

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 90 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

A better understanding of how the BEPS recommendations are implemented in practice could reduce misunderstandings and disputes between governments. Greater focus on implementation and tax administration should therefore be mutually beneficial to governments and business. Proposed improvements to data and analysis will help support ongoing evaluation of the quantitative impact of BEPS, as well as evaluating the impact of the countermeasures developed under the BEPS Project.

As a result, the OECD established the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The

Inclusive Framework, which already has more than 135 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 28 October 2020 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
SAT	Servicio de Administración Tributaria (Mexico's tax administration)

Executive summary

Mexico has a relatively large tax treaty network with over 60 tax treaties. Mexico has an established MAP programme and has modest experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 39 cases pending on 31 December 2018. Of these cases, 64% concern allocation/attribution cases. Overall Mexico meets half of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Mexico worked to address them, which has been monitored in stage 2 of the process. In this respect, Mexico solved some of the identified deficiencies.

All of Mexico's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention. Its treaty network is partly consistent with the requirements of the Action 14 Minimum Standard, which follows from the fact that:

- Except for one, all of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Almost half of its tax treaties do not contain the equivalent of Article 25(2), first sentence to the OECD Model Tax Convention, as they contain a provision based on that sentence that is supplemented with additional language requiring the competent authority that received the MAP request to notify the other competent authority within a time limit of four and a half years from the due date or the date of filing the return in Mexico, whichever is later.
- Almost half of its tax treaties do not contain the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Mexico signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument, Mexico reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. In this respect, for some of these treaties Mexico reported that it already undertook some actions or finalised negotiations. For the remaining treaties, Mexico reported having put a plan in place to initiate communications with those treaty partners.

Mexico meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request roll-backs of bilateral APAs. However, the requests received since 1 January 2016 are still under consideration by Mexico's competent authority.

Mexico meets some of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases. It further has not in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Mexico has clear guidance on the availability of MAP, which, however, does not contain information on how it applies this procedure in practice. Mexico further has an administrative/statutory dispute settlement or resolution process in place, which is independent from the audit and examination function and which can only be accessed through a request by the taxpayer. Requesting this procedure by taxpayers will lead to denial of access to MAP. The effect of this process on MAP, however, has not been described in the guidance on this process.

Concerning the average time needed to close MAP cases, the MAP statistics for Mexico for the period 2016-18 are as follows:

2016-18	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2018	Average time to close cases (in months) *
Attribution/allocation cases	10	26	11	25	44.75
Other cases	6	13	5	14	22.49
Total	16	39	16	39	37.79

* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Mexico used as a start date as the start date: the date in which the other Competent Authority informed Mexico about the MAP case, or the date of receipt of the MAP request from the taxpayer in Mexico (that depends of the jurisdiction in which the MAP case was initiated) and as the end date: the date of the official letter of the mutual agreement, or the date of the notification by or to the other Competent Authority of the mutual agreement, or even the date of the notification to the taxpayer.

The number of cases Mexico closed in 2016-18 is approximately 40% of as the number of all cases started in those years. During these years, MAP cases were on average not closed within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 37.79 months. This mainly concerns the resolution of attribution/allocation cases, as the average time to close these cases is significantly longer (44.75 months), whereas other MAP cases are also closed within the 24-month average (22.49 months). Furthermore, Mexico's MAP inventory as on 31 December 2018 increased with 144% as compared to 1 January 2016, which concerns both attribution/allocation cases (150%) and other cases (133%). While Mexico has performed an internal reorganisation of the department responsible for handling attribution/allocation cases and developed an internal system to control its MAP inventory, the increase in the average completion time and the doubling of the MAP inventory warrants that additional resources are necessary to ensure that MAP cases are resolved in a timely, efficient and effective manner and also to cope with the increase in the number of MAP cases. Such addition of resources should also enable Mexico to establish contacts after a MAP request was submitted, to timely submit position papers to treaty partners, to timely obtain the relevant information on the case when it relates to an adjustment made by Mexico and to timely notify treaty partners of submitted MAP requests or providing information to them on pending MAP cases.

Furthermore, Mexico meets almost all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Mexico's competent authority adopts a co-operative approach to resolve MAP cases. Its organisation is adequate

and the performance indicators used are appropriate to perform the MAP function. However, there is a risk that its competent authority does not operate fully independently from the audit function of the tax authorities, as there have been instances where Mexico's competent authority did not seem to have received accurate information from the tax administration personnel who made the adjustment at issue.

Lastly, Mexico meets the requirements under the Action 14 Minimum Standard as regards the implementation of MAP agreements. Although MAP agreements that needed to be implemented by Mexico are pending implementation, the recommendations included in the stage 1 peer review report as to implementation of MAP agreements have been followed up and no problems have surfaced regarding the implementation since 1 January 2018.

Introduction

Available mechanisms in Mexico to resolve tax treaty-related disputes

Mexico has entered into 61 tax treaties on income (and/or capital), 60 of which are in force.¹ These 61 treaties apply to an equal number of jurisdictions. All of these treaties provide for a mutual agreement procedure (“MAP”) for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 11 of the 61 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

Under the tax treaties Mexico entered into, the competent authority function is assigned to the Ministry of Finance and Public Credit, which it has delegated to the Mexico’s tax administration (“SAT”, for *Servicio de Administración Tributaria*). The competent authority of Mexico currently employs approximately 12 employees (some of them being also assigned other tasks), which work in three different departments and which concern:

- *Central Administration for Transfer Pricing Audits within the Large business and international division*: attribution/allocation cases for taxpayers not involved in the upstream, midstream or downstream oil and gas industry.
- *Central Administration for Legal Support and International Tax Legal Affairs within the Large business and international division*: other MAP cases related to treaty interpretation cases for taxpayers not involved in the upstream, midstream or downstream oil and gas industry.
- *Central Administration for Tax and Legal Affairs (Hydrocarbons) within the Hydrocarbons tax affairs division*: both attribution/allocation cases and other cases for taxpayers involved in the upstream, midstream or downstream oil and gas industry.

Mexico has published general information on the MAP process in Administrative rule 2.1.32. (page 37), which is available (in Spanish) by searching on the following page:

[https://www.sat.gob.mx/cs/Satellite?blobcol=
=urldata&blobkey=id&blobtable=MungoBlobs&blobwhere=
1461173838571&ssbinary=true](https://www.sat.gob.mx/cs/Satellite?blobcol=urldata&blobkey=id&blobtable=MungoBlobs&blobwhere=1461173838571&ssbinary=true)

In addition, Mexico issued guidance on the governance and administration of MAP in September 2019 and is available at (in English and Spanish; in the sub-section “Información relativa a procedimientos amistosos”):

[https://www.sat.gob.mx/normatividad/98105/tratados-en-materia-fiscal-y-cuestiones-
relacionadastratados-en-materia-fiscal-y-cuestiones-relacionadas](https://www.sat.gob.mx/normatividad/98105/tratados-en-materia-fiscal-y-cuestiones-relacionadastratados-en-materia-fiscal-y-cuestiones-relacionadas)

Developments in Mexico since 1 January 2018

Developments in relation to the tax treaty network

In the stage 1 peer review report of Mexico, it is reflected that it had signed new treaties with Costa Rica (2014), Guatemala (2015), Jamaica (2016), Philippines (2015) and Saudi Arabia (2016), all of which had not yet entered into force. Since the adoption of the stage 1 report, the treaty with Costa Rica (2014), Jamaica (2016), Philippines (2015) and Saudi Arabia (2016) entered into force. The treaty with Guatemala (2015) has been ratified by Mexico and is pending ratification in Guatemala.

Furthermore, on 7 June 2017 Mexico signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. With the signing of the Multilateral Instrument, Mexico also submitted its list of notifications and reservations to that instrument.³ In relation to the Action 14 Minimum Standard, Mexico reserved, pursuant to Article 16(5)(c), the right not to apply the second sentence of Article 16(2) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to provide that mutual agreements shall be implemented notwithstanding any time limits in the domestic law of the Contracting Jurisdictions.⁴ This reservation is in line with the requirements of the Action 14 Minimum Standard. Mexico reported that on 23 November 2018, the Multilateral Instrument was presented to the Senate, for which approval is pending. Mexico indicated that it expects the instrument will be approved during the next period of sessions of the Senate which starts on 1 September 2020. In relation to this ratification, Mexico reported that with the deposit of the instrument of ratification, it will withdraw the reservation to apply Article 16(5)(c) and accordingly wishes its treaties to be modified to include Article 25(2), second sentence, of the OECD Model Tax Convention. The anticipated effect of this withdrawal is that 47 of the 60 treaties that do not contain the second sentence or the alternative provisions for Article 9(1) and Article 7(2) will be modified to include this second sentence.

For those tax treaties that were in the stage 1 peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Mexico reported that it strives updating them through future bilateral negotiations. In the stage 1 report, it, however, was noted that Mexico had no plan for such purpose and was therefore recommended to put a plan in place and to bilaterally work on the renegotiation of these treaties. In total, 19 of Mexico’s tax treaties need a bilateral modification in order to be in line with the requirements under the Action 14 Minimum Standard, if the above mentioned withdrawal of the reservation under the Multilateral Instrument is taken into account. For 13 treaties, Mexico reported that it already undertook some actions or finalised negotiations to bring these treaties in line with the requirements under the Action 14 Minimum Standard. This concerns:

- Negotiations with Germany and Malta were finalised on an amending protocol to the treaty.
- Negotiations are pending with Brazil on an amendment of the treaty.
- Communications with Austria and Italy have been initiated on the amendment of the treaty and negotiations are envisaged.

- Eight treaty partners were requested to update their notifications under the Multilateral Instrument to enable the modification of the treaty. Some of the treaty partners have already responded that they will update their notifications under the instrument, while for the others such a response is pending. When it is not possible for the treaty partners to amend their notifications, Mexico stated that it will approach them to enter into bilateral negotiations for the amendment of the treaty by means of a protocol.

In addition, for the remaining six treaties, Mexico reported having put in place the following plan to bring these treaties in line with the requirements under the Action 14 Minimum Standard, in order of priority:

- initiate communications with Bahrain, Ecuador and Switzerland with the request for signing an amending protocol to the treaty
- initiate communications with the Philippines and the United States with the request for signing an amending protocol to the treaty
- initiate communications with Guatemala once they ratified the newly signed treaty, such with a view to enter into an amending protocol.

With respect to the treaty with Bahrain, Mexico reported having reached out to them, but that they have been informed by Bahrain on their intention to sign the Multilateral Instrument by which the treaty will meet the requirements under the Action 14 Minimum Standard. Mexico also reported having reached out to Ecuador and the Philippines, but is waiting for a response. Furthermore, Mexico indicated that it intends to approach Switzerland to request for signing an amending protocol to the treaty.

Other developments

Mexico reported that it has published new MAP guidance, that is supplementary to Administrative rule 2.1.32 and Procedure form 244/CFF which includes information regarding the MAP process. This guidance has been published in September 2019 at SAT's following page (in the sub-section "Información relativa a procedimientos amistosos"):

<https://www.sat.gob.mx/normatividad/98105/tratados-en-materia-fiscal-y-cuestiones-relacionadastratados-en-materia-fiscal-y-cuestiones-relacionadas>

This new MAP guidance describes, among other issues, that when a taxpayer does not provide all the information or documentation as part of its MAP request after a request thereto was issued by the Mexico's competent authority, it is considered as "Closed". Mexico noted that this is also clarified in the procedure form 244/CFF.

Basis for the peer review process

Outline of the peer review process

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

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Mexico's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 14 August 2018. This report identifies the strengths and shortcomings of Mexico in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.⁵ Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Mexico. In this update report, Mexico reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

For the purpose of this report and the statistics below, in assessing whether Mexico is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, were taken into account, even if it concerns a replacement of an existing treaty. Reference is made to Annex A for the overview of Mexico's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process was for Mexico launched on 29 December 2017, with the sending of questionnaires to Mexico and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Mexico in June 2018, with the subsequent approval by the BEPS Inclusive Framework on 14 August 2018. On 15 August 2019, Mexico submitted its update report, which initiated stage 2 of the process.

The period for evaluating Mexico's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2017 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2018 and depicts all developments as from that date until 31 August 2019.

In total eight peers provided input during stage 1: Canada, Germany, Japan, Russia, Sweden, Switzerland, Turkey and the United States. Out of these eight peers, five had MAP cases with Mexico that started on or after 1 January 2016. These five peers represent approximately 80% of post-2015 MAP cases in Mexico's inventory that started in 2016 or 2017. Input was also received from taxpayers. During stage 2, the same peers provided input, apart from Russia. In addition, also the Netherlands and Spain provided input during stage 2. For this stage, these peers represent approximately 44% of post-2015 MAP cases in Mexico's inventory that started in 2016, 2017 or 2018. Generally, all peers indicated having good relationships with Mexico, some of them emphasising the difficulties they encountered to resolve MAP cases in a timely manner with Mexico's competent authority. Specifically with respect to stage 2, most of the peers that provided input reported that the update report of Mexico fully reflects the experiences these peers have had with Mexico since 1 January 2018 and/or that there was no addition to previous input given. Some peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance. This input particularly relates to the resolution of MAP cases, for which some peers mentioned they still face difficulties in resolving MAP cases in terms of timely receiving position papers.

Input by Mexico and cooperation throughout the process

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

- MAP profile⁶
- MAP statistics⁷ according to the MAP Statistics Reporting Framework (see below).

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

Finally, Mexico is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Mexico provided very detailed peer input and made constructive suggestions on how to improve the process with another assessed jurisdiction.

Overview of MAP caseload in Mexico

The analysis of Mexico’s MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2017. For stage 2 the period ranges from 1 January 2018 to 31 December 2018. Both periods are taken into account in this report for analysing the MAP statistics of Mexico. The analysis of Mexico’s MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2018 (“**Statistics Reporting Period**”). According to the statistics provided by Mexico, its MAP caseload during this period was as follows:

2016-18	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2018
Attribution/allocation cases	10	26	11	25
Other cases	6	13	5	14
Total	16	39	16	39

General outline of the peer review report

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

- Preventing disputes
- Availability and access to MAP
- Resolution of MAP cases
- Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁸ Apart from analysing Mexico’s legal framework and

its administrative practice, the report also incorporates peer input and responses to such input by Mexico. Furthermore, the report depicts the changes adopted and plans shared by Mexico to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

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

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Mexico should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement and recommendation for this specific element.

Notes

1. The tax treaties Mexico has entered into are available at: <https://www.sat.gob.mx/cs/Satellite?blobcol=urldata&blobkey=id&blobtable=MungoBlobs&blobwhere=1461173806929&ssbinary=true> The treaty that is signed but has not yet entered into force is with Guatemala. Reference is made to Annex A for the overview of Mexico’s tax treaties regarding the mutual agreement procedure.
2. This concerns the treaties with Canada, Chile, Greece, Indonesia, Ireland, Israel, Luxembourg, Romania, Singapore, the United Kingdom and the United States.
3. Available at: www.oecd.org/tax/treaties/beps-mli-position-mexico.pdf.
4. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(c) of the Convention, Mexico reserves the right for the second sentence of Article 16(2) not to apply to its Covered Tax Agreements on the basis that for the purposes of all of its Covered Tax Agreements: i) it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS package by accepting, in its bilateral treaty negotiations, a treaty provision providing that:
the Contracting Jurisdictions shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting Jurisdictions after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have been attributable to the permanent establishment (this provision shall not apply in the case of fraud, gross negligence or wilful default); and
the Contracting Jurisdictions shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but that by reason of the conditions referred

to in a provision in the Covered Tax Agreement relating to associated enterprises have not so accrued, after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have accrued to the enterprise (this provision shall not apply in the case of fraud, gross negligence or wilful default)”.

5. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-mexico-stage-1-9789264304345-en.htm.
6. Available at www.oecd.org/tax/dispute/Mexico-Dispute-Resolution-Profile.pdf.
7. The MAP statistics of Mexico are included in Annex B and C of this report.
8. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

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

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

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

Current situation of Mexico’s tax treaties

2. Out of Mexico’s 61 tax treaties, 60 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. One treaty contains a provision based on the first sentence of Article 25(3), but is not considered being equivalent thereof due to the fact that the term “doubts” is missing.

3. Mexico reported that irrespective of whether the applicable treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, this would in practice not prevent Mexico from entering into interpretative MAP agreements of a general nature.

4. All peers that provided input reported that their treaty with Mexico meets the requirements under element A.1. For the treaty identified above that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, the relevant treaty partner did not provide peer input.

Recent developments

Bilateral modifications

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

Multilateral Instrument

6. Mexico signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected during the next period of sessions of the Senate, which starts on 1 September 2020.

7. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

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

Peer input

9. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Mexico. None of these peers concerns a treaty partner to the treaty identified above that does not contain Article 25(3), first sentence, of the OECD Model Tax Convention.

Anticipated modifications

10. Mexico reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	One out of 61 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. This treaty will be modified by the Multilateral Instrument to include the required provision.	Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.

