

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Foreword

Digitalisation and globalisation have had a profound impact on economies and the lives of people around the world, and this impact has only accelerated in the 21st century. These changes have brought with them challenges to the rules for taxing international business income, which have prevailed for more than a hundred years and created opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.

In 2013, the OECD ramped up efforts to address these challenges in response to growing public and political concerns about tax avoidance by large multinationals. The OECD and G20 countries joined forces and developed an Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions aimed at introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty.

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. As a result, they created the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and its subsidiary bodies. With over 140 members, the Inclusive Framework monitors and peer reviews the implementation of the minimum standards and is completing the work on standard setting to address BEPS issues. In addition to its members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

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

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

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

Viet Nam has an extensive tax treaty network with over 78 tax treaties. Viet Nam has an established MAP programme and has limited experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 11 cases pending on 31 December 2020. Overall Viet Nam meets less than half of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Viet Nam has worked to address them, which has been monitored in stage 2 of the process. In this respect, Viet Nam solved some of the identified deficiencies.

All of Viet Nam's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention (OECD, 2017). Its treaty network is mostly consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Approximately 17% of its tax treaties do not contain the equivalent of Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2017), requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.
- Approximately 15% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Approximately 10% of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017) 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, Viet Nam needs to amend and update a certain number of its tax treaties. In this respect, Viet Nam has 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. Viet Nam intends to ratify the Multilateral Instrument in 2022. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Viet Nam reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard, but it has not yet put in place a plan in relation hereto.

Viet Nam does not meet the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme, but this programme does not allow roll-back of bilateral APAs.

Viet Nam meets some requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it

has since 1 January 2017 not received any MAP request concerning cases where anti-abuse provisions are applied or cases where there has been an audit settlement. Furthermore, Viet Nam does not have 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. In addition, Viet Nam has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice under tax treaties.

Concerning the average time needed to close MAP cases, the MAP statistics for Viet Nam for the period 2017-20 are as follows:

2017-20	Opening inventory 1/1/2017	Cases started	Cases closed	End inventory 31/12/2020	Average time to close cases (in months)*
Attribution/allocation cases	6	6	1	11	23.15
Other cases	0	5	2	3	15.08
Total	6	8	3	14	17.77

* The average time taken for resolving MAP cases for post-2016 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2017 MAP cases, Viet Nam used as a start date when two tax authorities have received sufficient relevant information and documentation and agreed to start the bilateral MAP process and as the end date when two tax authorities agree to “close” (MAP is withdrawn by taxpayer) or “conclude” (MAP is solved/settled by the competent authorities) the MAP cases.

The number of cases Viet Nam closed in the period 2017-22 is less than the number of all new cases started in those years. Its MAP inventory as on 31 December 2020 increased as compared to its inventory as on 1 January 2017. During these years, MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 17.77 months. In this respect, peers experienced some difficulties in resolving MAP cases, in particular in obtaining position papers from Viet Nam’s competent authority, as well as responses to position papers issued by peers. Viet Nam is therefore recommended to ensure that adequate resources are made available for the competent authority function in order to resolve MAP cases in a timely, efficient and effective manner as well as the more timely issuing of position papers and responses thereto and sufficient authority for staff being present at the face-to-face meeting.

Furthermore, Viet Nam meets some of the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. However, it did not correctly match its MAP statistics according to the Statistics Reporting Framework for all the relevant years.

Lastly, Viet Nam almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements in principle, although no MAP agreements requiring implementation in Viet Nam have been entered into. However, it has a domestic statute of limitation, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), albeit that no problems have surfaced regarding implementation throughout the peer review process.

Reference

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

Introduction

Available mechanisms in Viet Nam to resolve tax treaty-related disputes

Viet Nam has entered into 78 tax treaties on income (and/or capital), 76 of which are in force.¹ These 78 treaties are being applied 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.

Under Viet Nam’s tax treaties, the competent authority function is assigned to the Minister of Finance and is further delegated to the General Department of Taxation (“**GDT**”). The competent authority of Viet Nam currently employs approximately fifteen full-time staff members who deal with both attribution/allocation and other MAP cases, in addition to other non-MAP-related duties.

Viet Nam intends to issue guidance on the governance and administration of the MAP in 2022, which will be available at:

www.gdt.gov.vn/wps/portal/english

Recent developments in Viet Nam

The stage 1 peer review report of Viet Nam noted that it was conducting tax treaty negotiations with two jurisdictions. Viet Nam reported that this remains the same.

