their position by publishing their policy in their MAP guidance and MAP profiles, including any legal or constitutional reasons for their choice. This is to ensure that information on this choice is publicly available both for other jurisdictions involved in tax treaty negotiations with that jurisdiction as well as the concerned taxpayers.

161. Additionally, jurisdictions that have chosen to apply Part VI of the BEPS Multilateral Instrument, the EU Arbitration Convention or the EU Dispute Resolution Directive have accepted the procedural rules for arbitration or similar procedure contained within those instruments. Specifically, jurisdictions have developed a model competent authority agreement for implementing Part VI of the BEPS Multilateral Instrument, to assist competent authorities in developing their bilateral agreements. The guidance in this section mainly concerns arbitration provisions modelled on Article 25(5) of the OECD Model Tax Convention, using examples of procedures agreed under various instruments. As a result, it may have limited application where procedural rules are already established within the instrument itself or through a related competent authority agreement.

162. While the term "arbitration" is used to describe this mechanism, MAP arbitration differs significantly from commercial or investment treaty arbitration.<sup>64</sup> These types of arbitration typically involve a taxpayer or private party resolving a dispute outside of domestic judicial remedies, resulting in a legally binding award that has to be enforced through a court process. In contrast, MAP arbitration is a government-to-government mechanism and is part of the MAP process. It supplements, rather than replaces, MAP and is only available when the competent authorities are unable to resolve a case within a specified period, typically two years. In addition, MAP arbitration allows only unresolved issues in MAP to be submitted to an arbitration panel as compared to other arbitration processes that generally concern the whole issue. Further, a MAP arbitration decision is not directly enforceable in the same way as a commercial or

---

<sup>64</sup> See also paragraph 64 of the Commentary on Article 25 of the OECD Model Tax Convention.

investment arbitration award; instead, it is implemented through mutual agreement between the competent authorities following the taxpayer's consent.

163. Furthermore, the arbitration process does not involve the taxpayer as a party. The taxpayer usually only has the ability to request arbitration (if allowed under the treaty or instrument). However, the conduct of the arbitration process, including the selection of panel members, the choice of arbitration approach, and the sharing of costs, is fully managed by the competent authorities.<sup>65</sup> Accordingly, MAP arbitration is a specific form of arbitration designed to promote resolution within the MAP process and to guarantee relief from taxation not in accordance with the treaty in the few cases where agreement is not otherwise possible in MAP.

164. Arbitration is considered a valuable mechanism in the context of tax treaty dispute resolution by proponent jurisdictions and business because it ensures that taxation not in accordance with the treaty is ultimately relieved. While MAP requires competent authorities to make best efforts in good faith to resolve disputes, it does not guarantee an agreement. As such, MAP arbitration provides a safeguard, ensuring that, where MAP fails to produce a resolution within the prescribed timeframe, a binding decision can be reached. This enhances legal certainty and protection for taxpayers. Business respondents to the survey emphasised that mandatory and binding arbitration, when included as a supplement to MAP in tax treaties, has significantly improved both the effectiveness and timeliness of the MAP process. Business also reported greater confidence in their rights being protected under such frameworks.

165. However, while arbitration offers a mechanism to resolve disputes, its core function is often to accelerate the resolution of MAP cases. Competent authorities participating in the survey that have dealt with instruments that include MAP arbitration have confirmed that although arbitration has been included in tax treaties for several years, such as through the EU Arbitration Convention, which has been in force for over three decades, very few cases have reached the arbitration stage in practice. They note that this limited use is not due to ineffectiveness, but rather the impact the possibility of arbitration has in prompting timely resolution of MAP cases.

166. Many competent authorities further noted that the existence of an arbitration deadline creates a strong incentive in their view for both competent authorities to intensify efforts to resolve the case within the timeframe provided in the treaty. Specifically, they reported that once a case approaches the 18-month mark, they increase their efforts to reach agreement significantly before arbitration becomes mandatory. In some jurisdictions, automated systems issue reminders to caseworkers as the arbitration deadline nears, ensuring that efforts to resolve those cases are expedited. Competent authorities also reported that even cases which were previously deadlocked have been resolved shortly before the arbitration deadline. In some instances, mere indications from the taxpayer that arbitration may be requested in the near future, has refocused competent authority efforts and led to resolution. Based on this experience, competent authorities have found that the inclusion of arbitration in their tax treaties serves an important role in incentivising the timely and efficient resolution of disputes within the MAP process itself. Nevertheless, one competent authority acknowledged that resorting to the arbitration process may be time consuming, although it does help in reaching a satisfactory outcome for the taxpayer – thus, also showing why MAP arbitration is best used as a tool to accelerate the resolution of cases at the MAP stage in most situations. Competent authorities have also observed that the obligations under the MAP provision of a tax treaty should, on their own, provide sufficient incentive to resolve the case as efficiently, effectively, and promptly as possible, without relying on MAP arbitration to achieve this.

---

<sup>65</sup> By contrast, Article 10(1) of the EU Arbitration Convention allows the taxpayer the right to also provide information, evidence and documents that may help the panel in reaching a decision.

167. Nevertheless, other competent authority respondents to the survey have noted that their jurisdictions have not adopted MAP arbitration into their tax treaties owing to legal and constitutional concerns surrounding the ceding of sovereignty over tax disputes to a third-party arbitrator and other policy reasons such as lack of familiarity with the process, lack of experienced panel members in their jurisdiction or scepticism concerning the costs of a MAP arbitration process.

### **3.3.2. When is MAP arbitration available?**

168. Paragraph 5 of Article 25 of the OECD Model Tax Convention (2017) provides the legal framework under which unresolved issues in a MAP case may be submitted to arbitration. According to this provision, arbitration becomes available where the following two conditions are satisfied:

- First, a person has presented a case under paragraph 1 of Article 25<sup>66</sup> to the competent authority of a Contracting State, on the basis that the actions of one or both of the Contracting States have resulted in taxation not in accordance with the provisions of the tax treaty.
- Second, the competent authorities have been unable to reach an agreement to resolve that case under paragraph 2 of Article 25 within two years from the date when all information required by both competent authorities to address the case has been provided to them.

#### *Actual taxation not in accordance with the treaty and “unresolved” issues*

169. MAP arbitration is only available where taxation not in accordance with the treaty has actually occurred.<sup>67</sup> It does not apply in cases where taxation will occur in the future, since it would not be feasible for an arbitration panel to adjudicate on hypothetical or prospective taxation and issue a binding resolution. Moreover, MAP arbitration may be limited to only the unresolved issues in a case. For instance, if four out of five issues raised in the MAP request have already been resolved through bilateral discussions, arbitration may still be initiated for the remaining unresolved issue.

170. In addition, it is also important to note that for the purposes of paragraph 5, a MAP case should not be considered resolved where at least one issue remains on which the competent authorities disagree and where one of the competent authorities maintains that such disagreement results in taxation not in accordance with the provisions of the treaty. In such situations, a competent authority cannot unilaterally declare the case closed or deny a taxpayer’s right to request arbitration of the unresolved issue. Similarly, both competent authorities cannot consider the case resolved and deny arbitration if outstanding issues remain that prevent them from jointly concluding that taxation not in accordance with the treaty has been avoided.

171. However, where the competent authorities agree that taxation in both jurisdictions has been in accordance with the treaty and no unresolved issues remain, the case may be considered resolved for the purposes of paragraph 5.<sup>68</sup> In addition, a case is considered resolved where the competent authorities have reached an agreement that resolves all the issues with regards to the application of the tax treaty

---

<sup>66</sup> Paragraph 73 of the Commentary on Article 25 of the OECD Model Tax Convention clarifies that this would include dual residence cases under Article 4(2)(d) and 4(3) of the OECD Model Tax Convention that are covered by MAP and allows jurisdictions to extend the scope of the arbitration provision to cover MAP cases under paragraph 3 of Article 25 as well. In this regard, see the tax treaties entered into by the United States with Canada and Belgium that allow for arbitration of unresolved issues under the MAP provision in general, including APA cases.

<sup>67</sup> Paragraph 72 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>68</sup> Paragraph 71 of the Commentary on Article 25 of the OECD Model Tax Convention.

(even if the taxpayer does not consider that the MAP agreement provides a correct solution to the case).<sup>69</sup>

*The two-year period*

172. A taxpayer can request that a case is submitted to arbitration if the issues remain unresolved after two years from the date both competent authorities have received all information required to address the case. The 2017 revision to the OECD Model Tax Convention introduced a significant change to the calculation of the two-year period. While the 2008 update to the OECD Model Tax Convention that introduced paragraph 5 started the two-year period from when the date the MAP request was presented to the other competent authority, the 2017 update revised this approach in response to concerns that arbitration could become available even in cases where competent authorities had not been provided sufficient information for meaningful MAP discussions.

173. For the purpose of determining the start of the two year period, it is considered that all required information has been provided only when both competent authorities have received sufficient information to assess whether the taxpayer's objection appears justified.<sup>70</sup> This information should ideally be determined by what is specified in the published MAP guidance of the respective jurisdictions (see section 2.1 above), unless additional information seen to be necessary for the substantive consideration of the case was requested in the course of the MAP case. Competent authorities may also bilaterally agree a pre-defined list of information that may be used for this purpose. Competent authorities should not make additional information requests in an excessive manner with the intention of delaying the start of the two-year period. Jurisdictions may also consider including specific procedural rules in their treaties to reinforce this provision and provide clarity for taxpayers. For instance, Part VI of the BEPS Multilateral Instrument, which closely follows Article 25(5) of the OECD Model, includes more detailed rules regarding the commencement of the two-year period<sup>71</sup>:

- Where no information request has been made following a MAP request, the two-year period begins on the earlier of:
  - the date on which a competent authority notifies the taxpayer that it has received all the necessary information, or
  - three months after the date on which the competent authority that received the MAP request has notified the other competent authority of the request.
- Where an information request has been made, the two-year period begins on the earlier of:
  - the latest date on which a competent authority notifies the other competent authority and the taxpayer that it has received all information requested from the taxpayer, or
  - three months after both competent authorities have received the relevant information.
- Where both competent authorities agree that a taxpayer has failed to provide the requested information, the timeframe for arbitration shall be extended by the period between the date on which the information was requested and the date on which it was provided.

174. However, jurisdictions may also consider aligning the starting point of the two-year period with the rules agreed under the MAP Statistics Reporting Framework, since competent authorities already follow these rules to seek to resolve all MAP cases within an average time of 24 months (see section 1.5).

---

<sup>69</sup> Paragraph 64 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>70</sup> Paragraph 75 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>71</sup> Articles 19(3), 19(8) and 19(9) of the BEPS Multilateral Instrument.

175. In addition, some jurisdictions are of the view that the two-year period is too short for starting the arbitration phase and thus, prefer to include a three-year period in their tax treaties.<sup>72</sup> Part VI of the BEPS Multilateral Instrument also offers jurisdictions the option to make a reservation to increase the two-year period to a three-year period.<sup>73</sup> This instrument also allows competent authorities to agree on a case-by-case basis to increase the two- or three- year period where for example, resolution in MAP is close, or decrease it, where it is clear that the period will end with disagreement, after notifying the taxpayer.<sup>74</sup> The two-year period may also be suspended during the time when the bilateral phase of MAP itself is suspended while judicial proceedings are being actively pursued by the taxpayer (see paragraph 127 and best practice 40).<sup>75</sup>

*Written request by the taxpayer*

176. Where the conditions mentioned in paragraph 168 are satisfied, and the case has not been resolved in the MAP process within the specified period, the unresolved issues shall be submitted to arbitration if the taxpayer submits a written request to that effect.<sup>76</sup> Arbitration under paragraph 5 is therefore not automatic and requires a clear and timely written request by the taxpayer.<sup>77</sup>

177. Competent authorities have observed that a written taxpayer request can be more efficient. In practice, if a case is near resolution at or close to the end of the two-year period, the competent authorities can communicate this to the taxpayer. In such situations, the taxpayer may choose to defer or withhold a formal arbitration request to give the authorities additional time to conclude the case through MAP, avoiding unnecessary transition to arbitration. This flexibility contributes to resource efficiency and timely resolution for all parties involved.

*Interaction with domestic remedies*

178. It is also important to note that the unresolved issues in a MAP case cannot be submitted to arbitration if a decision has already been rendered by a court or administrative tribunal of either jurisdiction. This is to prevent MAP arbitration from overturning decisions issued by domestic courts or tribunals, which could otherwise raise legal or constitutional concerns in or may be considered inappropriate by some

<sup>72</sup> Paragraph 70.1 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>73</sup> Articles 19(11) of the BEPS Multilateral Instrument.

<sup>74</sup> Article 19(1)(b) of the BEPS Multilateral Instrument. The possibility of including this option in paragraph 5 is also addressed in paragraph 70.1 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>75</sup> Paragraph 70.2 of the Commentary on Article 25 of the OECD Model Tax Convention and Article 19(2) of the BEPS Multilateral Instrument.

<sup>76</sup> Please note that some tax treaties contain a variation of this provision that allows for arbitration only where the request for arbitration is submitted by or approved by the competent authorities concerned. This provision does not offer the same legal protection to the taxpayer as the taxpayer does not have control over whether the arbitration stage would be started. Paragraph 63 of the Commentary on Article 25 of the OECD Model Tax Convention, on the other hand, clarifies that the authorisation of the competent authorities is not required for the arbitration stage to be started under Article 25(5) of the OECD Model Tax Convention.

<sup>77</sup> See also paragraph 70 of the Commentary on Article 25 of the OECD Model Tax Convention. Please note that some tax treaties and instruments (e.g. the tax treaty between Germany and Switzerland) include an arbitration provision that starts the arbitration stage automatically where the MAP process does not avoid taxation not in accordance with the treaty within a specified period.

jurisdictions. However, jurisdictions that face no legal restrictions to deviate from court decisions in MAP may choose to not include this restriction in their treaties.<sup>78</sup>

179. Further, even where the provision is contained in the treaty concerned, it must be noted that the legal obligation to start arbitration under treaty provisions that follow paragraph 5 of Article 25 of the OECD Model Tax Convention remains when a matter is only being considered by a court or tribunal before there is a decision. In cases where domestic remedies are available but not exhausted, the taxpayer may consider suspending these domestic proceedings while arbitration is active.<sup>79</sup> A provisional MAP agreement based on the arbitration outcome would then be presented to the taxpayer, who could either accept it (and withdraw from or renounce domestic remedies) or reject it and continue with domestic remedies as in the case of MAP (see paragraph 150 and best practice 48).<sup>80</sup>

#### *Exclusions from MAP arbitration*

180. Some jurisdictions choose to limit the scope of paragraph 5 to specific types of cases, such as those involving primarily factual issues like transfer pricing or permanent establishments, or to exclude certain issues from the scope of MAP arbitration (e.g. cases involving the application of anti-abuse provisions). However, it should be noted that overly restrictive provisions may reduce the effectiveness of MAP arbitration in resolving MAP cases.<sup>81</sup> In general, these restrictions should arise from the terms of the treaty itself, such as for example, Article 28(2)(a) of the BEPS Multilateral Instrument that allows each opting jurisdiction to include exclusions to the scope of arbitration while opting in to Part VI. However, where arbitration provisions are worded more broadly, some jurisdictions are of the view that scope exclusions may also be agreed by the competent authorities.

#### **3.3.3. When is MAP arbitration concluded?**

181. Following the text covering the initiation of the arbitration procedure by the taxpayer, paragraph 5 provides that unless a concerned taxpayer does not accept the mutual agreement that implements the arbitration decision, that decision is binding on both Contracting States and should be implemented notwithstanding domestic time-limits.<sup>82</sup> This text clarifies that a MAP arbitration decision is not legally implemented, but that since arbitration is a part of MAP, an arbitration decision is required to be implemented by the competent authorities through a mutual agreement just as any MAP agreement under Article 25(2) of the OECD Model Tax Convention. Further, since the arbitration process has been entered into to benefit the taxpayer, the taxpayer's consent is required before the decision is implemented through a mutual agreement. However, where the treaty text allows it, the competent authorities may agree on a

---

<sup>78</sup> Paragraph 74 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>79</sup> As noted in paragraph 175 above, the two-year period could be suspended during the time when the bilateral phase of MAP itself is suspended.

<sup>80</sup> Paragraphs 77 and 82 of the Commentary on Article 25 of the OECD Model Tax Convention. This is also included in Article 19(4) of the BEPS Multilateral Instrument.

<sup>81</sup> Paragraph 66 of the Commentary on Article 25 of the OECD Model Tax Convention.

<sup>82</sup> Paragraph 81 of the Commentary on Article 25 of the OECD Model Tax Convention notes that the decision would not be binding if it is found to be unenforceable by the courts of at least one of the concerned jurisdictions. This is also included in Article 19(4) of the BEPS Multilateral Instrument.

resolution different to the arbitration decision within a specified time period after the decision is issued.<sup>83</sup>

### **3.3.4. How is the MAP arbitration procedure conducted?**

182. Paragraph 5 does not directly cover the conduct of the arbitration process itself. The last sentence of the paragraph requires that the competent authorities agree on the mode of application of the paragraph by mutual agreement. Such an agreement is particularly important where the MAP arbitration provision in a treaty that follows the wording of paragraph 5. If a general agreement has not been put in place to cover all MAP arbitrations under a bilateral treaty, competent authorities must reach agreement on procedural rules on a case-by-case basis. Such an agreement should be concluded before the date on which unresolved issues in a case become eligible to be submitted to arbitration and may be modified by both competent authorities from time to time thereafter.

183. This agreement should cover all aspects of the arbitration process. The level of detail addressed by the mutual agreement depends on the wording of the arbitration provision in the relevant tax treaty as some jurisdictions have incorporated procedural aspects of the arbitration process in their treaties.<sup>84</sup> In general, a competent authority agreement should specify procedural details on the conduct of the arbitration process not covered in the treaty text such as:

- the competent authority to which an arbitration request should be submitted
- the timelines for forwarding the request to the other competent authority
- the process for communication among all parties
- the rules for determining the scope of information required to address the case for the purpose of calculating the two-year period for arbitration
- the terms of reference for the panel
- the appointment of the arbitration panel including the independence rules applicable
- the type(s) and mode of arbitration process envisaged
- the confidentiality rules applicable, the rules applicable to the sharing of costs etc.

A sample mutual agreement for this purpose is included in the Commentary on Article 25 of the OECD Model Tax Convention (“**sample mutual agreement**”).

184. One competent authority responding to the survey observed that although reaching such competent authority agreements in advance requires considerable effort from jurisdictions, it can significantly reduce the costs and administrative burden compared to establishing procedures and appointing the panel members only once a MAP case reaches the arbitration stage. Additionally, another competent authority reported a case where arbitration ultimately could not proceed because its treaty partner claimed that no competent authority agreement had been concluded, while at the same time refusing to enter into such an agreement even for the case at hand. In situations where there is no general competent authority agreement at the point when MAP arbitration is validly requested, the competent authorities should agree procedural rules for that case to ensure that the arbitration phase for the case can move forward.

---

<sup>83</sup> Paragraph 84 of the Commentary on Article 25 of the OECD Model Tax Convention and Article 24 of the BEPS Multilateral Instrument.

<sup>84</sup> For example, through option into Part VI of the BEPS Multilateral Instrument, which includes detailed procedural rules in the treaty text itself.

*Submission of the request for MAP arbitration*

185. Once the prescribed period for resolving MAP case for the purposes of MAP arbitration process as set out in the treaty has expired, the taxpayer may submit a written request for arbitration to the competent authority designated under the competent authority agreement. Ideally, the taxpayer should be allowed to file before either competent authority for this purpose, particularly where the treaty allows for the taxpayer to file a MAP request before either competent authority. However, some jurisdictions may prefer to allow the taxpayer to only submit the request for MAP arbitration before the competent authority that initially received the MAP request. In any case, in the absence of a competent authority agreement that prescribes rules for filing MAP arbitration requests, a MAP arbitration request filed before the competent authority before which MAP cases can be submitted under the relevant tax treaty should be accepted.

186. While submitting a request for MAP arbitration, the taxpayer should include specific information that assists the competent authorities in determining whether the request is admissible and can proceed under the applicable treaty provisions. In particular, the request should include:

- Information on whether a decision has already been rendered by a court or administrative tribunal of either jurisdiction with respect to the same issues.
- Information indicating whether any proceedings are currently pending before a court or administrative tribunal of either jurisdiction concerning the same issues.
- A declaration to promptly notify both competent authorities if proceedings are initiated before a court or administrative tribunal in either jurisdiction after the arbitration request has been submitted.
- A declaration by the taxpayer and its advisors not to disclose any information received during the arbitration proceedings from either competent authority or from the arbitration panel, except where such disclosure is required under the laws of a jurisdiction (e.g. for financial reporting or securities regulations).

187. This information is important to enable the competent authorities to determine whether the arbitration request satisfies the conditions under the treaty. If the taxpayer breaches the confidentiality commitment before the panel has delivered its decision, the arbitration process and the associated MAP proceedings may be terminated. If the breach occurs after the decision is rendered, the competent authorities may assess the appropriate consequences through mutual agreement. Competent authorities are encouraged to adopt a practical and proportionate approach in such situations, weighing the need to safeguard the integrity of the process with the objective of ensuring timely and fair resolution of disputes.

*Processing of the MAP arbitration request*

188. Once the relevant competent authority receives the request for MAP arbitration from the taxpayer, they are duty bound to notify the other competent authority as soon as possible and ideally within ten days of receiving this request. Where the arbitration request is accompanied by any material information that was not exchanged as part of MAP, this additional information should also be shared with the other competent authority along with this notification.