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

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

11. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.¹ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Mexico’s APA programme

12. Mexico reported that it has implemented an APA programme, under which it is authorised to enter into bilateral APAs. This APA programme is set forth in Article 34-A of Mexico’s Federal Fiscal Code. The procedure for obtaining an APA and the form an APA request should follow is further described in Administrative rule 2.12.8., which is available at:

<https://www.sat.gob.mx/cs/Satellite?blobcol=urldata&blobkey=id&blobtable=MungoBlobs&blobwhere=1461173838571&ssbinary=true>

13. Mexico reported that typically bilateral APAs run for a period of three years and that there is no specific timeline to follow to submit a bilateral APA request to its competent authority.

Roll-back of bilateral APAs

14. Mexico reported that it is possible to obtain a roll-back of bilateral APAs. With respect to the years that can potentially be subject to roll-back, Mexico reported that usually the years that are not yet barred due its domestic statute of limitation when the APA request is filed, could be covered. Articles 67 and 146 of Mexico’s Federal Fiscal Code provide that Mexico’s domestic statute of limitation is five years as from the day following the day on which the tax return was filed.

15. Section C.14 of Mexico’s MAP guidance confirms that roll-back of bilateral APAs is possible under the above mentioned circumstances.

Recent developments

16. Mexico reported that with the introduction of MAP guidance, it included guidance regarding the possibility of a roll-back of bilateral APAs, as outlined above.

Practical application of roll-back of bilateral APAs

Period 1 January 2016-31 December 2017 (stage 1)

17. Mexico reported that it received five requests for a bilateral APA in the period 1 January 2016-31 December 2017, which all also concerned a request for a roll-back. All five requests are being under consideration.

18. Of the eight peers that provided input, six indicated that their competent authority has not received any request from a taxpayer asking for a roll-back of a bilateral APA with Mexico in the period 1 January 2016-31 December 2017, one of them specifying that it has not entered into any bilateral APAs with Mexico.

19. The remaining two peers reported having received each two requests for bilateral APAs with Mexico in which the taxpayer asked for a roll-back. While both peers confirmed that these requests are still under consideration, they also specified that they both endeavour to reach agreements with Mexico and provide for the roll-back of APAs if appropriate. One of these peers specified that it has not reached any bilateral APA agreement with Mexico including a roll-back so far. On the other hand, the other peer reported that it has not yet received the position of Mexico's competent authority with respect to the granting of the roll-back in the cases at stake, but that Mexico's competent authority already engaged in cooperative discussions with its competent authority to develop a practical solution to apply a transfer pricing framework to years subject to a roll-back.

Period 1 January 2018-31 August 2019 (stage 2)

20. Mexico reported that since 1 January 2018 its competent authority received 16 requests for bilateral APA, six of which included a request for roll-back. Mexico further reported that all cases are under consideration.

21. Further to the above, Mexico also reported that all five roll-back requests that it received in the period 1 January 2016-31 December 2017 are still under consideration.

22. Almost all peers that provided input during stage 1 stated in stage 2 that the update report provided by Mexico fully reflects their experience with Mexico since 1 January 2018 and/or there are no additions to the previous input given. One peer provided additional input as to element A.2 and mentioned that since 1 January 2018 its competent authority received three APA requests with a roll-back. It also mentioned it has with Mexico still pending an earlier APA request with a roll-back. This peer further mentioned that it has had no indication that Mexico will not be able to grant a roll-back for these cases or in general. In response to this input, Mexico confirmed those cases and mentioned that it is analysing all the years requested and expecting to have the position papers at the beginning of the second semester of 2020 (also on the acceptance of the roll-back) for all of them.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Note

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).

References

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

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

Part B

Availability and access to MAP

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

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

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

Current situation of Mexico's tax treaties

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

25. Out of Mexico's 61 tax treaties, one contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. In addition, 49 treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

26. The remaining 11 tax treaties can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	10
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

27. The ten treaties mentioned in the first row of the table above are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons eight of those ten treaties are considered to be in line with this part of element B.1:

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

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

29. The treaty mentioned in the second row of the table above, the provision incorporated in the protocol to this tax treaty reads:

... the term “irrespective of the remedies provided by the national laws” means that the mutual agreement procedure is not alternative as regards national contentious proceedings, prior recourse to which is, in all cases, necessary when the dispute refers to an assessment of taxes in Italy not in accordance with this Convention.

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

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

31. Out of Mexico’s 61 tax treaties, 38 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

32. The remaining 23 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	12
Filing period more than three years for a MAP request (four years)	4
Filing period more than three years for a MAP request (four and a half years) and with a different commencement date for filing a MAP request	1
Filing period less than three years for a MAP request (18 months or two years)	6

33. The treaty in the third row of the table above provides that the starting point to file a MAP request is the expiry of the year in which the action resulting in taxation not in accordance with the provisions of the tax treaty was taken. Therefore, this starting point is later than the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty. As the filing period is also longer than three years, this treaty, however, is considered in line with this part of element B.1. As a consequence, only the six tax treaties referred to in the last row of the table above are considered not in line with this part of element B.1 as they provide for a shorter period than three years to submit a MAP request.

Peer input

34. Almost all peers that provided input reported their tax treaty with Mexico meets the requirements under element B.1. For the eight treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 Final Report, two peers provided input and confirmed this analysis and the other six peers did not provide input.

Practical application

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

Access to MAP in relation to domestic remedies

35. As follows from the above analysis, all but one of Mexico's tax treaties allow a taxpayer to file a MAP request irrespective of domestic remedies. For the remaining treaties, Mexico reported that while it grants access to MAP where domestic judicial remedies are still pending, it does not grant access to MAP in cases where the issue under dispute has already been decided via the judicial remedies provided by Mexico's domestic law, and that this results from Article 125 of Mexico's Federal fiscal code. This policy is also specified in Mexico's MAP guidance (Administrative rule 2.1.32.) and in Mexico's MAP profile. In this respect, Mexico clarified that it is considering presenting the case to its treaty partner via exchange of information, while it would continue not to grant access to MAP in such cases.

36. With respect to administrative remedies, Mexico reported that under its domestic laws, access to MAP will also be denied when the MAP request refers to an act or subject where the issue under dispute has already been decided by administrative remedies provided by the domestic law. It, however, also reported that at the moment a MAP request is filed, the administrative remedies are still pending, it is possible to suspend these remedies until the MAP case is concluded. This suspension avoids any contradictions between of the outcome of the MAP process and the administrative appeals process.

37. Section C.8, under sub h) of the MAP guidance (Administrative rule 2.1.32.) explicitly stipulates that access to MAP will not be granted in cases where the MAP requests refers to a case where the issue under dispute has already been resolved by the judicial and administrative remedies provided by the domestic law.

38. Mexico further reported that since 1 January 2018 it has not received MAP requests for which domestic remedies have already been applied.

Submission of MAP request for transfer pricing cases

39. One peer reported that Mexico requested taxpayers to submit a MAP request for transfer pricing cases also with Mexico's competent authority even though they were resident in the other jurisdiction and while the tax treaty requires taxpayers to submit the request in the state of residence. According to this peer, this requirement is not compliant with the tax treaty.

40. Mexico responded to this input and mentioned that it has not formally required taxpayers to also submit the MAP request in Mexico for the case the peer refers to and that in its view there is no violation of the treaty concerned. In that respect, Mexico clarified that usually taxpayers also submit a MAP request in Mexico or files a notification letter informing that a MAP request has been filed in the other contracting state. In Mexico's view, by doing so the information flow is considerably more efficient since both competent authorities have all the essential information available to be able to initiate and perform the MAP process. Mexico also mentioned that it would lead to more efficient implementation of the MAP agreements reached, since the result might be that the Mexican-resident taxpayer must submit a refund request to give effect to the MAP agreement. Mexico therefore concluded that in its view this practice favors the timely solution of cases and also favors the taxpayers, since the information flow and the implementation become much more efficient.

41. Furthermore, Mexico clarified that in the recent communications between Mexico and this peer, it agreed to start the analysis of the cases and keep exchanging views.

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

42. Mexico reported that for those tax treaties that do not contain a filing period for MAP request, its domestic legislation does not contain any rule limiting the filing period of a MAP request. It, however, reported that if it would have had receive a MAP request in the period up to 31 December 2019 for which the domestic statute of limitation has lapsed, its competent authority would have denied access to MAP. Mexico clarified that upon a change to its domestic law that came into force on 1 January 2020, it will now give access to MAP regardless of whether the statute of limitation has expired. This is also explicitly in section C.2 of Mexico's MAP guidance.

43. Mexico further reported that since 1 January 2018 it has not received MAP requests under those tax treaties that do not contain a filing period for MAP request.

44. Since Mexico has changed its domestic law, the potential limitation on access to MAP when the domestic statute of limitation had expired that was identified in Mexico's stage 1 peer review report has been resolved and as a result there are no limitations on access to MAP when the tax treaty concerned does not contain a filing period for MAP requests. Accordingly, the recommendation that was made in the stage 1 peer review report has been addressed.

Recent developments

Bilateral modifications

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

Multilateral Instrument

46. Mexico signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected during the next period of sessions of the Senate which starts on 1 September 2020.

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

47. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 Final Report and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 Final Report. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 Final Report. Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

48. With the signing of the Multilateral Instrument, Mexico opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 Final Report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Mexico's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, Mexico opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Mexico listed all of its 61 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for 60 of them the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 Final Report.

49. In total, six of the relevant 60 treaty partners are not a signatory to the Multilateral Instrument, whereas one has not listed its treaty with Mexico as a covered tax agreement under that instrument and 17 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Of the remaining 36 treaty partners, 35 listed their treaty with Mexico as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify 35 treaties to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.

50. Furthermore, for the remaining treaty partner that did not list their treaty with Mexico on the basis of Article 16(6)(a), the Multilateral Instrument will only supersede this treaty to the extent that the provisions contained therein are incompatible with the first sentence of Article 16(1). Since the provisions of the covered tax agreement does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, they are considered to be incompatible with the first sentence of Article 16(1). Therefore, at this stage the Multilateral Instrument will, upon entry into force, supersede this treaty to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.

51. In view of the above and in relation to the three treaties identified in paragraphs 27-30 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, two are included in the list of 35 treaties that will be modified via the Multilateral Instrument.

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

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

53. In regard of the six tax treaties identified in paragraph 31 above that contain a filing period for MAP requests of less than three years, Mexico listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the relevant six treaty partners, one is not a signatory to the Multilateral Instrument. All remaining five treaty partners listed their treaty with Mexico as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify five of the six treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Other developments

54. For the one tax treaty that does not contain the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, and that will not be modified by the Multilateral Instrument as regards the first sentence, Mexico reported that communications with the relevant treaty partner are envisaged with a view to amend the treaty in order to make ineffective the additional requirement in the protocol to the treaty to initiate domestic remedies when filing a MAP request.

55. For the remaining treaty that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, Mexico indicated that it has approached the treaty partner with the request for entering into an amending protocol in order to meet the requirements under the Action 14 Minimum Standard. Currently, it is awaiting a response from this treaty partner.

Peer input

56. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Mexico. None of these peers concerns a treaty partner to one of the two treaties identified above that does not contain Article 25(1), first and/or second sentence, of the OECD Model Tax Convention, as it read prior to or as amended by the adoption of the Action 14 Final Report and which will not be modified by the Multilateral Instrument.

Anticipated modifications

57. Mexico reported it will seek to include Article 25(1) of the OECD Model Tax Convention, as it read after to the adoption of Action 14 final report, in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	Two out of 61 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either as it read prior to the adoption of the Action 14 final report or amended by the report. Both tax treaties are expected to be modified by the Multilateral Instrument to include the required provision.	Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report in those treaties that currently do not contain such equivalent.
	Five out of 61 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these five treaties: <ul style="list-style-type: none"> • Four are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • One will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. For this treaty Mexico has approached the relevant treaty partner to initiate discussions on the amendment of the treaty with a view to include the required provision, but the treaty partner has not yet responded. 	Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in four of the five treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned. For the remaining treaty that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Mexico should, upon receipt of a response from the relevant treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision
	One out of 61 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, but will so as to the second sentence. For this treaty negotiations are envisaged.	Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in this treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned. With respect to the first sentence, Mexico should continue the process to initiate negotiations with the treaty partner to include the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ol style="list-style-type: none"> a. as amended by the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
	Access to MAP is denied in eligible cases where the issue under dispute has already been decided via the judicial or administrative remedies provided under domestic law.	Mexico should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP and should not deny access to MAP when the issue under dispute has already been decided via the judicial or administrative remedies provided under domestic law.

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

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

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

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

Domestic bilateral consultation or notification process in place

59. As discussed under element B.1, out of Mexico's 61 treaties, one currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 Final Report and allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. However, as was also discussed under element B.1, 35 of the remaining 60 treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

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

Recent developments

61. Mexico reported that Section C.7 of its MAP guidance clarifies that if its competent authority considers that the objection raised by the taxpayer in its MAP request is not justified, it will contact the other competent authority to communicate its position regarding said objection. Also the taxpayer will be notified thereof. In this regard, Mexico reported

that the consultation process is set out only in its MAP guidance, since it considers that it is a straightforward process of communications between competent authorities and that there are no further internal instructions for staff members in what circumstances to apply the process and what steps then have to be taken, including the timing of these steps.

Practical application

Period 1 January 2016-31 December 2017 (stage 1)

62. Mexico reported that in the period 1 January 2016-31 December 2017 its competent authority has not considered any objection raised in a MAP request being not justified. From Mexico's 2016 and 2017 MAP statistics it follows that in one case the outcome reported was an objection not justified, which concerned a decision made by the competent authority of the treaty partner.

63. Almost all peers that provided input indicated not being aware of any cases for which Mexico's competent authority denied access to MAP. One peer reported that in one case the taxpayer had not been granted access to MAP initially, but that after further exchanges with the taxpayer Mexico's competent authority resolved the case unilaterally.

64. Furthermore, all peers that provided input reported not having been consulted/notified of a case where Mexico's competent authority considered the objection raised in a MAP request as not justified, which can be clarified by the fact that there were no such cases in Mexico. One peer additionally reported that it would appreciate receiving notifications from Mexico's competent authority for every MAP request that the latter would receive, both in situations where Mexico's competent authority would grant or deny access to the relevant cases.

Period 1 January 2018-31 August 2019 (stage 2)

65. Mexico reported that since 1 January 2018 its competent authority has not considered any objection raised in a MAP request as not being justified. The 2018 MAP statistics submitted by Mexico confirm that none of its MAP cases were closed with the outcome "objection not justified".

66. All peers that provided input in stage 2 stated that the update report provided by Mexico fully reflects their experience with Mexico since 1 January 2018 and/or there are no additions to the previous input given.

Anticipated modifications

67. Mexico indicated that it will introduce a documented notification/consultation process in its internal regulations.

Conclusion

	Areas for improvement	Recommendations
[B.2]	60 of the 61 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention, as amended by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Mexico should without further delay follow its stated intention to introduce a documented notification and/or consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Mexico should apply such process for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

69. Out of Mexico's 61 tax treaties, 31 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, nine treaties do not contain a provision based on or equivalent to Article 9(2) of the OECD Model Tax Convention. The remaining 21 treaties do contain a provision that is based on Article 9(2), but for the following reasons deviate from this provision and are therefore not considered being equivalent thereof:

- Four treaties refer to the corresponding adjustment as a mere possibility, as the word "may" is used instead of "shall".
- 15 treaties provide that the corresponding adjustment is only available through a mutual agreement procedure or a consultation between competent authorities or if it is made by the competent authority itself.
- Two treaties both refer to the corresponding adjustment as a mere possibility and provide that the corresponding adjustment is only available through a mutual agreement procedure.

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

71. Procedure form 244/CFE stipulates that for transfer pricing cases, Mexican taxpayers have to pay a cost recovery fee of MXN 248 687 (2020 figure) pursuant to Article 53-G of the Federal Fees Law. This is also stipulated in Section C.6 of Mexico's MAP guidance.

72. Section C.1 of Mexico's MAP guidance includes examples of cases for which taxpayers can file a MAP request, which includes transfer pricing cases.

Recent developments***Bilateral modifications***

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

Multilateral Instrument

74. Mexico reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, Mexico signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected during the next period of sessions of the Senate which starts on 1 September 2020.

75. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does for a tax treaty not take effect if one or both of the treaty partners to the tax treaty have, pursuant to Article 17(3), reserved the right to not apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention).

76. In regard of the 30 treaties identified in paragraph 73 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Mexico listed all of them as a covered tax agreement under the Multilateral Instrument and included 15 of them in the list of treaties for which Mexico has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. For the remaining 15 treaties Mexico did not make, pursuant to Article 17(4), a notification that these treaties do contain such equivalent.

77. Of the relevant 15 treaty partners, three are not a signatory to the Multilateral Instrument and one has not listed its treaty with Mexico under that instrument. Of the remaining 11 treaty partners, two have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Mexico already contains the equivalent of Article 9(2), whereas another one made a reservation on the basis of Article 17(3) the right not to apply Article 17(2) in its entirety. Therefore, at this stage, the Multilateral Instrument will, upon entry into force, supersede the remaining nine treaties only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Application of legal and administrative framework in practice

Period 1 January 2016-31 December 2017 (stage 1)

78. Mexico reported that in the period 1 January 2016-31 December 2017, it has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

79. All peers that provided input indicated not being aware of a denial of access to MAP by Mexico in the period 1 January 2016-31 December 2017 on the basis that the case concerned was a transfer pricing case. In addition, also taxpayers reported not being aware of such a limitation of access.