Furthermore, on 9 February 2022, Viet Nam 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, Viet Nam submitted its list of notifications and reservations to that instrument.² In relation to the Action 14 Minimum Standard, Viet Nam has made one reservation pursuant to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure). The reservation is in relation to Article 16(5)(a), where Viet Nam reserves the right for the first sentence of Article 16(1) not to apply to its covered tax agreements on the basis that it intends to meet the Action 14 Minimum Standard by implementing a bilateral notification or consultation process with the competent authority of the other contracting jurisdiction for cases in which the competent authority to which the MAP case was presented does not consider the taxpayer’s objection to be justified. This bilateral notification process is in Viet Nam’s MAP Regulation dated 31 December 2021.

Where treaties will not be modified by the Multilateral Instrument, Viet Nam reported that it will strive to update them through future bilateral negotiations, and that it will contact

its treaty partners that do not sign the Multilateral Instrument or have signed the Multilateral Instrument but made a reservation for the relevant articles to update the existing treaties to be compliant with the Action 14 Minimum Standard. However, no details were shared as to the planned actions, specifically as regards which treaty partners are prioritised for bilateral negotiations.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Viet Nam's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Viet Nam, 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, Viet Nam's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 28 October 2020. This report identifies the strengths and shortcomings of Viet Nam in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.³ Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Viet Nam. In this update report, Viet Nam 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 Viet Nam 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 modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of Viet Nam's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received from peers and taxpayers

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

The period for evaluating Viet Nam's implementation of the Action 14 Minimum Standard for stage 1 ranged from 1 January 2018 to 31 December 2019 and formed the basis

for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2020 and depicts all developments as from that date until 31 October 2021.

For stage 1 of the peer review process, in total 11 peers provided input: Austria, China, Denmark, Germany, Hungary, Japan, Korea, Poland, Singapore, Switzerland and Türkiye. Out of these 11 peers, eight have experiences with Viet Nam in handling MAP cases. Generally, all peers that have MAP experiences with Viet Nam indicated having a good relationship with Viet Nam’s competent authority, some of them, however, experienced some procedural impediments to a timely and effective resolution of MAP cases.

During stage 2, the same peers provided input. In addition, the Netherlands and Spain provided input during this stage. Most peers that provided input reported that the update report of Viet Nam fully reflects the experiences these peers have had with Viet Nam since 31 December 2020. Some peers, however, reflected additional input or new experiences, which is reflected throughout this document under the elements where they have relevance. This input particularly relates to access to MAP and the resolution of MAP cases.

Input by Viet Nam and co-operation throughout the process

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

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

In addition, Viet Nam provided the following information:

- MAP profile⁴
- MAP statistics⁵ for 2017, 2019 and 2020 statistics according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Viet Nam

The analysis of Viet Nam’s MAP caseload relates to the period starting on 1 January 2017 and ending on 31 December 2019. For stage 2, the period ranges from 1 January 2020 to 31 December 2020. Both periods are taken into account in this report for analysing the MAP statistics of India. The analysis of Viet Nam’s MAP caseload therefore relates to the period starting on 1 January 2017 and ending 31 December 2020 (“**Statistics Reporting Period**”). According to the statistics provided by Viet Nam, its MAP caseload during this period was as follows:

2017-20	Opening inventory 1/1/2017	Cases started	Cases closed	End inventory 31/12/2020
Attribution/allocation cases	6	6	1	11
Other cases	0	5	2	3
Total	6	11	3	14

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁶ Apart from analysing Viet Nam’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Viet Nam during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Viet Nam 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 Viet Nam 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 included 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 Viet Nam 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 Viet Nam has entered into are available at: www.gdt.gov.vn/wps/portal/english. The treaties that are signed but have not yet entered into force are with Former Yugoslav Republic of Macedonia and the United States. For that reason the newly negotiated treaty is taken into account in the treaty analysis. Reference is made to Annex A for the overview of Viet Nam's tax treaties.
2. <https://www.oecd.org/tax/treaties/beps-mli-position-viet-nam.pdf>.
3. Available at: <https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-viet-nam-stage-1-417776da-en.htm>.
4. Available at <https://www.oecd.org/tax/dispute/VietNam-Dispute-Resolution-Profile.pdf>.
5. The MAP statistics of Viet Nam are included in Annexes B and C of this report.
6. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

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

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

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 Viet Nam’s tax treaties

2. Out of Viet Nam’s 78 tax treaties, 58 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. Of the other 20 treaties, 19 do not contain the word “interpretation” or “doubts” and are therefore considered not to have the equivalent of Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2017a). The remaining treaty does not include the words “by mutual agreement”. Such wording is considered lesser an obligation than provided for in the first sentence of Article 25(3) of the OECD Model Tax Convention and therefore is not considered to be the equivalent of Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2017a).