189. Following receipt of a valid request for MAP arbitration, competent authorities may, according to the competent authority agreement on arbitration concluded between them, be required to agree on a brief statement of information. This should be done as soon as possible and ideally within 60 days. Such a statement identifies the parties directly affected by the case and includes a general description of the issues to be resolved. It serves as a key reference point in determining the eligibility of potential panel members, particularly in assessing their independence and impartiality.

190. Within this period or soon after, the competent authorities should also agree on the Terms of Reference for the case that will be submitted to the arbitration panel, as usually required in the competent authority agreement concluded between them. The Terms of Reference should include the questions to be resolved by the arbitration panel and procedural rules to facilitate the efficient functioning of the arbitration process. The Terms of Reference usually also outline the relevant business activities of the taxpayer, describe the issues in dispute, detail the matters already agreed between the competent authorities, record the final positions taken by each authority on the unresolved issues and include logistical and procedural details. It is considered good practice for the terms of reference to also include each competent authority's final position in MAP as this enhances the transparency and accountability of both the MAP process and arbitration proceedings. The Terms of Reference can be essential to structure the work of the arbitration panel efficiently and ensure clarity in the scope of the arbitration.

191. Where the Terms of Reference are not agreed by the time the competent authorities are due to make their submissions to the panel, each competent authority should send its latest proposed version of the Terms of Reference to the other and to the arbitrator or chair of the arbitration panel along with their submissions. All issues listed in these proposals may then be treated as unresolved for the purposes of the arbitration, but any decision on the Terms of Reference should ideally be agreed by both competent authorities.

#### *The MAP arbitration panel*

192. The next step in the process is the appointment of the arbitration panel, which should be completed soon after agreeing the Terms of Reference and ideally within 60 days. To ensure that the panel's decision-making does not end in a deadlock, arbitration panels should always comprise an odd number of panel members. While MAP arbitration may proceed before a sole arbitrator, this approach is typically not preferred. A single arbitrator carries significant responsibility and may lack the balance of perspective offered by a multiple member panel. More commonly, panels are composed of either three or five members, depending on the preferences of the competent authorities involved.

193. A three-member panel typically involves each competent authority appointing one member. These two appointed members then jointly select a Chair. This is the structure suggested in the sample mutual agreement as well as under Part VI of the BEPS Multilateral Instrument. By contrast, the EU Arbitration Convention and the EU Dispute Resolution Directive envisage a seven-member panel or five-member panel. A five-member or seven-member panel can include both competent authorities appointing one or two staff members each, typically individuals who participated in the MAP discussions, as well as one independent expert each. The four (or six) appointed panel members then select a fifth (or seventh) member to serve as Chair. The inclusion of competent authority staff members in a panel may offer advantages and disadvantages. On the one hand, they can provide useful context and technical clarity to the panel's deliberations based on the MAP discussions. On the other hand, they may simply reflect their own positions from the MAP case and effectively cancel each other out in decision-making, without contributing substantially to the resolution of the case. However, one competent authority responding to the survey indicated that including competent authority staff members in the panel can assist the independent panel members to focus on the key issues in dispute, rather than revisit issues that the competent authorities had already agreed.

194. The appointment of each panel member must be made within a prescribed timeframe. Default rules should apply where one or both competent authorities fail to appoint a panel member or where a Chair is not appointed in the timeframe. In such cases, competent authorities should agree fall-back

mechanisms such as appointment by a neutral third party<sup>85</sup>, selection at random from any agreed list of experts eligible to be panel members, nomination by the other competent authority where one competent authority has failed to do so or proceeding with the process with a smaller panel size. Since competent authorities have observed that deadlocks in the selection of panel members is common, jurisdictions should ensure that a clear mechanism to resolve the deadlock is documented in the competent authority agreement governing the arbitration process.

195. Panel members and Chairs may be selected on an *ad hoc* basis or from pre-established lists of independent experts maintained by each competent authority for a particular tax treaty. Selection of panel members on an *ad hoc* basis for each case may be more time consuming as there may be selections considered ineligible by the other competent authority or individuals not available to serve as panel members. Although maintaining lists is not mandatory, doing so can provide benefits such as increased transparency regarding potential panel members and the opportunity for selections to be vetted in advance by the other competent authority, thereby reducing the likelihood of challenges when panel members are nominated in a live case.

196. Competent authorities responding to the survey reported differing levels of difficulty in appointing the arbitration panel, depending on the treaty partner involved. The experience of competent authorities under the United States–Canada treaty, the EU Arbitration Convention and the EU Dispute Resolution Directive have shown that predefined lists of qualified experts can contribute to a smoother and more transparent panel selection process.

197. It is usually best practice to ensure that the Chair of the panel is not a national of either jurisdiction involved in the MAP arbitration case. Where lists are maintained, some competent authorities prefer to pre-agree a list of individuals who are nationals or residents of third jurisdiction and are eligible to be chosen as Chair. To ensure the timely constitution of arbitration panels, competent authorities are encouraged to nominate individuals who have confirmed their willingness to serve.

198. The members of the panel should be individuals with relevant expertise and ideally practical experience, particularly in international tax or transfer pricing matters. Individuals who are usually eligible to serve as panel members are academics, retired judges, former government officials, individuals formerly affiliated with international organisations or former tax advisors. Some jurisdictions also consider serving judges or currently active tax advisors to be appropriate candidates for an arbitration panel. Nevertheless, to ensure that a truly third-party view is obtained through MAP arbitration, serving government officials or competent authorities are usually not eligible to serve as independent experts in MAP arbitration panels. Serving competent authority personnel of other jurisdictions are particularly not suitable to be panel members as the arbitration decision may be coloured by their own positions in MAP cases and the ongoing competent authority relationship with the competent authorities concerned by the MAP arbitration. Similarly, tax advisors who, directly or at an organisational level, have a prior or ongoing relationship with the taxpayer concerned or are dealing with issues similar to the case at hand in an advisory capacity for other taxpayers are not appropriate panel members.

199. Panel members may come from legal, economic, or accounting backgrounds, depending on whether the MAP case raises questions that are primarily legal, economic, or accounting in nature. Where industry-specific issues arise, individuals with practical experience in that industry may be appropriate candidates. Academics and judges are well suited to serve as panel members when matters of law and

---

<sup>85</sup> The sample mutual agreement as well as Part VI of the BEPS Multilateral Instrument allow the highest-ranking official of the Centre for Tax Policy and Administration of the OECD, who is not a national of either concerned jurisdiction, to be the neutral party to break a deadlock.

principle are at stake, while former government officials or tax advisors with practical experience may be more appropriate for practical questions, particularly when dealing with attribution or allocation cases.

200. The members of the panel should also be individuals with demonstrated independence. Each member should have no recent personal, financial, advisory or employment ties to the concerned taxpayer at the time of appointment and should not have been involved in providing advice related to the issue at stake in the taxpayer's MAP case. Similarly, each member should be impartial and independent of the competent authorities and administrations of the jurisdictions involved in the MAP case. Individuals are usually required to provide an affidavit or written statement to this extent before being appointed to an arbitration panel. All panel members must also declare that they will remain impartial and independent throughout the proceeding and for a reasonable period afterwards, avoiding any conduct that may affect the appearance of independence, such as immediately accepting employment or consultancy roles with the taxpayer concerned, an affiliate or their tax advisory firm.

#### *Confidentiality requirements*

201. To maintain the integrity of the process, panel members should receive and consider relevant information under the same confidentiality protections applicable to competent authorities in the MAP. Accordingly, panel members should be treated as authorised persons for the purposes of exchange of information, confidentiality and administrative assistance provisions under the equivalent of Article 26 of the OECD Model Tax Convention contained in the tax treaty as well as the domestic law of the jurisdictions concerned. Further, information may also be disclosed to potential panel members to the extent needed to assess their eligibility, particularly their independence and impartiality, but only after obtaining the express consent of the taxpayer. All information shared with the panel or received from it is deemed exchanged under the exchange of information provisions in the relevant treaty. Recognising that the panel may also need administrative support, disclosure to support staff may also be permitted under the same confidentiality safeguards. However, the competent authorities should ensure that all panel members and support staff agree in writing to comply with these confidentiality requirements prior to their participation. Similarly, all communications between the panel members and between the panel, the competent authorities, and the taxpayer should be treated as confidential.

202. Any breach of these confidentiality requirements may be subject to criminal prosecution or penalties under the applicable domestic laws of the contracting jurisdictions and under the terms of the confidentiality agreement itself, which may include forfeiture of fees or removal from the panel. If a breach occurs during an ongoing proceeding, the competent authorities must determine by mutual agreement whether to continue the process or replace affected panel members. A breach by the taxpayer concerned before the panel has issued its decision may result in automatic termination of both the MAP and arbitration proceedings. If the breach occurs after the panel has rendered its decision and both competent authorities agree, jurisdictions may consider enabling their tax treaties to annul such a decision.

#### *The decision-making process*

203. With regard to the decision-making process for MAP arbitration, jurisdictions may adopt different approaches under their tax treaties or instruments. The two most commonly used approaches are the last-

best offer approach and the independent opinion approach.<sup>86</sup>

204. Under the last-best offer approach, each competent authority submits its proposed resolution for the unresolved issues in a MAP case, typically a specific tax amount, rate or quantifiable position, within a prescribed period after the panel is constituted, supported by a written position paper. The arbitration panel would then choose only one of the submitted proposals, with no power to amend the selected proposal or provide reasoning for its decision. The decision is adopted by a simple majority and delivered within a defined timeframe, with no precedential value.

205. On the other hand, the independent opinion approach allows the panel to reach its own reasoned conclusion based on a full consideration of the facts, legal arguments and tax treaty provisions. Competent authorities submit to the panel all relevant documents exchanged during the MAP process and their description of the facts, positions as well as legal arguments to the panel. The arbitration panel may also request additional information that they consider necessary to reach a decision. The panel may then render its decision based on their own analysis of the case, typically supported by written reasoning and references supporting the decision. Under this approach, the decision would still be adopted by majority and also would not have precedential value but is closer to a traditional court decision in that the panel is free to adopt a decision that differs from the positions taken by the competent authorities.

206. In either approach, the panel should base its decision on whether the adjustment or assessment in question is supported by the facts and evidence provided by the competent authorities, without expecting the other jurisdiction to disprove it. Where a treaty or instrument does not prescribe an approach, jurisdictions should establish a default approach by mutual agreement to guarantee the effectiveness of the MAP arbitration procedure. They may also consider allowing flexibility to apply a different approach if agreed upon on a case-by-case basis.

207. Jurisdictions that prefer the last-best offer approach emphasise its efficiency, cost-effectiveness and usefulness in quantitative disputes such as transfer pricing or profit attribution in their view, where it encourages reasonable positions from competent authorities and can reduce both deliberation time and costs, while also giving their jurisdictions reassurance from a sovereignty standpoint that the outcome will align with one of their positions. By contrast, jurisdictions that prefer the independent opinion approach value its usefulness in both attribution/allocation and other cases, its procedural simplicity, particularly for less experienced competent authorities, as well as the flexibility it gives the panel to deliver well-balanced solutions in complex cases in their view.

#### *Sharing of positions and evaluation of the case*

208. The format and content of the position papers that the competent authorities submit to the arbitration panel may vary depending on the decision-making approach applied to the arbitration process.

209. In the last-best offer approach, each competent authority should submit a short proposed resolution, which should typically be no more than five pages, stating the proposed resolution in quantitative terms, such as the precise amount of tax adjustment or revenue offset, together with a supporting position paper of reasonable length that outlines the factual background, legal basis and policy considerations underpinning the offer. These submissions may draw from the template for a MAP position paper included in Annex C.4, particularly as it includes templates that may be used for proposed monetary

---

<sup>86</sup> While the sample mutual agreement recognised independent opinion arbitration to be the default approach until the 2017 update of the OECD Model Tax Convention, the agreement currently refers to the last-best offer approach as the default option. While Part VI of the BEPS Multilateral Instrument refers to both models, the last-best offer approach is considered the default option there as well.

solutions. Where there are legal or substantive issues to be decided that would then dictate a proposed monetary resolution (e.g. a question as to the existence of a permanent establishment), the proposed resolution should reflect each alternative outcome depending on the resolution of that question. The proposed resolution should articulate a proposal that is coherent and possible to implement directly, leaving no elements subject to later negotiation or calculation, while the position paper may include annexes containing detailed evidence such as factual and legal analysis as well as any documents exchanged during the MAP case, such as audit reports, transfer pricing studies, and correspondence, where relevant. The submissions should use a consistent structure with clear cross-referencing so that the panel can readily compare the competing offers and select the most reasonable one without amendment.

210. In the independent opinion arbitration approach, the terms of reference as noted in paragraph 190 would include all documents exchanged during the MAP process and providing additional submissions is usually not required. However, where additional submissions are made, a competent authority may follow the format used by its tax administration for submissions before a domestic court and submit a single consolidated paper to the arbitration panel. This paper may include a concise statement of the relevant facts of the MAP case, a clear identification of the treaty articles and domestic law provisions at issue, a clear presentation of the competent authority's legal arguments and analysis with references to sources such as the Commentary on the OECD Model Tax Convention, comparable court cases, or other treatises covering the subject, and where possible, an indication of the solution proposed by that competent authority. The paper may also include as appendices any documents exchanged during the MAP case, including audit reports, transfer pricing studies, and correspondence, where relevant. Where submitted, the paper should be organised in numbered sections and kept to a reasonable length to allow the panel to review the documents provided fully and render a reasoned decision based on its own examination of the facts and treaty provisions. The paper may also include a brief summary of positions to guide the panel to the key points in the paper.

211. Within a reasonable period after receiving submissions from both competent authorities, the arbitration panel may request further factual details, though such requests should generally be directed towards the competent authorities and not be directly addressed to the taxpayer.<sup>87</sup> To prevent taxpayers from withholding information during MAP in order to present it only to the panel, any supplementary material sought should pertain only to documentation already submitted or reviewed in MAP, and should exclude any new analyses. Both competent authorities should collaborate to gather any needed clarifications from the taxpayer and jointly submit their response to the panel.

212. Since the purpose of MAP arbitration is to encourage competent authorities to reach an agreement, they are generally free to settle the case during the arbitration process before the panel issues a decision, which would then end the arbitration. Accordingly, competent authorities are encouraged to maintain open communication throughout the arbitration and ideally even hold one final discussion at short notice based on their proposed resolutions or submissions to see if they can arrive at an agreement before the panel is formally established, to see if the resource expenditure of going through the MAP arbitration process is necessary.

### *Costs in the arbitration process*

213. It is acknowledged that MAP arbitration necessarily involves additional administrative and financial costs for jurisdictions. Some competent authorities reported that, in particular, taking on secretariat duties

---

<sup>87</sup> The arbitration panel may ask for additional information from the taxpayer directly under the EU Arbitration Convention and the EU Dispute Resolution Directive.

demands a significant allocation of administrative resources. In planning for the sharing of costs in MAP arbitration within a tax treaty, instrument or competent authority agreement, jurisdictions should consider a model that is both transparent as well as equitable. A common approach is for each competent authority to bear its own internal costs related to participation in the process, including staff time and resources spent preparing proposed resolutions and replies. In relation to nominated panel members, jurisdictions may follow a model in which each jurisdiction covers the fees, expenses and logistical support of the panel members that its competent authority appoints, while equally sharing the fee and costs associated with the Chair as well as any incidental costs such as translation or interpretation services agreed to by both sides. Alternatively, jurisdictions may agree to share equally the fees and costs associated with all the nominated panel members. The host jurisdiction for any physical meeting typically bears venue and logistical costs, though this can be allocated differently by agreement between the competent authorities. However, special arrangements could be agreed considering the circumstances of the jurisdictions involved. For instance, in cases involving significant asymmetry in capacity or resources or where one jurisdiction is a low-capacity jurisdiction, an alternative cost arrangement may be agreed where the jurisdiction with more resources bears more of the costs.

214. To manage and contain the cost of proceedings, it is recommended that jurisdictions adopt specific procedural safeguards. In-person meetings for the panel should be minimised and considered on a case-by-case basis, with telephone calls and videoconferencing strongly encouraged to eliminate travel costs. However, in-person meetings may be considered where it would support the efficient conduct of the arbitration process (particularly, in independent opinion arbitration). Where travel is unavoidable and mutually agreed upon, the competent authorities should agree how to share travel costs. For example, each competent authority may bear the travel costs for the panel members it has nominated and an equal share of the Chair's travel costs, or to equally share the costs of all the nominated panel members. Other procedural safeguards that could be considered are introducing page limits on submissions, limits on the number of meeting days for the panel and fixed caps on remuneration and remunerated days for the panel members and staff.

#### *The arbitration decision and guidance for panel members*

215. A MAP arbitration decision should be delivered in a timely manner to ensure an efficient resolution of the dispute. Ideally, the process should be structured so that the taxpayer receives a final decision within one year from the date the request for MAP arbitration is filed. While the OECD Model Tax Convention itself does not impose overall deadlines for completing the entire process, the sample mutual agreement in the Commentary on the OECD Model Tax Convention provides specific time frames for various steps of the process.<sup>88</sup> Competent authorities may want to use these time frames as reference when agreeing procedural rules for MAP arbitration.

216. Given that arbitration outcomes are also covered by the confidentiality provisions of the treaty, complete arbitration decisions should generally not be published. However, where both competent authorities agree to publish summaries or where publication is required under the applicable instrument<sup>89</sup>, any confidential taxpayer information should be anonymised as necessary and the confidentiality of

---

<sup>88</sup> Under the last-best offer approach, the decision should be communicated to both competent authorities within 60 days after the panel members receive the last reply submission or, if no reply is submitted, within 150 days after the appointment of the Chair of the panel. Under the independent opinion approach, the decision is expected within 365 days from the appointment of the Chair.

<sup>89</sup> The EU Dispute Resolution Directive, for example, envisages the redacted publication of summaries of decisions arising from the MAP arbitration stage under provisions implementing that instrument.

competent authority communications should also be protected. Where decisions are published, it may also be useful to clarify explicitly that the decision does not have precedential value. While the aim for transparency is acknowledged, the protection of confidential and sensitive information provided by the taxpayer is paramount. In some cases, the taxpayer may still be identifiable based solely on the general facts disclosed, even in an anonymised decision or summary.

217. Adequate information on the procedural and practical aspects of MAP arbitration for individuals who are eligible to act as panel members in MAP arbitration is useful to ensure good and consistent outcomes in MAP arbitration. Emphasis could be placed on understanding the different positions taken by jurisdictions and on developing the ability to identify balanced solutions, taking into account the specific arbitration process being applied. This information could also cover fairness in decision making, particularly in international environments where jurisdictions have different levels of development and approaches that may differ from each individual's own orientation. Jurisdictions that are new to MAP arbitration and wish to include it in their tax treaties may also consider seeking support from more experienced jurisdictions to build local capacity, including training individuals to serve as panel members. Efforts to improve the diversity in the individuals that may serve in MAP arbitration panels can also help foster greater trust and confidence in the use of MAP arbitration in general.

### ***Best practices***

**51 Best practice 51.** Jurisdictions that have chosen to adopt a general policy to not include MAP arbitration provisions in any of their tax treaties should ensure transparency by clearly indicating this policy choice in their published MAP guidance and MAP profile, along with the legal or policy reasoning behind the decision. These jurisdictions could also explore obtaining non-binding third-party expert opinions in MAP cases, including from experts in their own jurisdiction or region trained through capacity-building initiatives.

**52 Best practice 52.** Jurisdictions should ensure that where treaties or other agreements/instruments contain a supplementary dispute resolution mechanism, such as a MAP arbitration provision that may be initiated by the taxpayer when competent authorities fail to resolve a case within a specified timeframe, the obligation to endeavour to resolve the case includes the obligation to follow such mechanisms as part of the MAP process, subject to the conditions and any restrictions set out in the treaty, instrument, or any other agreement between the jurisdictions or their competent authorities concerning the application of arbitration.

**53 Best practice 53.** Jurisdictions should enter into a general agreement on the procedural conduct of the arbitration process under its tax treaties or other similar agreements/instruments for each bilateral relationship. However, the absence of such an agreement does not justify a failure to commence the arbitration process once it has been initiated by the taxpayer as this is a requirement under the tax treaty. If there is no existing general competent authority agreement and the MAP arbitration phase is validly invoked in a MAP case, the two competent authorities should agree procedural rules to ensure that the arbitration phase for the case can move forward.

**54 Best practice 54.** Where discussions between competent authorities in MAP are seen to be productive but go beyond the prescribed period for arbitration under the concerned treaty or instrument, taxpayers should assess whether to allow MAP discussions to continue beyond the time-limit or request for arbitration, weighing the time and effort required to set up a panel against the likelihood of an agreement resolving taxation not in accordance with the treaty.