Period 1 January 2018-31 August 2019 (stage 2)

80. Mexico reported that also since 1 January 2018 for none of the MAP requests it received it has denied access to MAP on the basis that the case concerned was a transfer pricing case.

81. All peers that provided input during stage 1, stated in stage 2 that the update report provided by Mexico fully reflects their experience with Mexico since 1 January 2018 and/or there are no additions to the previous input given. Of these peers, one noted that it has received two MAP requests concerning adjustments initiated by Mexico and that it is not aware of any requests for which access to MAP was denied. The second peer reported that it has had one pending transfer pricing case with Mexico, and that it has had no indication that Mexico would not accept such cases.

82. One of these peers provided input in relation to experiences with Mexico on transfer pricing cases that arose after 31 August 2019, the applicable review period for stage 2.

83. This peer mentioned that it was informed that Mexico has rejected MAP requests on the basis of the adjustment in Mexico (e.g. a deductibility issue under domestic law rather than (in Mexico's view) a transfer pricing adjustment). Nonetheless, these adjustments result in double taxation or taxation not in accordance with the treaty. In this respect, the peer recommends that Mexico's competent authority accept such cases into MAP to endeavour to resolve the double taxation or taxation not in accordance with the treaty. In addition, this peer noted that Mexico's competent authority will not count such cases for OECD statistics purposes because the cases are rejected outright as non-MAP cases, and "objection not justified" is not even reported to the OECD, leading to statistics mismatches between these two jurisdictions.

84. Mexico responded to this input and mentioned that it considers that the fact that an adjustment resulting from a tax audit includes transactions performed between related parties shall not automatically be considered a transfer pricing case under Article 9, since the inconsistencies identified during the tax audit do not refer to the compliance of the arm's length principle, but instead they are related to the application of domestic rules to determine the very existence (not the value) of an expense if it is deductible. Mexico further mentioned that in fact, audits related to the application of domestic rules to determine the existence (not the value) of an expense and in such case if it is deductible, are also performed to transactions between a Mexican taxpayer with domestic and foreign unrelated parties (e.g. arm's length transactions). The result of such audits might also be the determination by the audit team that the challenged expense is not deductible, and such adjustment or result should not be considered as an Article 9 issue of the applicable tax treaty. Furthermore, Mexico noted that in every case it communicates its treaty partner a detailed view about the case submitted by the taxpayer, and it is described, whether or not, it should be considered as a MAP case.

85. Another peer, who only provided input during stage 2 and who only has limited experience in transfer pricing cases with Mexico, mentioned that it has been informed by taxpayers that Mexico is (at least in practice) not granting access to MAP in transfer pricing cases concerning certain adjustments made by Mexico. The peer specified that

these taxpayers noted that the reason for not granting access is that Mexico claims that these adjustment concern only the application of domestic law and therefore, cannot be discussed in MAP (e.g. denying the deduction of certain costs).

86. In response to this input, Mexico mentioned that the simple fact that a MAP request refers to Article 9 should not necessarily be considered a transfer pricing case. It referred as an example to the situation when a MAP request does not result from an adjustment related to the compliance of the arm's length principle of the transactions between related parties, but is related to the non-compliance of domestic deductibility requirements. Mexico stated that in such a situation the adjustment should not be considered as a misinterpretation of Article 9 of the applicable tax treaty, but stems from the application of domestic rules to determine the deductibility of an expense in Mexico. This is also reflected in section C.8, sub e) of Mexico's MAP guidance, which notes that access to MAP will not be granted in cases that relate to the application of domestic law that is not related to any treaty provision. In the cases the peer referred to, Mexico noted that there was thus no situation that access to MAP was denied for the case being a transfer pricing case.

87. The peer responded that when a state imposes an adjustment which results in a taxation that is possibly in violation of the tax convention, the taxpayer should in principle be granted a right to apply for a MAP. The peer further stated that the cases the taxpayers referred to, it seems that they are referring to both Article 9 (associated enterprises) and Article 24 (non-discrimination). In situation in which a state is of an opinion that the tax convention is not violated seen the specific character of the domestic provision that has been applied, the peer stressed it would expect that a state to provide a written explanation of their vision.

88. In a response, Mexico clarified that it had one case with the peer where its competent authority has determined that the MAP request was not considered to be a transfer pricing case, but followed from the application of domestic law which is not related to any treaty provisions or that the request refers to the application of a procedural provisions of domestic law. It is for that reason that the access to MAP was denied for this case (e.g. the consideration that the objection raised by the taxpayer was not justified due to there not being any violation of the provisions of the treaty). It further clarified that it notified the peer through an official letter describing in detail the case and the reasons to conclude that it refers to the application of domestic law which is not related to any treaty provisions or that the request refers to the application of a procedural provision of domestic law.

Anticipated modifications

89. Mexico reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

90. There is no general rule denying access to MAP in cases of perceived abuse. In order to protect taxpayers from arbitrary application of anti-abuse provisions in tax treaties and in order to ensure that competent authorities have a common understanding on such application, it is important that taxpayers have access to MAP if they consider the interpretation and/or application of a treaty anti-abuse provision as being incorrect. Subsequently, to avoid cases in which the application of domestic anti-abuse legislation is in conflict with the provisions of a tax treaty, it is also important that taxpayers have access to MAP in such cases.

Legal and administrative framework

91. None of Mexico's 61 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Mexico do not contain a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

92. Mexico reported that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of MAP and thus that in practice it would grant access to MAP in such cases. Section C.1 of Mexico's MAP guidance includes examples of cases for which taxpayers can file a MAP request, which includes cases concerning the application of domestic or treaty anti-abuse provisions.

Recent developments

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

Practical application***Period 1 January 2016-31 December 2017 (stage 1)***

94. Mexico reported that it has in the period 1 January 2016-31 December 2017 it has not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received in that period.

95. All peers that provided indicated not being aware of cases that have been denied access to MAP in Mexico in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2016-31 December 2017. Also taxpayers reported not being aware of such a limitation of access.

Period 1 January 2018-31 August 2019 (stage 2)

96. Mexico reported that also since 1 January 2018 it has also not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. Mexico further reported that it has received two cases related to the application of domestic anti-abuse provisions, for which access to MAP was granted.

97. All peers that provided input in stage 2 stated that the update report provided by Mexico fully reflects their experience with Mexico since 1 January 2018 and/or there are no additions to the previous input given. One of these peers noted that it is not aware of any requests for which access to MAP was denied.

Anticipated modifications

98. Mexico did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

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

*Legal and administrative framework**Audit settlements*

100. Mexico reported that under its domestic law it is not possible that taxpayers and the tax administration enter into an audit settlement during the course of or after an audit has ended.

Administrative or statutory dispute settlement/resolution process

101. Mexico reported it has a statutory dispute settlement process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer. This statutory process is set forth in Articles 69-C through

69-H of the Federal Fiscal Code and is available to taxpayers that do not agree with the facts or omissions as they are described by the tax authority in one of the audit reports. This can be the preliminary audit report or any preliminary resolution issued before the final tax assessment that may constitute a breach to tax provisions (e.g. official observations made during the audit), including in cases where there are no such reports or resolutions if the tax authority has qualified the facts or omissions, provided that the final assessment has not yet been notified to the taxpayer. In such cases, taxpayers may request the adoption of a so-called “conclusive agreement”, which is then definitive with regard to the facts or omissions it covers.

102. Mexico further reported that the settlement/resolution process is handled through the taxpayer advocacy agency (“**PRODECON**” for “Procuraduría de la Defensa del Contribuyente”), which mediates actively between the taxpayer and the tax authority in order for them to reach an agreement, even though it is optional for the tax authority to accept the conclusive agreement proposed. Mexico clarified that PRODECON is not involved in the audit and the process itself is independent from the audit and the examination function of Mexico’s tax authority. Mexico stated that this procedure guarantees transparency and ensures that fundamental rights of taxpayers are respected and that the conclusive agreement potentially reached is enforceable.

103. As provided in Article 69-H of the Federal Fiscal Code, the conclusive agreements that are reached under the process described previously cannot be challenged. For this reason, Mexico reported that it will not give access to MAP in cases where a conclusive agreement was reached by the taxpayer and the tax administration. This is also specified in the information on MAP publically available (Administrative Rule 2.1.32) and section C.8, sub f) and C.15 of its MAP guidance, as it will be further discussed under element B.10.

Recent developments

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

Practical application

Period 1 January 2016-31 December 2017 (stage 1)

105. Mexico reported that in the period 1 January 2016-31 December 2017 it has not denied access to MAP for cases where the taxpayer and the tax administration have entered into an audit settlement. However, no such cases in relation hereto were received in that period.

106. Mexico further reported that it did not receive any MAP request for a case relating to a matter already resolved via a conclusive agreement in the period 1 January 2016-31 December 2017.

107. All peers that provided input indicated not being aware of a denial of access to MAP in Mexico in the period 1 January 2016-31 December 2017 in cases where there was an audit settlement between the taxpayer and the tax administration, which can be clarified by the fact that audit settlements are not available in Mexico.

Period 1 January 2018-31 August 2019 (stage 2)

108. Mexico reported that since 1 January 2018 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and tax administration. However, no such cases in relation hereto were received since that date. Mexico further reported that it did not receive any

MAP request for a case relating to a matter already resolved via a conclusive agreement since 1 January 2018.

109. All peers that provided input in stage 2 stated that the update report provided by Mexico fully reflects their experience with Mexico since 1 January 2018 and/or there are no additions to the previous input given. One of these peers noted that it is not aware of any requests for which access to MAP was denied.

Anticipated modifications

110. Mexico indicated that it does not anticipate any modifications relating to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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

Legal framework on access to MAP and information to be submitted

112. The information and documentation Mexico requires taxpayers to include in a request for MAP assistance are publically available in a procedure form and are discussed under element B.8.

113. Mexico reported that where the taxpayer did not provide the required information or documentation in its MAP request, its competent authority would send, pursuant to Article 18 and 18-A of the Federal Fiscal Code, an information request that would follow the list of information publically available and that taxpayers are given ten business days to respond and provide the requested information. If the taxpayer fails to provide such information, Mexico reported that in the past, the MAP request would be considered as unfiled. This practice was described in Mexico’s Procedure form 244/CFF, even though Mexico reported that it would now register the case and close it with the outcome “objection not justified” in case the taxpayer would fail to provide the relevant information. In this respect, section C.4 of Mexico’s recently issued MAP guidance describes that if the required information is not submitted in time and form, such MAP request will be considered as closed. It further clarifies that the taxpayer would be allowed to submit a new MAP request for the same case in such a situation. This is also clarified in the modified procedure form 244/CFF.

Recent developments

114. As described above, Mexico’s new MAP guidance clarifies that if the required information is not submitted in time and form, such MAP request will be considered as closed. However, it is also stated that the MAP request might be submitted again, as far as it is submitted in accordance to the filing periods established for this purpose in the applicable tax treaty.

Practical application***Period 1 January 2016-31 December 2017 (stage 1)***

115. Mexico reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that in the period 1 January 2016-31 December 2017 its competent authority has not limited access to MAP for cases where taxpayers have complied with the information or documentation requirements.

116. All peers that provided input indicated not being aware of a limitation of access to MAP by Mexico in the period 1 January 2016-31 December 2017 in situations where taxpayers complied with information and documentation requirements. Also taxpayers reported not being aware of such a limitation of access.

Period 1 January 2018-31 August 2019 (stage 2)

117. Mexico reported that since 1 January 2018 it has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

118. All peers that provided input in stage 2 stated that the update report provided by Mexico fully reflects their experience with Mexico since 1 January 2018 and/or there are no additions to the previous input given. One of these peers noted that it is not aware of any requests for which access to MAP was denied.

Anticipated modifications

119. Mexico reported that it does not anticipate any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

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

Current situation of Mexico’s tax treaties

121. Out of Mexico’s 61 tax treaties, 34 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. Furthermore, seven treaties contain a provision that is based on Article 25(3), second sentence, but refer to the consultation regarding cases not provided for in the convention, whereas the second sentence refers to the consultation for the elimination of double taxation in cases not provided for in the convention. As the particular tax treaties provide for a scope of application that is at least as broad as that second sentence of Article 25(3) of the OECD Model Tax Convention, they are considered to be in line with element B.7. The remaining 27 tax treaties do not contain any provision based on Article 25(3), second sentence, of the OECD Model Tax Convention.

122. Out of the eight peers that provided input, three indicated that their treaty with Mexico contains the required provision, which is confirmed by the analysis above. For the 27 treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, five peers reported that their treaty with Mexico was not in line with element B.7 and the remaining relevant peers did not provide input. One of the five peers mentioned that its treaty with Mexico will be modified by the Multilateral Instrument, which conforms with the below analysis.

Recent developments

Bilateral modifications

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

Multilateral Instrument

124. Mexico signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected during the next period of sessions of the Senate which starts on 1 September 2020.

125. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. In other words,

in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

126. In regard of the 27 tax treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Mexico listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant 27 treaty partners, three are not a signatory to the Multilateral Instrument. All the remaining 24 treaty partners also made a notification on the basis of Article 16(6)(d)(ii). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify 24 of the 27 tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Other developments

127. For one of the three tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, Mexico reported that it has been informed by this treaty partner that it will sign the Multilateral Instrument in 2020 and will list the treaty with Mexico as a covered tax agreement under that instrument and make the necessary notification, which would lead to a modification of the tax treaty being in line with element B.7. It further reported that for the second treaty, negotiations are pending with the relevant treaty partner on an amending protocol with a view to meet the requirements under the Action 14 Minimum Standard.

128. With respect to the remaining treaty, Mexico indicated that it has approached the treaty partner with the request for entering into an amending protocol in order to meet the requirements under the Action 14 Minimum Standard. Currently, it is awaiting a response from this treaty partner.

Peer input

129. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Mexico. Both peers concerns a treaty partner to the treaty identified above that does not contain Article 25(3), second sentence, of the OECD Model Tax Convention. These peers noted that in line with the above analysis that their treaty with Mexico will be modified by the Multilateral Instrument to include the second sentence.

Anticipated modifications

130. Mexico reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>27 out of 61 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 27 treaties:</p> <ul style="list-style-type: none"> • 24 are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention once the treaty partner has signed the instrument. • Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these two treaties: <ul style="list-style-type: none"> - Negotiations are pending with one treaty partner. - Mexico has approached one partner to initiate discussions on the amendment of the treaty with a view to include the required provision, but the treaty partner has not yet responded. 	<p>Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in 25 of the 27 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for 24 of the 25 treaties concerned and once the other treaty partner signed and ratified the instrument.</p> <p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention following its entry into force, Mexico should:</p> <ul style="list-style-type: none"> • continue negotiations with one treaty partner with a view to include the required provision • upon receipt of a response from the relevant treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision.

[B.8] Publish clear and comprehensive MAP guidance

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

131. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

Mexico's MAP guidance

132. Mexico has issued rules, guidelines and procedures on the MAP process and how it conducts that process in practice. These are included in the combination of three documents, being: (i) Administrative rule 2.1.32, (ii) Procedure form 244/CFF and (iii) MAP guidance.

133. Administrative rule 2.1.32. can be found in page 37, of the "Resolución Miscelánea Fiscal para 2020" and is available at:

<https://www.sat.gob.mx/cs/Satellite?blobcol=urldata&blobkey=id&blobtable=MungoBlobs&blobwhere=1461173838571&ssbinary=true>

134. The Procedure form 244/CFF can be found in page 365, of the "Anexo 1-A de la Resolución Miscelánea Fiscal para 2020" and is available at:

<https://www.sat.gob.mx/cs/Satellite?blobcol=urldata&blobkey=id&blobtable=MungoBlobs&blobwhere=1461173838628&ssbinary=true>

135. The MAP guidance is supplementary to the administrative rule 2.1.32. and the procedure form 244/CFF, and is available at (in English and Spanish; in the sub-section “Información relativa a procedimientos amistosos”):

<https://www.sat.gob.mx/normatividad/98105/tratados-en-materia-fiscal-y-cuestiones-relacionadastratados-en-materia-fiscal-y-cuestiones-relacionadas>

136. The MAP guidance consists of three chapters and sets out in detail how taxpayers can access the mutual agreement procedure and what rules apply during that procedure under tax treaties Mexico entered into. More specific, it contains information on:

The possibility for taxpayers to submit a MAP request, including examples of cases for which such request can be submitted (transfer pricing cases, cases concerning the application of anti-abuse provisions, multilateral disputes, multi-year disputes and bona fide foreign-initiated self-adjustments)
Competent authority for handling MAP cases
Time limits for submission of MAP requests
Manner and form in which MAP requests should be filed, including the information to be included in the MAP request
Fees due with the submission of a MAP request
The MAP process
Limitations in access to MAP and possible termination of a MAP case
Implementation of MAP agreements
Interest and penalties in relation to the MAP process
Suspension of tax collection for the period a MAP case is pending
Roll-back of bilateral APAs

137. The above-described MAP guidance of Mexico includes detailed information on the availability and the use of MAP and how its competent authority conducts the process in practice, which for instance concerns the steps of the process, how the MAP functions in terms of timing and the role of the competent authorities. This guidance also includes the information that the FTA MAP Forum agreed should be included in a jurisdiction’s MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.