3. In this respect, Viet Nam reported that in the absence of a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in the treaty, it is able to enter into general MAP agreements.

4. For the 20 treaties identified above that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), the relevant peers provided the following input during the stage 1. One peer reported the provision of the relevant treaty lacks the word “interpretation.” In that regard, the peer reported it has not made a relevant notification under Article 16(6)(d)(ii) of the Multilateral Instrument with regard to the treaty and therefore the treaty will not be modified in this regard by the Multilateral Instrument. The peer noted it is due to an error in its own language version of the

treaty, however the interpretation of the treaty will generally allow to meet the Minimum Standard, even though the wording of the treaty does not completely reflect the wording provided in OECD Model Tax Convention – i.e. in case of difficulties or doubts regarding the interpretation of the treaty, the competent authorities would be open to endeavour to resolve the issue by mutual agreement. Further, another peer reported that it has listed the treaty with Viet Nam as a covered tax agreement under the Multilateral Instrument and therefore the treaty will be modified if Viet Nam were to sign and ratify the Multilateral Instrument. The peer has approached Viet Nam to amend the treaty in this regard via bilateral negotiation, but it has not received a response from Viet Nam yet.

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. Viet Nam signed the Multilateral Instrument on 9 February 2022 and is expected to ratify this instrument in 2022.

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 (OECD, 2017a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). 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 (OECD, 2017a).

8. With regard to the 20 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Viet Nam listed 19 of those as a covered tax agreement under the Multilateral Instrument and made notifications pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). However, only 13 of its treaty partners are signatories to the Multilateral Instrument. Further, only eight of the 13 treaty listed their treaty with Viet Nam as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(i).

9. Therefore, at this stage, eight of the 20 tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

Peer input

10. Of the peers who provided input into Stage 2, two peers noted that their relevant tax treaties with Viet Nam would be amended by the Multilateral Instrument in relation to element A.1.

11. Another peer reiterated its comments from stage 1, that it has erroneously not made a relevant notification under Article 16(6)(d)(ii) of the Multilateral Instrument with regard to the treaty. However, the peer noted that it was of the view that the interpretation of that tax treaty would generally meet the Action 14 Minimum Standard, even though the wording of the treaty does not completely reflect the wording provided in Article 25(3), 1st sentence, of the OECD Model Tax Convention (OECD, 2017a), as it would be open to endeavour to resolve the issue by mutual agreement.

Anticipated modifications

12. Viet Nam further reported its intention that for the tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) and will not be modified by the Multilateral Instrument, it intends to contact the relevant treaty partners to update them via bilateral negotiations with a view to be compliant with element A.1. Viet Nam, however, reported not having in place a specific plan for such negotiations.

13. In addition, Viet Nam reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	<p>20 out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). With respect to these 20 tax treaties:</p> <ul style="list-style-type: none"> • Eight will be modified by the Multilateral Instrument upon ratification to include the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). • Twelve will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017a). With respect to these 12 tax treaties: <ul style="list-style-type: none"> - For five tax treaties, of which the treaty partner is a signatory to the Multilateral Instrument, Viet Nam intends to request the treaty partners to amend their notifications under the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) into the treaty concerned. - For seven tax treaties, no actions have been taken or are planned to be taken. 	<p>Viet Nam should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in the eight 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 five tax treaties to which the treaty partner is a signatory to the Multilateral Instrument but the treaty will not be modified by the Multilateral Instrument, Viet Nam should without further delay follow its intention to strive to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) via the Multilateral Instrument, in five tax treaties and where such turns out not to be possible, initiate bilateral negotiations.</p> <p>For the remaining seven tax treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) upon its entry into force, Viet Nam should without further delay request the inclusion of the required provision via bilateral negotiations.</p>

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

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

14. 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.

Viet Nam’s APA programme

15. Viet Nam is authorised to enter into bilateral APAs and has implemented an APA programme. The rules relating to APAs are set forth in Circular no. 45/2021/TT-BTC dated 18 June 2021 to be found at:

www.gdt.gov.vn/

16. The Circular clarifies that the consultation before official submission of the application shall be held at the request of the taxpayer to determine the suitability of the APA application. Viet Nam reported that within 120 days from the date of receiving GDT’s written letter approving for a formal APA application, the taxpayer must submit a formal APA application. It further reported that in case that the taxpayer is not able to submit the application in due date because of objective reasons, the taxpayer must submit a written request to and approved by GDT to extend the deadline. The extended deadline is no more than 30 days from the original expiry date. Typically, bilateral APAs run for a period of three to five years.