**55 Best practice 55.** Jurisdictions should ensure that MAP arbitration procedures arising from provisions in treaties or other agreements/instruments are designed to provide a clear, transparent and effective dispute resolution mechanism while maintaining fairness and efficiency in the process. In this regard, jurisdictions should, where permitted and not already provided for in the treaty or instrument:

- 55.1 Include in their competent authority agreements clarity on the scope of issues covered by the arbitration procedure.
- 55.2 Agree clear rules with respect to the determination of the start date for the period following which arbitration can be requested, including implications on the start date where additional information is requested, unless provided for in the treaty or instrument itself and where possible, building on the rules contained in the MAP Statistics Reporting Framework.
- 55.3 Ensure that a request for arbitration by the taxpayer is submitted in writing and includes all necessary information to clearly identify the case. Competent authority agreements on the procedural conduct of arbitration should outline procedural rules for initiating arbitration, including:
  - 55.3.1 Which competent authority should receive the request.
  - 55.3.2 The timeframe for forwarding the request to the other competent authority.
  - 55.3.3 Communication of the initiation of arbitration to all parties.
  - 55.3.4 The need for taxpayers to confirm that the case falls within the scope of arbitration where limitations apply (e.g. cases already decided by courts, cases covered by

	agreed scope exclusions in the treaty/competent authority agreement).
55.4	Where required or useful, establish in a timely manner terms of reference agreed by both competent authorities that define the main issues to be resolved by the arbitration panel, based on the taxpayer's request and competent authority submissions. If no agreement is reached, each competent authority should submit a list of issues to be resolved and the arbitration panel may then finalise the terms of reference after their appointment following consultations with both competent authorities.
55.5	Ensure in a timely manner the selection of an arbitration panel that includes: <ul style="list-style-type: none"> <li>55.5.1 Experienced, independent and impartial panel members, including a declaration of acceptance, independence, impartiality and compliance with confidentiality requirements to be provided by each arbitrator.</li> <li>55.5.2 Clear rules for appointing panel members, with a preference for an odd-numbered panel to avoid deadlocks (e.g. three-member panels with each competent authority selecting one panel members and the two panel members selecting a Chair).</li> <li>55.5.3 Maintenance of a predefined list of persons eligible to serve as panel members by each competent authority, specifying third country nationals that are eligible to act as Chair in their view as well.</li> <li>55.5.4 A default mechanism for appointing panel members if the designated competent authorities fail to do so within the prescribed timeframe, which could involve choice by random selection from a predefined lists of persons eligible to be panel members by the concerned competent authority or the other competent authority, where no list is defined.</li> <li>55.5.5 Replacement procedures in cases of incapacity, disqualification, or resignation.</li> </ul>
55.6	Follow a structured arbitration process, which may take different forms depending on the agreement between jurisdictions. Jurisdictions should choose a default decision-making approach or allow competent authorities the flexibility to agree on the approach on a case-by-case basis, considering the pros and cons of each approach. The possible approaches typically are: <ul style="list-style-type: none"> <li>55.6.1 Last-best offer arbitration, where the panel selects one of the proposed resolutions.</li> <li>55.6.2 Independent opinion arbitration, where the panel issues a reasoned decision based on the facts, legal arguments and treaty provisions.</li> </ul>
55.7	Ensure confidentiality throughout the arbitration process by: <ul style="list-style-type: none"> <li>55.7.1 Protecting information shared with competent authorities and panel members in line with treaty and domestic law confidentiality provisions.</li> <li>55.7.2 Using secure communication channels.</li> <li>55.7.3 Requiring panel members to destroy all case-related information upon completion of the proceedings and to not share exchanges with or between the panel or positions of the competent authorities with the taxpayer, the staff assisting the arbitration panel or any other third party.</li> </ul>
55.8	Establish fair cost-sharing mechanisms for the arbitration procedure as follows: <ul style="list-style-type: none"> <li>55.8.1 Each competent authority should bear its own costs.</li> <li>55.8.2 Each competent authority should remunerate and reimburse the expenses incurred by the arbitrator appointed by them, noting that the agreed rules on arbitration between the competent authorities should ideally provide for rules on the remuneration and reimbursement of panel members, including the amounts paid per meeting and/or preparation days, as well as a potential cost cap for the whole arbitration procedure;</li> <li>55.8.3 Shared costs, such as those for the chairperson and administrative expenses, should be divided equally unless an alternative arrangement is agreed upon.</li> <li>55.8.4 Taxpayers should bear their own costs in relation to the arbitration process, if any.</li> <li>55.8.5 Special considerations should be given to low-capacity jurisdictions to ensure</li> </ul>

arbitration remains accessible.

55.9 Confirm that the arbitration decision is final and binding on both competent authorities and implemented by both competent authorities through mutual agreement unless the taxpayer rejects it:

- 55.9.1 Decisions should be made by simple majority where there are multiple panel members, based on the treaty provisions, applicable domestic laws and any other mutually agreed sources.
- 55.9.2 Complete arbitration decisions should in most cases not be published, but where summaries are agreed to be published by both competent authorities or required to be published under the underlying instrument, publication should be in an anonymised form where necessary to ensure that confidential taxpayer details are not published and should clarify that the decision does not have precedential value.
- 55.9.3 Competent authorities should have the opportunity to reach an agreement fully eliminating taxation not in accordance with the treaty independently while arbitration is pending, allowing withdrawal of the arbitration request and closure of the MAP case.

**56 Best practice 56.** Where possible, jurisdictions with experience in MAP arbitration should invest in capacity building to develop experts in international tax and transfer pricing who could potentially act as panel members in MAP arbitration cases, particularly in jurisdictions that do not currently have MAP arbitration provisions, including low-capacity jurisdictions and developing countries. Such initiatives can help build trust in arbitration among these jurisdictions by enabling them to develop the necessary expertise to participate effectively in the process. Capacity-building efforts should focus on training experts who could eventually act as panel members, ensuring that the pool of persons eligible to serve in MAP arbitration panels is diverse and globally representative.

# 4 Considerations for low-capacity jurisdictions

218. The guidance and best practices outlined in the preceding sections have been developed to accommodate the diverse needs of jurisdictions, taking into account differences in MAP inventory size, levels of experience, and stages of development. Nonetheless, some competent authority respondents to the survey suggested that this Manual could also include specific guidance on how jurisdictions that are new to MAP, particularly those with limited capacity, can initiate and build a functional MAP programme. Such guidance could help ensure that these jurisdictions are well-positioned to implement effective procedures from the outset, drawing on both the core principles in this Manual and targeted capacity-building support from more experienced peers.

219. To support the effective implementation of MAP in these jurisdictions, jurisdictions with significant MAP experience are encouraged to actively engage in capacity-building initiatives tailored to the needs of low-capacity or less experienced jurisdictions. Competent authority respondents to the survey emphasised the importance of sharing practical expertise gained through their direct involvement in MAP cases through their involvement as participants or experts in MAP workshops. They noted that the use of real-world case studies in such workshops can be particularly valuable in illustrating how MAP functions in practice and in helping less-experienced competent authorities build the skills needed to manage cases effectively. The guidance and best practices in the MEMAP may be used as a reference point for such efforts. There have been several capacity-building initiatives such as MAP workshops organised by the OECD or regional tax organisations. These workshops, which have increasingly focused on the needs of officials from low-capacity jurisdictions have seen participation from nearly all such jurisdictions in the Inclusive Framework. Drawing on insights gained through these workshops, many jurisdictions have been able to establish a MAP framework and designate personnel with practical training in MAP to their competent authority functions. Participants in these workshops have noted that the hands-on structure of these workshops, often based on simulated MAP case studies covering all stages of the MAP process, has proven especially useful, both in building technical proficiency and in fostering peer-to-peer relationships among competent authorities from jurisdictions that are new to MAP.

220. In addition, competent authorities not directly involved in a MAP case could provide support through mechanisms modelled on the Tax Inspectors Without Borders (“**TIWB**”) programme. Some survey respondents noted that independent expert assistance could offer hands-on guidance during the life of a MAP case, provided strict confidentiality safeguards are maintained. Such support can be particularly useful when navigating complex cases and contributes to building long-term internal expertise, reducing reliance on external support over time. Furthermore, some competent authority respondents suggested establishing a regional “buddy system” to match less-experienced competent authorities with more experienced peers that share similar legal systems, a common language or are within the same region. For instance, it has been noted that the technical assistance provided by Spain’s competent authority to competent authorities in the Latin America region has been appreciated.

***Best practices***

**57 Best practice 57.** Where possible, jurisdictions with extensive MAP experience should invest in capacity-building initiatives to support competent authorities in jurisdictions with little or no MAP experience. These efforts should follow the MEMAP as a model, providing guidance on the practical steps of the MAP process through case studies. The sharing of expertise and best practices should aim to enhance the capabilities of less-experienced competent authorities, fostering more effective, efficient and timely handling and resolution of MAP across the globe.

**58 Best practice 58.** Where possible, jurisdictions with experience in MAP cases should support low-capacity jurisdictions in specific MAP cases by providing independent expert assistance, following the Tax Inspectors Without Borders (“**TIWB**”) model, provided they are not directly involved in the MAP case at hand. Serving or retired staff members from competent authorities who have the necessary experience could offer hands-on guidance to help less-experienced competent authorities navigate treaty provisions and the MAP process while ensuring confidentiality, strengthening capacity for MAP cases, improving outcomes in MAP and promoting a more globally inclusive network of experts in the MAP area.

**59 Best practice 59.** Jurisdictions should consider establishing a buddy system where competent authorities in low-capacity jurisdictions are paired with more experienced competent authorities from the same region or those that share a common language. This would enable less-experienced competent authorities to learn directly from their peers through practical guidance and case collaboration. Regional tax organisations could help coordinate these partnerships, fostering long-term capacity building and stronger regional cooperation in MAP.

# Annex A. List of best practices in the MEMAP

## Annex A. 1. Best practices for jurisdictions

- 1 **Best practice 1.** Jurisdictions should incorporate the full and complete text of paragraphs 1 to 4 of Article 25 of the OECD Model Tax Convention (the 2017 version as amended following the BEPS Action 14 final report) into their tax treaties, either on its own or together with treaty provisions that limit the time during which a jurisdiction may make an adjustment pursuant to Article 9(1) or Article 7(2). Jurisdictions should also ensure that provisions equivalent to paragraphs 1 to 4 of Article 25 in their tax treaties are interpreted and applied in practice as interpreted in the Commentary on Article 25 of the OECD Model Tax Convention, as amended following the BEPS Action 14 final report.<sup>90</sup>
- 2 **Best practice 2.** Jurisdictions should uphold their obligations under tax treaties concerning the proper application of the MAP provision in good faith. Where the provisions of a tax treaty limit the taxation rights otherwise available to a jurisdiction under domestic law, those domestic law provisions should not then be an impediment for that jurisdiction to provide access to MAP (as detailed under **Best practice 27**) or to undertake endeavours to resolve the case (as detailed under **Best practice 39**), in eligible cases under the treaty.<sup>91</sup> A competent authority relying upon a domestic law impediment as the reason for not allowing a taxpayer to initiate MAP or for not initiating MAP should inform the other competent authority of this and duly explain the legal basis of its position.
- 3 **Best practice 3.** Jurisdictions should ensure that all information necessary to consider and resolve a case is exchanged between competent authorities and that such exchanges of information during the MAP process comply with the standards set out in the equivalent of Article 26 of the OECD Model Tax Convention, as interpreted in the Commentary on that provision. In this regard, information may be disclosed to any person or authority concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered, including courts and administrative bodies. In the context of MAP, while the taxpayer should be updated on the

---

<sup>90</sup> It must be noted that elements 1.1, 3.1 and 3.3 of the BEPS Action 14 Minimum Standard require jurisdictions to include the equivalent of paragraphs 1 through 3 of Article 25 in their tax treaties, as interpreted in the Commentary, subject to the fact that jurisdictions are allowed to:

- retain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (the 2014 version as it read prior to the adoption of the BEPS Action 14 Final Report) so long as they implement for those treaties a bilateral notification or consultation process for cases in which the competent authority to which the MAP case was presented does not consider the taxpayer's objection to be justified; and
- not include Article 25(2), second sentence, of the OECD Model Tax Convention in their tax treaties so long as they are willing to accept alternative treaty provisions that limit the time during which a Contracting State 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.

<sup>91</sup> Noting that questions that do not involve the tax treaty and only matters of domestic law are not meant to be covered by a MAP provision. See paragraph 43.

progress of the case on request and informed of the final proposed resolution agreed between the competent authorities, communications from one competent authority intended solely for the other competent authority as part of the MAP case, including those setting out the competent authority position such as position papers, should not be disclosed to the taxpayer.

Where disclosure to persons or authorities is permitted under Article 26(2), and particularly where the information may be considered sensitive or relates to the MAP discussions themselves, the competent authority concerned should consult with the other competent authority and take their view on board prior to disclosure. Information should not be disclosed to any other person or in any other circumstance beyond those listed above, regardless of any domestic information disclosure legislation, such as freedom of information laws or other provisions allowing broader access to government-held documents.

- 4 **Best practice 4.** Jurisdictions should ensure that taxpayers are informed of their right to access MAP when notified of audit adjustments or assessments in international tax or transfer pricing matters that would be covered by a tax treaty. This communication should aim to clearly share information on the filing period for requesting MAP under the tax treaty and direct the taxpayer on where to find the concerned jurisdiction's published MAP guidance.
- 5 **Best practice 5.** Jurisdictions should take proactive measures to prevent disputes leading to MAP cases, with a particular focus on ensuring that the audit/examination functions avoid adjustments or assessments that are clearly contrary to the terms of the tax treaty or are consistently and commonly relieved in MAP. To achieve this, jurisdictions should work towards:
  - 5.1 Enhancing global awareness in audit/examination functions
    - 5.1.1 Providing training to relevant personnel on international tax and transfer pricing matters, including the FTA's "Global Awareness Training Module."
    - 5.1.2 Supplementing this training with insights from past MAP cases to identify and address recurring issues that are frequently relieved in MAP.
    - 5.1.3 Building awareness in the audit/examination function of tax treaty obligations in international tax and transfer pricing matters.
  - 5.2 Ensuring well-reasoned and well-substantiated audit adjustments or assessments
    - 5.2.1 Strengthening the quality of audit adjustments or assessments by ensuring that they are well-supported by facts, legal reasoning and relevant treaty provisions, which are clearly recorded in writing and included in the audit report.
    - 5.2.2 Encouraging audit teams to request all necessary information from the taxpayer at the earliest possible time and produce robust documentation that can serve as a reliable foundation for potential MAP cases, reducing the need for extensive fact-finding during the MAP phase.
  - 5.3 Enhancing periodic engagement and communication between the audit/examination and competent authority functions by establishing independent governance or feedback processes. This should enable the competent authority to provide input where appropriate and feasible, especially in high-value or complex cases, to help prevent repeated adjustments or assessments that have been consistently and commonly relieved in MAP. However, this should be done while respecting the audit/examination function's independence to assert adjustments or raise assessments and while maintaining the competent authority's independence from the approval or direction of personnel that make adjustments leading to MAP cases (as discussed in **Best practice 9**).
  - 5.4 Providing clear and accessible guidance available to taxpayers on the applicability of the tax treaty as part of the tax return filing process in international tax cases, especially for individual taxpayers who do not have business income but earn other types of cross-border income covered by the tax treaty.

**6 Best practice 6.** Jurisdictions should take proactive measures to minimise the need for dispute resolution and prevent MAP cases by:

- 6.1 Engaging in agreements under the equivalent of Article 25(3) of the OECD Model Tax Convention contained in their tax treaties. These may include agreements on the interpretation of treaty terms, the application of treaty provisions, or general framework agreements outlining how cases involving specific issues, sectors, or groups of taxpayers will be resolved. Publishing these mutual agreements is also encouraged to improve guidance and proactively resolve future disputes, unless the nature of the agreement means that its publication would undermine its administrative goal.
- 6.2 Where available and appropriate, entering into bilateral or multilateral advance pricing arrangements (APAs) under the equivalent of Article 25(3) of the OECD Model Tax Convention contained in their tax treaties for specific cases requested by taxpayers, to provide certainty and prevent disputes before they arise. In this regard, where appropriate and possible, ongoing audits concerning the same taxpayer and issues covered by the APA request that may lead to MAP cases for previous years may even be suspended while a bilateral or multilateral APA is being actively discussed and progressed with the cooperation of the taxpayer, while at the same time recognising that any decision to suspend an audit would follow careful consideration on a case-by-case basis.
- 6.3 Implementing procedures to allow, in appropriate cases, taxpayer requests for the multi-year resolution of recurring issues through MAP, where the relevant facts and circumstances are the same and are subject to the verification of such facts and circumstances on audit, to prevent the repetition of MAP cases in future years. Jurisdictions should also, where appropriate, explore the coordination of MAP with bilateral or multilateral APA cases to achieve prospective and efficient resolutions for recurring disputes.

**7 Best practice 7.** Jurisdictions should ensure that the competent authority function is structured in a manner that enables staff members to effectively fulfil each jurisdiction's obligations under their tax treaties. This includes:

- 7.1 Appropriate structure: Positioning the competent authority function within the appropriate department to ensure it can independently and effectively carry out its MAP responsibilities, including overseeing the timely implementation of MAP agreements.
- 7.2 Adequate staffing: Allocating a sufficient number of suitably experienced staff members to manage the MAP caseload effectively, taking into account both the volume and complexity of cases and monitoring and adjusting the staffing of the function depending on change in MAP inventory. Where staff members are assigned to MAP on a part-time basis, care should be taken to ensure that they are not pressured to prioritise other responsibilities at the expense of their MAP-related duties.
- 7.3 Ongoing training: Providing staff with thorough training in substantive tax treaty and/or transfer pricing matters, depending on the type of cases they will handle, as well as the practical handling of MAP cases, on an ongoing basis, including effective training and handover for new staff brought into the team to ensure a smooth transition.
- 7.4 Sufficient budget: Ensuring adequate funding to support the effective preparation and exchange of positions, as well as organisation of and participation in meetings between the competent authorities in MAP. This includes planning for logistical and operational costs by:
  - 7.4.1 Establishing outline agreements with treaty partners regarding the timing and location of meetings.
  - 7.4.2 Preparing an annual budget to forecast the costs of overseas travel or for hosting meetings, including venue expenses and necessary provisions, to allow allocation of adequate funds, while ensuring flexibility to allocate additional funds during the year where required.

**8 Best practice 8.** Jurisdictions should ensure that the staff members in its competent authority function follow a treaty-first approach, to uphold the treaty in good faith (as described in **Best practice 2**) without regard to the revenue involved in a case, including:

- 8.1 Handling and resolving the MAP case based on the merits of the case, without reperforming the audit at the MAP stage<sup>92</sup>.
- 8.2 Acting autonomously in MAP cases, without requiring approval outside the competent authority function.
- 8.3 Granting unilateral relief where appropriate.
- 8.4 Adopting a pragmatic, solution-oriented stance in bilateral discussions.
- 8.5 Proposing and accepting reasonable solutions.
- 8.6 Being principled and fair in positions taken in MAP.
- 8.7 Being willing to compromise where appropriate.
- 8.8 Ensuring that personnel transitioning from the audit/examination function to the competent authority function do not allow their previous experience to negatively influence their approach and mindset in MAP cases, receive specialised training on the required MAP mindset and are initially exposed to MAP cases by observing a few MAP cases being conducted by more experienced team members.

**9 Best practice 9.** Jurisdictions should ensure that personnel in the competent authority function operate independently of the audit/examination team responsible for the original adjustment or assessment and only consult them for factual clarifications where necessary. This can be achieved by:

- 9.1 In jurisdictions with meaningful MAP experience, structurally separating the competent authority function from audit/examination functions to ensure that any staff member that has previously worked in the audit/examination function and was involved in the adjustment or assessment (including economic analysis) does not participate in the handling and resolution of the same case at the MAP stage. In this regard, the competent authority function should ideally be fully independent from the audit/examination function. Nevertheless, current or former staff members in the audit/examination function may provide factual clarifications relevant to the case as noted in **Best practice 44** and staff members with relevant expertise may be transitioned from the audit/examination function to the competent authority function subject to training with respect to the difference in approach as noted in **Best practice 8.8**.
- 9.2 In jurisdictions with limited MAP experience, where staff in the competent authority function have various tasks, ensuring that any staff member involved in the audit adjustment or assessment (including economic analysis) does not participate in the handling and resolution of the same case at the MAP stage.
- 9.3 Preventing active involvement of a supervisor in the same case at both the audit and MAP levels, beyond routine signoffs by high-level functionaries in the tax administration.

**10 Best practice 10.** Jurisdictions should ensure that MAP cases are resolved based solely on the applicable tax treaty and not influenced by future treaty policy considerations. In this regard, endeavours to resolve MAP cases (as described in **Best practice 39**) should not be ceased on the basis that there may be a change in the treaty or a different policy position in the future. However, feedback from MAP cases on difficulties or doubts that may arise concerning the interpretation or application of tax treaty provisions should be systematically shared with the treaty negotiation team to inform potential future amendments to the treaty or future treaty negotiations, where not already sought

---

<sup>92</sup> See paragraph 116 for more details.

to be addressed through a competent authority agreement under the equivalent of Article 25(3) of the OECD Model Tax Convention in the concerned treaty.

**11 Best practice 11.** Jurisdictions should ensure that the performance assessment of the staff in the competent authority function, including supervisory personnel, is not based on the revenue sustained through a case. Instead, assessments should focus on tracking progress against specific milestones for each stage of a MAP case in their own jurisdiction, assessing whether required actions under that competent authority's control have been carried out effectively, efficiently and within appropriate timeframes, including communicating with and responding to the other competent authority and taxpayer in a timely manner, as well as through:

- 11.1 Objective performance indicators such as the number of cases resolved and the timeliness of case resolution including the sharing of position papers and responses, taking into account where the number of cases resolved and timeliness of case resolution are affected by factors attributable to the treaty partner or taxpayer, or to the complexity of the issues in dispute more broadly and the concerned staff member has taken necessary actions in a timely manner.
- 11.2 Subjective performance indicators such as consistency in positions taken (particularly in similar fact patterns, regardless of the jurisdiction's role in the case) and feedback on the quality of relationships maintained by a staff member with treaty partners to promote constructive international cooperation.