138. Peers did not provide input on the availability of Mexico’s MAP guidance. Also taxpayers did not report any issues on the clarity and availability of Mexico’s MAP guidance.

Information and documentation to be included in a MAP request

139. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.¹ This agreed guidance is shown below. Section C.3 of Mexico’s MAP guidance enumerating which

items must be included in a request for MAP assistance (if available) are checked in the following list:

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

140. In addition to the information listed above, Mexico's MAP guidance also stipulates that taxpayers shall provide the following information on whether:

- the facts or circumstances related to the MAP request were subject to a domestic administrative or judicial procedure in Mexico or in the other jurisdiction involved
- the situation related to the MAP request was analysed or qualified by Mexico's competent authority or by the competent authority of its treaty partner within an APA, a conclusive agreement procedure or any other similar procedure
- the taxpayer(s) concerned or its related parties is/are subject to a tax audit in Mexico or in the other jurisdiction (including a specification of the relevant tax years and the procedural stage)
- any changes that occur in the relation, situation or structure of the operations after the MAP request has been submitted.

141. With respect to the language used, Mexico's competent authority requires that the information and documentation should be filed in Spanish or, if the document is in a different language, with a translation into Spanish by a certified expert. In addition, Procedure form 244/CFE and section C.3, sub q) of Mexico's MAP guidance requires taxpayers to provide an English version of the MAP request so that its competent authority can share it with the competent authority of the relevant treaty partner.

142. Peers did not provide input on the documentation and information to submit in a MAP request. Taxpayers also did not report any issues in this respect.

Recent developments

143. Mexico has in September 2019 issued specific MAP guidance that covers the recommendations formulated by the FTA MAP Forum in its stage 1 peer review report. This concerns a reflection that access to MAP is available in cases of: (i) transfer pricing cases,

(ii) application of anti-abuse provisions, (iii) multilateral disputes; and (iv) cases of bona fide foreign-initiated self-adjustments. Next to an outline of the MAP process, the newly issued guidance also includes information on *inter alia*:

- time limits for submission of a MAP request
- a list of information taxpayers need to include in their MAP request
- situations for which access to MAP may be limited
- process for implementation of MAP agreements
- suspension of tax collection during the period a MAP is pending
- interest and penalties in relation to the MAP process.

144. The new MAP guidance has been reflected above in the analysis.

Anticipated modifications

145. Mexico reported that it does not anticipate any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

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

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

146. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.²

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

147. The information on the MAP process and the MAP guidance of Mexico is published and can be found at:

148. Administrative rule 2.1.32:

<https://www.sat.gob.mx/cs/Satellite?blobcol=urldata&blobkey=id&blobtable=MungoBlobs&blobwhere=1461173838571&ssbinary=true>

149. Procedure form 244/CFF:

<https://www.sat.gob.mx/cs/Satellite?blobcol=urldata&blobkey=id&blobtable=MungoBlobs&blobwhere=1461173838628&ssbinary=true>

150. MAP guidance (in English and Spanish; in the sub-section “Información relativa a procedimientos amistosos”):

<https://www.sat.gob.mx/normatividad/98105/tratados-en-materia-fiscal-y-cuestiones-relacionadastratados-en-materia-fiscal-y-cuestiones-relacionadas>

151. As regards its accessibility, Mexico’s MAP guidance can be found on the website of the tax administration website by searching for “mutual agreement procedure” in Spanish or by following the path described under element B.8.

MAP profile

152. Mexico’s MAP profile is published on the website of the OECD, which was last updated in August 2019. This MAP profile is complete and often with detailed information. This profile includes external links which provide extra information and guidance where appropriate.

Recent developments

153. There are no recent developments with respect to element B.9.

Anticipated modifications

154. Mexico indicated that it will update its MAP profile following the issuance of the MAP guidance in September 2019.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

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

between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the previously mentioned processes.

MAP and audit settlements in the MAP guidance

156. As previously discussed under element B.5, it is under Mexico's domestic law not possible that taxpayers and the tax administration enter into audit settlements during the course of or after an audit has ended.

157. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Mexico's MAP guidance, which also follows from the fact that audit settlements are not available in Mexico.

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

158. As previously mentioned under element B.5, Mexico has a statutory dispute settlement process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer. The relationship between access to MAP and internal administrative or statutory dispute settlement/resolution processes is included in item VI of Administrative rule 2.1.32 as well as section C.8, sub f) and section C.15 of Mexico's MAP guidance, which clarifies that access to MAP will be limited in cases where taxpayers reached a conclusive agreement through Mexico's statutory dispute settlement process. However, this limitation of access is not addressed in the public guidance on Mexico's statutory dispute settlement process.³

159. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Mexico.

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

160. Mexico reported that it notified its treaty partners of its statutory dispute settlement process through its MAP profile, which contains a reference to the process available in Mexico and its potential impact on MAP. Mexico also specified that at the meeting when the Action 14 Final Report was discussed, it was stated that in Mexico an administrative or statutory dispute settlement/resolution process is available, which allowed Mexico to inform its treaty partners of such a procedure. This is considered in line with element B.10.

161. Irrespective of the above, all peers reported being not informed of the existence of this process and its effect on MAP.

Recent developments

162. Mexico issued in September 2019 MAP guidance, which – as outlined above – clarifies in section C.8, sub f) and section C.15 the effects of a conclusive agreement through Mexico's statutory dispute settlement process on the MAP process.

Anticipated modifications

163. Mexico reported that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	The effects of the administrative or statutory dispute/resolution settlement processes on the MAP process are not addressed in the guidance on such process.	Mexico should without further delay clarify in its guidance on the administrative or statutory dispute settlement/resolution process available in Mexico should clarify the effects on MAP when the case was resolved through such dispute settlement/resolution process.

Notes

1. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
2. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
3. A public explanation of the conclusive agreement is available at: www.prodecon.gob.mx/index.php/home/p/acuerdos-conclusivos and public guidelines are also available at: www.prodecon.gob.mx/Documentos/MarcoNormativo/3-LineamientosAtribucionesSustantivasProdecon.pdf.

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

Part C

Resolution of MAP cases

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

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

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

Current situation of Mexico’s tax treaties

165. Out of Mexico’s 61 tax treaties, 34 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty. The remaining 27 tax treaties contain a provision that is based on Article 25(2), first sentence, but also contains additional language that sets a condition for the provision to apply. This condition consists of a notification from the competent authority to that of Mexico that it received the MAP request within a time limit of four and a half years from the due date or the date of filing the return in Mexico, whichever is later. As such an obligation may prevent that cases are effectively dealt with in MAP, the provision contained in these treaties are therefore considered as not being equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.

166. Almost all peers that provided input reported that their tax treaty with Mexico meets the requirements under element C.1. For the 27 treaties identified that do not contain the equivalent of Article 25(2), first sentence of the OECD Model Tax Convention, only one provided input and confirmed the above analysis.

Practical application

167. One peer specified that its tax treaty with Mexico is among the 27 treaties that contain the deviating provision as described above, while it is not contained in its own model tax treaty. This peer confirmed that the current language including in the treaty could actually lead to limitations to enter into the bilateral phase of the MAP process. This peer further reported that it experienced several cases where Mexico did not accept to enter into discussions with its competent authority, referring to the fact that the notification requirement contained in the MAP provision had not been met. For these cases, the peer clarified having sent a formal letter to Mexico's competent authority and having operated in line with the MAP provision contained in their tax treaty, but there have been some cases where the Mexican taxpayer was notified of the adjustment after or shortly before the period during which the notification from one competent authority to another had to be made under the relevant treaty. The peer reported having discussed this issue with Mexico's competent authority to convince them that the notification requirement was met, but Mexico did not agree to enter into discussions with this peer regarding the underlying cases.

168. In a response, Mexico indicated that two conditions need to be met for the notification to be taken into account, being: (i) the notification needs to be registered (which is the case if it is done via a fax, an official letter notified by mail courier or an e-mail) and (ii) the notification needs to be received within the timeframe specified in the treaty. Regardless, Mexico reported that it is currently discussing with the relevant peer to interpret the relevant provision of their tax treaty in line with the requirements of the Action 14 Minimum Standard. Mexico's MAP statistics show that one attribution/allocation case was closed in 2017 for this reason as Mexico reported that the MAP case was not timely notified by the other competent authority as required in the relevant tax treaty.

169. Further to the above, an association of taxpayers also reported that its members have experienced 13 cases where taxpayers have submitted MAP requests to the peer's competent authority and filed MAP requests to Mexico's competent authority, but that the case could not be opened because the peer did not notify Mexico's competent authority within the timeframe specified in the treaty. In response, Mexico explained that the issue had only been encountered in one case since 1 January 2016. Mexico also clarified that its competent authority did not receive any MAP request itself, but was merely informed by the taxpayer of the MAP request submitted in the other country.

170. On a global perspective, Mexico reported that when an audit is initiated, the audit team notifies the taxpayer about the time constraints contained in the relevant tax treaty that may impact access to MAP. Mexico further indicated that in the last few years, it has adopted a real time approach to audit most recent years, which has contributed to a limitation of the number of MAP cases for which access to MAP was denied because of not meeting the notification period contained in the tax treaty. In addition, Mexico reported since then having published an administrative rule and provided a corresponding form (Administrative rule 2.1.48 and Form 249/CFF) that allows taxpayers to suspend the period during which the notification shall be made from one competent authority to another under the relevant treaty, provided the form is submitted before the expiration of the timeframe provided in the treaty. Mexico clarified that this administrative rule was published on 23 December 2016 and applicable as from 1 January 2017. Mexico also specified that this administrative rule can be applied as long as the timeframe provided under the treaty has not expired even though the MAP request was submitted with the competent authority of the treaty partner and before the entry into force of the administrative rule. Finally, Mexico reported that while this administrative rule currently only covers the cases submitted under

the tax treaty that Mexico has with the relevant peer, it is currently evaluating whether the solution found could be extended to other treaties containing similar wording.

171. In this respect, the relevant peer responded and mentioned that it appreciates Mexico's efforts to implement administrative practices to mitigate the effect of their interpretation of the deviating provision, but that such administrative practices do not entirely solve the problem. With regard to the notification of the taxpayer upon initiation of a tax audit, the peer emphasised that audits can begin after the end of the notification period contained in the tax treaty as, under Mexican law, they can begin up to five years after the later of the filing or the due date of the return, and such audits can be completed within a period up to seven years after that date. This peer also indicated that auditing on a more real-time basis may therefore not address the situation of all taxpayers. Given these concerns, this peer welcomes its recent engagement with Mexico to mutually determine the scope of application of this provision.

172. In view of the above, while the practice identified by the peer may hamper the resolution of MAP cases due to certain formal requirements have not been met, these result from the specific language of the MAP provision contained in many of Mexico's tax treaties. As will be discussed below, via the Multilateral Instrument and subsequent bilateral negotiations in nearly all of Mexico's tax treaties the equivalent of Article 25(2), first sentence of the OECD Model Tax Convention will be contained and the reported issues by the peer will no longer be an item of concern.

Recent developments

Bilateral modifications

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

Multilateral Instrument

174. Mexico signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected during the next period of sessions of the Senate which starts on 1 September 2020.

175. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

176. In regard of the 27 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Mexico listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), a notification that they do not contain a provision described in Article 16(4)(b)(i). Of the relevant 27 treaty partners, three are not a signatory to the Multilateral Instrument. All 24 remaining treaty partners listed their treaty with Mexico as

a covered tax agreement under that instrument, but only 19 also made a notification on the basis of Article 16(6)(c)(i). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify 19 of the 27 tax treaties identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Other developments

177. With respect to five of the eight remaining tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, Mexico reported that this follows from the fact that while the relevant treaty partners are signatories to the instrument, they did not make for the treaty with Mexico the required notification pursuant to Article 16 (6)(c)(i). In this respect, Mexico reported that it has contacted the relevant treaty partners to update their notifications under Article 16 (6)(c)(i) of the Multilateral Instrument with a view to be in line with element C.1. It further reported that it has received a response from one of them, which indicated that it is not able to update its notifications, following which Mexico agreed with this treaty partner to initiate bilateral negotiations on the amendment to the treaty to include the required provision. So far the remaining four treaty partners have not yet responded.

178. For one of the remaining three treaties for which the treaty partners that are not a signatory to the Multilateral Instrument, Mexico reported that it has been informed by one of them that it will sign the instrument in 2020 and will list the treaty with Mexico as a covered tax agreement under that instrument and make the necessary notification, which would lead to a modification of the tax treaty being in line with element C.1. It further reported that for another treaty, it has approached the treaty partner with the request for entering into an amending protocol in order to meet the requirements under the Action 14 Minimum Standard. Currently, it is awaiting a response from this treaty partner.

Peer input

179. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Mexico. None of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument.

Anticipated modifications

180. Further to the developments reported in paragraph 180 above, for the four of the five treaties concerned, for which the relevant treaty partners have not responded to Mexico's outreach to modify their notifications under the Multilateral Instrument, Mexico noted that it will reach out to the respective treaty partners again to identify whether it is for them possible to amend their notifications under the Multilateral Instrument. When it is not possible for the treaty partners to amend their notifications, Mexico stated that it will approach them to enter into bilateral negotiations for the amendment of the treaty by means of a protocol.

181. For the remaining treaty partner that is not a signatory to the Multilateral Instrument, Mexico reported that it envisages initiating communications with the relevant treaty partner with the request for signing an amending protocol in order to meet the requirements under the Action 14 Minimum Standard in the future once all other negotiations have been completed.

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

Conclusion

	Areas for improvement	Recommendations
[C.1]	<p>27 out of 61 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these 27 treaties:</p> <ul style="list-style-type: none"> • 19 are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention once the treaty partner has signed the instrument and made the necessary notifications. <p>Seven will not be modified by the Multilateral Instrument to include the required provision. With respect to these seven treaties:</p> <ul style="list-style-type: none"> • For five, the treaty partners have been approached to update their notifications under the Multilateral Instrument with a view to modify the treaty to include the required provision. Of these five: <ul style="list-style-type: none"> - For one Mexico has received a response and agreed with the treaty partner to enter into negotiations on an amending protocol to the treaty. - For the remaining four, Mexico is awaiting a response. - Mexico has approached one partner to initiate discussions on the amendment of the treaty with a view to include the required provision, but the treaty partner has not yet responded. - For one no actions have been taken, but are planned to be taken. 	<p>Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention in 20 of the 27 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for 19 of the 20 treaties concerned and once the other treaty partner signed and ratified the instrument</p> <p>For the remaining seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention following its entry into force, Mexico should:</p> <ul style="list-style-type: none"> • initiate the envisaged negotiations with one treaty partner with a view to include the required provision. • For four treaties, if the relevant treaty partners do not modify their notifications under the Multilateral Instrument, request the required provision via bilateral negotiations • Upon receipt of a response from the relevant treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision. • For one treaty request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations.

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

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

183. As double taxation creates uncertainties and leads to costs for both taxpayers and jurisdictions, and as the resolution of MAP cases may also avoid (potential) similar issues for future years concerning the same taxpayers, it is important that MAP cases are resolved swiftly. A period of 24 months is considered as an appropriate time period to resolve MAP cases on average.

Reporting of MAP statistics

184. Statistics regarding all tax treaty related disputes concerning Mexico are published on the website of the OECD as of 2007.¹ Mexico also publishes MAP statistics on SAT's website.² In addition to the MAP statistics available on the OECD website, this website also contains information on the treaty provisions that are disputed and the treaty partners involved.

185. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after January 1, 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Mexico provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Mexico and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annexes B and C respectively and should be considered jointly for an understanding of the MAP caseload of Mexico.³

186. With respect to post-2015 cases, Mexico reported that for the years 2016-18 it has reached out to all its MAP partners with a view to have their MAP statistics matching. In that regard, Mexico reported that it could match its statistics with all its MAP partners.

187. Four peers provided input on the matching of MAP statistics with Mexico. All peers confirmed that they were able to match the statistics.