Roll-back of bilateral APAs

17. Viet Nam reported that it is not possible to obtain a roll-back of bilateral APAs as its internal laws have no provisions to grants roll-back of bilateral APAs (Law on Tax Administration no. 38/2019/QH14) and it stipulates that the time of commencement of validity is not before the date the taxpayer submits an official application for APA.

Recent developments

18. Viet Nam reported that it issued Decree no. 126/2020/ND-CP on 19 October 2020 which detailed the processes and procedures in relation to APAs to the level of Government decree. Article 41 of that decree outlines the application of advance pricing arrangements to enterprises having related-party transactions. The Decree took effect from December 5, 2020. However, the Decree maintains that the roll-back of bilateral APAs is not available in Viet Nam.

19. Viet Nam reported that it issued Circular no. 45/2021/TT-BTC dated 18 June 2021 which outlines the guiding applications of advance pricing arrangements regarding enterprises engaging in related-party transactions. This Circular took effect on 3 August 2021 and replaces the previous Circular no. 201/2013/TT-BTC.

Practical application of roll-back of bilateral APAs

Period 1 January 2017-31 December 2019 (stage 1)

20. Viet Nam reported having received 12 requests for bilateral in the period 1 January 2017-31 December 2019. Viet Nam reported that in that period it received six requests for roll-back of bilateral APAs, and that it only denied those roll back requests but did not deny for the years covered in the APA requests. Out of 12 requests, two have been granted and the others are under consideration.

21. Peers that have experience of bilateral APAs with Viet Nam provided the following input in Stage 1. One peer reported it has received one request for roll-back of bilateral APAs from taxpayers in 2018 and the number of such inventories on 31 December 2019 is two. The peer noted it has not reached an agreement with Viet Nam on bilateral APAs. Another peer reported that in its understanding, there is no rule on APA roll-back in Viet Nam and therefore the competent authorities could not provide the roll-back for a such request to the taxpayer. The third peer reported that it has received two APA requests but in both cases, no roll-back requests were made in the APA applications. Other peers provided no specific input in relation to element A.2.

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

22. Viet Nam reported having received 13 requests for bilateral APAs from 1 January 2020 to 31 October 2021. Viet Nam reported that during this period, one application was rejected and the remaining 12 applications are still in the process of assessment and evaluation.

23. Peers that have experience of bilateral APAs with Viet Nam provided the following input in Stage 2.

24. One peer reported that it has received five bilateral APA cases with Viet Nam including three requests asking for a roll-back. This peer also noted that in some of these cases the proposed APA covered period has been shortened to 3 years and that this would seem to undermine the goal of preventing disputes. Viet Nam responded to this peer's comments, noting that three year bilateral APAs were in line with the Handbook of Practical Manual on Transfer Pricing for Developing Countries and were appropriate given its limited experience in applying its transfer pricing regime, especially given the volatility caused by the economic effects of COVID-19. It was also noted that Viet Nam's regulations allow a signed bilateral APA to be extended at the request of the parties if appropriate conditions are met.

25. One peer noted that since 2016 it has received three bilateral APA requests from Viet Nam, none of which contained requests for roll-back. Another peer requested that Viet Nam put in place regulations that allow for roll-back, for which Viet Nam did not directly provide a response.

26. Lastly, one peer noted that it received a request for a bilateral APA in December 2018, at which time it notified Viet Nam. The peer received a response from Viet Nam in late September 2019 that Viet Nam had also received the same request. The peer sent its position paper to Viet Nam in February 2020 and in December 2020 provided Viet Nam with an invitation to start discussions via videoconference. Viet Nam did not reply and the peer followed-up in July 2021. The peer is still yet to receive a response from Viet Nam. Further, in January 2022, the peer was informed by the taxpayer that Viet Nam had informed the taxpayer by letter that the APA process is discontinued because of a lack of sufficient information. The peer is of the opinion that there is enough information to

start discussions between the two countries and are still willing to continue the process. The peer is of the opinion that the bilateral APA process could have been more effective and efficient if the two competent authorities could have discussed the case including the discussion about which information is necessary for an agreement on the transfer pricing method of the company.

27. In response, Viet Nam noted that the taxpayer failed to provide additional information as proposed in April 2020. Due to the failure to provide the information Viet Nam felt it had insufficient grounds to appraise and verify that the taxpayer's bilateral APA application is in accordance with the relevant legal provisions of Viet Nam. In November 2021, Viet Nam notified the taxpayer of the suspension of its bilateral APA application. However, Viet Nam noted it was ready to discuss the issue with the peer.

Anticipated modifications

28. Viet Nam reported that it will study the recommendations of the FTA MAP Forum and international experiences to review its position in relation to roll-backs for bilateral APAs.