**12 Best practice 12.** For issues where the two jurisdictions concerned may have different views on whether the adjustment or assessment raises treaty issues or is purely a matter of domestic law, the competent authority receiving the MAP request should not decide on its own to not substantively consider the case in MAP without first consulting the other competent authority and making endeavours in good faith to reach a shared understanding on whether the MAP request presents issues within the scope of the treaty.<sup>93</sup>

**13 Best practice 13.** Jurisdictions should aim to resolve each MAP case at the earliest possible time and within a timeframe of 24 months from the Start Date as established under the MAP Statistics Reporting Framework. If a case is expected to exceed this timeframe due to factors such as case complexity, competent authorities should continue discussions where a resolution remains feasible and provide taxpayers with regular updates on progress where requested. However, it is acknowledged that the time taken to resolve a MAP case may exceed this timeframe owing to factors attributable to the taxpayer as well, such as delays in the taxpayer providing the requested information or the taxpayer actively pursuing litigation alongside the MAP process with respect to the same issues.

In situations where a MAP case has been open for 18 months and is likely to exceed a reasonable period beyond the 24-month timeframe, it is advisable for senior officials in the competent authority functions of the concerned jurisdictions to review the case, identify the reasons for the delay and agree on an approach to ensure its efficient resolution as promptly as possible.

While it is recognised that complex cases, especially certain attribution/allocation cases, may take more than 24 months to resolve, competent authorities should aim to resolve their remaining MAP cases in a quicker manner to ensure that all cases are closed within 24 months on average.

---

<sup>93</sup> Element 3.1 of the Action 14 Minimum Standard already requires all Inclusive Framework member jurisdictions to implement a documented bilateral notification or consultation process for cases in which the competent authority to which the MAP case was presented does not consider the taxpayer's objection to be justified, where a treaty does not permit a MAP request to be made to either Contracting State.

**14 Best practice 14.** Jurisdictions should implement structured inventory management processes, using technology where possible, to ensure the efficient and timely handling of MAP cases. This includes:

- 14.1 For jurisdictions with medium to large inventories (e.g. at least ten MAP cases in its MAP inventory on average over the previous three years):
  - 14.1.1 Assigning dedicated case handlers and supervisors to each case (which could include designated experts in the team for the sector involved), issuing regular updates and reminders to case handlers and prioritising cases where necessary to maintain efficiency.
  - 14.1.2 Establishing a clear and comprehensive internal practice manual for staff in the competent authority function which provides details on the actions required to be performed and the associated timelines for each step of the MAP process.
  - 14.1.3 Maintaining a well-organised database that includes key details such as the treaty partner, start date, issue under MAP, a high-level description of the case, the steps undertaken in the MAP process and the date of the last competent authority action. This database could split the cases into attribution/allocation cases and other MAP cases and further sub-categories within these main categories depending on issues/sectors. This database should be updated regularly to reflect case progress.
  - 14.1.4 Establishing a clear workflow, whereby upon receipt of a MAP request, the case is recorded in the MAP database, assigned to a case handler by the team leader and allocated a supervisor (generally a delegated competent authority). The case handler should then be in charge of updating the database.
  - 14.1.5 Implementing milestone-based case updates, conducting regular meetings between case handlers and supervisors to review progress and ensuring closer monitoring by the supervisor and the delegated competent authority's team for cases that exceed 18 months in duration.
  - 14.1.6 Ensuring seamless transition and handover between a new case handler taking over a case from a previous case handler.
- 14.2 For jurisdictions with small MAP inventories (e.g. less than ten MAP cases in its MAP inventory on average over the previous three years):
  - 14.2.1 Ensuring that at least one staff member is always available to receive and prioritise MAP requests as well as their handling and resolution when multiple functions are being performed by staff assigned to the competent authority function.
  - 14.2.2 Assigning responsibility for tracking ongoing MAP cases, including key details such as the treaty partner involved, the Start Date, the issue in MAP, a high-level description of the issue and the date of the last competent authority action.
  - 14.2.3 Monitoring the progress of MAP cases to identify where action is needed, ensuring proactive case management.
  - 14.2.4 Overseeing the competent authority function to confirm that tasks are performed efficiently, effectively and in a timely manner, preventing delays or inefficiencies.

**15 Best practice 15.** Jurisdictions should be open to taxpayers seeking guidance before submitting a MAP request to understand the required filing format, documentation requirements as well as formal and procedural aspects around eligibility conditions in general. While taxpayers should not expect the competent authority to provide a formal position on eligibility or substantive positions on the case before a MAP request is filed, the competent authority may, at its discretion, discuss the general prospects of pursuing MAP in a given situation. Nevertheless, competent authorities should not engage with the taxpayer at this stage to unilaterally agree any position that will be covered in the taxpayer's MAP request.

**16 Best practice 16.** Jurisdictions should publish clear and accessible guidance on the MAP, including

the relevant rules, guidelines and procedures for accessing and using the MAP and take appropriate measures to ensure that this guidance is publicly available, easily accessible to taxpayers and updated regularly to reflect any changes. This guidance should contain comprehensive information on the following:

- Contact details of the competent authority or the office handling MAP cases.
- The manner and form in which taxpayers should submit a MAP request, including the information that is required to be submitted along with the MAP request.
- How the MAP operates in the jurisdiction, including timing and rules for access under tax treaties and other similar instruments (e.g. the EU Arbitration Convention or the EU Dispute Resolution Directive).
- The role of the competent authorities and how they apply the process in practice.
- The availability of arbitration under tax treaties and other similar instruments.
- The relationship between MAP and domestic remedies, including whether access to MAP is available for cases pending or resolved in such remedies, any available recourse where access to MAP is denied or the objection raised by the taxpayer is considered not justified, any restrictions on endeavours in MAP (e.g. if the competent authority is bound by a decision), the taxpayer's right to choose between MAP and domestic remedies and any policy clarifying the prioritisation of MAP relative to domestic remedies, including potential requirements to suspend one while actively pursuing the other.
- How the competent authority considers protective MAP requests.
- Whether MAP is available in cases of: (i) transfer pricing, (ii) audit settlements (including whether the competent authority is bound by such a settlement), (iii) the application of anti-abuse provisions (including whether the competent authority can substantively consider such cases), (iv) multilateral disputes and (v) bona fide foreign-initiated self-adjustments.
- The possibility of multi-year resolution of recurring issues through the MAP.
- The steps of the MAP process and the timing of each step, including any actions required from taxpayers.
- The implementation of MAP agreements, including any necessary taxpayer actions.
- The rights and role of taxpayers in the process.
- The possibility of suspending tax collection during a MAP.
- The consideration of interest and penalties within the MAP.

**17 Best practice 17.** Jurisdictions should publish their MAP profiles on the shared public platform of the OECD website, following the agreed template. They should ensure that the information is complete, detailed and up to date, accurately reflecting their MAP policies, guidance and practices. Where appropriate, profiles should include external links to additional information and guidance.<sup>94</sup>

**19 Best practice 19.** Jurisdictions should ensure that taxpayers, as stakeholders in a MAP case, receive updates from the competent authority that received the MAP request regarding the progress of the

---

<sup>94</sup> Element 2.2 of the Action 14 Minimum Standard already requires all Inclusive Framework member jurisdictions to publish their MAP profiles on a shared public platform and the FTA MAP Forum reviews whether the information contained therein is detailed and in line with a jurisdiction's MAP policy, guidance and practices as part of the BEPS Action 14 peer review process.

case, upon their request. While taxpayers should not be informed of the substance of discussions during the bilateral phase or privy to communications between the competent authorities including position papers, they should be kept informed whether progress is being made. Competent authorities may also choose to engage with taxpayers regarding their analysis before sharing their positions with the other jurisdiction(s) involved or invite taxpayers to jointly clarify facts to or share views with both competent authorities. Regular communication with taxpayers, such as providing additional information when required, enhances the transparency of the MAP process and fosters cooperation.

**20 Best practice 20.** Jurisdictions should ensure that the process for taxpayers to file a MAP request is streamlined, secure and easily accessible. In particular:

- 20.1 Jurisdictions should allow electronic submission of MAP requests via emails or secure digital cloud platforms on a secure server. Where email is used, a generic mailbox should be provided to ensure requests will always be received by the relevant people and are not impacted by personnel transitions. Digital platforms should also support the secure transfer and storage of large volumes of information, which can be particularly relevant for transfer pricing cases.
- 20.2 Jurisdictions should generally adopt a flexible approach regarding the language of MAP request and the supporting documentation, provided they are submitted in English or the common language of both jurisdictions. If the domestic law of a jurisdiction requires MAP requests to be submitted in the national language(s), the competent authority of that jurisdiction should be willing to accept a brief MAP request in that language (or those languages) to meet formal requirements, and accept a translation of the request as well as all further details, including all supporting information and documentation in English or the common language of both jurisdictions.

**21 Best practice 21.** Jurisdictions should tailor their expectations and requirements of taxpayers based on their size and sophistication (e.g. individual taxpayers v corporate / business taxpayers) and generally not require the same level of detail (such as in-depth analysis) from individual taxpayers as from business taxpayers. Jurisdictions should, especially for individual taxpayers, create a simple format for digital submissions, accept unofficial translations and adopt a proactive approach to sourcing missing information internally or from the other competent authority where feasible.

**26 Best practice 26.** The competent authority receiving a MAP request should, within four to eight weeks of receipt<sup>95</sup>, notify the taxpayer and communicate its decision on whether the request is eligible for access to MAP (i.e. whether the conditions set out in the provision governing the filing of a MAP request in the relevant tax treaty (typically equivalent to or based on Article 25(1) of the OECD Model Tax Convention) are met, as interpreted in the Commentary on Article 25 of the OECD Model Tax Convention) or where additional information is required for determining whether these conditions are met. Where applicable, the competent authority should outline any domestic law limitations that may affect the MAP process.

The competent authority receiving a MAP request should, within four to eight weeks of receipt, also notify the other competent authority of the MAP request along with a copy of the request and communicate its decision on whether it is eligible for access to MAP or whether additional information is required for determining whether these conditions are met. The notification should include a proposed Start Date in accordance with the MAP Statistics Reporting Framework where applicable. Where additional information is to be requested from the taxpayer, the notification should also outline

---

<sup>95</sup> This decision should take up to eight weeks only where the decision is accompanied by a decision as to whether the objection raised by the taxpayer is justified.

the details of the request along with an assessment of its impact on the Start Date. In addition, in cases where access to MAP is denied or further information is requested, the reasoning behind such decision or request should also be shared. If access to MAP is denied, it should also specify the proposed outcome and End Date. Where applicable, the competent authority should also outline any domestic law limitations that may affect the MAP process. Where additional information from the other competent authority is needed to determine the eligibility of the MAP request, the decision on whether to grant access should only be made following consultation between the two competent authorities.

The other competent authority should have the opportunity to respond to the decision on whether the request is eligible for access to MAP within two to four weeks if it so wishes. A response should always be provided if the other competent authority has also received the MAP request, as this may affect the determination of the Start Date, or where additional information is sought to be requested by the other competent authority to determine the eligibility of the MAP request. Where applicable, the other competent authority should also outline any domestic law limitations that may affect the MAP process.

Any communication to the other competent authority should include clear contact information, such as the phone number and email address of the staff assigned to the case, to facilitate direct and efficient discussions. Competent authorities should also share a copy of all information received from the taxpayer with the other competent authority to ensure that both sides are working with the same facts. Furthermore, the transmission of information should follow the agreed protocols for secure communication and avoid the use of unprotected email.

**27 Best practice 27.** Jurisdictions should grant access to MAP in all cases where the conditions set out in the provision governing access to MAP in the relevant tax treaty (typically equivalent to or based on Article 25(1) of the OECD Model Tax Convention) are met, as interpreted in the Commentary on Article 25 of the OECD Model Tax Convention. For provisions equivalent to or based on Article 25(1) of the OECD Model Tax Convention, a MAP request may only be denied in three circumstances (noting that this does not cover substantive issues where the taxpayer's objection may be considered not justified, as detailed in section 2.3 below):

- The request has not been submitted to the appropriate competent authority under the relevant treaty.
- The request has not been submitted within the deadline specified in the MAP article of the relevant treaty.
- The request has not been submitted by an eligible taxpayer or relates to fiscal years in which the relevant treaty was not or is no longer in force.

While access to MAP should be granted for all eligible cases under the tax treaty, some notable examples of situations where access to MAP should be granted are:

27.1 Transfer pricing cases. In this regard,

27.1.1 Jurisdictions should ensure that, in the case of *bona fide* taxpayer-initiated adjustments, access to MAP is granted<sup>96</sup>, provided that:

- They are authorised under the domestic law of the jurisdiction and permit or require the taxpayer, under appropriate circumstances, to amend a previously filed tax

---

<sup>96</sup> As noted under paragraph 90 above, some jurisdictions have noted that they do not consider this as best practice for all cases.

return in order to report a price in a controlled transaction, or an attribution of profits to a permanent establishment that is in the taxpayer's opinion in accordance with the arm's length principle; and

- It is at least probable that such adjustments, in the taxpayer's view, will result in taxation not in accordance with the applicable tax treaty and the taxpayer is clearly acting with the *bona fide* intent to resolve such taxation.<sup>97</sup>

27.2 Cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment or assessment 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. In this regard, ongoing or finalised criminal proceedings against a taxpayer should not, in themselves, be a reason to deny access to MAP, while noting that substantive consideration of a case may be suspended while a court is actively considering criminal proceedings connected to the adjustment or assessment in question that may result in the adjustment or assessment being made final (as noted in **Best practice 40**) and that once a decision is issued, a competent authority may be bound by law to follow such decision in MAP (as noted in **Best practice 41**).

27.3 Cases where audit settlements have been entered into to settle the taxation action in question between tax authorities and taxpayers. In this regard:

- 27.3.1 Taxpayers should not be required, either explicitly or implicitly, to waive their right to MAP in order to obtain an audit settlement, noting that it is the choice of the taxpayer to request for MAP or not following such a settlement.
- 27.3.2 There should be no informal agreements or pressure from the audit/examination function discouraging taxpayers from accessing MAP, including:
  - The threat of a higher audit adjustment, assessment or settlement amount if MAP is pursued.
  - The threat of future audits as a consequence of requesting MAP.
  - The imposition or revocation of (criminal) penalties or criminal prosecution being contingent on whether MAP is accessed.
- 27.3.3 Jurisdictions should ensure that audit practices and settlement procedures do not undermine taxpayers' treaty rights or create undue deterrents to accessing MAP.

27.4 Cases where the taxpayer has provided the required information as prescribed in a jurisdiction's MAP guidance.

27.5 Cases where taxpayers have initiated available domestic remedies along with a MAP request simultaneously, irrespective of whether such remedies are pending or have been finalised. In this respect, access to MAP should also not be made contingent on the taxpayer taking actions with respect to ongoing domestic remedies or collection processes (i.e. withdrawal of ongoing processes, requirement to initiate processes, requirement to pay taxes before initiating MAP etc.).

27.6 Cases where taxpayers have entered into unilateral rulings or unilateral advance pricing arrangements with the tax authorities or where the taxpayer has benefited from other similar domestic dispute prevention mechanisms that provide for a unilateral resolution or settlement.

27.7 Cases where there is no double taxation, but there is taxation not in accordance with the concerned tax treaty.

**28 Best practice 28.** Jurisdictions should ensure that where there is ambiguity, the time limit for filing a MAP request is interpreted in a manner that is favourable to the taxpayer, balancing the competent

---

<sup>97</sup> It is understood that taxpayer-initiated adjustments that are considered to be retroactive tax planning or abusive may not be considered appropriate.

authority's need for reasonable limitations with the taxpayer's entitlement to treaty benefits in eligible cases. In case of ambiguity, taxpayers should not be unduly prevented from accessing MAP due to overly strict interpretations of time limits where there is room for an interpretation favourable to the taxpayer in appropriate circumstances. In borderline cases, the benefit of the doubt should be given to the taxpayer to ensure fair and effective access to MAP.

**29 Best practice 29.** Jurisdictions should provide access to MAP in eligible cases under the tax treaty where a taxpayer files a MAP request concerning the payment of withholding taxes in the source jurisdiction that it considers to not be in accordance with the treaty. This access should be granted at a minimum to ensure that the prescribed filing period does not expire, regardless of whether the taxpayer is procedurally required to apply for a refund of withholding taxes under domestic law, without requiring them to wait for a rejection of a request under such a procedure. However, where jurisdictions have implemented such domestic procedures for the refund of withholding taxes at source, competent authorities should consider MAP requests arising from these cases as follows:

- 29.1 In general, if domestic procedures remain available at the time of submission of the MAP request or notification by the other competent authority, the competent authority may postpone its consideration of the MAP request's validity or defer substantive discussions in the bilateral phase of MAP until the rejection of a request under the appropriate domestic procedure. In such cases, the competent authority should promptly notify the taxpayer and the other competent authority of the specific requirements the taxpayer must fulfil under the appropriate domestic procedure and the prescribed timeframe for doing so. If the refund request is denied due to the taxpayer not having met processual requirements, such as filing within the prescribed deadline, the MAP case may be closed.
- 29.2 For individual taxpayers, where domestic procedures are no longer available at the time of notification or where they may lack the expertise or resources to navigate domestic procedures, the competent authorities should, where appropriate, assist the taxpayer with domestic procedures where possible and substantively consider eligible cases under Article 25(1). Where possible and appropriate, they should consider using Article 25(3) proactively to resolve the issue for the taxpayer.

**30 Best practice 30.** Jurisdictions should take appropriate measures to provide for the suspension of collection procedures while a MAP case is pending, at least with respect to adjustments or assessments that are the subject of a MAP request where taxes have not been collected. The suspension should commence upon the filing of the MAP request and remain in effect until the MAP case is closed by both jurisdictions, whether or not the offered outcome is accepted by the taxpayer (i.e. until the "end date" as defined in the MAP Statistics Reporting Framework). Jurisdictions may require taxpayers to provide adequate security proportionate to the suspended taxes, such as a bank guarantee, escrow account, or similar mechanism.

Suspension may be limited to cases where the taxpayer has expressly requested it and to not exceed the tax amount at stake. Jurisdictions may also withdraw the suspension for business taxpayers, provided they notify the taxpayer of the reasons, if:

- The objection raised in the MAP request is found to not be justified.
- The taxpayer requested for MAP only for suspension of collection, while actively pursuing other domestic remedies, keeping discussions in MAP suspended.

The competent authority of the jurisdiction suspending collection believes that there is a material risk to the collection of the relevant tax, the basis for which has been agreed with the other competent authority.

**31 Best practice 31.** Jurisdictions should ensure that a taxpayer's objection is considered not justified by a competent authority only where a *prima facie* preliminary analysis demonstrates that there was no or will not be taxation not in accordance with the tax treaty. This provision should not be interpreted as granting the competent authority receiving the MAP request the full discretion to decline moving the case forward to the bilateral phase.

In making this determination, the competent authority receiving the MAP request should in principle not request more information than prescribed under its MAP guidance for this *prima facie* analysis at this stage. While competent authorities should follow their jurisdiction's tax treaty policy in determining treaty applicability, this should remain within a reasonable scope. Competent authorities should also avoid assessments that the objection raised is not justified in cases where they only have a difference of opinion with the taxpayer, but where there is no clear conclusion that there was no or will not be taxation not in accordance with the tax treaty.

**32 Best practice 32.** Jurisdictions should ensure that, where there is a disagreement between the taxpayer and the tax authorities making the adjustment or assessment regarding whether the conditions for applying a treaty anti-abuse provision have been met, once access to MAP is granted, the competent authority receiving the MAP request should consult with the other competent authority before deciding as to whether the objection raised by the taxpayer is justified. Although the receiving competent authority retains the discretion to make its own decision as to whether the objection raised is justified and is not obliged to adopt the position of the other competent authority, it should make a genuine effort, in good faith, to reach a common understanding as to whether the conditions for applying the treaty anti-abuse provision are met.

Similarly, jurisdictions should ensure that in cases where there is a disagreement as to whether the application of a domestic law anti-abuse provision conflicts with the provisions of a treaty, once access to MAP is granted, the receiving competent authority should consult with the other competent authority before deciding as to whether the objection raised by the taxpayer is justified. Although the receiving competent authority retains the discretion to make its own decision as to whether the objection raised is justified and is not obliged to adopt the position of the other competent authority, it should make a genuine effort, in good faith, to reach a common understanding as to whether there is taxation not in accordance with the treaty or whether the main purpose of the relevant transactions or arrangements concerned by the application of the domestic law anti-abuse provision was to obtain a more favourable tax position and the granting such treatment would be contrary to the object and purpose of the relevant treaty provisions.

**33 Best practice 33.** Jurisdictions should establish a consultation process between the competent authorities for cases where their competent authority considers the objection raised in a MAP request to not be justified, which is documented in the internal guidelines that staff in the competent authority must follow. This document should set out procedural rules such as the steps to be followed for the consultation and the timeline for each of those steps. This document could also contain broad principles that outline when a case handler should consider the objection raised by the taxpayer justified. In all such cases, the competent authority receiving the MAP request should apply this process to consult with the other competent authority and consider its views before making a final

decision that the objection is not justified.<sup>98</sup>

**34 Best practice 34.** Jurisdictions should request only the additional information that they consider necessary to resolve a MAP case and for business taxpayers, should require the taxpayer to provide this information to both competent authorities involved at the same time. Where possible and particularly for attribution/allocation cases, the two competent authorities should issue joint information requests, provided this does not cause delays due to the need for both competent authorities to agree on the required additional information. For particularly complex attribution/allocation cases, joint functional interviews or site visits may be considered if needed. Competent authorities should set a reasonable timeframe, such as a minimum of 30 to 60 days, for taxpayers to respond to requests for additional information, with the possibility of extension based on the complexity of the request. If the taxpayer does not respond within the deadline, a follow-up reminder should be issued and reasonable extensions should be granted upon request before considering closing the case.