Monitoring of MAP statistics

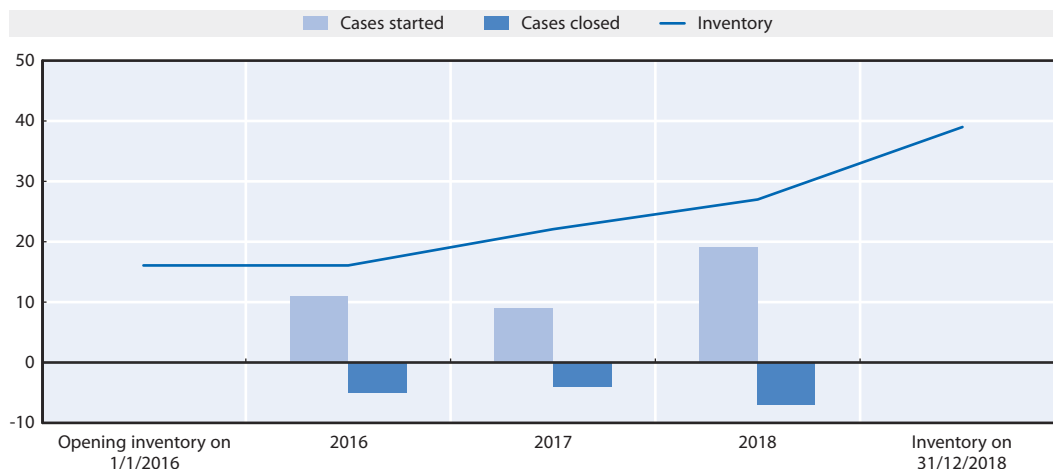
188. Mexico reported that it has a system in place that monitors and manages its MAP caseload. Mexico reported that it keeps track, among other indicators, of relevant stages of the MAP process, such as: the filing date of the MAP request, the notification date of such request to the other competent authority and the date of issuance of the MAP agreement. Mexico clarified that the purpose of this monitoring is to ensure that MAP cases are on average closed in a 24-month timeframe.

Analysis of Mexico’s MAP caseload

189. The analysis of Mexico’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018.⁴

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

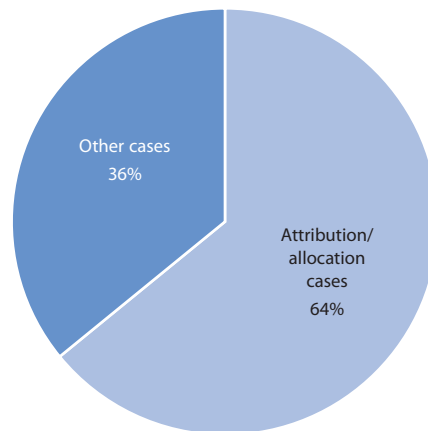
Figure C.1. Evolution of Mexico’s MAP caseload



191. At the beginning of the Statistics Reporting Period Mexico had 16 pending MAP cases, of which 10 were attribution/allocation cases and six other MAP cases.⁵ At the end of the Statistics Reporting Period, Mexico had 39 MAP cases in its inventory, of which 25 are attribution/allocation cases and 14 are other MAP cases. Accordingly, Mexico's MAP caseload has increased by 144% during the Statistics Reporting Period, which concerns an increase of 150% in the number of attribution/allocation cases and an increase of 133% in the number of other MAP cases.

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

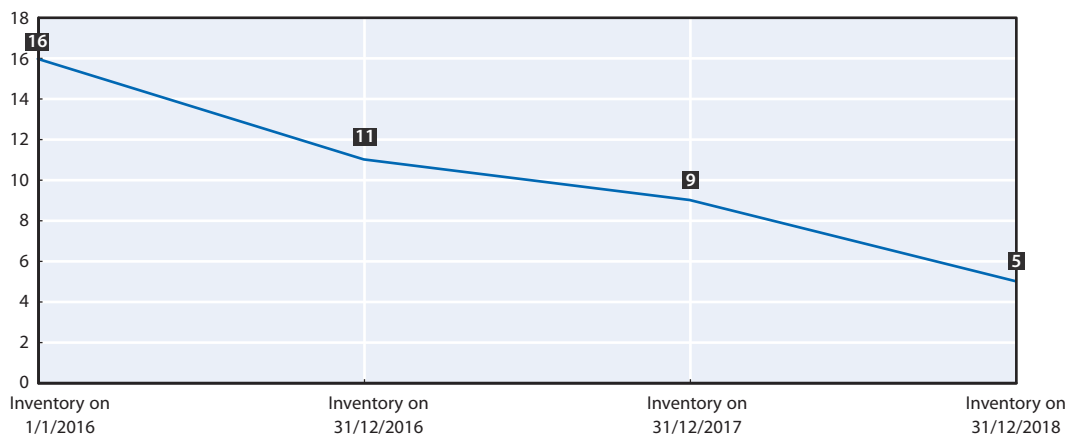
Figure C.2. End inventory on 31 December 2018 (39 cases)



Pre-2016 cases

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

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



194. At the beginning of the Statistics Reporting Period, Mexico's MAP inventory of pre-2016 MAP cases consisted of 16 cases, of which were 10 attribution/allocation cases and six other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to five cases, consisting of three attribution/allocation cases and two other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

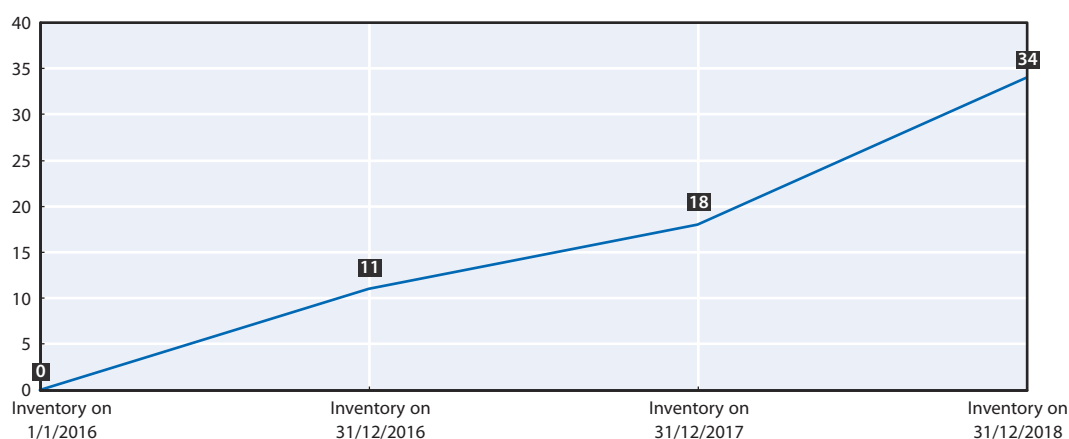
	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	-20%	-13%	-57%	-70%
Other cases	-50%	-33%	(no case closed)	-67%

Post-2015 cases

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

Figure C.4. Evolution of Mexico's MAP inventory

Post-2015 cases



196. In total, 39 MAP cases started during the Statistics Reporting Period, 26 of which concerned attribution/allocation cases and 13 other cases. At the end of this period the total number of post-2015 cases in the inventory was 34 cases, consisting of 22 attribution/allocation cases and 12 other cases. Accordingly, Mexico closed five post-2015 case during the Statistics Reporting Period, four of which concerned attribution/allocation cases and one other case. The total number of closed cases represent 13% of the total post-2015 cases that started during the Statistics Reporting Period.

197. The number of post-2015 cases closed as compared to the number of post-2015 cases started during the Statistics Reporting Period is shown in the table below.

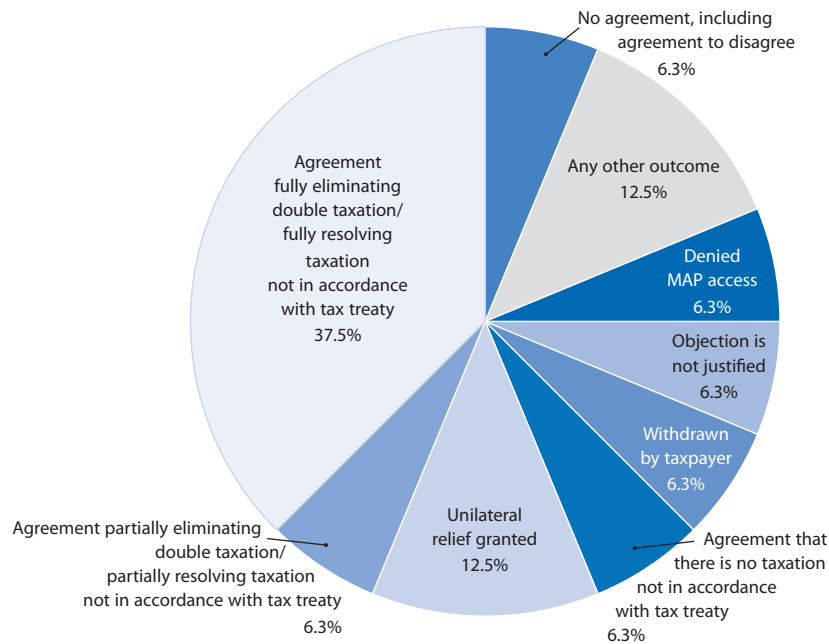
	% of cases closed compared to cases started in 2016	% of cases closed compared to cases started in 2017	% of cases closed compared to cases started in 2018	Cumulative percentage of cases closed compared to cases started over the three years (2016-18)
Attribution/allocation cases	0%	33%	17%	15%
Other cases	0%	0%	14%	8%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

198. During the Statistics Reporting Period Mexico in total closed 16 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed in 2016, 2017 or 2018 (16 cases)



199. Figure C.5 shows that during the Statistics Reporting Period, six out of 16 cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

200. In total, 11 attribution/allocation cases were closed during the Statistics Reporting Period. The reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (55%)
- unilateral relief granted (18%)
- agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty (9%)
- agreement that there is no taxation not in accordance with tax treaty (9%)
- denied MAP access (9%).

Reported outcomes for other cases

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

- any other outcome (40%)
- no agreement including agreement to disagree (20%)
- objection not justified (20%)
- withdrawn by taxpayer (20%).

*Average timeframe needed to resolve MAP cases**All cases closed during the Statistics Reporting Period*

202. The average time needed to close MAP cases during the Statistics Reporting Period was 37.79 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	11	44.75
Other cases	5	22.49
All cases	16	37.79

Pre-2016 cases

203. For pre-2016 cases Mexico reported that on average it needed 61.43 months to close seven attribution/allocation cases and 25.25 months to close four other cases. This resulted in an average time needed of 48.27 months to close 11 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Mexico reported that it uses the following dates:

- *Start date*: the date on which the other competent authority informed Mexico about the MAP case, or the date of receipt of the MAP request from the taxpayer in Mexico (depending on the jurisdiction in which the MAP case was initiated)
- *End date*: the date of the official letter of the mutual agreement, or the date of the notification by or to the other competent authority of the mutual agreement, or even the date of the notification to the taxpayer.

Post-2015 cases

204. For post-2015 cases Mexico reported that it needed 15.57 months to close four attribution/allocation cases and 11.44 months to close one other cases. This resulted in an average time needed of 14.74 months to close five post-2015 cases.

Peer input

205. Peer input relating to the resolution of MAP cases is discussed under element C.3.

Recent developments

206. Mexico was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 89% of its post-2015 MAP cases that were pending on 31 December 2017 within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

207. With respect to this recommendation, Mexico reported that an internal reorganisation was implemented as at the level of the Central Administration for Transfer Pricing Audits, who is responsible for handling attribution/allocation cases, such with the aim to balancing the skills of the staff, experience level and caseloads. Mexico further reported that by the end of 2018, an internal system was developed to enhance the control of the inventory of attribution/allocation MAP and APA cases, the process and the elapsed time of each type of cases. A similar reorganisation is foreseen for the non-transfer pricing cases.

208. Of the peers that provided input during stage 2, five provided input in relation to their experience with Mexico as to handling and resolving MAP cases. Their input is further discussed under element C.3. One of these five peers mentioned that for new cases started, Mexico’s competent authority is easy to approach and that helpful conference calls were held to handle these cases.

Anticipated modifications

209. Mexico did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

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

Description of Mexico’s competent authority

211. Under the tax treaties Mexico entered into, the competent authority function is assigned to the Ministry of Finance and Public Credit, which it has delegated to Mexico’s tax administration (“SAT”, for *Servicio de Administración Tributaria*). Within SAT, three departments are involved in handling MAP cases, which are:

- *Central Administration for Transfer Pricing Audits within the Large business and international division (five persons)*: attribution/allocation cases for taxpayers not involved in the upstream, midstream or downstream oil and gas industry
- *Central Administration for Legal Support and International Tax Legal Affairs within the Large business and international division (five persons)*: other MAP cases related to treaty interpretation for taxpayers not involved in the upstream, midstream or downstream oil and gas industry

- *Central Administration for Tax and Legal Affairs (Hydrocarbons) within the Hydrocarbons tax affairs division (five persons)*: both attribution/allocation cases and other cases when they involve taxpayers involved in the upstream, midstream or downstream oil and gas industry.

212. In view of the above, Mexico's competent authority currently consists of 15 people, some of them dealing partly with MAP cases along with other tasks such as advance pricing agreements or other assignments.

213. Mexico further reported that staff within its competent authority has a background in economics, finance, accounting and law, which are considered as areas of relevance to deal with MAP cases. Mexico also reported that it strives to hire experienced staff and that SAT's annual training programme contains mandatory sessions on the issues often encountered within MAP. Finally, Mexico reported that the budget available for the competent authority function seems adequate and enables its staff to have face-to-face meetings annually with its most relevant treaty partners.

Monitoring mechanism

214. Mexico reported that the framework for the monitoring of whether the available resources for the MAP function are adequate consists of ensuring that MAP cases are resolved within the 24-month timeframe. When it is noticed that there is a risk that the 24-month timeframe is not met for a given case, Mexico reported that it would assign more resources to the resolution of the relevant case.

Recent developments

215. As discussed under element C.2, Mexico has performed an internal reorganisation at the level of the Central Administration for Transfer Pricing Audits, who is responsible for handling attribution/allocation, with a view to balance the skills of the staff, experience level and caseloads to address the personnel turnovers over the recent years. Mexico further reported that by the end of 2018 an internal system was developed to enhance the control of the inventory of attribution/allocation MAP and APA cases, the process and the elapsed time of each type of cases. Mexico further reported that the reorganisation was implemented to face personnel turnovers of the last years and further the purpose of the reorganisation was to ensure that MAP cases are solved within a reasonable timeframe. Mexico clarified that more experienced personnel are in charge of complex MAP cases, so that taking advantage of their seniority level could lead to a more timely resolution of MAP cases, while at the same time they co-ordinate and train new team members. On the other hand less experienced staff is in charge of less complex cases or issues so that they are able to develop the required expertise to address more complex cases in the future.

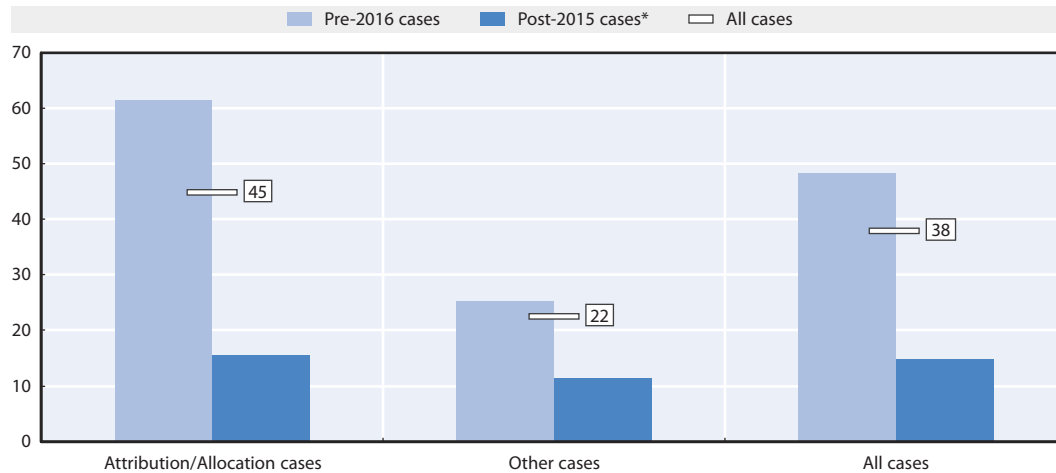
216. Lastly, Mexico reported that a similar reorganisation is foreseen for non-attribution/allocation cases, but that for the time being, there have been no changes in terms of personnel, funding, training or other aspects related to their function.

Practical application

MAP statistics

217. As discussed under element C.2 Mexico did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average. In addition, the average time taken to close attribution/allocation cases is higher than the average time needed for other cases. This can be illustrated by Figure C.6.

Figure C.6. Average time (in months) to close cases in 2016-2018



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

218. Based on these figures, it follows that on average it took Mexico 37.79 months to close 16 MAP cases, which is above the pursued average of 24 months. This, however, only regards attribution/allocation cases, for which the average is 44.75 months, while other cases are on average closed within 24 months (22.49 months).

219. The stage 1 peer review report of Mexico analysed the 2016 and 2017 statistics and showed an average of 25.68 months, which is slightly above the pursued average of 24 months to close MAP cases. This both regards attribution/allocation cases (26.02 months) and other cases (25.25 months). In this respect, Mexico provided the median time taken to close MAP cases, which was approximately 22 months. However, as Mexico's MAP caseload has increased significantly in the period 1 January 2016-31 December 2017, it was concluded this may indicate that Mexico's competent authority is not adequately resourced while no specific actions have been taken by Mexico to address this in the meantime. On that basis Mexico was recommended to ensure that the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner.

220. For stage 2, the 2018 MAP statistics are also taken into account. The average time to close MAP cases for this year are:

	2018
Attribution/Allocation cases	60.36
Other cases	11.44
All cases	53.37

221. The 2018 statistics of Mexico show that the average completion time of MAP cases increased from 25.68 months to 53.37 months, whereby the average for attribution/allocation cases increased significantly from 26.02 months to 60.36 months. For other cases the average decreased from 25.25 months to 11.44 months.