Conclusion

	Areas for improvement	Recommendations
[A.2]	Roll-back of bilateral APAs is not available.	Viet Nam should without further delay introduce the possibility of, and in practice provide for, roll-back of bilateral APAs in appropriate cases.

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>.

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).

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.

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

Current situation of Viet Nam’s tax treaties

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

30. Out of Viet Nam’s 78 tax treaties, none contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), 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, 18 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

31. The remaining 60 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	50
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby a MAP request is limited to actions taken only by a competent authority	9
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby 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

32. The 50 treaties¹ mentioned in the first row of the table are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 49 of the 50 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 (seven treaties).
- 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 allow only for the submission of MAP requests to the state of which the taxpayer is a resident (42 treaties).

33. For the remaining treaty, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2015a) 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 (OECD, 2015a) is therefore not clarified by the absence of or a limited scope of the non-discrimination provision, following which the treaty is not in line with this part of element B.1.

34. The nine treaties in the second row of the table are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since the treaties contain a provision that reads:

Where a person who is a resident of a Contracting State considers that the actions of the competent authority of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which that person is a resident.

35. The language above is additional language that limits MAP requests to actions taken only by a “competent authority” as opposed to actions taken by a “contracting state.” Given this additional limiting language, this treaty does not contain the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a). In this respect, under the treaties Viet Nam has entered into, Viet Nam’s competent authority is the Minister of Finance or a representative authorised by the Minister of Finance.

Article 51 and 52 of the Circular No. 205/2013/TT-BTC of Viet Nam stipulates that GDT is authorised by the Minister of Finance to act as the competent authority of MAP. Viet Nam reported that the words “of the competent authority” in those treaties do not mean to limit the access to MAP as the competent authorities are representatives of contracting partners and it does not indicate the action of an individual competent authority, and the reference to a competent authority in the treaties are merely for clarification purposes and not intended to materially deviate from the OECD Model Tax Convention. Given the above reasons, it is considered that Viet Nam will accept MAP requests even if it is not a competent authority that took action. Therefore, the nine treaties are considered to be in line with this part of element B.1.

36. The treaty mentioned in the third row of the table, it allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this treaty limits such submission, as it requires that a domestic remedy should first be initiated before a case can be dealt with in MAP. The provision incorporated in the protocol to this treaty reads:

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

37. 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. This tax treaty is therefore considered not to be in line with this part of element B.1.

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

38. Out of Viet Nam’s 78 tax treaties, 73 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

39. The remaining five 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	1
Filing period less than 3 years for a MAP request (2 years)	4

40. Viet Nam reported that under its internal law there is no regulation on the deadline for submitting a MAP request.

Peer input

41. In stage 1, all but one peer that provided input indicated that their treaty with Viet Nam meets the requirements under this element of the Action 14 Minimum Standard. For the five treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2017), the relevant peers did not provide input.

42. One peer commented that it was informed by one taxpayer that it was of the understanding that in Viet Nam, once a taxpayer initiates the first step in the domestic appeal process (i.e. the case has not reached the courts yet), the taxpayer will have limited access to MAP. Viet Nam responded that it has not received a MAP request from a taxpayer and that in practice it has not rejected any MAP case with such reason.

Practical application

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

43. Under Viet Nam's domestic legislation, when taxpayers intend to object to a tax assessment, they have two options. They can decide to lodge an appeal with the Internal Inspection Unit of the Province Tax Office, after which it can be submitted to the Internal Inspection Department of the GDT. Taxpayers can also present their case directly to the court, or after the administrative remedies have been run through. Viet Nam clarified that it is not possible to run both options concurrently. In this respect, the following four situations are possible in Viet Nam when the case under review follows from an adjustment made by the GDT:

- a. The taxpayer does not lodge an appeal with the Internal Inspection Unit of Province Tax Office/the Internal Inspection Department of the GDT, after which the tax assessment becomes final.
- b. The taxpayer lodges an appeal with the Internal Inspection Unit of Province Tax Office and subsequently with the Internal Inspection Department of the GDT, but decides not to proceed with the case to the court after the process with these institutions have been finalised.
- c. The taxpayer lodges an appeal with the Internal Inspection Unit of Province Tax Office/the Internal Inspection Department of the GDT and after the decision by these institutions proceeds with the case to the court.
- d. The taxpayer directly lodges an appeal to the court.