**35 Best practice 35.** The competent authority receiving the MAP request should aim to consult with the other competent authority regarding a possible decision that the objection is not justified within two months of receiving a MAP request including all necessary information for this determination. The other competent authority should aim to provide its views on the matter within one month of receiving the consultation request. After considering the views of the other competent authority, if the receiving competent authority maintains its decision that the objection is not justified, it should aim to inform both the taxpayer and the other competent authority of its final decision and propose to the other competent authority a confirmation of the Start Date, the End Date and outcome of the case for MAP Statistics purposes within three months of receiving a complete MAP request and all necessary information. If additional information is requested from the taxpayer, the other competent authority should be informed at the same time as the taxpayer, along with an assessment of the impact on the Start Date.

Similarly, where the objection raised by the taxpayer is considered justified by the competent authority receiving the MAP request, it should aim to inform both the taxpayer and the other competent authority of its decision within three months of receiving a complete MAP request and all necessary information. Where the objection raised by the taxpayer is considered justified by the competent authority of the jurisdiction that did not make the adjustment or assessment in question, the reasoning that forms the basis for finding the request justified should also be provided to the other competent authority.

**37 Best practice 37.** Jurisdictions should ensure that the competent authority receiving a MAP request fulfils its role as an appointee under the treaty, recognising its obligation and duty to apply the treaty independently and determine whether unilateral relief can be granted with respect to an action causing taxation not in accordance with the treaty. The competent authority should conduct a thorough and early review of the action, receiving any factual information required from the audit/examination team as needed, and verify whether it is well-founded and meets necessary standards, failing which unilateral relief should be granted. In this regard:

37.1 Where the adjustment or assessment originates in the jurisdiction of the receiving competent authority and the correct treaty application is straightforward, jurisdictions should not restrict the competent authority's authority under the treaty to correct its own tax administration's actions and the competent authority should exercise this authority in practice.

---

<sup>98</sup> Element 3.1 of the Action 14 Minimum Standard already requires all Inclusive Framework member jurisdictions to implement a documented bilateral notification or consultation process for cases in which the competent authority to which the MAP case was presented does not consider the taxpayer's objection to be justified, where a treaty does not permit a MAP request to be made to either Contracting State.

- 37.2 Where the adjustment or assessment is made by the other jurisdiction and the receiving competent authority considers it to be in line with the treaty, the competent authority should have the authority to grant full relief of taxation not in accordance with the treaty and should do so in practice.
- 37.3 Even when the taxpayer is pursuing domestic remedies alongside the MAP request and the taxpayer has not filed the MAP request on a protective basis, the competent authority receiving the MAP request should, where possible, grant unilateral relief to fully address the taxation not in accordance with the treaty, thereby resolving the taxpayer's issue, allowing them to withdraw their domestic case.
- 37.4 In attribution/allocation cases, where the competent authority receiving the MAP request is of the view that the taxpayer's reported position is at one point of the arm's length range in the competent authority's view and the adjustment made by its tax administration only moves the value to a different point within that range, that competent authority should generally grant unilateral relief.
- 37.5 Where the adjustment or assessment in its own jurisdiction is not well-substantiated by adequate evidence to support it in the view of the competent authority of that jurisdiction, that competent authority should not re-perform the audit<sup>99</sup> in an attempt to build support for the adjustment or assessment, but generally provide unilateral relief to avoid taxation not in accordance with the treaty when a MAP request concerning that adjustment or assessment is presented before it, subject to the taxpayer having been cooperative and providing the requested information at the audit/examination stage as noted in **Best Practice 18**.
- 37.6 Ideally, a jurisdiction's treaty policy should allow for unilateral relief to be granted notwithstanding domestic time-limits even if a bilateral MAP agreement is not entered into with the other treaty partner. Where this is not possible, a streamlined process should be implemented to seek official agreement from the other competent authority with respect to the full unilateral relief that will be provided by the receiving competent authority.

**38 Best practice 38.** The competent authority receiving the MAP request should aim to decide whether it can provide unilateral relief and inform the taxpayer and the other competent authority thereof and propose to the other competent authority the Start Date, End Date and outcome of the case for MAP Statistics purposes within four months from receiving a complete MAP request and all necessary information for this determination.

**39 Best practice 39.** Jurisdictions should ensure that, where the competent authority receiving a MAP request considers that an objection is justified and unilateral relief is not possible with respect to an eligible MAP request where the necessary information has been submitted, the bilateral phase of MAP is initiated and both competent authorities endeavour to resolve the case in line with their obligation under the tax treaty. This obligation includes initiating or having discussions on the merits of the case in good faith and in a timely manner, following a pragmatic and solution-oriented approach. The aim should be to reach an agreement that avoids taxation not in accordance with the tax treaty. In this regard, where all necessary information has been provided by the taxpayer, jurisdictions should continue endeavours in MAP, except as provided in **Best practice 40** and **Best practice 41**, until both competent authorities agree that further endeavours would not result in an agreement and would thus no longer be useful in their considered view or in exceptional cases where one competent authority determines that resolution is impossible or highly unlikely after a prolonged period.

**40 Best practice 40.** Jurisdictions should ensure that a suspension of discussions in the bilateral phase

---

<sup>99</sup> See paragraph 116 for more details.

of MAP occurs only if the taxpayer is actively pursuing judicial proceedings and those proceedings have not been stayed or stopped. If a taxpayer files in court solely to protect domestic time limits and the court proceedings are paused or no hearing is requested for a prolonged period, the issue should continue to be considered in MAP. Suspension of MAP discussions should apply only where the same issue is actively before a court in at least one of the concerned jurisdictions, involving either the same taxpayer as in the MAP case or, in withholding tax cases, a withholding agent litigating on behalf of the taxpayer, or where the court's decision will be directly binding under law for the taxpayer concerned by the MAP case. In transfer pricing cases, suspension may also be acceptable where an associated enterprise involved in the MAP case is actively before a court on the same issue for an identical transaction, either with the other associated enterprise involved in the MAP case or with another associated enterprise, provided the court's decision may materially affect the substantive position that the competent authority can adopt in the MAP proceedings and at least one of the competent authorities considers it appropriate to suspend discussions during the ongoing litigation.

**41 Best practice 41.** Jurisdictions should ensure that a competent authority is not bound by a decision in a domestic remedy when considering a case under MAP, except where it is legally impossible for them to deviate from that decision. This would include amongst other processes, administrative rulings, settlements, or other decisions under domestic law. In this regard, competent authorities should ideally not be bound by any decision except for a decision of a court that finally adjudicates a claim (i.e. a decision that cannot be or has not been appealed further), and that cannot be deviated from under their law. The competent authority should remain free from policies or practices that would prevent it from independently assessing the correct application of the treaty. This does not preclude the competent authority from reviewing such decisions and determining, on their merits, whether to follow them and competent authorities may choose to deviate only where there is an error of fact or law, or where new information or differing facts necessitate a different analysis.

**42 Best practice 42.** If a competent authority is legally bound by a court decision in line with **Best practice 41** and cannot deviate from that decision in MAP, it should communicate this position to the other competent authority and within a reasonable time, provide a translated copy of the decision, along with a clear summary of the decision, including the reasoning behind it, to allow the other competent authority to determine whether correlative relief can be granted in MAP in line with that decision. A MAP case should not be closed unilaterally without allowing the other competent authority adequate time to make such a determination and to provide for relief of taxation not in accordance with the treaty to the extent possible.

**43 Best practice 43.** Jurisdictions should ensure that clear and comprehensive position papers are prepared and shared in a timely manner to facilitate an efficient and well-informed MAP process. In this regard:

43.1 Preparation of the first position paper:

43.1.1 For attribution/allocation cases, the first position paper should typically be prepared by the competent authority of the jurisdiction that asserted the adjustment or raised the assessment<sup>100</sup>, unless otherwise agreed by the competent authorities.

43.1.2 For other MAP cases, either competent authority may prepare the first position paper. However, it is advisable for the competent authority with the most relevant information concerning the taxpayer and the circumstances of the case to do so. If the competent

---

<sup>100</sup> Where the MAP request is filed before the competent authority of the other jurisdiction, this would be subject to that competent authority sharing the reasoning that forms the basis of considering the objection raised by the taxpayer in the MAP request justified as provided in Best Practice 35.

authority that receives the MAP request has sufficient information to prepare the first position paper, it should do so. If not, it should request the first position paper from the other competent authority.

43.1.3 Irrespective, the other competent authority may take the initiative to prepare the first position paper, for example if the adjusting or assessing jurisdiction has limited capacity or experience with MAP.

43.2 Content and structure of the position paper:

43.2.1 The position paper should be comprehensive, providing both general information and a detailed analysis of the case. However, in straightforward cases, position papers could be more concise and focused on the central issues.

43.2.2 Where applicable, it should clearly outline points of agreement and disagreement with the audit position, along with the reasoning behind each.

43.2.3 The main position paper should be succinct, with additional supporting information included as Annexes. The paper should reference specific Annexes (with page numbers) to ensure clarity and ease of review.

43.2.4 The positions taken in MAP should be principled and consistent, avoiding differences based on whether a jurisdiction is on one side of a transaction or the other, to build trust between competent authorities and positions that the competent authority preparing it would be willing to accept if offered, avoiding extreme positions as they create large gaps at the outset and hinder effective resolution in MAP cases.

43.3 Response position papers:

43.3.1 A response position paper should be provided when a competent authority has a different viewpoint or disagrees with the position of the other competent authority. If provided, the response position paper should be succinct, following the same principles outlined above for position papers and should highlight points of agreement or disagreement as well as propose alternative solutions where there is disagreement.

43.4 Timely sharing of position papers:

43.4.1 Position papers should be shared at least two to four weeks before a meeting of the competent authorities to allow sufficient time for review and to ensure a productive and informed discussion. For simple cases, position papers should be shared at least two to three weeks in advance, while for complex cases, the other competent authority should be given at least four weeks.

43.4.2 Position papers should be shared within six to eight months from receiving a complete MAP request and all necessary information for this determination. Response position papers, if any, should be shared within around four months from the first position paper i.e. ten to twelve months from receiving a complete MAP request and all necessary information for this determination. For simple cases, position papers should be shared within six months and a response should be shared within ten months, while for complex cases, these timelines can be extended to eight and twelve months respectively. However, these timelines may be adjusted where doing so leads to a more efficient and timely process between the two competent authorities.

**44 Best practice 44.** Jurisdictions should ensure that meetings between the competent authorities in MAP are conducted effectively, with a structured approach aimed at reaching an agreement on both factual and technical issues in a collaborative, pragmatic and solution-oriented manner. In this regard:

44.1 Meetings can take place either face-to-face or via telephone or videoconferencing. Virtual meetings should be used to discuss status updates on the MAP inventory in general, to resolve smaller and less complex cases quickly and to progress the remaining cases. Face-to-face meetings should be used to discuss and resolve all remaining cases, including particularly complex ones, in a cordial and pragmatic atmosphere. Competent authorities should schedule as many face-to-face meetings as necessary to manage their joint inventory and supplement

them with virtual meetings as appropriate rather than rely only on annual meetings.

44.2 During the meeting, competent authorities should:

- 44.2.1 Ensure a welcoming environment, with clear introductions of participants and their roles.
- 44.2.2 Set a structured agenda, determine the order of cases and assign the lead jurisdiction for each discussion.
- 44.2.3 Agree that meeting minutes will be recorded and circulated unless decided otherwise.
- 44.2.4 Maintain respectful discussions, ensuring that all arguments are backed by facts and logical reasoning.
- 44.2.5 Remain open to reasonable compromises, such as finding common ground within an acceptable range in attribution/allocation cases, even where there are principle-level differences in how that range is determined. However, any compromises should be in line with the concerned tax treaty, defensible within the jurisdiction and should not set a precedent.
- 44.2.6 Clearly outline next steps, including closure timelines, the matching of MAP Statistics, required letters and communication with taxpayers, particularly in cases involving MAP requests submitted before both competent authorities.

44.3 While personnel involved in the relevant case from the audit/examination function should not participate in MAP discussions in principle, with agreement from the other competent authority, they may be invited, similar to the taxpayer, to attend specific allotted times in meetings between the competent authorities in MAP solely for factual clarifications. Competent authorities should ensure that auditors are not present during substantive discussions or decision-making stages of the MAP process, unless agreed otherwise by the competent authorities.

46 **Best practice 46.** Jurisdictions should allow taxpayers to file MAP requests for multilateral cases and ensure that such cases are handled and resolved in accordance with the guidance set out in the Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements (MoMA). In this regard, as noted in section 1.7, jurisdictions should clearly specify in their MAP guidance the legal requirements applicable to taxpayers and other competent authorities in the context of multilateral cases. Further, where two competent authorities are engaged in MAP discussions on a bilateral issue within a multilateral case that could affect a third jurisdiction or related MAP cases, they should keep the third competent authority regularly informed of the progress of the case.

47 **Best practice 47.** Jurisdictions should ensure that, once a provisional agreement is reached in a MAP case, the resolution is clearly documented, and taxpayer consent is obtained within a reasonable timeframe to facilitate implementation and prevent future disputes. In this regard:

- 47.1 The two competent authorities should agree as to which competent authority would document the details of the agreement in either a closing letter that is shared between the two competent authorities or as part of the minutes of the meeting. The closing letter or minutes should outline the resolution and where possible, the reasoning behind it and clarify that there would be no precedent value to compromises that have been made where necessary. It should also document how the resolution will be implemented in practical terms, particularly in terms of numerical adjustments or assessed tax amount
- 47.2 Each competent authority located in a jurisdiction where the MAP agreement requires implementation or where the taxpayer may undertake domestic remedies should seek taxpayer consent before implementing the agreement. Competent authorities should clearly explain the tax consequences of the provisional agreement to the taxpayer before obtaining their consent, particularly in the case of individual taxpayers to ensure that the taxpayer fully understands the terms and implications of the agreement. A clear and reasonable timeframe

such as one-two months after the notification of the provisional MAP agreement should be provided for the taxpayer to give consent, depending on the actions required to be undertaken by the taxpayer.

47.3 Along with consent, the taxpayer and where applicable, their associated enterprise, should be asked to withdraw all domestic remedies initiated in both jurisdictions that concern the issue resolved by MAP for the fiscal year concerned and, where possible, waive the right to future remedies for that issue in both jurisdictions. Where domestic law prescribes a deadline for the withdrawal of domestic remedies as a condition for implementing MAP agreements, competent authorities should ensure that such deadlines are clearly communicated to the other competent authority and to the taxpayer in a timely manner. In addition, where competent authorities are required to assist taxpayers to formally withdraw domestic remedies under the domestic law of a jurisdiction, competent authorities should undertake all actions necessary to enable this process.

**48 Best practice 48.** Jurisdictions should ensure that all MAP agreements are implemented in a timely manner, recognising that timely implementation is essential to the effectiveness of MAP. In this regard:

48.1 Where a tax treaty contains the equivalent of Article 25(2), second sentence, the treaty should override domestic law and thus all MAP agreements should always be fully implemented notwithstanding domestic time-limits

48.2 Where a tax treaty does not contain such a provision, the domestic law and/or administrative rules of jurisdictions should ideally ensure that all MAP agreements can be implemented, along with, where necessary for tax treaties that include no filing period, the introduction in domestic law of a reasonable filing period for MAP requests of at least three years from the first notification of the action resulting in taxation not in accordance with the treaty. Where this is not possible, jurisdictions should inform the taxpayer and the other competent authority early of any potential limitations to implementation.

48.3 Taxpayers may be required to take reasonable actions within a reasonable timeframe to facilitate implementation, such as filing a revised tax return or submitting a refund claim. In these situations, the competent authority should provide the taxpayer the specific requirements the taxpayer must fulfil under the appropriate domestic procedure and the prescribed timeframe for doing so.

48.4 All MAP agreements where all necessary taxpayer actions have been performed should be implemented at the earliest possible time, avoiding all unnecessary delays, taking into account the complexity of the actions required to be performed by each tax administration to implement the MAP agreement. This should, in most cases, be possible within three months from when the taxpayer has given consent to the provisional agreement and has fulfilled all requirements necessary to facilitate implementation. In this regard, refunds meant to implement MAP agreements should not be artificially delayed in anticipation of potential subsequent adjustments.

**50 Best practice 50.** Where interest and penalties are directly connected to taxes covered under a tax treaty, jurisdictions should take appropriate measures to reduce or withdraw such interest or penalties to the same extent as the underlying tax is reduced or withdrawn pursuant to a MAP agreement. In particular, where a jurisdiction has applied interest or an administrative penalty that is computed with reference to an underlying tax liability (or with reference to some other amount relevant to the determination of tax, such as the amount of an adjustment/assessment or an amount of taxable income) and has subsequently agreed pursuant to a MAP agreement to reduce or withdraw that underlying tax liability, that jurisdiction should proportionally reduce the amount of or withdraw such interest or administrative penalty. This may also include making changes corresponding to interest charges in the other jurisdiction, where possible. In contrast, other administrative penalties that concern domestic law compliance issues (such as penalties for failure to maintain proper transfer

pricing documentation or for late filings or payment of the undisputed tax amount due) that are not directly connected to a tax liability that is the object of a MAP request (even where they are computed based on that liability) and criminal penalties imposed by a public prosecutor or a court may be retained regardless of the outcome of the MAP case.

51 **Best practice 51.** Jurisdictions that have chosen to adopt a general policy to not include MAP arbitration provisions in any of their tax treaties should ensure transparency by clearly indicating this policy choice in their published MAP guidance and MAP profile, along with the legal or policy reasoning behind the decision. These jurisdictions could also explore obtaining non-binding third-party expert opinions in MAP cases, including from experts in their own jurisdiction or region trained through capacity-building initiatives.

52 **Best practice 52.** Jurisdictions should ensure that where treaties or other agreements/instruments contain a supplementary dispute resolution mechanism, such as a MAP arbitration provision that may be initiated by the taxpayer when competent authorities fail to resolve a case within a specified timeframe, the obligation to endeavour to resolve the case includes the obligation to follow such mechanisms as part of the MAP process, subject to the conditions and any restrictions set out in the treaty, instrument, or any other agreement between the jurisdictions or their competent authorities concerning the application of arbitration.

53 **Best practice 53.** Jurisdictions should enter into a general agreement on the procedural conduct of the arbitration process under its tax treaties or other similar agreements/instruments for each bilateral relationship. However, the absence of such an agreement does not justify a failure to commence the arbitration process once it has been initiated by the taxpayer as this is a requirement under the tax treaty. If there is no existing general competent authority agreement and the MAP arbitration phase is validly invoked in a MAP case, the two competent authorities should agree procedural rules to ensure that the arbitration phase for the case can move forward.

55 **Best practice 55.** Jurisdictions should ensure that MAP arbitration procedures arising from provisions in treaties or other agreements/instruments are designed to provide a clear, transparent and effective dispute resolution mechanism while maintaining fairness and efficiency in the process. In this regard, jurisdictions should, where permitted and not already provided for in the treaty or instrument:

- 55.1 Include in their competent authority agreements clarity on the scope of issues covered by the arbitration procedure.
- 55.2 Agree clear rules with respect to the determination of the start date for the period following which arbitration can be requested, including implications on the start date where additional information is requested, unless provided for in the treaty or instrument itself and where possible, building on the rules contained in the MAP Statistics Reporting Framework.
- 55.3 Ensure that a request for arbitration by the taxpayer is submitted in writing and includes all necessary information to clearly identify the case. Competent authority agreements on the procedural conduct of arbitration should outline procedural rules for initiating arbitration, including:
  - 55.3.1 Which competent authority should receive the request.
  - 55.3.2 The timeframe for forwarding the request to the other competent authority.
  - 55.3.3 Communication of the initiation of arbitration to all parties.
  - 55.3.4 The need for taxpayers to confirm that the case falls within the scope of arbitration where limitations apply (e.g. cases already decided by courts, cases covered by agreed scope exclusions in the treaty/competent authority agreement).
- 55.4 Where required or useful, establish in a timely manner terms of reference agreed by both competent authorities that define the main issues to be resolved by the arbitration panel, based on the taxpayer's request and competent authority submissions. If no agreement is reached,

each competent authority should submit a list of issues to be resolved and the arbitration panel may then finalise the terms of reference after their appointment following consultations with both competent authorities.

55.5 Ensure in a timely manner the selection of an arbitration panel that includes:

- 55.5.1 Experienced, independent and impartial panel members, including a declaration of acceptance, independence, impartiality and compliance with confidentiality requirements to be provided by each arbitrator.
- 55.5.2 Clear rules for appointing panel members, with a preference for an odd-numbered panel to avoid deadlocks (e.g. three-member panels with each competent authority selecting one panel members and the two panel members selecting a Chair).
- 55.5.3 Maintenance of a predefined list of persons eligible to serve as panel members by each competent authority, specifying third country nationals that are eligible to act as Chair in their view as well.
- 55.5.4 A default mechanism for appointing panel members if the designated competent authorities fail to do so within the prescribed timeframe, which could involve choice by random selection from a predefined lists of persons eligible to be panel members by the concerned competent authority or the other competent authority, where no list is defined.
- 55.5.5 Replacement procedures in cases of incapacity, disqualification, or resignation.

55.6 Follow a structured arbitration process, which may take different forms depending on the agreement between jurisdictions. Jurisdictions should choose a default decision-making approach or allow competent authorities the flexibility to agree on the approach on a case-by-case basis, considering the pros and cons of each approach. The possible approaches typically are:

- 55.6.1 Last-best offer arbitration, where the panel selects one of the proposed resolutions.
- 55.6.2 Independent opinion arbitration, where the panel issues a reasoned decision based on the facts, legal arguments and treaty provisions.

55.7 Ensure confidentiality throughout the arbitration process by:

- 55.7.1 Protecting information shared with competent authorities and panel members in line with treaty and domestic law confidentiality provisions.
- 55.7.2 Using secure communication channels.
- 55.7.3 Requiring panel members to destroy all case-related information upon completion of the proceedings and to not share exchanges with or between the panel or positions of the competent authorities with the taxpayer, the staff assisting the arbitration panel or any other third party.