222. Furthermore – as analysed in element C.2 – the MAP inventory of Mexico more than double since 1 January 2016. This can be shown as in the table below.

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2018	Increase in %
Attribution/allocation cases	10	26	11	25	150%
Other cases	6	13	5	14	133%
Total	16	39	16	39	144%

Clarifications by Mexico

223. During stage 1 Mexico provided the following clarification for why MAP cases were not closed within the 24-month average time period:

- In one attribution/allocation case significant delays resulted from tax authorities' late notification and insufficient information and documentation provided by the taxpayer.
- One case concerned a complex attribution/allocation case.
- One other MAP case was brought to the attention of the Mexican Supreme Court, as a consequence of an appeal formulated on the same issue by another taxpayer. In such a case, Mexico's competent authority considered appropriate, for the sake of consistency, to wait for the Supreme Court making a final determination on the case.

224. For stage 2, Mexico did not provide a further clarification why MAP cases were not closed within the 24-month average time period.

Peer input

Period 1 January 2016-31 December 2017 (stage 1)

225. Out of the eight peers that provided input, five specified that their experience with Mexico is limited and mentioned that the number of pending MAP cases is relatively modest. Two peers mentioned that Mexico is an important MAP partner for their jurisdiction.

226. With respect to the contacts and correspondence with Mexico's competent authority, one peer with limited experience with Mexico mentioned that it has had some difficulties in establishing contacts. The other peers reported that they have contacts with Mexico's competent authority, via e-mails and phone calls. One significant MAP partner for Mexico reported that the communication with Mexico's competent authority occurs on a regular and timely basis.

227. Two peers reported that face-to-face meetings were held with Mexico's competent authority, one of them appreciating the fact that Mexico's competent authority could travel to its jurisdiction. The remaining peers did not provide input on the scheduling of face-to-face meetings.

228. With respect to the resolution of MAP cases, three peers with limited MAP experience with Mexico commented on the time needed during their exchanges with Mexico's competent authority, one of them mentioning that Mexico's competent authority endeavours to resolve MAP cases in a reasonable timeframe. The other peers reported they had been waiting a long time for a position paper from Mexico's competent authority, in cases where the adjustment at issue was made by Mexico's tax authority. One of these peers

specified that the MAP request was received in June 2016 and that it was still waiting for Mexico's competent authority's position paper on 31 December 2017, while the other peer referred in general to a very long time it takes to obtain such position paper.

229. Another peer with limited MAP experience with Mexico's competent authority also reported having experienced some delays, which in its opinion may result from the fact the information shared by the tax auditor with Mexico's competent authority differed from the information on the Mexican adjustments provided by the taxpayer to this peer. This opinion is based on the fact that Mexico's competent authority denied an important element of the adjustment. Mexico responded in describing its competent authority's working process, which consists of (i) reviewing the information provided by the taxpayer, in order to determine whether the objection raised is justified and then (ii) collecting additional information from the tax administration personnel who made the adjustment at issue, which is then compared with the information provided by the taxpayer. Mexico further reported that when it was necessary, its competent authority investigated further to clarify any mismatch in the information collected from the taxpayer and from its tax administration.

230. This peer also reported that according to taxpayer's information, Mexico's competent authority would be in contact with other jurisdictions to resolve similar issues to the ones involving this peer and Mexico's competent authority would have decided to suspend the discussions with this peer as long as the case with the other jurisdiction is not resolved, which resulted in delays. This peer questioned whether the corresponding cases have been prioritised efficiently by Mexico's competent authority. Mexico responded that the impression of this peer is based on feedback it might have received from the taxpayer and not on its own experience. Mexico further clarified that its position is not subject to the outcome of a discussion with another treaty partner and that MAP cases are handled separately, and that the timing for handling and resolving MAP cases depends on its competent authority and its treaty partner's competent authority's availability.

231. A third peer, who is a significant MAP partner for Mexico, also commented on the timeliness of the resolution of MAP cases involving Mexico. This peer reported that considerable time was taken by Mexico's competent authority to (i) send position papers, (ii) be ready to discuss a MAP case or (iii) exchange closing documents after reaching a MAP agreement. This peer specified that the time needed to meet such milestones was also significant when the disputed adjustment had been made by Mexico's tax authority. This latter peer also reported having experienced extensive delays before receiving Mexico's competent authority's written confirmation of its interpretation of a treaty provision impacting the opening of bilateral discussions, which was already discussed under element C.1.

232. Some peers formulated suggestions for improvement. These suggestions relate to decreasing the time needed to issue and share a position paper, by ensuring that the information shared from the tax administration personnel who made the adjustment at issue is correct or by requesting additional information from taxpayers through its treaty partner if this would be beneficial for speeding up the case. One of these peers also suggested to make discussions with Mexico's competent authority more transparent to better understand its analysis, concerns and potential constraints (e.g. negotiation timing affected by a domestic administrative or judicial processes or resources constraints). In particular, this peer invited Mexico to share any questions and concerns about a factual, legal, or analytical issue when it first arises, in order to co-operate and address the issue and move the case forward more swiftly.

Period 1 January 2018-31 August 2019 (stage 2)

233. Most of the peers that provided input during stage 1, stated in stage 2 that the update report provided by Mexico fully reflects their experience with Mexico since 1 January 2018 and/or there are no additions to the previous input given, one of them stressing that for new cases started with Mexico, its competent authority is easy to approach and that helpful conference calls were held to handle these cases. Of the peers that provided input, five provided input in relation to their experience in resolving MAP cases since 1 January 2018. One of these peers only reported the number of MAP cases it has with Mexico and that these cases are in an early stage.

234. One of the other four peers mentioned that it currently has two pending MAP cases with Mexico, received in June 2016 and March 2018 and which arose from adjustments issued by Mexico's tax authority. This peer specified that it is for both cases waiting a position paper from Mexico's competent authority. Mexico responded that at the time of the taxpayer's request its competent authority was waiting for the finalisation of the examination for some fiscal years under review. Mexico further reported that it has been working to send any position paper or corresponding letters regarding each case through 2019. Particularly for these cases, Mexico noted that during 2018 its reorganisation of the team handling attribution/allocation cases was performed, which impacted the timely resolution of MAP cases. As this process had already been concluded, Mexico reported that it would be more co-operative to solve these two pending cases in the near future.

235. The third peer stated that it has a good working relationship with Mexico and is positive on Mexico's understanding, co-operation and efforts – including internal reorganisations – towards the improvement of MAP process between two jurisdictions. This peer, however, also noted that it has an attribution/allocation case with Mexico that has not been resolved for over three years. In order to resolve cases more timely, effectively and efficiently in the future, this peer made the following suggestions based on its MAP experiences with Mexico: (i) ensuring that when personnel rotate within the competent authority, the process to hand over pending cases is seamless, such to avoid difficulties in communicate with the new person in charge of the pending MAP cases; (ii) exchanging necessary information on pending MAP cases in a timely manner, in particular the issuing of and responses to position papers in advance of face-to-face meetings; and (iii) ensuring adequacy of resources (e.g. personnel and budget) to resolve cases within a reasonable period. In response to this input, Mexico reiterated the implementation of an internal reorganisation process in order to address the difficulties faced in 2018 at issuing responses to position papers. As this process has been completed, Mexico noted that it is in a position to ensure its co-operative relationship to solve the cases still under negotiation. It further mentioned that in fact both competent authorities have informed each other the personnel in charge of the pending cases and have exchanged some communications.

236. Further to the above, the fourth peer mentioned that currently it has five transfer pricing cases pending with Mexico, all of which follow from an adjustment imposed by Mexico. The peer added that it is waiting for Mexico's position papers, noting some of them are pending for more than two years. It clarified that it reached out to Mexico's competent authority several times, but did not receive any substantial reaction, as it only informed the peer that in some cases no decision has not yet been made on access to MAP and others cases are being examined.

237. The last peer stated that since 1 January 2019 contacts with Mexico's competent authority have been more frequent and telephone conferences have been held to sort out the case stock. This peer noted that even though no cases have been solved yet, it is positive

about this development. Mexico responded that it is working on all cases with this peer to solve them properly.

Anticipated modifications

238. Mexico did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	<p>MAP cases were resolved in 37.79 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This regards attribution/allocation cases, as the average time needed to close these cases was 44.75 months, whereas for other cases the average time was below 24 months (22.49 months). The average completion time has also increased substantially in 2018 as compared to the period 2016-17. There is therefore a risk that post-2015 are not resolved within the average of 24 months, which may indicate that the competent authority is not adequately resourced. In this respect, some peers have experienced difficulties in resolving both type of MAP cases in a timely, efficient and effective manner, which in particular concerns:</p> <ul style="list-style-type: none"> • establishing of contacts after a MAP request was submitted • timely submission of position papers to treaty partners • timely obtaining the relevant information on the case when it relates to an adjustment made by Mexico • timely notifications of treaty partners of submitted MAP requests or providing information on pending MAP cases. <p>Furthermore, the MAP caseload has more than doubled since 1 January 2016, which regards both attribution/allocation and other MAP cases. This may also indicate that the competent authority is not adequately resourced to cope with this increase.</p>	<p>While Mexico has performed an internal reorganisation for of the department responsible for handling attribution/allocation cases and the development of internal system to control MAP inventory, the increase in the average time needed to close MAP cases and the doubling of the MAP inventory warrants that Mexico should devote additional resources to its competent authority to handle MAP cases, in particular attribution/allocation cases and also to be able to cope with the increase in the number of attribution/allocation and other MAP cases, such to be able to resolve all MAP cases in a timely, efficient and effective manner. Such addition of resources should also enable Mexico to:</p> <ul style="list-style-type: none"> • establish contacts after a MAP request was submitted • timely submit position papers to treaty partners • timely obtain the relevant information on the case when it relates to an adjustment made by Mexico • timely notify treaty partners of submitted MAP requests or providing information to them on pending MAP cases.

[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty

Jurisdictions should ensure that the staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty, in particular without being dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty.

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

Functioning of staff in charge of MAP

240. Mexico reported that its internal legal and administrative framework provides that staff of its competent authority only takes into consideration the merits of cases when handling MAP cases. Mexico further reported that in practice, staff in charge of the MAP case needs to make a thorough analysis before preparing a draft position paper. Mexico reported that each position paper needs to be approved by a nominated supervisor within the competent authority and subsequently by the head of Mexico's competent authority. While the head of Mexico's competent authority for attribution/allocation cases is also the head of the audit department, Mexico reported that its competent authority neither consults nor involves any other personnel directly involved in the adjustment at issue when dealing with MAP cases.

241. In regard of the above, Mexico reported that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment at issue and the process for negotiating MAP agreements is not influenced by policy considerations that Mexico wants to see reflected in future amendments to the treaty.

Recent developments

242. In the stage 1 report, based on peer input provided (see below), the risk was identified that staff in charge of MAP depends on the direction given by the tax administration personnel directly involved in the adjustment at issue, as in some cases staff in charge of MAP cases did not seem to have received accurate information from the tax administration personnel who made the adjustment at issue. In this respect, Mexico was recommended to ensure that the competent authority is provided with all relevant information on the case when the adjustment under review in MAP follows from an Mexican initiated adjustment.

243. In regard of this information, Mexico reported that, as is stated in its stage 1 peer review report, when the MAP case under review follows from an adjustment by Mexico's local tax administration, staff in charge of MAP has access to all information with no restrictions and also files related to such adjustment are made available by the personnel in charge of the tax adjustment.

Practical application

Period 1 January 2016-31 December 2017 (stage 1)

244. All but one peer that provided input reported no impediments in Mexico to perform its MAP function in the absence of approval or the direction of the tax administration personnel directly involved in the adjustments at issue or being influenced by considerations of the policy. One peer specifically mentioned that it is not aware that staff in charge of the MAP in Mexico is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

245. The remaining peer, however, expressed a concern that based on its experience with Mexico, if insufficient or inaccurate information is shared by the tax administration personnel who made the adjustment at issue, this might affect the authority and independency of Mexico's competent authority. This peer therefore suggested that in such cases Mexico ensures that sufficient and accurate information is shared by the tax administration. Mexico responded to this input only in general and stated that the analysis made by its competent authority is not influenced by the personnel in charge of audits, since it has full capacity and

formal authority to enter into MAP agreements. Mexico further emphasised that Mexico's competent authority relies on the tax administration personnel who made the adjustment at issue to collect facts only and that the latter does not influence Mexico's competent authority's position in a given case.

Period 1 January 2018-31 August 2019 (stage 2)

246. All peers that provided input in stage 2 stated that the update report provided by Mexico fully reflects their experience with Mexico since 1 January 2018 and/or there are no additions to the previous input given. One of these peers that provided input in stage 1, which is reflected in the previous paragraph, provided additional input during stage 2 and mentioned that it still has a concern on independency and authority of Mexico's competent authority for specific MAP cases, because it experienced difficulties to have communicates, or be able to initiate negotiations, with Mexico's competent authority in relation to an attribution/allocation case since 2018, even though it had initiated contacts for that purpose. It therefore concluded that the situation addressed previously has not been improved.

247. Mexico responded to this input and mentioned that it ensures that its competent authority has sufficient authority and independency in conducting MAP for all cases. In this respect, Mexico clarified that for the case the peer referred to, its competent authority requested – after consultation with the peer's competent authority – the taxpayer to provide additional documentation. Upon submission, the documents were evaluated jointly by the tax administration personnel that directly was involved in the adjustment at issue and the competent authority, such with a view to ensure that the competent authority's positions rely on accurate information.

248. Based on the input and the response given, both competent authorities had a further communication on the case and agreed to keep close communication for resolving MAP cases effectively and efficiently. In that regard, the peer noted that it would consider reviewing its input on this issue based on its future MAP experiences with Mexico.

249. Two of these peers provided input relating to experiences in relation to the authority of the competent authority to resolve MAP cases that arose after 31 August 2019, which is after the applicable review period for stage 2.

250. One peer reported that it was informed by taxpayers that Mexico's tax audit function is having discussions to resolve transfer pricing based tax matters for domestic tax purposes in Mexico even after the taxpayer had filed its MAP case with the peer and the peer had informed Mexico's competent authority that it had accepted the taxpayer's MAP request on the adjustment. This peer noted that in its understanding from the taxpayers that, pursuant to any settlement with Mexico's tax audit function, the taxpayer would agree not to file a MAP request or agree to withdraw an existing MAP request with respect to the transfer pricing issue settled through this domestic procedure in Mexico. In this respect, this peer recommends that Mexico respond to these concerns with respect to these audit agreements and the possible resulting barrier to MAP access it may create.

251. Mexico responded to this input and mentioned that according to Article 25 (1) MAP is available irrespective of internal remedies provided by domestic law, and it is taxpayer's choice to file a MAP request or to challenge tax determination by means of appeal or tax court. In this respect, Mexico noted that if there are cases where there is an adjustment resulting from a tax audit that is related to the non-compliance of domestic deductibility requirements, its competent authority respects the taxpayer's right to withdraw a MAP request and solve his taxation issues derived from the non-compliance of domestic deductibility requirements determinations by means of the domestic dispute resolution

procedures. In relation to this, Mexico also reported that its competent authority is still reflecting on its position on this issue.

252. Another peer reported that Mexico’s Tax Administration did not issue an assessment but, after the tax audit, it issued a “conclusion statement” and invited the taxpayer to submit a self-correction of its self-assessment. This peer further reported that Mexico’s competent authority has accepted the MAP request from the taxpayer concerned but only to explain the audit procedure and to allow the peer’s competent authority to agree on a corresponding adjustment. That is to say that Mexico’s competent authority is not going to discuss the case since it cannot depart from the adjustment. This peer noted that it is quite similar to certain countries’ position concerning audit settlements and it does not agree with such position.

253. In response to this input, Mexico mentioned that this specific case relates to an audit that concluded with the taxpayer accepting the adjustment determined by the audit unit, paying the additional income tax related to such adjustment, and applying domestic law benefits related to reduction of penalties and interest charges. Those benefits are granted through a procedure that is different from the audit functions. Mexico further mentioned that the Mexican taxpayer requested its competent authority to have communication with the peer’s competent authority since he had the intention to obtain relief in the other jurisdiction, with regard to the adjustment that he had already accepted in Mexico. In that regard, Mexico’s competent authority sent a position paper to the peer’s competent authority under Article 25 (since referring to this Article is the only way many jurisdictions activate their powers), explaining in detail the case that since the taxpayer accepted the adjustment and applied domestic law benefits related to the reduction of penalties and interest charges, it was only able to inform the details of the adjustment. Lastly, Mexico noted that the decision of giving relief to the taxpayer was on the peer’s competent authority.

Anticipated modifications

254. Mexico did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	There is a risk that staff in charge of MAP depends on the direction given by the tax administration personnel directly involved in the adjustment at issue as in some cases staff in charge of MAP did not seem to have received accurate information from the tax administration personnel who made the adjustment at issue.	Mexico should ensure that staff in charge of MAP can access all relevant information to enter into MAP agreements without being dependent on the tax administration personnel who made the adjustment at issue.