44. Viet Nam reported that in situation a), access to MAP would be granted and there would not be any restrictions for Viet Nam's competent authority to handle and resolve the case in MAP. For situations b), c) and d), according to Viet Nam's domestic legislation access to MAP would not be allowed. Specifically as to situation c) and d), Viet Nam reported that access to MAP would not be granted once the taxpayer lodges an appeal with the court as well as once the court has decided on the case under review. This policy follows from clause 1.3.b) of Article 7 of the Circular no. 205/2013/TT-BTC, where it is stipulated that the competent authority of Viet Nam shall not handle complaints that have been settled or are being settled by courts, or that have been settled or are being settled in accordance with the order of settlement of complaints.

45. Viet Nam, however, reported that in practice it would accept MAP requests for cases that are being settled or have been settled by the administrative dispute resolution processes. It further reported that it has already accepted MAP cases that have been settled by these processes. In this respect, Viet Nam clarified that the competent authority has the right to deviate in MAP from the decision of the administrative remedies outlined above.

46. While in practice no issues have arisen as to the allowance of access to MAP for cases for which domestic administrative remedies have been applied, Viet Nam's domestic legislation clearly stipulates that in such situation access to MAP will not be given as well as in situation domestic judicial remedies are pending or have been finalised. Therefore,

there is a risk that access to MAP will not be given irrespective of domestic remedies, even though Article 25(1) of the OECD Model Tax Convention (OECD, 2017), as incorporated in Viet Nam’s treaties, explicitly allows so.

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

47. Viet Nam reported that in the absence of a filing period in the treaty there will be no applicable filing period, and the competent authority can open a MAP case anytime.

Recent developments

Bilateral modifications

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

Multilateral Instrument

49. Viet Nam signed the Multilateral Instrument on 9 February 2022 and is expected to ratify this instrument in 2022.

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

50. Article 16(4)(a)(i) of Multilateral Instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the Action 14 final report (OECD, 2015b) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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.

51. With the signing of the Multilateral Instrument, Viet Nam reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.² In this reservation, Viet Nam declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b). It subsequently declared to implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction and application of such process will be further discussed under element B.2.

52. In view of the above, following the reservation made by Viet Nam, those two tax treaties identified in paragraphs 30-35 above that are considered not containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

53. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) – 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 (OECD, 2017).

54. With regard of the four tax treaties identified in the second row of the table of paragraph 39 above that contain a filing period for MAP requests of less than three years, Viet Nam 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). Three of these treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Viet Nam as a covered tax agreement and also made a notification on the basis of Article 16(6)(b)(i). Two of these treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Viet Nam and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these two treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). The remaining treaty will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.

Peer input

55. Of the peers that provided input during stage 2, one peer sought further clarification as to whether MAP is granted in eligible cases where the issue under dispute was pending or has already been decided via the judicial or administrative remedies provided by Viet Nam's domestic law. Viet Nam confirmed the outcomes outlined in paragraphs 44 and 45 above. That is, access to MAP will be granted for eligible MAP cases regardless of whether the issue under dispute is pending or has already been decided via administrative remedies provided by Viet Nam's domestic law. However, access to MAP will not be granted in situations where complaints have been settled or are being settled by the courts. Further, Viet Nam clarified that its MAP Regulation does not disturb the domestic law limitation outlined in clause 1.3.b of Article 7 of the Circular no. 205/2013/TT-BTC.

Anticipated modifications

56. Viet Nam reported that when the tax treaties 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 (OECD, 2015b), and will not be modified by the Multilateral Instrument, it intends to contact the relevant treaty partners to update them via bilateral negotiations with a view to be compliant with element B.1. Viet Nam, however, reported not having in place a specific plan for such negotiations.

57. In addition, Viet Nam reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended in the Action 14 final report (OECD, 2015b) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
	<p>Two out of 78 tax treaties do not contain a provision that is equivalent to Article 25(1) first sentence, of the OECD Model Tax Convention (OECD, 2015a).</p> <p>None of these two treaties are expected to be modified by the Multilateral Instrument to include the required provision. For these treaties, no actions have been taken but Viet Nam intends to modify them via bilateral negotiations.</p>	<p>For the two tax treaties that do not contain a provision that is equivalent to Article 25(1) first sentence, of the OECD Model Tax Convention (OECD, 2015a), Viet Nam should without further delay request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
[B.1]	<p>Four out of 78 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. With respect to these four tax treaties:</p> <ul style="list-style-type: none"> • Three are expected to be modified by the Multilateral Instrument to include the required provision. • For one, no actions have been taken or are planned to be taken. 	<p>Viet Nam should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) 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.</p> <p>For the remaining tax treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) upon its entry into force, Viet Nam should without further delay request the inclusion of the required provision via bilateral negotiations.</p>
	<p>Under Viet Nam's domestic law access to MAP is denied in eligible cases where the issue under dispute is pending or has already been decided via the judicial and administrative remedies provided by Viet Nam's domestic law, even though the requirements for initiating a MAP case under the treaty provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) are met.</p>	<p>Viet Nam should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017), as incorporated in its tax treaties, can access the MAP regardless of whether domestic remedies have been initiated or finalised. In particular, Viet Nam should ensure that its domestic law does not obstruct access to MAP in cases where the issue under dispute is pending or has already been decided via the judicial and administrative remedies.</p>