55.8 Establish fair cost-sharing mechanisms for the arbitration procedure as follows:

- 55.8.1 Each competent authority should bear its own costs.
- 55.8.2 Each competent authority should remunerate and reimburse the expenses incurred by the arbitrator appointed by them, noting that the agreed rules on arbitration between the competent authorities should ideally provide for rules on the remuneration and reimbursement of panel members, including the amounts paid per meeting and/or preparation days, as well as a potential cost cap for the whole arbitration procedure;
- 55.8.3 Shared costs, such as those for the chairperson and administrative expenses, should be divided equally unless an alternative arrangement is agreed upon.
- 55.8.4 Taxpayers should bear their own costs of participation in the arbitration process, if any.
- 55.8.5 Special considerations should be given to low-capacity jurisdictions to ensure arbitration remains accessible.

55.9 Confirm that the arbitration decision is final and binding on both competent authorities and implemented by both competent authorities through mutual agreement unless the taxpayer rejects it:

- 55.9.1 Decisions should be made by simple majority where there are multiple panel members,

based on the treaty provisions, applicable domestic laws and any other mutually agreed sources.

55.9.2 Complete arbitration decisions should in most cases not be published, but where summaries are agreed to be published by both competent authorities or required to be published under the underlying instrument, publication should be in an anonymised form where necessary to ensure that confidential taxpayer details are not published and should clarify that the decision does not have precedential value.

55.9.3 Competent authorities should have the opportunity to reach an agreement fully eliminating taxation not in accordance with the treaty independently while arbitration is pending, allowing withdrawal of the arbitration request and closure of the MAP case.

**56 Best practice 56.** Where possible, jurisdictions with experience in MAP arbitration should invest in capacity building to develop experts in international tax and transfer pricing who could potentially act as panel members in MAP arbitration cases, particularly in jurisdictions that do not currently have MAP arbitration provisions, including low-capacity jurisdictions and developing countries. Such initiatives can help build trust in arbitration among these jurisdictions by enabling them to develop the necessary expertise to participate effectively in the process. Capacity-building efforts should focus on training experts who could eventually act as panel members, ensuring that the pool of persons eligible to serve in MAP arbitration panels is diverse and globally representative.

**57 Best practice 57.** Where possible, jurisdictions with extensive MAP experience should invest in capacity-building initiatives to support competent authorities in jurisdictions with little or no MAP experience. These efforts should follow the MEMAP as a model, providing guidance on the practical steps of the MAP process through case studies. The sharing of expertise and best practices should aim to enhance the capabilities of less-experienced competent authorities, fostering more effective, efficient and timely handling and resolution of MAP across the globe.

**58 Best practice 58.** Where possible, jurisdictions with experience in MAP cases should support low-capacity jurisdictions in specific MAP cases by providing independent expert assistance, following the Tax Inspectors Without Borders (“**TIWB**”) model, provided they are not directly involved in the MAP case at hand. Serving or retired staff members from competent authorities who have the necessary experience could offer hands-on guidance to help less-experienced competent authorities navigate treaty provisions and the MAP process while ensuring confidentiality, strengthening capacity for MAP cases, improving outcomes in MAP and promoting a more globally inclusive network of experts in the MAP area.

**59 Best practice 59.** Jurisdictions should consider establishing a buddy system where competent authorities in low-capacity jurisdictions are paired with more experienced competent authorities from the same region or those that share a common language. This would enable less-experienced competent authorities to learn directly from their peers through practical guidance and case collaboration. Regional tax organisations could help coordinate these partnerships, fostering long-term capacity building and stronger regional cooperation in MAP.

## Annex A. 2. Best practices for taxpayers

**18 Best practice 18.** Taxpayers should approach and engage with the MAP process, including all steps leading up to it at the tax administration level, in good faith, by acting transparently and cooperatively first at the audit/examination stage and when a case reaches the MAP stage, supporting the competent authorities to find an efficient, effective and timely solution. In this regard, taxpayers should:

18.1 Actively engage during the audit/examination stage by providing all necessary and requested

information, rather than withholding it for the MAP stage or using the audit process solely as a means to obtain an adjustment or assessment that facilitates access to competent authorities in MAP.

18.2 Submit MAP requests in a timely and complete manner, having proactively reviewed the published MAP guidance of the relevant jurisdictions to understand all requirements and sharing all necessary information at the time of submission of the MAP request to facilitate a smooth resolution.

18.3 Maintain a cooperative and transparent approach throughout the process, being available to provide necessary additional information or clarifications, to the extent this is within their ability to provide, and to do so promptly when requested.

18.4 Understand that all information provided to a competent authority in MAP will be shared with the other competent authority as both competent authorities should work on the basis of the same set of facts and equally, not request to withhold specific information shared with one competent authority from the other.

18.5 Clearly state whether the MAP request is being filed as a “protective” request and their expectations regarding the priority of MAP over other available remedies (or vice versa) and act accordingly, without asking for these remedies interchangeably depending on perceived benefits at each point.

18.6 Be willing to accept MAP agreements that in their view fully resolve taxation not in accordance with the treaty and to provide any reasonable information or undertake any reasonable actions to assist with implementation of the MAP outcome in both jurisdictions.

**22 Best practice 22.** Taxpayers should submit MAP requests as soon as possible for them after receiving notification of an action they believe results or will result in taxation not in accordance with the tax treaty, rather than waiting until the end of the prescribed filing period. In this regard, taxpayers should provide all necessary information, especially in complex cases where additional context may aid faster resolution and provide translations of relevant documentation where useful to facilitate efficient processing.

**23 Best practice 23.** Business taxpayers should provide a MAP request to both jurisdictions concerned, either by having enterprises resident in each jurisdiction formally submitting it before each competent authority or by having only one MAP request submitted formally to the competent authority of the taxpayer’s state of residence as required under the treaty, while providing a copy to the other, so as to ensure that both competent authorities receive the same or substantially similar information and documentation. In this regard, business taxpayers should also consider providing checklists that demonstrate how the information provided corresponds to the information requirements in both jurisdictions. Business taxpayers represented by advisors should also clearly inform the competent authorities of the identity of their representatives in each relevant jurisdiction.

**24 Best practice 24.** Taxpayers should provide the required information in a MAP request in a simple and understandable format to avoid delays in processing. Where extensive documentation is provided and relied upon in the taxpayer’s analysis, the request should include a clear and concise main body with annexes. In such cases, the main body should contain clear references to relevant pages in the annexes to support key positions taken by the taxpayer. Where several issues are covered and the analysis provided is complex, an Executive Summary should also be provided by the taxpayer. Where competent authorities do not share a common language, taxpayers should submit MAP requests and supporting documents with an English translation or another mutually agreed language.

**25 Best practice 25.** Taxpayers submitting protective MAP requests should clearly inform the competent authority receiving the request that it is intended solely to preserve the time limits prescribed under the relevant tax treaty and is in general not to be examined or substantively considered until

express notice is given. Where examination or substantive consideration is later sought, the taxpayer should provide such notice clearly and without delay to both competent authorities. As noted in **Best practice 18**, the taxpayer should be permitted to ask for a MAP request to be considered protectively only once, at the time of submission, or subsequently where domestic processes are initiated. Once the taxpayer requests that the competent authorities begin substantive consideration of the case, the taxpayer should generally not request the suspension of the MAP process at a later point so as to resume or pursue domestic remedies. If the taxpayer makes such a request after substantive MAP discussions have begun, the competent authorities will generally continue their substantive MAP discussions with an aim to resolve the case, until the MAP request is withdrawn.

- 36 **Best practice 36.** Taxpayers should ensure that they provide timely and full responses to requests for additional information during the MAP process, with business taxpayers providing the same details to both competent authorities without delay.
- 45 **Best practice 45.** Taxpayers should make themselves available for communications, calls and meetings with the competent authorities throughout the MAP process to support the efficient, effective and timely handling and resolution of MAP cases.
- 49 **Best practice 49.** Once a provisional MAP agreement is shared, taxpayers should confirm agreement or disagreement within the timeframe specified in the notification and provide any reasonable information requested for by the competent authorities, as well as withdraw or waive domestic remedies with respect to the issue resolved in MAP, to allow for implementation in both jurisdictions. Where consent and withdrawal/waiver are not obtained within the prescribed timeframe, despite reasonable follow-up, the case may be closed unless there are extraordinary circumstances where the competent authorities agree to keep the case open to allow for relief in the other jurisdiction in line with the outcome of a court decision.
- 54 **Best practice 54.** Where discussions between competent authorities in MAP are seen to be productive but go beyond the prescribed period for arbitration under the concerned treaty or instrument, taxpayers should assess whether to allow MAP discussions to continue beyond the time-limit or request for arbitration, weighing the time and effort required to set up a panel against the likelihood of an agreement resolving taxation not in accordance with the treaty.

# Annex B. BEPS Action 14 Minimum Standard and best practices

## Elements of the BEPS Action 14 Minimum Standard

1. **Countries should ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner.**
  - 1.1 Countries should include paragraphs 1 through 3 of Article 25 in their tax treaties, as interpreted in the Commentary and subject to the variations in these paragraphs provided for under elements 3.1 and 3.3 of the Minimum Standard; they should provide access to MAP in transfer pricing cases and should implement the resulting mutual agreements (e.g. by making appropriate adjustments to the tax assessed).
  - 1.2 Countries should provide MAP access 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.
  - 1.3 Countries should commit to a timely resolution of MAP cases: countries commit to seek to resolve MAP cases within an average timeframe of 24 months. Countries' progress toward meeting that target will be periodically reviewed on the basis of the statistics prepared in accordance with the agreed reporting framework referred to in element 1.5.
  - 1.4 Countries should enhance their competent authority relationships and work collectively to improve the effectiveness of the MAP by becoming members of the Forum on Tax Administration MAP Forum (FTA MAP Forum).
  - 1.5 Countries should provide timely and complete reporting of MAP statistics, pursuant to an agreed reporting framework to be developed in co-ordination with the FTA MAP Forum.
  - 1.6 Countries should commit to have their compliance with the Minimum Standard reviewed by their peers in the context of the FTA MAP Forum.
  - 1.7 Countries should provide transparency with respect to their positions on MAP arbitration.
2. **Countries should ensure that administrative processes promote the prevention and timely resolution of treaty-related disputes.**
  - 2.1 Countries should publish rules, guidelines and procedures to access and use the MAP and take appropriate measures to make such information available to taxpayers. Countries should ensure that their MAP guidance is clear and easily accessible to the public.
  - 2.2 Countries should publish their country MAP profiles on a shared public platform (pursuant to an agreed template to be developed in co-ordination with the FTA MAP Forum).
  - 2.3 Countries 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 country would like to see reflected in future amendments to the treaty.

- 2.4 Countries 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.
- 2.5 Countries should ensure that adequate resources are provided to the MAP function.
- 2.6 Countries should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If countries 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, countries may limit access to the MAP with respect to the matters resolved through that process. Countries 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.
- 2.7 Countries 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.

3. **Countries should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 can access the mutual agreement procedure.**

- 3.1 Both competent authorities should be made aware of MAP requests being submitted and should be able to give their views on whether the request is accepted or rejected. In order to achieve this, countries should either: amend paragraph 1 of Article 25 to permit a request for MAP assistance to be made to the competent authority of either Contracting State, or where a treaty does not permit a MAP request to be made to either Contracting State, implement a bilateral notification or consultation process for cases in which the competent authority to which the MAP case was presented does not consider the taxpayer's objection to be justified (such consultation shall not be interpreted as consultation as to how to resolve the case).
- 3.2 Countries' published MAP guidance should identify the specific information and documentation that a taxpayer is required to submit with a request for MAP assistance. Countries should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information.
- 3.3 Countries should include in their tax treaties the second sentence of paragraph 2 of Article 25 ("Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States"). Countries that cannot include the second sentence of paragraph 2 of Article 25 in their tax treaties should be willing to accept alternative treaty provisions that limit the time during which a Contracting State 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.

## Best practices under BEPS Action 14

1. **Countries should ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner**
  - 1.1 Countries should include paragraph 2 of Article 9 in their tax treaties.
2. **Countries should ensure that administrative processes promote the prevention and timely resolution of treaty-related disputes**
  - 2.1 Countries should have appropriate procedures in place to publish agreements reached pursuant to the authority provided by the first sentence of paragraph 3 of Article 25 “to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention” that affect the application of a treaty to all taxpayers or to a category of taxpayers (rather than to a specific taxpayer’s MAP case) where such agreements provide guidance that would be useful to prevent future disputes and where the competent authorities agree that such publication is consistent with principles of sound tax administration.
  - 2.2 Countries should develop the “global awareness” of the audit/examination functions involved in international matters through the delivery of the Forum on Tax Administration’s “Global Awareness Training Module” to appropriate personnel.
  - 2.3 Countries should implement bilateral APA programmes.
  - 2.4 Countries should implement appropriate procedures to permit, in certain cases and after an initial tax assessment, taxpayer requests for the multiyear resolution through the MAP of recurring issues with respect to filed tax years, where the relevant facts and circumstances are the same and subject to the verification of such facts and circumstances on audit. Such procedures would remain subject to the requirements of paragraph 1 of Article 25: a request to resolve an issue with respect to a particular taxable year would only be allowed where the case has been presented within three years of the first notification of the action resulting in taxation not in accordance with the Convention with respect to that taxable year.
3. **Countries should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 can access the mutual agreement procedure**
  - 3.1 Countries should take appropriate measures to provide for a suspension of collections procedures during the period a MAP case is pending. Such a suspension of collections should be available, at a minimum, under the same conditions as apply to a person pursuing a domestic administrative or judicial remedy.
  - 3.2 Countries should implement appropriate administrative measures to facilitate recourse to the MAP to resolve treaty-related disputes, recognizing the general principle that the choice of remedies should remain with the taxpayer.
  - 3.3 Countries should include in their published MAP guidance an explanation of the relationship between the MAP and domestic law administrative and judicial remedies. Such public guidance should address, in particular, whether the competent authority considers itself to be legally bound to follow a domestic court decision in the MAP or whether the competent authority will not deviate from a domestic court decision as a matter of administrative policy or practice.
  - 3.4 Countries’ published MAP guidance should provide that taxpayers will be allowed access to the MAP so that the competent authorities may resolve through consultation the double taxation that can arise in the case of bona fide taxpayer-initiated foreign adjustments – i.e.

taxpayer-initiated adjustments permitted under the domestic laws of a treaty partner which allow a taxpayer under appropriate circumstances to amend a previously-filed tax return to adjust (i) the price for a transaction between associated enterprises or (ii) the profits attributable to a permanent establishment, with a view to reporting a result that is, in the view of the taxpayer, in accordance with the arm's length principle. For such purposes, a taxpayer-initiated foreign adjustment should be considered bona fide where it reflects the good faith effort of the taxpayer to report correctly the taxable income from a controlled transaction or the profits attributable to a permanent establishment and where the taxpayer has otherwise timely and properly fulfilled all of its obligations related to such taxable income or profits under the tax laws of the two Contracting States.

- 3.5 Countries' published MAP guidance should provide guidance on the consideration of interest and penalties in the mutual agreement procedure.
- 3.6 Countries' published MAP guidance should provide guidance on multilateral MAPs and APAs.

## Annex C. Templates for the MAP process

### Annex C.1. Template for MAP request along with documentation requirements for MAP requests – business/individual taxpayers

#### *MAP request for Attribution / Allocation cases*

[City], [Date]

[Name;  
Address;  
Taxpayer identification number;  
Phone number;  
Email address of the Taxpayer]

Mr./Ms. [Name, Surname of the Head of delegation of the Competent Authority] /  
Office of the Competent Authority

[Address of the Competent Authority;  
STATE A]

**Subject: Request for mutual agreement procedure (MAP) under paragraph 1 of [the MAP provision] of the [Convention between State A and State B for the elimination of double taxation with respect to taxes on income and capital and the prevention of tax avoidance and erosion] (hereinafter the “Treaty”).**

[Name; identification number of the taxpayer]

[Fiscal year(s) ending 20XX through / and 20XX]

Dear Mr./Ms. [Surname of the Head of delegation of the Competent Authority] / To whom it may concern,

[Entity name] / On behalf of [entity name], I hereby requests / request the assistance of the Competent Authority of [State A] for the purpose of eliminating taxation not in accordance with the provisions of the [Convention between State A and State B for the elimination of double taxation with respect to taxes on income and capital and the prevention of tax avoidance and erosion] (hereinafter the “Treaty”).

**[Option A: For actions that have resulted in taxation not in accordance with the provisions of the Treaty]** This request follows a tax assessment / adjustment notice, dated [date of notice], issued by the tax administration of [State X]. This notice has resulted in a taxation not in accordance with the Treaty for the fiscal year(s) ending 20XX [through / and 20XX].

**[Option B: For actions that will result in taxation not in accordance with the provisions of the Treaty]**

This request follows a notification of a likely tax assessment / adjustment, dated [date of notification], from the tax administration of [State X]. This notification will result in taxation not in accordance with the Treaty for the fiscal year(s) ending 20XX [through / and 20XX].

In accordance with the [MAP provision of the Treaty], [entity name] / on behalf of [entity name], I hereby requests / request that the Competent Authority of [State A] endeavours to resolve this case by mutual agreement with the Competent Authority of [State B].

More information on the request is provided hereafter.

### **IDENTIFICATION**

1. Identity of the taxpayer:

- [Name, Address, Taxpayer identification number].
- [Name(s), Address(es), Taxpayer identification number(s) of the associated enterprise(s) involved].
- [Relationship between the concerned related parties and description of the covered transactions between them].

2. Fiscal year(s) involved:

This request relates to the fiscal year(s) ending 20XX [through / and 20XX].

3. Assessing / adjusting tax administration:

The tax administration that issued / is proposing to issue the assessment / adjustment that triggered the taxation not in accordance with the Treaty provisions is the tax administration of [State B], (*if possible*) more specifically [identification and address of the assessment / adjustment office].

4. Amounts at stake in each jurisdiction:

	<b>Assessment(s) / Adjustment(s)</b>	<b>Income taxed in [State A]</b>	<b>Assessment / Adjustment in [State A]</b>	<b>Income taxed in [State B]</b>
Fiscal year ending [20XX]	Transaction 1 [e.g. royalty adjustment]			
	Transaction 2			
	Transaction 3			
Fiscal year ending [20XX]	Transaction 1			
	Transaction 2			
	Transaction 3			
Fiscal year ending [20XX]	Transaction 1			
	Transaction 2			
	Transaction 3			

**BACKGROUND**5. Relevant article(s) of the Treaty:

Article(s) [XX] of the [Convention between State A and State B for the elimination of double taxation with respect to taxes on income and capital and the prevention of tax avoidance and erosion].

6. Facts of the case and analysis:

- [A detailed description of the circumstances in which the income (not taxed in accordance with the Treaty) was generated for each year at stake: Details of the paying entity, what the payments were for and for how long.]
- [A description of the transfer pricing policy as applicable to the transactions in question.]
- [Which jurisdiction(s) have taxed the income, under what circumstances and at what level.]
- [An analysis of the facts and the issues for which the assistance of the Competent Authority is

*requested under the MAP, as well as the interpretation of the application of the Treaty article(s) and how the income should have been taxed under the Treaty provisions].*

### **CONTEXT OF THE REQUEST**

7. **(If applicable) Submission of the request to the Competent Authority of [State B]:**

- A request has also been filed by [name of the associated enterprise(s)] to the Competent Authority of [State B] on [date of filing the request], which is attached in Annex [X].
- **[And / or]** A copy of this request has been sent on [date] / will soon be sent by [fax / mail / email] to [the Competent Authority of State B]. A copy of the same is attached in Annex [X].

8. **(If applicable) Domestic dispute mechanisms:**

On [date of domestic appeal], the taxpayer / the taxpayer's representative filed a notice of objection / notice of appeal / other appeal in [State XX]. This appeal is still pending at the time of the MAP application / has been dealt with by [State XX], on [date of the outcome of the appeal] which considers [provide a brief summary of the outcome of the appeal]. A copy of the same is attached in Annex [X].

9. **(If applicable) Submission of a prior request to the Competent Authority of either contracting State on the same or related issue by the Taxpayer, a related party or a predecessor:**

The taxpayer / the taxpayer's representative / a related party / a predecessor made a request on the same / a related issue to the Competent Authority(ies) of [State A] and/or [State B] on [date of the request]. The purpose of this request was to have both Competent Authorities to solve, by mutual agreement procedure, the situation of taxation not in accordance with the Treaty in the following situation(s): [for each fiscal year concerned, provide a brief summary of the situation(s) that grounded the request for MAP].

10. **(If applicable) Unilateral advance pricing arrangement, ruling, or similar proceeding(s) currently or previously considered as applicable by the tax authorities of either contracting State to issues covered by the MAP request:**

- A unilateral advance pricing arrangement / ruling / similar procedure is currently / has previously been considered applicable by the tax authorities of [State A and / or State B] for the following issues covered by the MAP application:
  - For the fiscal year ending [20XX]: [brief summary of the issue covered]
  - For the fiscal year ending [20XX]: [brief summary of the issue covered]
  - For the fiscal year ending [20XX]: [brief summary of the issue covered]
- A bilateral advance pricing arrangement is being considered for the years at stake.

11. **(If applicable)** Applicable settlement or agreement reached with the other jurisdiction on the issue(s) covered in present MAP request:

A settlement / An agreement has been reached with the tax administration of [State B] on the following issue(s) covered by the MAP request: [brief summary of the issue(s) covered and the substance of the settlement or agreement].