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

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

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

Performance indicators used by Mexico

256. Mexico reported that it has a system in place to monitor and evaluate annually the performance of staff in charge of MAP processes, such in accordance to internal objectives. In practice, Mexico reported that staff in its competent authority is mainly assessed on whether they made a thorough analysis of each MAP case. Mexico further reported that it uses performance indicators relating to the time taken to resolve MAP cases, while taking into account the complexities of each case.

257. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented for Mexico in the form of a checklist:

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

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

Recent developments

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

Practical application

Period 1 January 2016-31 December 2017 (stage 1)

260. All peers that provided input provided no specific input relating to this element of the Action 14 Minimum Standard. One peer particularly noted that it was not aware of the use of performance indicators by Mexico that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Period 1 January 2018-31 August 2019 (stage 2)

261. All peers that provided input in stage 2 stated that the update report provided by Mexico fully reflects their experience with Mexico since 1 January 2018 and/or there are no additions to the previous input given.

Anticipated modifications

262. Mexico did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

263. The inclusion of an arbitration provision in tax treaties may help ensure that MAP cases are resolved within a certain timeframe, which provides certainty to both taxpayers and competent authorities. In order to have full clarity on whether arbitration as a final stage in the MAP process can and will be available in jurisdictions it is important that jurisdictions are transparent on their position on MAP arbitration.

Position on MAP arbitration

264. Mexico reported that it has no domestic law limitations for including MAP arbitration in its tax treaties but its tax treaty policy is not to include a mandatory and binding arbitration provision in its bilateral tax treaties. While Mexico was a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument but it did not opt in for part VI of this instrument, which includes a mandatory and binding arbitration provision.

265. In addition, Mexico reserved the right in the Commentary to Article 25 of the OECD Model Tax Convention not to include paragraph 5 in its tax treaties but it is open to include a voluntary arbitration clause in some tax treaties, which position is also reflected in its MAP profile.

Recent developments

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

Practical application

267. Up to date, Mexico has incorporated an arbitration clause in 11 of 61 treaties as a final stage to the MAP. These clauses are all providing for a voluntary and binding arbitration. In this respect, Mexico reported in its MAP profiles that the relevant clauses require the exchange of diplomatic notes in order to come into effect, which have not yet occurred with any of Mexico's treaty partners.

268. In addition, four of Mexico's tax treaties contain an arbitration provision based on a most-favoured nation clause.⁶ Mexico reported that none of the conditions included in the most-favoured nation clauses have been fulfilled and for that reason no negotiations on this issue have been initiated.

Anticipated modifications

269. Mexico did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2019.
2. Available at: www.sat.gob.mx/informacion_fiscal/normatividad/Paginas/tratados_fiscales.aspx. These statistics are up to and include fiscal year 2015.
3. For post-2015 cases, if the number of MAP cases in Mexico’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Mexico reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
4. Mexico’s 2016 and 2017 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for the years 2016-17. See further explanations in Annex B and C.
5. For pre-2016 and post-2015 Mexico follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.
6. This concerns the treaties with Belgium, the Netherlands, Spain and Switzerland.

References

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

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

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

Legal framework to implement MAP agreements

271. Mexico reported that the implementation of MAP agreements is subject to its domestic statute of limitation, which is provided by Article 67 and 146 of Mexico's Federal Fiscal Code. This statute of limitation is between five and ten years after the filing date of the taxpayer's tax return and always applies as none of Mexico's tax treaties contain the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017), as will be discussed under element D.3. Mexico clarified that the statute of limitation is, however, suspended:

- when a tax audit is undertaken by Mexico's tax authority (suspension until the notification of the assessment resulting from the audit)
- when an administrative appeal or trial is filed in Mexico.

272. In view of these possibilities Mexico reported that the taxpayer could benefit from a suspension of the statute of limitation if it opens a case before Mexico's courts and obtains a solution via MAP before the judgment is rendered. This, however, does not apply if tax audit is undertaken by a foreign tax authority or if the taxpayer does not appeal the final assessment made by Mexico's tax authority.

273. Concerning the process for implementing MAP agreements, Mexico reported that in practice taxpayers are notified of such agreements reached and are accordingly requested to file relevant information and an amended annual tax return within a 30-day timeframe. If taxpayers fail to file the amended tax return within this timeframe, Mexico reported that:

- in case of an upward adjustment, Mexico's tax authority would send a letter to the taxpayer to request a payment of corresponding taxes. Also an audit process might be triggered.
- In case of a downward adjustment, the authority in Mexico in charge of the tax refund process would nevertheless allow the refund, as long as it is still possible under its domestic statute of limitations.

274. In addition, Mexico reported that, if taxpayers have to request a tax refund, they must file a tax refund petition to an administrative unit that is separate from Mexico's competent authority. Such request has to be filed in accordance with domestic regulations provided in Article 22 of the Federal Fiscal Code.

275. Administrative Rule 2.1.32 mentions that taxpayers will be informed of a MAP agreement reached, but does not specify the process they need to follow to ensure implementation of such an agreement. In this respect, section C.10 of Mexico's MAP guidance includes information on the implementation process as outlined above.

276. As to the monitoring of the implementation of MAP agreements, Mexico further reported that its competent authority follows up the implementation of such agreements by requesting information from the taxpayer to ensure the MAP agreement is implemented in attribution/allocation cases and by notifying the MAP agreement to be implemented to the office in charge of implementation in other cases.

Recent developments

277. With respect to the process for implementing MAP agreements, it was in Mexico's stage 1 peer review report identified that the time limit for taxpayers to submit a refund request, being 30 days as from the date of the MAP agreement, bears the risk that not all MAP agreements will be implemented. In that regard Mexico was recommended to closely monitor whether this period in practices not acts as an obstruction to implement said agreements and, if so, that Mexico should consider amending this process. In this respect, and as will be discussed below, since Mexico nor peers reported any impediments as regards the implementation of MAP agreements due to the time period for requesting an amendment of the tax return, the recommendation made in stage 1 has been addressed.

Practical application

Period 1 January 2016-31 December 2017 (stage 1)

278. Mexico reported that in the period 1 January 2016-31 December 2017 it has reached two MAP agreements (both in 2016). One of these two agreements required an implementation by Mexico, for which it confirmed they were implemented. As to the domestic statute of limitation, Mexico reported that this is taken into account by its competent authority when entering into a MAP agreement, which causes that all MAP agreements reached can be implemented and for that reason there were no cases where a MAP agreement could not be implemented due to its statute of limitation.

279. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2016-31 December 2017 that was not implemented by the Mexico. Also taxpayers reported no difficulties in relation to implementation of MAP agreements.

Period 1 January 2018-31 August 2019 (stage 2)

280. Mexico reported that since 1 January 2018 its competent authority has entered into four MAP agreements that needed to be implemented by Mexico. In that regard, Mexico reported that these cases are pending implementation. Mexico also reported that there were no cases where an agreement was not entered into due to its domestic statute of limitation of 5-10 years.

281. All peers that provided input in stage 2 stated that the update report provided by Mexico fully reflects their experience with Mexico since 1 January 2018 and/or there are no additions to the previous input given.

Anticipated modifications

282. Mexico reported that the amendment of its Federal Fiscal Code was published on 9 December 2019 and that as of 1 January 2020 all MAP agreements reached by Mexico will be implemented, regardless the statute of limitations. It further reported that such modification does not differentiate whether the adjustment was made at the level of the treaty partner or in Mexico.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

[D.2] Implement all MAP agreements on a timely basis

Agreements reached by competent authorities through the MAP process should be implemented on a timely basis.

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

Theoretical timeframe for implementing mutual agreements

284. As discussed under element D.1, the taxpayer is given 30 days to file an amended tax return and provide the necessary information to implement MAP agreements. This timeframe is not specified in Mexico's MAP guidance. Apart from the time given to the taxpayer to submit an amended tax return in order for the MAP agreement to be implemented, Mexico reported that no timeline is given to Mexico's tax authority to effectively implement MAP agreements, provided that it can be implemented in Mexico under its domestic statute of limitation.

Recent developments

285. With respect to the recommendation made in the stage 1 peer review report, as to timely implementation of MAP agreements, Mexico indicated that it intends to enhance communication with its peers regarding the implementation and closing process of each MAP case, since the delay in the implementation identified in stage 1 was not related to domestic limitations/regulations or an issue related to Mexico's competent authority performance. In this respect, Mexico reported that it has enhanced its communication process with its treaty partners through telephone calls, official letters and emails with the aim of constantly following up on any issues derived from the conclusion of a MAP case. By doing so, the recommendation included in the stage 1 peer review report has been followed up.

Practical application

Period 1 January 2016-31 December 2017 (stage 1)

286. As discussed under element D.1, in the period 1 January 2016-31 December 2017, Mexico reported that it entered into two MAP agreements, one of which required an implementation by Mexico. In this respect, Mexico reported having implemented such an agreement and that no noticeable delays have occurred.

287. Almost all peers that provided input indicated not having experienced any issues with Mexico regarding the implementation of MAP agreements reached on a timely basis. One peer, however, mentioned that it is aware of one MAP agreement which was not implemented timely and that it experienced delays in exchanging closing notes after reaching a MAP agreement with Mexico. Therefore, this peer suggested that Mexico's competent authority identifies the actions it could take to accelerate the implementation of MAP agreements, and to provide insight to peers if it is experiencing internal delays.

288. Mexico responded to this input and stated that these delays resulted from administrative procedures that must be followed within the Mexican government in order to implement a MAP agreement and that some of these procedures require co-ordination with, and handling by, departments or agencies outside of Mexico's competent authority. Mexico further reported that for this reason, its competent authority does not have complete control over the timing of the implementation process of MAP agreements (such as in the case of refunds). Mexico recognised that without clear communication with the peer, uncertainties can arise as to the reason for the delay or how long the delay will last. Accordingly, Mexico reported that its competent authority will endeavour to enhance communication with peers when delays affect the implementation of a MAP agreement.

Period 1 January 2018-31 August 2019 (stage 2)

289. As mentioned under element D.1, Mexico has since 1 January 2018 entered into four MAP agreements that needed to be implemented by Mexico. In that regard, Mexico reported that these cases are pending implementation.

290. All peers that provided input in stage 2 stated that the update report provided by Mexico fully reflects their experience with Mexico since 1 January 2018 and/or there are no additions to the previous input given.

Anticipated modifications

291. Mexico did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

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

Legal framework and current situation of Mexico's tax treaties

293. As discussed under element D.1, Mexico's domestic legislation includes a statute of limitations of five to ten years for implementing MAP agreements, unless overridden by tax treaties.

294. Out of Mexico's 61 tax treaties two contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. However, for one treaty the protocol to this treaty also contains a provision that stipulates that any MAP agreement reached shall be implemented within ten years from the due date or the date of filing of the tax return. For another treaty, the protocol to this treaty also contains a provision that introduces a time limit for implementation of MAP agreements at the level of Mexico. As both provision may obstruct the full implementation of a MAP agreement notwithstanding domestic time limits in both states, both treaties are considered not having the full equivalent of the second sentence of Article 25(2) of the OECD Model Tax Convention.

295. Further to the above, one of 61 treaties contains the alternative provisions for Article 9(1) and Article 7(2), setting a time limit for making adjustments. Two other tax treaties contain the alternative provision in Article 9(1) only.

296. In view of the above, the fact that none of Mexico's tax treaties contain the second sentence of Article 25 stems from the fact that it reserved in the Commentary to Article 25 of the OECD Model Tax Convention the right not to include the second sentence of paragraph 2 in its tax treaties.

297. Almost all peers that provided input reported that their treaty with Mexico is not in line with element D.3 and mentioned that they were aware of Mexico's reservation to the Multilateral Instrument not to include Article 25(2), second sentence, of the OECD Model Tax Convention in its tax treaties. One peer expressed concerns about the current wording of its tax treaty with Mexico, as in its view it might obstruct the implementation of MAP agreements by Mexico when they are later than ten years after the due date or the date of filing of the tax return. This peer expressed that its expectations were that Mexico's practice does not obstruct the implementation of MAP agreements and that they enter into discussions with a view to amend their treaty.

Recent developments

Bilateral modifications

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

Multilateral Instrument

299. Mexico signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected during the next period of sessions of the Senate which starts on 1 September 2020.

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

301. Mexico has, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, of the Multilateral Instrument. Therefore, at this stage the Multilateral Instrument will not modify the 61 treaties referred to previously to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Other developments

302. Mexico reported that with the depositing of its instrument of ratification of the Multilateral Instrument, it will withdraw its reservation under Article 16(5)(c) and by doing so opt for its treaties to be modified to include Article 25(2), second sentence, of the OECD Model Tax Convention. In this respect, Mexico noted that it will list all of its 60 treaties that do not contain the second sentence or the alternative provisions for Article 9(1) and Article 7(2) and for all them will it make a notification on the basis of Article 16(6)(c)(ii). If the choices made by the treaty partners are taken into account, the anticipated effect of the Multilateral Instrument is that 47 of the 60 treaties will be modified to include the second sentence of Article 25(2) of the OECD Model Tax Convention.

303. If the above anticipated effect of the Multilateral Instrument is taken into account once Mexico updates its list of reservations and notifications under that instrument, there will be 13 tax treaties remaining that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternative provisions provided for in Article 9(1) and Article 7(2) and that will not be modified by the Multilateral Instrument.

Mexico has put a plan in place for the bilateral renegotiations of those tax treaties and for four of them it has already taken action to that effect. These actions can be divided between the jurisdictions that signed and did not sign the Multilateral Instrument.

304. In total seven of the 13 treaties regard treaty partners that signed the Multilateral Instrument. Mexico reported that the non-modification of the treaty by this instrument after Mexico's withdrawal of the reservation and the making of the necessary notifications, follows from the fact that the relevant treaty partners have not included the treaty with Mexico either as a covered tax agreement under that instrument, made a reservation under Article 16(5)(c) or did not make for the treaty with Mexico a notification pursuant to Article 16 (6)(c)(ii). In this respect, Mexico reported the following developments:

- It finalised negotiations with two treaty partners on an amendment to the treaty to include Article 25(2), second sentence, of the OECD Model Tax Convention.
- It has contacted four treaty partners to update their notifications under Article 16 (6)(c)(ii) of the Multilateral Instrument with a view to be in line with element D.3, but that it has not received a response from two of them. The two other treaty partners responded that they will update their notifications under the Multilateral Instrument.
- For the remaining treaty, for which the treaty partner made a reservation pursuant to Article 16(5)(c) of the Multilateral Instrument, Mexico reported that it tends to approach the relevant treaty partner with a view to amend the treaty in order to meet the requirements under element D.3.

305. For the other six treaties with treaty partners that are not a signatory to the Multilateral Instrument, Mexico reported that:

- Negotiations are pending with one treaty partner on an amendment to the treaty *inter alia* to include the second sentence of Article 25(2).
- It has reached out to three treaty partners with a request to enter into negotiations on the amendment of the treaty *inter alia* to include the second sentence of Article 25(2). So far, only one treaty partner responded that it intends to sign the Multilateral Instrument in 2020 and will list the treaty with Mexico as a covered tax agreement under that instrument and make the necessary notification.

Peer input

306. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Mexico. These peers concerns a treaty partner to the treaty identified above that does not contain Article 25(2), second sentence, of the OECD Model Tax Convention. In line with the above analysis, both peers noted that their treaty with Mexico will not be modified by the Multilateral Instrument, due to the reservation made by Mexico. Mexico responded that with the ratification of the Multilateral Instrument, it will withdraw its reservation under Article 16(5)(c) of the instrument and accordingly the relevant treaties will be modified by the instrument upon its entry into force for these treaties.

Anticipated modifications

307. Further to the developments reported in paragraph 303 above, for the two treaties concerned, for which the relevant treaty partners have not responded to Mexico outreach to modify their notifications under the Multilateral Instrument, Mexico noted that it will reach out to the respective treaty partners again to identify whether it is for them possible

to amend their notifications under the Multilateral Instrument and if this is not possible, what is the most favourable way to bring the treaty in line with the requirements under the Action 14 Minimum Standard. It, however, has not put a specific plan in place to that effect nor has it taken any actions for the renegotiations of these tax treaties.

308. For the remaining two treaty partners that are not a signatory to the Multilateral Instrument, Mexico reported that it envisages initiating communications with them with the request for signing an amending protocol in order to meet the requirements under the Action 14 Minimum Standard in the future once all other negotiations have been completed. One of these two treaties, however, has not yet entered into force due to the treaty partner not having ratified the treaty. For this treaty Mexico specified that it will contact the relevant treaty partner once it has ratified the newly signed treaty, such with a view to enter into an amending protocol to also include the second sentence.

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>60 out of 61 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these 60 treaties:</p> <ul style="list-style-type: none"> • 47 are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once Mexico withdraws its reservation and changes notifications under the instrument. • Two are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partners have updated their notifications under the instrument. • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has signed the instrument and made the necessary notifications. • For two negotiations have been completed on the amendment of the treaty to include the required provision. • Eight will not be modified by the Multilateral Instrument to include the required provision. With respect to these nine treaties: <ul style="list-style-type: none"> - For one negotiations are pending. - For two, the treaty partners have been approached to update their notifications under the Multilateral Instrument with a view to modify the treaty to include the required provision, but Mexico has not received a response. - Mexico has approached two treaty partners to initiate discussions on the amendment of the treaty with a view to include the required provision, but the treaty partner has not yet responded. - For three no actions have been taken, but are included in the plan for renegotiations. 	<p>Mexico should as quickly as possible ratify the Multilateral Instrument, and with that ratification follow its state intention to withdraw its reservation and changes notifications under the instrument, to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in 50 of the 60 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for 47 of the 50 treaties concerned and once one treaty partner signed and ratified the instrument and two other treaty partners amended their notifications under that instrument.</p> <p>Furthermore, Mexico should as quickly as possible sign and ratify the amending protocol to two treaties to have in place the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.</p> <p>For the remaining eight treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention following its entry into force to include such equivalent, Mexico should:</p> <ul style="list-style-type: none"> • continue negotiations with one treaty partner for which negotiations are currently pending to include the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. • For two treaties, if the relevant treaty partners do not modify their notifications under the Multilateral Instrument, request without further delay the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. • Upon receipt of a response from the relevant two treaty partners agreeing to include the required provision, work towards updating the treaty to include this provision or be willing to accept the inclusion of both alternative provisions. • For three treaties request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations or be willing to accept the inclusion of both alternative provisions.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	One out of 61 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. This treaty will be modified by the Multilateral Instrument to include the required provision.	Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.
[A.2]	-	-
Part B: Availability and access to MAP		
	Two out of 61 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either as it read prior to the adoption of the Action 14 final report. Both tax treaties are expected to be modified by the Multilateral Instrument to include the required provision.	Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report in those treaties that currently do not contain such equivalent.
[B.1]	<p>Five out of 61 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these five treaties:</p> <ul style="list-style-type: none"> • Four are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • One will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. For this treaty Mexico has approached the relevant treaty partner to initiate discussions on the amendment of the treaty with a view to include the required provision, but the treaty partner has not yet responded. 	<p>Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in four of the five treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Mexico should, upon receipt of a response from the relevant treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision</p>

	Areas for improvement	Recommendations
[B.1]	<p>One out of 61 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, but will so as to the second sentence. For this treaty negotiations are envisaged.</p>	<p>Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in this treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.</p> <p>With respect to the first sentence, Mexico should continue the process to initiate negotiations with the treaty partner to include the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> as amended in the final report of Action 14; or as it read prior to the adoption of final report of Action 14, thereby including the full sentence of such provision.
	<p>Access to MAP is denied in eligible cases where the issue under dispute has already been decided via the judicial or administrative remedies provided under domestic law.</p>	<p>Mexico should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP and should not deny access to MAP when the issue under dispute has already been decided via the judicial or administrative remedies provided under domestic law.</p>
[B.2]	<p>60 of the 61 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention, as amended by the Action 14 Final Report and allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.</p>	<p>Mexico should without further delay follow its stated intention to introduce a documented notification and/or consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Mexico should apply such process for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 Final Report.</p>
[B.3]	-	
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	<p>27 out of 61 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 27 treaties:</p> <p>24 are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.</p> <ul style="list-style-type: none"> One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention once the treaty partner has signed the instrument. Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these two treaties: <ul style="list-style-type: none"> Negotiations are pending with one treaty partner. Mexico has approached one partner to initiate discussions on the amendment of the treaty with a view to include the required provision, but the treaty partner has not yet responded. 	<p>Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in 25 of the 27 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for 24 of the 25 treaties concerned and once the other treaty partner signed and ratified the instrument.</p> <p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention following its entry into force, Mexico should:</p> <ul style="list-style-type: none"> continue negotiations with one treaty partner with a view to include the required provision upon receipt of a response from the relevant treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision.

	Areas for improvement	Recommendations
[B.8]	-	-
[B.9]	-	-
[B.10]	The effects of the administrative or statutory dispute/resolution settlement processes on the MAP process are not addressed in the guidance on such process.	Mexico should without further delay clarify in its guidance on the administrative or statutory dispute settlement/resolution process available in Mexico should clarify the effects on MAP when the case was resolved through such dispute settlement/resolution process.
Part C: Resolution of MAP cases		
[C.1]	<p>27 out of 61 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these 27 treaties:</p> <ul style="list-style-type: none"> • 19 are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention once the treaty partner has signed the instrument and made the necessary notifications. • Seven will not be modified by the Multilateral Instrument to include the required provision. With respect to these seven treaties: • For five, the treaty partners have been approached to update their notifications under the Multilateral Instrument with a view to modify the treaty to include the required provision. Of these five: <ul style="list-style-type: none"> - For one Mexico has received a response and agreed with the treaty partner to enter into negotiations on an amending protocol to the treaty. - For the remaining four, Mexico is awaiting a response. - Mexico has approached one partner to initiate discussions on the amendment of the treaty with a view to include the required provision, but the treaty partner has not yet responded. - For one no actions have been taken, but are planned to be taken. 	<p>Mexico should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention in 20 of the 27 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for 19 of the 20 treaties concerned and once the other treaty partner signed and ratified the instrument</p> <p>For the remaining seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention following its entry into force, Mexico should:</p> <ul style="list-style-type: none"> • initiate the envisaged negotiations with one treaty partner with a view to include the required provision. • For four treaties, if the relevant treaty partners do not modify their notifications under the Multilateral Instrument, request the required provision via bilateral negotiations. • Upon receipt of a response from the relevant treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision. • For one treaty request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations.
[C.2]	-	-

	Areas for improvement	Recommendations
[C.3]	<p>MAP cases were resolved in 37.79 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This regards attribution/allocation cases, as the average time needed to close these cases was 44.75 months, whereas for other cases the average time was below 24 months (22.49 months). The average completion time has also increased substantially in 2018 as compared to the period 2016-17. There is therefore a risk that post-2015 are not resolved within the average of 24 months, which may indicate that the competent authority is not adequately resourced. In this respect, some peers have experienced difficulties in resolving both type of MAP cases in a timely efficient and effective manner, which in particular concerns:</p> <ul style="list-style-type: none"> • establishing of contacts after a MAP request was submitted • timely submission of position papers to treaty partners • timely obtaining the relevant information on the case when it relates to an adjustment made by Mexico • timely notifications of treaty partners of submitted MAP requests or providing information on pending MAP cases. <p>Furthermore, the MAP caseload has more than doubled since 1 January 2016, which regards both attribution/allocation and other MAP cases. This may also indicate that the competent authority is not adequately resourced to cope with this increase.</p>	<p>While Mexico has performed an internal reorganisation for of the department responsible for handling attribution/ allocation cases and the development of internal system to control MAP inventory, the increase in the average time needed to close MAP cases and the doubling of the MAP inventory warrants that Mexico should devote additional resources to its competent authority to handle MAP cases, in particular attribution/allocation cases and also to be able to cope with the increase in the number of attribution/allocation and other MAP cases, such to be able to resolve all MAP cases in a timely, efficient and effective manner. Such addition of resources should also enable Mexico to:</p> <ul style="list-style-type: none"> • establish contacts after a MAP request was submitted • timely submit position papers to treaty partners • timely obtain the relevant information on the case when it relates to an adjustment made by Mexico • timely notify treaty partners of submitted MAP requests or providing information to them on pending MAP cases.
[C.4]	<p>There is a risk that staff in charge of MAP depends on the direction given by the tax administration personnel directly involved in the adjustment at issue as in some cases staff in charge of MAP did not seem to have received accurate information from the tax administration personnel who made the adjustment at issue.</p>	<p>Mexico should ensure that staff in charge of MAP can access all relevant information to enter into MAP agreements without being dependent on the tax administration personnel who made the adjustment at issue.</p>
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-

	Areas for improvement	Recommendations
[D.3]	<p>60 out of 61 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these 60 treaties:</p> <ul style="list-style-type: none"> • 47 are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once Mexico withdraws its reservation and changes notifications under the instrument. • Two are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partners have updated their notifications under the instrument. • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has signed the instrument and made the necessary notifications. • For two negotiations have been completed on the amendment of the treaty to include the required provision. • Eight will not be modified by the Multilateral Instrument to include the required provision. With respect to these eight treaties: <ul style="list-style-type: none"> - For one negotiations are pending. - For two, the treaty partners have been approached to update their notifications under the Multilateral Instrument with a view to modify the treaty to include the required provision, but Mexico has not received a response. - Mexico has approached two treaty partners to initiate discussions on the amendment of the treaty with a view to include the required provision, but the treaty partner has not yet responded. - For three no actions have been taken, but are included in the plan for renegotiations. 	<p>Mexico should as quickly as possible ratify the Multilateral Instrument, and with that ratification follow its state intention to withdraw its reservation and changes notifications under the instrument, to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in 48 of the treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for 45 of the 48 treaties concerned and once one treaty partner signed and ratified the instrument and two other treaty partners amended their notifications under that instrument.</p> <p>Furthermore, Mexico should as quickly as possible sign and ratify the amending protocol to two treaties to have in place the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.</p> <p>For the remaining eight treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention following its entry into force to include such equivalent, Mexico should:</p> <ul style="list-style-type: none"> • continue negotiations with one treaty partner for which negotiations are currently pending to include the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. • For two treaties, if the relevant treaty partners do not modify their notifications under the Multilateral Instrument, request without further delay the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. • Upon receipt of a response from the relevant two treaty partners agreeing to include the required provision, work towards updating the treaty to include this provision or be willing to accept the inclusion of both alternative provisions. • For three treaties request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations or be willing to accept the inclusion of both alternative provisions.

Annex A

Tax treaty network of Mexico

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

Treaty partner	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC	Arbitration		
	B.1	B.1			C.1	D.3			A.1	B.7
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
		Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
	DTC in force?	If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)			
Belgium	Y	O*	Y	N/A	i	Y	N	Y	N*	N
Brazil	Y	O	i	N/A	i	Y	N	Y	N	N
Canada	Y	O	Y	N/A	i	Y	iii	Y	N*	Y
Chile	Y	O	i	N/A	i	Y	ii	Y	N*	Y
China (People's Republic of)	Y	O	Y	N/A	i	N*	N	Y	N*	N
Colombia	Y	O*	ii*	18 months	i	Y	N	Y	N*	N
Costa Rica	Y	O**	Y	N/A	i	Y	N	Y	Y	N
Czech Republic	Y	O*	ii	4 years	i	N*	N	Y	Y	N
Denmark	Y	O*	i	N/A	i	N*	N	Y	Y	N
Ecuador	Y	O	ii	2 years	i	Y	N	Y	N	N
Estonia	Y	O*	Y	N/A	i	N*	N	Y	Y	N
Finland	Y	O*	Y	N/A	i	N*	N	Y	Y	N
France	Y	O*	ii*	2 years	i	Y	N	N*	N*	N
Germany	Y	O	Y	N/A	i	Y	N	Y	Y	N

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

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration					
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6											
Luxembourg	Y	O*	Y	N/A	Y	i	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Malta	Y	O*	Y	N/A	Y	Y	i	N*	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Netherlands	Y	O*	Y	N/A	Y	Y	i	Y	N	Y	N	Y	N*	Y	N*	Y	N*	Y	N	N
New Zealand	Y	O*	ii	4 years	i	i	i	N*	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Norway	Y	O*	Y	N/A	Y	i**	i	N*	N	Y	N	Y	N*	Y	N*	Y	N*	Y	N	N
Panama	Y	O*	Y	N/A	Y	i	i	N*	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Peru	Y	O	Y	N/A	Y	Y	i	Y	N	Y	N	Y	N*	Y	N*	Y	N*	Y	N	N
Philippines	Y	O	Y	N/A	Y	Y	i	N	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Poland	Y	O	i	N/A	i	i**	i	N*	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Portugal	Y	O	Y	N/A	Y	Y	i	Y	N	Y	N	Y	N*	Y	N*	Y	N*	Y	Y	N
Qatar	Y	O*	ii*	2 years	i	i	i	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Romania	Y	O	Y	N/A	i	i	i	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
Russia	Y	N*	i	N/A	i	i	i	Y	N	Y	N	Y	N*	Y	N*	Y	N*	Y	N	N
Saudi Arabia	Y	O*	Y	N/A	Y	Y	i	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Singapore	Y	O	i	N/A	i	i**	i	N*	N	Y	N	Y	N*	Y	N*	Y	N*	Y	Y	Y
Slovak Republic	Y	O	Y	N/A	Y	Y	i	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.1	Article 9(2) of the OECD MTC	B.3	B.4	Article 25(2) of the OECD MTC	C.1	D.3	A.1	B.7	C.6	Arbitration							
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?										
South Africa	Y	O	Y	i	i	N*	N	Y	Y	Y	N									
Spain	Y	O	Y	Y	i	Y	N	Y	Y	N*	N									
Sweden	Y	O*	iv	Y	i	Y	N	Y	Y	N*	N									
Switzerland	Y	O*	ii*	i**	i	Y	ii	Y	Y	N	N									
Turkey	Y	O*	Y	Y	i	Y	N	Y	Y	Y	N									
Ukraine	Y	O*	Y	i	i	N	N	Y	Y	Y	N									
United Arab Emirates	Y	O*	Y	Y	i	Y	N	Y	Y	Y	N									
United Kingdom	Y	O*	i	Y	i	Y	N	Y	Y	N*	Y									
United States	Y	O	i	i	i	N	N	Y	Y	Y	Y									
Uruguay	Y	O*	ii	i	i	N*	N	Y	Y	N*	N									

Annex B

MAP Statistics Reporting for the 2016, 2017 and 2018 Reporting Periods (1 January 2016 to 31 December 2018) for Pre-2016 Cases

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	10	0	0	0	0	0	1	1	0	0	0	8	44.00
Others	6	0	0	0	0	0	0	0	0	1	2	3	28.00
Total	16	0	0	0	0	0	1	1	0	1	2	11	34.40

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	8	0	0	0	0	0	0	0	1	0	0	7	22.00
Others	3	0	1	0	0	0	0	0	0	0	0	2	17.00
Total	11	0	1	0	0	0	0	0	1	0	0	9	19.50

Notes: There is a discrepancy between the number of pre-2016 MAP cases in Spain's inventory as per 31 December 2016 and 1 January 2017.

- The reported number of MAP cases pending on 31 December 2016 was 208, which consists of 148 attribution/allocation cases and 60 other cases.
 - The reported number of MAP cases pending on 1 January 2017 was 203, which consists of 143 attribution/allocation cases and 60 other cases.
- In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of pre-2016 cases pending on per 1 January 2016 was corrected.

2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including disagreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	7	0	0	0	0	0	4	0	0	0	0	3	80.00
Others	2	0	0	0	0	0	0	0	0	0	0	2	n.a.
Total	9	0	0	0	0	0	4	0	0	0	0	5	80.00

Notes: There is a discrepancy between the number of pre-2016 MAP cases in Spain's inventory as per 31 December 2017 and 1 January 2018.

- The reported number of MAP cases pending on 31 December 2017 was 125, which consists of 79 attribution/allocation cases and 47 other cases.
- The reported number of MAP cases pending on 1 January 2018 was 125, which consists of 79 attribution/allocation cases and 46 other cases.

In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of pre-2016 cases pending on per 1 January 2016 was corrected.

Annex C

MAP Statistics Reporting for the 2016, 2017 and 2018 Reporting Periods (1 January 2016 to 31 December 2018) for Post-2015 Cases

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

2017 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	8	6	1	0	0	1	0	0	0	0	0	0	0	12	10.06
Others	3	3	0	0	0	0	0	0	0	0	0	0	0	6	-1.00
Total	11	9	1	0	0	1	0	0	0	0	0	0	0	18	10.06

Notes: There is a discrepancy between the number of post-2015 MAP cases in Spain's inventory as per 31 December 2016 and 1 January 2017.

- The reported number of MAP cases pending on 31 December 2016 was 79, which consists of 55 attribution/allocation cases and 24 other cases.
- The reported number of MAP cases pending on 1 January 2017 was 77, which consists of 53 attribution/allocation cases and 24 other cases. In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of post-2015 cases received in 2016 was corrected.

2018 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	12	12	0	0	0	1	0	1	0	0	0	0	0	22	16.63
Others	6	7	0	0	1	0	0	0	0	0	0	0	0	12	11.44
Total	18	19	0	0	1	1	0	1	0	0	0	0	0	34	17.86

Notes: There is a discrepancy between the number of post-2015 MAP cases in Spain's inventory as per 31 December 2017 and 1 January 2018.

- The reported number of MAP cases pending on 31 December 2017 was 149, which consists of 92 attribution/allocation cases and 57 other cases.
 - The reported number of MAP cases pending on 1 January 2018 was 154, which consists of 96 attribution/allocation cases and 58 other cases.
- In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of post-2015 cases received in 2017 was corrected.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Guidance	Administrative rule 2.1.32 addressing MAP in Mexico combined with Procedure form 244/CFF applicable to submit a MAP request in Mexico
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
PRODECON	Procuraduría de la Defensa del Contribuyente, Mexico’s taxpayers advocacy agency
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2018
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process.

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



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