[Name of entity] / On behalf of [entity name], I confirms / confirm that all information and documentation provided in the MAP request is accurate and that [name of entity] / I will assist the Competent Authority in the resolution of the issue(s) presented in the MAP request by furnishing any additional information or documentation required by the Competent Authority in a timely manner.

For further correspondence and additional information concerning this request, please contact:

[Contact details of the taxpayer or representative]

**(When a representative has been appointed to apply for the MAP)** [Name of the representative] has been designated by [entity name] to submit this MAP application on its behalf. The mandate, signed by [entity name], is attached at Annex [XX].

We appreciate your assistance in this matter.

Yours sincerely,

[Name of the entity or representative]

[Signature of the entity or representative]

#### LIST OF APPENDICES

Appendix 1. Power of attorney to prove legal representation. This document is to be signed by the taxpayer filing the MAP request if the application is being made through a representative.

Appendix 2. A copy of the application filed (or to be filed) with the other State's Competent Authority and copies of any other relevant requests from the other Competent Authority and the taxpayer's responses.

Appendix 3. Copy of the notice of adjustment / tax returns / any documents proving that the taxation is (or will be) inconsistent with the Treaty.

Appendix 4. Copy of domestic appeals and any replies received.

Appendix 5. Copy of the organisation chart of the group to which the taxpayer belongs.

Appendix 6. Copy of Transfer Pricing documentation involving the taxpayer.

Appendix 7. **(When applicable)** Copy of the advance pricing arrangement / ruling / similar procedure(s) that is currently or has previously been considered by the tax authorities of either contracting State to cover the issues covered by the MAP request.

Appendix 8. **(When applicable)** Copy of any settlement / agreement reached with the other jurisdiction that may affect the MAP process.

**MAP request for Other cases**

[City], [Date]

[Name;  
 Address;  
 Taxpayer identification number;  
 Phone number;  
 Email address of the taxpayer]

Mr./Ms. [Name, Surname of the Head of delegation of the Competent Authority] / Office of the Competent Authority  
 [Address of the Competent Authority;  
 STATE A]

**Subject:** Request for mutual agreement procedure (MAP) under paragraph 1 of [the MAP provision] of the [Convention between State A and State B for the elimination of double taxation with respect to taxes on income and capital and the prevention of tax avoidance and erosion] (hereinafter the “Treaty”).

[Name; identification number of the taxpayer]  
 [Fiscal year(s) ending 20XX through / and 20XX]

Dear Mr./Ms. [Surname of the Head of delegation of the Competent Authority] / To whom it may concern,

[On behalf of [taxpayer’s name],] I hereby request the assistance of the Competent Authority of [State A] for the purpose of eliminating taxation not in accordance with the provisions of the [Convention between State A and State B for the elimination of double taxation with respect to taxes on income and capital and the prevention of tax avoidance and erosion] (hereinafter the “Treaty”).

**[Option A: For actions that have resulted in taxation not in accordance with the provisions of the Treaty]** This request follows a tax assessment notice / notification of taxation, dated [date of notice or notification], issued by the tax administration of [State X]. This notice has resulted in a taxation not in accordance with the Treaty for the fiscal year(s) ending 20XX [through / and 20XX].

**[Option B: For actions that will result in taxation not in accordance with the provisions of the Treaty]** This request follows a notification of a likely tax assessment / taxation dated [date of notification] from the tax administration of [State X]. This notification will result in taxation not in accordance with the Treaty for the fiscal year(s) ending 20XX [through / and 20XX].

In accordance with the [MAP provision of the Treaty], [entity name] / on behalf of [entity name], I hereby requests / request that the Competent Authority of [State A] endeavours to resolve this case by mutual agreement with the Competent Authority of [State B].

More information on the request is provided hereafter.

## IDENTIFICATION

1. Identity of the taxpayer:

- Name(s)<sup>101</sup>:
- Taxpayer Identification Number(s) and/or birth date(s):
- Address(es):
- Telephone number(s):
- Email address(es):

2. Fiscal year(s) involved:

This request relates to the fiscal year(s) ending 20XX [through / and 20XX].

3. Assessing / taxing tax administration:

The tax administration that issued / is proposing to issue the assessment / taxation that triggered the taxation not in accordance with the Treaty provisions is the tax administration of [State B], (*if possible*) more specifically [identification and address of the assessment / adjustment office].

4. Amounts at stake in each jurisdiction:

If possible, for each taxable year, state the specific amount at issue:

	Types of income	Total amount of income	Income subject to tax in State A	Tax paid or claimed in State A	Income subject to tax in State B	Tax paid or claimed in State B
Fiscal year ending [20XX]	[Type 1] (e.g. pensions; employment income; etc.).					
	[Type 2]					
	[Type 3]					
Fiscal year ending	[Type 1]					
	[Type 2]					

<sup>101</sup> In countries where the tax household system is in place, the couple is treated as a single taxpayer, allowing only one name to be listed, with the other included for reference. However, in countries where the tax household system does not apply, each individual in the couple is treated as a separate taxpayer, and both names must be listed.

[20XX]	[Type 3]					
Fiscal year ending [20XX]	[Type 1]					
	[Type 2]					
	[Type 3]					

### **BACKGROUND**

5. Description of the issue(s) and nature of the relief sought:
  - **(If possible)** [Specific treaty article(s) applicable].
  - **[Description of the issue(s), outlining why you believe you have experienced or are likely to experience double taxation or taxation not in accordance with the Treaty].**

### **CONTEXT OF THE REQUEST**

6. **(If applicable)** Submission of the request to the Competent Authority of [State B]:

A copy of this request has been sent / will soon be sent by [fax / mail / email] on [date] to the Competent Authority of [State B]. A copy of the same is attached in Annex X.

7. **(If applicable)** Domestic dispute mechanisms:

On [date of domestic appeal], I / the taxpayer filed a notice of objection / notice of appeal / claim for refund / other appeal in [State XX]. This appeal is still pending at the time of the MAP application / has been dealt with by [State XX], on [date of the outcome of the appeal] which considers [provide details of the outcome of the appeal]. A copy of the same is attached in Annex [X].

8. **(If applicable)** Submission of a prior request to the Competent Authority of either contracting state on the same or related issue by the taxpayer or a predecessor:

The taxpayer / A predecessor made a request on the same / a related issue to the Competent Authority(ies) of [State A] and/or [State B] on [date of the request]. The purpose of this request was to have both Competent Authorities to solve, by mutual agreement procedure, the situation of taxation not in accordance with the Treaty in the following situation(s): [for each fiscal year concerned, provide a brief summary of the situation(s) that grounded the request for MAP].

9. **(If applicable)** Applicable settlement, agreement or ruling reached with the other jurisdiction on the issue(s) covered in present MAP request:

A settlement / agreement / ruling has been reached with the tax administration of [State B] on the following issue(s) covered by the MAP request: [brief description of the issue(s) covered, and description of the substance of the settlement or agreement]. A copy of the same is attached in Annex [X].

[On behalf of the taxpayer,] I confirm that all information and documentation provided in the MAP request is accurate and that I will assist the Competent Authority in the resolution of the issue(s) presented in the MAP request by furnishing any additional information or documentation required by the Competent Authority in a timely manner.

For further correspondence and additional information concerning this request, please contact:

[Contact details of the taxpayer or representative]

**[When a representative has been appointed to apply for the MAP]** [Name of the representative] has been designated by [taxpayer name] to submit this MAP application on his / her behalf. The mandate, signed by [taxpayer name], is attached at Annex [X].

I appreciate your assistance in this matter.

Yours sincerely,

[Name of the taxpayer or representative]

[Signature of the taxpayer or representative]

#### LIST OF APPENDICES

Appendix 1. Power of attorney to prove legal representation. This document is to be signed by the taxpayer filing the MAP request if the application is being made through a representative.

Appendix 2. A copy of the application filed (or to be filed) with the other State's Competent Authority and copies of any other relevant requests from the other Competent Authority and the taxpayer's responses.

Appendix 3. Copy of the notice of adjustment / tax returns / any documents showing that the taxation is (or will be) inconsistent with the Treaty.

Appendix 4. Copy of domestic appeals and any replies received.

Appendix 5. (**When applicable**) Copy of any settlement / agreement / ruling reached with the other jurisdiction that may affect the MAP process.

## Annex C.2. Template for notification of a filed MAP request to the other competent authority

Dear ...

Please be informed that we received a MAP request based on the tax treaty that [name of your jurisdiction] entered into with [name of the jurisdiction of your treaty partner].

This MAP request involves the following taxpayer(s) [identification of the taxpayer(s) concerned in both jurisdictions (where appropriate), specifying for instance their name and address, tax identification number(s) or birth date (where appropriate)] and should be counted as [number of MAP cases concerned] MAP case(s) for the reporting of MAP statistics to the OECD Secretariat.

The MAP request raises the following issue(s)

- tax years covered;
- brief issue(s) (e.g. the article(s) concerned and whether the MAP case is an attribution/allocation case); and
- (...)

### *Start Date of MAP case*

#### [Option A: if you do not intend to request additional information/documentation from the taxpayer]

The MAP request was received on [date of receipt of the taxpayer's MAP request], which should result in a Start date for reporting of MAP statistics to the OECD Secretariat of [either 1 week from the date of the present notification or 5 weeks from the receipt of the taxpayer's MAP request, whichever is the earlier date]. Please note that this Start date can be different if you also received a MAP request for the same case. Please inform us as soon as possible of this potential situation as we should then amend the Start date (the earlier start date should be used for MAP statistics purposes).

#### [Option B: if additional/documentation is necessary and you have already requested such additional information/documentation]

The MAP request was received on [date of receipt of the taxpayer's MAP request], but we consider that the MAP request does not include all information/documentation required on the basis of our MAP guidance and therefore, we have already requested additional information/documentation from the taxpayer [today/on date of request]. We will inform you as soon as possible of the date when we have received such missing information and/or documentation in order to determine the Start date. In the meantime, please also inform us as soon as possible if you also received a MAP request for the same case as this could impact the Start date (the earlier start date should be used for MAP statistics purposes).

**[Option C: if you have not yet decided whether you will request additional information/documentation from the taxpayer within three months]**

The MAP request was received on [date of receipt of the taxpayer's MAP request], but at this stage we have not yet verified whether the MAP request includes all the information / documentation required on the basis of our MAP guidance and we may intend to request such information and/or documentation within three months from the receipt of the MAP submission. In such a case, we will inform you as soon as possible of the date when we have received such missing information and/or documentation in order to determine the Start date. In the meantime, please inform us as soon as possible if you also received a MAP request for the same case as this could impact the Start date (the earlier start date should be used for MAP statistics purposes).

*Eligibility of a MAP request*

[Where **Option A** & eligible for MAP, upon request by the other competent authority] We consider this MAP request eligible for access to MAP under paragraph 1 of **[the MAP provision] of the [Convention between State A and State B for the elimination of double taxation with respect to taxes on income and capital and the prevention of tax avoidance and erosion]** ("Treaty"), since:

- a. The MAP request has been submitted by the right taxpayer: By virtue of Articles [1, 3 and 4] of the Treaty, [name of the entity] is a resident of State [X] because [provide elements proving the residence in State [X]]; **and**
- b. The MAP request is submitted to the right Competent Authority: [name of the entity] has submitted the MAP request to the Competent Authority of State [X] by virtue of Article 25(1) of the Treaty; **and**
- c. The MAP request is submitted within the time limits laid down in paragraph 1 of **[the MAP provision]** of the Treaty: present MAP request is submitted within the three-year period beginning on [XX], date of [the first notification of the action resulting in taxation not in accordance with the provisions of the Treaty].

[Where **Option A** & not eligible for MAP] We consider this MAP request not eligible for access to MAP under paragraph 1 of **[the MAP provision] of the [Convention between State A and State B for the elimination of double taxation with respect to taxes on income and capital and the prevention of tax avoidance and erosion]** ("Treaty"), since:

- a. The MAP request has not been submitted by the right taxpayer: By virtue of Articles [1, 3 and 4] of the Treaty, [name of the entity] is not entitled to benefits under the Treaty because of [X]; **AND/OR**
- b. The MAP request is not submitted to the right Competent Authority: [name of the entity] has not submitted the MAP request to the Competent Authority of State [X] as required under **[the MAP provision]** of the Treaty; **AND/OR**
- c. The MAP request is not submitted within the time limits laid down in paragraph 1 of **[the MAP provision]** of the Treaty: present MAP request has been submitted on [X], which is not within the three-year period beginning on [XX], date of [the first notification of the action resulting in taxation not in accordance with the provisions of the Treaty].

You will find attached the taxpayer's MAP request that we received (including additional documentation provided at this stage) [if applicable].

Finally, please note that you may contact [include the contact details (e.g. contact number and email) of the official(s) in charge of the MAP case] for any questions you may have in relation to this MAP request.

### Annex C.3. Template for consultation when the objection is not considered justified

Dear ...

We are contacting you with respect to the MAP request we received and that is based on the tax treaty that [name of your jurisdiction] entered into with [name of the jurisdiction of your treaty partner].

This MAP request involves the following taxpayer(s) [identification of the taxpayer(s) concerned in both jurisdictions (where appropriate), specifying for instance their name and address, tax identification number(s) or birth date (where appropriate)], [insert also here the reference number of the MAP request if relevant].

The MAP request concerns the following

- brief issue(s) (e.g. the article(s) concerned and whether the MAP case is an attribution/allocation case, facts and circumstances, tax years covered) ; and
- (...)

You will find attached the taxpayer's MAP request that we received (including additional documentation provided at this stage) [if applicable].

After analysis of this MAP request, we conclude/intend to conclude that the objection raised by the taxpayer is not justified.

**[Option A: if you consider the objection is not justified because there is no taxation not in accordance with the tax treaty]**

- Provide a brief explanation of why there is no taxation not in accordance with the tax treaty based on the facts and circumstances presented.

**[Option B: if you consider the objection is not justified because you are not in a position to make a preliminary assessment on whether the taxation in both states is consistent with the terms of the applicable tax treaty]**

- Provide a brief explanation of why you are not in a position to make such a preliminary assessment and mention (i) the information received by the taxpayer and (ii) the information that was additionally requested and the date(s) on which it was requested.

With the present letter, we want to [bilaterally consult with you on this conclusion]. Could you therefore either provide your views via email or contact us before [date]? In this respect, please note that you may contact [include the contact details (e.g. contact number and email) of the official(s) in charge of the MAP case] for any questions you may have in relation to this MAP request.

If we do not receive any response from your jurisdiction by [date], the case will be closed with the outcome "objection not justified". We will thereafter liaise with you for purposes of matching MAP statistics.

## Annex C.4. Template for position papers

### *Position paper for Attribution / Allocation cases*

[City], [Date]

Competent Authority of [State A] Tax Administration  
[Address]

Case handler: [name, email address and phone number]  
Sent by [mail; email; fax]

Mr./Ms. [Name, Surname of the Head of  
delegation of the Foreign Competent  
Authority]

[Address of the Competent Authority;  
STATE B]

**Subject: Position paper on mutual agreement procedure under paragraph 1 of [the MAP provision]  
of the [Convention between State A and State B for the elimination of double taxation with  
respect to taxes on income and capital and the prevention of tax avoidance and erosion]  
(hereinafter the “Treaty”).**

Case: [Name of entity under MAP in State A; Name of entity in State B]  
Case ref.: [in State A]; [in State B]  
Taxation year(s): 20XX [through / and 20XX]

Dear Mr./Ms. [Surname of the Head of delegation of the Foreign Competent Authority],

On [date of the MAP request in State A], [Name of requesting entity] requested Competent Authority assistance following a transfer pricing or business profits attribution adjustment(s) by [identity of the tax audit service in State X] at [name of entity in State A], covering the fiscal year(s) 20XX [through / and 20XX].

I am pleased to share the position of the [State A] Competent Authority regarding the MAP case.

Yours sincerely,

[Name of the Head of delegation of the State A Competent Authority]

[Signature]

### SUMMARY OF TAXPAYER INFORMATION

<b>Taxpayer(s) in [State A]</b>	<p>Name of entity in State A</p> <p>Address in State A</p> <p>Taxpayer identification number</p>															
<b>Taxpayer(s) in [State B]</b>	<p>Name of entity in State B</p> <p>Address in State B</p> <p>Taxpayer identification number</p>															
<b>Relationship between the entities</b>	<i>[Brief description of the relationship between the entities and the business transactions between them]</i>															
<b>Transactions between entities in MAP</b>	<p>[Entity A] and [Entity B] are linked by the following transactions:</p> <ul style="list-style-type: none"> <li>• Transaction 1: [brief description]</li> <li>• Transaction 2: [brief description]</li> <li>• Transaction 3: [brief description]</li> <li>• Etc.</li> </ul>															
<b>Period covered by the MAP request</b>	[Day, Month, 20XX] to [Day, Month, 20XX].															
<b>Treaty article(s)</b>	Article(s) XX.															
<b>Taxpayer request</b>	<p>The taxpayer has requested relief from double taxation for transfer pricing [and secondary] adjustment(s) initiated by the [State A] tax administration:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 5px;"><b>Taxation year</b></th> <th style="text-align: center; padding: 5px;"><b>Adjustments</b></th> <th style="text-align: center; padding: 5px;"><b>In [State A currency]</b></th> </tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 5px;">20XX</td> <td style="text-align: center; padding: 5px;">Transfer pricing adjustment(s)</td> <td style="text-align: center; padding: 5px;">xx</td> </tr> <tr> <td style="text-align: center; padding: 5px;">20XX</td> <td style="text-align: center; padding: 5px;">Secondary adjustment(s)</td> <td style="text-align: center; padding: 5px;">xx</td> </tr> <tr> <td style="text-align: center; padding: 5px;">20XX</td> <td style="text-align: center; padding: 5px;">Transfer pricing adjustments</td> <td style="text-align: center; padding: 5px;">xx</td> </tr> <tr> <td style="text-align: center; padding: 5px;">20XX</td> <td style="text-align: center; padding: 5px;">Secondary adjustment(s)</td> <td style="text-align: center; padding: 5px;">xx</td> </tr> </tbody> </table>	<b>Taxation year</b>	<b>Adjustments</b>	<b>In [State A currency]</b>	20XX	Transfer pricing adjustment(s)	xx	20XX	Secondary adjustment(s)	xx	20XX	Transfer pricing adjustments	xx	20XX	Secondary adjustment(s)	xx
<b>Taxation year</b>	<b>Adjustments</b>	<b>In [State A currency]</b>														
20XX	Transfer pricing adjustment(s)	xx														
20XX	Secondary adjustment(s)	xx														
20XX	Transfer pricing adjustments	xx														
20XX	Secondary adjustment(s)	xx														

			Transfer pricing adjustments	xx	
		20XX	Secondary adjustment(s)	xx	
		<b>Total</b>	<b>Transfer pricing adjustments</b>	<b>xx</b>	
			Secondary adjustment(s)	xx	

### **POSITION OF THE [STATE A] COMPETENT AUTHORITY**

#### **I. Background**

*[Provide a brief description of information from the transfer pricing documentation that is relevant for the case, for example:*

- *Place in the organisational chart of the group.*
- *Description of the group's activity and structure (number of affiliated entities worldwide, in how many countries, and number of employees) and profitability of the group.*
- *Description of the industry and if possible, usual profitability in the sector.*
- *Description of the taxpayer's activity, line of business and structure worldwide and in State A; details on the taxpayer's profitability, and number of employees.*
- *If possible, description of the foreign taxpayer's activity, line of business and structure worldwide and in State B; details on the taxpayer's profitability, and number of employees].*

Further information can be found in the transfer pricing documentation, in Annex [X].

#### **II. Description of the adjustments and position of the [State A] Competent Authority**

**Option A: For transfer pricing adjustments/assessments** Issue covered by present mutual agreement procedure is the determination of the arm's length transfer pricing for the following transactions between [Name of the entity in State A] and [Name of the entity in State B] pursuant to [the equivalent of Article 9 of the Treaty]: (e.g., “Transactions involving tangible or intangible property”; “Manufacturing activities”; “Distribution functions”; “Management fees or headquarter cost allocations”; “Intragroup services”; “Research and development”; “Royalty or license fees”; etc.).

1. Issue 1
2. Issue 2
3. Issue 3
4. Etc.

**Option B: For adjustments/assessment related to attribution of profits to permanent**

**establishments]** Issue covered by present mutual agreement procedure is the attribution of profit(s) to a permanent establishment located in [State A or B] pursuant to [the equivalent of Article 7 of the Treaty]. The tax audit has identified the following issues: (e.g., “Sale of tangible goods”; “Warehousing activities”; “Advertising or marketing functions”; “Warehousing of goods”; “Order processing”; “Invoicing and collection”; etc.)

1. Issue 1
2. Issue 2
3. Issue 3
4. Etc.

### **1. Issue 1**

#### **a. Description of the transaction(s)**

[Description of the transaction(s) at issue, parties involved, and fiscal years concerned].

#### **b. Description of the adjustment(s)**

[Description of the rationale and findings of the transfer pricing audit, and the reasons for not considering the transaction(s) as arm's length;]

[The arm's length transfer pricing method as determined by the audit service;]

[Indicate the amounts as reassessed for each taxation year].

#### **c. Objections submitted by the taxpayer**

[Description of any objections raised by the taxpayer to contradict the adjustments].

#### **d. Position of the [State A] Competent Authority**

[The State A Competent Authority should describe its own view of on the arm's length nature of the transactions at issue, which may be consistent with or differ from the conclusions of the tax audit service].

**(The same rationale should apply to all the other issues at stake)**

### **2. Issue 2**

- a. **Description of the transaction(s)**
- b. **Description of the adjustment(s)**
- c. **Objections submitted by the taxpayer**
- d. **Position of the [State A] Competent Authority**

### **3. Issue 3**

#### **a. Description of the transaction(s)**

- b. Description of the adjustment(s)*
- c. Objections submitted by the taxpayer*
- d. Position of the [State A] Competent Authority*

**4. Issue 4:**

*Etc.*

**III. Summary of [State A] Competent Authority position**

As a result of the above rationale, [State A] Competent Authority's position leads to the following financial consequences:

Taxation year	Issues at stake	Initial adjustment	Adjustment according to [State A] CA	Corresponding adjustment to be made by [State B] CA
20XX				
	1. [e.g. Tangible or Intangible property]	XX	XX	XX
	2. [e.g. Management fees or Headquarters cost allocations]	XX	XX	XX
	3. [e.g. Intragroup services]	XX	XX	XX
	4. [e.g. Research and development]	XX	XX	XX
	5. [e.g. Royalty or License fees]	XX	XX	XX
	<b>Total reassessments for 20XX</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>
	<b>Non-Resident Withholding Taxes (XX%) pursuant to secondary adjustment(s) under article XX of the Treaty</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>
20XX				
	1. [e.g. Tangible or Intangible property]	XX	XX	XX

	2. [e.g. Management fees or Headquarters cost allocations]	XX	XX	XX
	3. [e.g. Intragroup services]	XX	XX	XX
	4. [e.g. Research and development]	XX	XX	XX
	5. [e.g. Royalty or License fees]	XX	XX	XX
	<b>Total reassessments for 20XX</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>
	<b>Non-Resident Withholding Taxes (XX%) pursuant to secondary adjustment(s) under article XX of the Treaty</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>
<b>20XX</b>				
	1. [e.g. Tangible or Intangible property]	XX	XX	XX
	2. [e.g. Management fees or Headquarters cost allocations]	XX	XX	XX
	3. [e.g. Intragroup services]	XX	XX	XX
	4. [e.g. Research and development]	XX	XX	XX
	5. [e.g. Royalty or License fees]	XX	XX	XX
	<b>Total reassessments for 20XX</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>
	<b>Non-Resident Withholding Taxes (XX%) pursuant to secondary adjustment(s) under article XX of the Treaty</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>
	<b>Total Reassessments for</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>

	<b>20XX through / and 20XX</b>			
	<b>Total Non-Resident Withholding Taxes pursuant to secondary adjustment(s) for 20XX through/and 20XX</b>	XX	XX	XX

Should you be in agreement with the rationale outlined above, we kindly request that you proceed with the corresponding adjustments or share your position on the matter.

***Position paper for Other cases***

[City], [Date]

Competent Authority of [State A] Tax Administration

[Address]

Case handler: [name, email address and phone number]

Sent by [mail; email; fax]

Mr./Ms. [Name, Surname of the Head of  
delegation of the Foreign Competent  
Authority]

[Address of the Competent Authority;  
STATE B]

**Subject: Position paper on mutual agreement procedure under paragraph 1 of [the MAP provision]  
of the [Convention between State A and State B for the elimination of double taxation with  
respect to taxes on income and capital and the prevention of tax avoidance and erosion]  
(hereinafter the “Treaty”).**

Case: [Taxpayer name]

Case ref.: [in State A]; [in State B]

Taxation year(s): 20XX [through / and 20XX]

Dear Mr./Ms. [Surname of the Head of delegation of the Foreign Competent Authority],

On [date of request for MAP in State A], [name of taxpayer] requested Competent Authority assistance following a tax audit / taxation by [identity of the tax audit service / or taxation service in State X] of [name of the taxpayer], for the fiscal year(s) 20XX [through / and 20XX].

I am pleased to share the position of the [State A] Competent Authority regarding the MAP case.

Yours sincerely,

[Name of the Head of delegation of the State A Competent Authority]

[Signature]

**SUMMARY OF TAXPAYER INFORMATION**

<b>Taxpayer in [State A]</b>	Name of taxpayer Address in State A Taxpayer identification number and/or birth date															
<b>Issues</b>	[Brief description of the issues at stake, e.g. whether the taxpayer is a resident of State A or State B; description of the sources of income and where and how they have been taxed].															
<b>Period covered by the MAP request</b>	[Day, Month, 20XX] to [Day, Month, 20XX].															
<b>Treaty article(s)</b>	Article(s) XX.															
<b>Taxpayer request</b>	<p>The taxpayer has requested relief from double taxation / taxation contrary to the Treaty for the following assessments initiated by the tax audit service / taxation applied by the taxation office of the [State X] tax administration:</p> <table border="1"> <thead> <tr> <th>Taxation year</th> <th>Assessment Taxation in [State XX]</th> <th>In [State X] currency</th> </tr> </thead> <tbody> <tr> <td>20XX</td> <td>Adjustments / Taxation</td> <td>XX</td> </tr> <tr> <td>20XX</td> <td>Adjustments / Taxation</td> <td>XX</td> </tr> <tr> <td>20XX</td> <td>Adjustments / Taxation</td> <td>XX</td> </tr> <tr> <td><b>Total</b></td> <td><b>Adjustments / Taxation</b></td> <td><b>XX</b></td> </tr> </tbody> </table>	Taxation year	Assessment Taxation in [State XX]	In [State X] currency	20XX	Adjustments / Taxation	XX	20XX	Adjustments / Taxation	XX	20XX	Adjustments / Taxation	XX	<b>Total</b>	<b>Adjustments / Taxation</b>	<b>XX</b>
Taxation year	Assessment Taxation in [State XX]	In [State X] currency														
20XX	Adjustments / Taxation	XX														
20XX	Adjustments / Taxation	XX														
20XX	Adjustments / Taxation	XX														
<b>Total</b>	<b>Adjustments / Taxation</b>	<b>XX</b>														

## POSITION OF THE [STATE A] COMPETENT AUTHORITY

### **I. Background**

*Provide a brief description of the taxpayer:*

- Identification of the taxpayer [name, surname, taxpayer identification number in State A and in State B (**if known**) and/or birth date].
- *Description of relevant connections to State A and State B (for instance, a list of the taxpayer's ties with States A and B) and consequences on the residence of the taxpayer: is the taxpayer considered a resident of State A and / or State B?*
- List of the income sources:
  1. Income 1:
  2. Income 2:
  3. Income 3:
  4. Etc.
- *Description of the taxpayer's filing and payment history in State A, as well as audit experience in State A.*

### **II. Description of the assessment(s) / taxation applied and position of the [State A] Competent Authority**

Issues covered by present mutual agreement procedure are as follows (e.g., "Residence"; "Pensions"; "Capital gains"; "Income from employment"; etc.):

1. Issue 1
2. Issue 2
3. Issue 3
4. Etc.

#### **1- Issue 1**

##### **a. *Description of the source of income and/or situation of the taxpayer***

*Description of the income at issue earned by the taxpayer or the situation of the taxpayer that led to a taxation not in accordance with the Treaty.*

##### **b. *Description of the assessment(s) / taxation not in accordance with the Treaty***

*Description of the rationale and findings of the tax audit / taxation applied in State XX to the income, that triggers double taxation or taxation not in accordance with the Treaty.*

##### **c. *Objections submitted by the taxpayer***

*Describe any objections raised by the taxpayer to contradict the assessment(s) / any domestic claims made by the taxpayer.*

**d. Position of the [State A] Competent Authority**

*Considering the above arguments, the [State A] Competent Authority should describe its own view on where and how the income should be taxed, which may be consistent with or differ from the conclusions of the tax audit service / taxation office.*

*(The same rationale should be applied to all the other issues at stake)*

**2- Issue 2**

- a. Description of the source of income and/or situation of the taxpayer**
- b. Description of the assessment(s) / taxation not in accordance with the Treaty**
- c. Objections submitted by the taxpayer**
- d. Position of the [State A] Competent Authority**

**3- Issue 3**

- a. Description of the source of income and/or situation of the taxpayer**
- b. Description of the assessment(s) / taxation not in accordance with the Treaty**
- c. Objections submitted by the taxpayer**
- d. Position of the [State A] Competent Authority**

**4- Issue 4:**

*Etc.*

**III. Summary of [State A] Competent Authority position**

As a result of the above rationale, the [State A] Competent Authority's position leads to the following financial consequences:

Taxation year	Issues at stake	Income subject to taxation in [State A]	Taxation in [State B]	Proposal in [State A]	Relief requested from [State B]
20XX					
	1. Income 1	XX	XX	XX	XX
	2. Income 2	XX	XX	XX	XX
	3. Income 3	XX	XX	XX	XX

	4. Etc.	XX	XX	XX	XX
	<b>Total for 20XX</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>
20XX					
	1. Income 1	XX	XX	XX	XX
	2. Income 2	XX	XX	XX	XX
	3. Income 3	XX	XX	XX	XX
	4. Etc.	XX	XX	XX	XX
	<b>Total for 20XX</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>
20XX					
	1. Income 1	XX	XX	XX	XX
	2. Income 2	XX	XX	XX	XX
	3. Income 3	XX	XX	XX	XX
	4. Etc.	XX	XX	XX	XX
	<b>Total for 20XX</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>
	<b>Total for 20XX</b> [through / and 20XX]	<b>XX</b>	<b>XX</b>	<b>XX</b>	<b>XX</b>

Should you be in agreement with the rationale outlined above, we kindly request that you proceed with the corresponding relief or share your position on the matter.

## Annex C.5. Template for closing letters and/or agreed meeting minutes

Dear ...

Please be informed that the MAP case involving the following taxpayer(s) [identification of the taxpayer(s) concerned in both jurisdictions (where appropriate), specifying for instance their name and address, tax identification number(s) or birth date (where appropriate)] and started on [start date] is now closed.

### *Outcome and End Date*

The outcome of the case(s) is the following [only one outcome, falling in one of the following categories: (i) denied MAP access, (ii) objection is not justified, (iii) withdrawn by taxpayer, (iv) unilateral relief granted, (v) resolved via domestic remedy, (vi) agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty, (vii) agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty, (viii) agreement that there is no taxation not in accordance with tax treaty, (ix) no agreement including agreement to disagree or (x) any other outcome in the latter case, please also specify the reasons why this category should apply]

This(these) case(s) was closed with a Milestone 1 (if applicable) as a position paper was first sent on [date of the first position paper] and the End date to be used for statistical purposes should be [specify End date] [and explain how the End date was determined, e.g. 'which is the date the taxpayer was informed about the outcome'].

### *Result of MAP case*

The outcome that has been arrived at by the two competent authorities is: [add broad grounds of resolution]. (if applicable) This is a negotiated resolution that should not be considered as precedent for future cases.

The abovementioned outcome has resulted in the following financial consequences:

(for attribution/allocation cases)

Taxation year	Issues at stake	Initial adjustment	Adjustment according to [State A] CA	Corresponding adjustment to be made by [State B] CA
20XX				
	1. [e.g. Tangible or Intangible property]	XX	XX	XX

102 ..				
-----------	--	--	--	--

(for other cases)

Taxation year	Issues at stake	Income subject to taxation in [State A]	Taxation in [State B]	Taxation in [State A]	Relief in [State A/B]
20XX					
	1. Income 1	XX	XX	XX	XX
103 ..					

You will find attached/below the summary of all relevant information for the MAP case [where appropriate].

Finally, please note that you may contact [include the contact details (e.g. contact number and email) of the official(s) in charge of the MAP case] for any questions you may have in relation to the reporting of MAP statistics relating to this MAP case.

Attachment- summary of all relevant information for the MAP case (please see next page).

---

<sup>102</sup> As under Annex C.4.

<sup>103</sup> As under Annex C.4.

<b>INFORMATION ABOUT THE MAP CASE(S)</b>		
<b>(DATA IN BOLD SHOULD MATCH FOR BOTH JURISDICTIONS FOR STATISTICS PURPOSES)</b>		
	<b>Jurisdiction A</b>	<b>Jurisdiction B</b>
Name of the jurisdictions <sup>104</sup>		
Name of the taxpayer(s)		
Tax period(s) concerned		
► <b>Type of case(s) (attribution/allocation case or other case)</b>		
► <b>Number of MAP cases to be taken into account</b>		
► <b>Outcome of the case(s)</b>		
(...)		
<b>RELEVANT DATES</b>		
<b>(DATES IN BOLD SHOULD MATCH FOR BOTH JURISDICTIONS FOR STATISTICS PURPOSES)</b>		
	<b>Jurisdiction A</b>	<b>Jurisdiction B</b>
► <b>Date of receipt of the MAP request(s)</b>  (specify in both columns if received by both jurisdictions and specify in bold the date used for statistics purposes after determining the earlier Start date)		
• <i>Date of notification by the competent authority that received the request (sending date)</i>		
• <i>Date when additional information was requested from the taxpayer</i>		
• <i>Date when all the necessary information was received from the taxpayer</i>		
► <b>Start date</b>		
► <b>Date of first position paper, if any (Milestone 1)</b>		
► <b>End date</b>		

<sup>104</sup> If more than two jurisdictions are involved, additional columns should be inserted

## Annex D. Ideal Timeframe for the MAP Process<sup>105</sup>

Step in the MAP process	Ideal timeframe
Submission of a MAP request	As soon as possible after receiving an action that results or will result in taxation not in accordance with a tax treaty
Decision on eligibility of MAP request or request for additional information to determine eligibility, communicated to taxpayer and other competent authority	4-8 weeks from receipt of MAP request, with 8 weeks only where the decision is accompanied by a decision as to whether the objection raised by the taxpayer is justified
Response from other competent authority	2-4 weeks from notification by first competent authority on eligibility
Requests for additional information from the taxpayer	8-12 weeks from receipt of MAP request
Decision as to whether the objection raised by the taxpayer is justified, following consultation or notification	3 months from receiving a complete MAP request
Determination as to whether unilateral relief can be provided	4 months from receiving a complete MAP request
Issuance of first position paper	6-8 months from receiving a complete MAP request and at least 2-4 weeks before a competent authority meeting, depending on the complexity
Issuance of response position paper (if any)	10-12 months from receiving a complete MAP request (around 4 months from the first position paper) and at least 2-4 weeks before a competent authority meeting, depending on the complexity
Resolution of MAP case through a provisional MAP agreement	24 months from receiving a complete MAP request
Taxpayer consent and withdrawal/waiver of domestic remedies	1-2 months from notification of provisional MAP agreement
Implementation of MAP agreements	Usually 3 months from taxpayer consent, subject to necessary taxpayer actions being completed

<sup>105</sup> Please note that the timelines specified in this section reproduce the indicative timelines that are provided in the text of the MEMAP. Accordingly, these timelines should not be seen in isolation of observations made in the context of these timelines in the MEMAP.

## Annex E. The steps of an ideal MAP Process

### Dispute prevention & pre-MAP phase

- MAP cases arise from the improper application of a tax treaty
- This can be partially addressed through tax administration practices that aim to prevent MAP cases
- Other dispute prevention avenues exist such as APAs, ICAP or programmes fostering greater cooperation and transparency between taxpayers and tax administrations
- Competent authorities can offer taxpayers pre-MAP consultations to better inform them of what is required and expected under the MAP process

### 1. MAP request

- The MAP process starts with a MAP request sent by a taxpayer to one or both competent authorities in accordance with the MAP provision in the tax treaty
- The receiving competent authority notifies the taxpayer and the other competent authority that it has received the MAP request
- It then determines if the MAP request meets the formal requirements for eligibility without considering the merits of the case itself

### 2. Unilateral phase of MAP

- For eligible requests, a *prima facie* analysis is undertaken by the receiving competent authority to determine whether the objection raised by the taxpayer is justified
- If it is, the receiving competent authority should then, in good faith, provide unilateral relief for the taxation not in accordance with the tax treaty where possible, or else initiate the bilateral phase of MAP

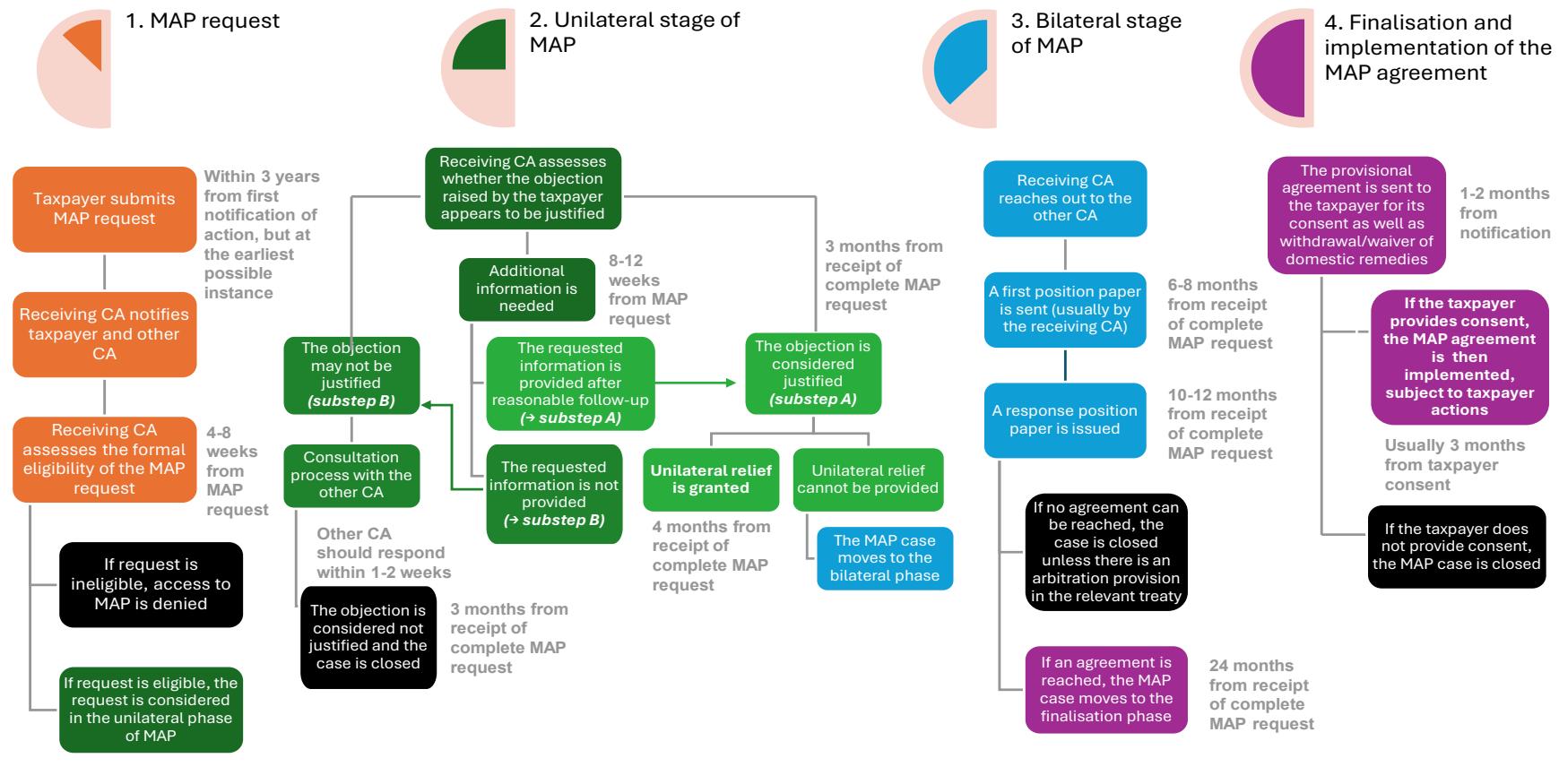
### 3. Bilateral phase of MAP

- Where it is not possible to provide unilateral relief, the competent authorities should endeavour to find together a solution to the case
- The contact between competent authorities can occur both through letters, phone calls or written position papers, followed by physical or virtual meetings should the need arise

### 4. Finalisation and implementation of the MAP agreement

- In most cases, competent authorities are able to reach a provisional agreement which is then communicated to the taxpayer to obtain its consent along with withdrawal/waiver of domestic remedies before being finalised
- Where competent authorities are unable to find an agreement resolving the case, the taxpayer will be duly notified and the MAP case would be closed unless the relevant tax treaty contains a MAP arbitration provision under which a mandatory, binding outcome to resolve the case would be determined
- The tax administration of the State(s) that agreed to eliminate the taxation not in accordance with the tax treaty are responsible for the implementation of the MAP agreement

Figure A E.1. The steps of an ideal MAP process



# References

OECD (2022), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022*, OECD Publishing, Paris, <https://doi.org/10.1787/0e655865-en>. [2]

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>. [1]

OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264241633-en>. [3]

# Manual on Effective Mutual Agreement Procedures (2026 Edition)

## Inclusive Framework on BEPS

The *Manual on Effective Mutual Agreement Procedures (MEMAP) (2026 Edition)* supports the broader focus of the BEPS Inclusive Framework and Forum on Tax Administration (FTA) to improve international tax dispute resolution as part of the tax certainty agenda. Building on the 2007 edition, it provides non-binding, comprehensive practical guidance to competent authorities and taxpayers on the effective conduct of the Mutual Agreement Procedure (MAP).

This revised edition features 59 best practices targeted at both competent authorities and taxpayers that were developed directly by competent authorities in the FTA MAP Forum, based on input from all stakeholders and grounded in over a decade of experience discussing practical issues and administering the BEPS Action 14 Minimum Standard peer reviews. Beyond detailed procedural guidance, the Manual addresses organisational considerations, such as the ideal staffing of a competent authority function and the solution-oriented mindset required to handle cases effectively. It also outlines steps that jurisdictions can take to proactively prevent disputes. The MEMAP is designed to assist jurisdictions of all experience levels, offering practical templates for those new to the process and, for the first time, detailed guidance and best practices related to MAP arbitration.