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

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

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 Viet Nam's 78 treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

60. Viet Nam reported that it has not introduced a documented bilateral consultation or notification process that allows the other competent authority concerned to provide its views on the case when Viet Nam's competent authority considers the objection raised in the MAP request not to be justified. In that regard, it reported that in case it receives a MAP request and if taxpayer's objection is considered not being justified, its competent authority will consult/notify in writing the other competent authority in the MAP case.

Recent developments

61. As noted above, Viet Nam has signed the Multilateral Instrument and is expected to ratify this instrument in 2022.

62. Viet Nam has reported that in its MAP Regulation dated 31 December 2021, there are provisions requiring bilateral notification in circumstances where a taxpayer's objection is considered not being justified.

Practical application

Period 1 January 2017-31 December 2019 (stage 1)

63. Viet Nam reported that in the period from 1 January 2017 to 31 December 2019, its competent authority has not received any MAP request from taxpayers. The 2017 and 2019 MAP statistics submitted by Viet Nam also show that none of its MAP cases was closed with the outcome "objection not justified".

64. All peers that provided input indicated not being aware of any cases for which Viet Nam’s competent authority denied access to MAP. This can be explained by the fact that in the period 1 January 2017-31 December 2019 Viet Nam has not received any MAP requests from taxpayers.

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

65. Viet Nam reported that in the period from 1 January 2020-31 October 2021, its competent authority has not received any MAP request from taxpayers. The 2020 MAP statistics submitted by Viet Nam also show that none of its MAP cases was closed with the outcome “objection not justified”.

66. All peers that provided input indicated not being aware of any cases for which Viet Nam’s competent authority denied access to MAP.

Anticipated modifications

67. Viet Nam indicated that it has introduced a bilateral notification process for those situations where its competent authority considers an objection raised in a MAP request as being not justified. Viet Nam reported it will notify in writing treaty partners within one month from the receipt date, and it designs the form similar to the template in the MAP Routine.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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 Viet Nam’s 78 tax treaties, 42 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, 27 do not contain such equivalent. The remaining nine treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviate from this provision for the following reasons:

- In five treaties, corresponding adjustments can only be made through MAP.
- In three treaties, the provision is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but the granting of a corresponding adjustment could be read as only optional as the word “shall” is replaced by “may”.

- In one treaty, a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is included, but it lacks the second sentence of that provision and is replaced by a sentence that stipulates that a corresponding adjustment can only be made through MAP.

70. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Viet Nam’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, Viet Nam indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties.

Recent developments

Bilateral modifications

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

Multilateral Instrument

72. Viet Nam signed the Multilateral Instrument on 9 February 2022 and is expected to ratify this instrument in 2022.

73. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). 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 not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), 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 (OECD, 2017). 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 (OECD, 2017)).

74. Viet Nam has, pursuant to Article 17(3)(b), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). In regard of the 36 treaties identified above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), none of the treaties will be modified or superseded by the Multilateral Instrument.

Application of legal and administrative framework in practice

75. Period 1 January 2017-31 December 2019 (stage 1) Viet Nam reported that in the period 1 January 2017-31 December 2019, it has not received MAP requests concerning a transfer pricing case from taxpayers and therefore has not denied access to MAP in transfer pricing cases.

76. All peers that provided input indicated not being aware of a denial of access to MAP by Viet Nam in the period 1 January 2017-31 December 2019 on the basis that the case concerned was a transfer pricing case.

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

77. Viet Nam reported that since 1 January 2020, it has also not received MAP requests concerning a transfer pricing case from taxpayers and therefore has not denied access to MAP in transfer pricing cases.

78. All peers that provided input indicated not being aware of a denial of access to MAP by Viet Nam since 1 January 2020 on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

79. Viet Nam reported that it will consider to include Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties if it is proposed by treaty partners and that it will consider to include Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties depending on each treaty partner.

80. Other than this, Viet Nam did not indicate that it anticipates any modifications in relation to element B.3.

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.

81. 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

82. None of Viet Nam’s 78 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 Viet Nam do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

Recent developments

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

Practical application

Period 1 January 2017-31 December 2019 (stage 1)

84. Viet Nam reported that in the period 1 January 2017-31 December 2019, Viet Nam’s competent authority has not received any MAP requests and therefore, 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.

85. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Viet Nam since 1 January 2017 to 31 December in relation to the application of treaty and/or domestic anti-abuse provisions.

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

86. Viet Nam reported that its competent authority has not received any MAP requests and therefore, 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.

87. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Viet Nam since 1 January 2020 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

88. Viet Nam 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.

89. 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

90. Under Viet Nam’s domestic law it is possible that taxpayers and the tax administration enter into an audit settlement. Viet Nam reported that after an audit settlement, a minute is made between taxpayer and tax authority, including the taxpayer’s opinion. It further reported that the conclusion of an audit settlement does not affect access to MAP while it would be an input to be reviewed in the process of MAP. Viet Nam’s competent authority has the right to deviate in MAP from an audit settlement.

Administrative or statutory dispute settlement/resolution process

91. Viet Nam reported that it does not have an administrative 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.

Practical application

Period 1 January 2017-31 December 2019 (stage 1)

92. Viet Nam reported that in the period 1 January 2017-31 December 2019 it has not denied access to MAP in any case where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration. However, in the period 1 January 2017-31 December 2019 it has not received any MAP requests from taxpayers.

93. All peers indicated not being aware of a denial of access to MAP in Viet Nam in the period 1 January 2017-31 December 2019 in cases where there was an audit settlement between the taxpayer and the tax administration.

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

94. Viet Nam reported that since 1 January 2020 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 the tax administration. However, since 1 January 2020 it has not received any MAP requests from taxpayers.

95. All peers indicated not being aware of a denial of access to MAP in Viet Nam in the period 1 January 2020 in cases where there was an audit settlement between the taxpayer and the tax administration.

Anticipated modifications

96. Viet Nam did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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

Legal framework on access to MAP and information to be submitted

98. As will be discussed under element B.8, Viet Nam has not yet issued any MAP guidance.

99. Where a taxpayer has not included all required information in its MAP request, Viet Nam reported that it normally allows taxpayers 30 working days from the date of receiving the tax authority's written request to supplement the dossier. It also reported that the timeline is stated in the tax authority's document to send the taxpayer and that it would allow an appropriate time period for providing information or documents, depending on each specific case or depending on the complexity of the dossier.

Recent developments

100. Viet Nam reported that it has released its MAP Regulation of the General Department of Taxation on 31 December 2021, which stipulates the required forms, the process of handling a MAP request and the relevant deadlines for taxpayers in line with the information outlined above.

Practical application

101. Period 1 January 2017-31 December 2019 (stage 1) Viet Nam reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation its competent authority asks the taxpayer to provide. It further reported that between 1 January 2017-31 December 2019 it has not received any MAP requests from a taxpayer.

102. All peers that provided input indicated not being aware of a limitation of access to MAP by Viet Nam between 1 January 2017-31 December 2019 in situations where taxpayers complied with information and documentation requirements.

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

103. Viet Nam reported that its competent authority has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation, which can be clarified by the fact that no MAP cases have arisen in Viet Nam since 1 January 2020.

104. All peers that provided input indicated not being aware of a limitation of access to MAP by Viet Nam since 1 January 2020 in situations where taxpayers complied with information and documentation requirements.

Anticipated modifications

105. There are no anticipated 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.

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

Current situation of Viet Nam's tax treaties

107. Out of Viet Nam's 78 tax treaties, 69 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining nine treaties do not contain such provision at all.

108. In stage 1 of the peer review process, one of the relevant peers reported it has listed the treaty with Viet Nam as a covered tax agreement under the Multilateral Instrument and therefore the treaty will be modified if Viet Nam were to sign and ratify the Multilateral Instrument. The peer had approached Viet Nam to amend the treaty in this regard via bilateral negotiation, but it had not received a response from Viet Nam yet. Other peers provided no specific input in relation to element B.7.

Recent developments

Bilateral modifications

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

Multilateral Instrument

110. Viet Nam has signed the Multilateral Instrument. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). 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 (OECD, 2017).

111. With regard to the nine tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Viet Nam listed all nine treaties as a covered tax agreement under the Multilateral Instrument and pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). All the relevant nine treaty partners are signatories to the Multilateral Instrument, listed their treaty with Viet Nam as a covered tax agreement and made such notification.

112. Therefore, at this stage, all nine tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

113. Of the peers that provided input during stage 2, two peers provided input noting that their tax treaties with Viet Nam would be modified once Viet Nam ratifies the Multilateral Instrument.

Anticipated modifications

114. Viet Nam reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) will not be modified by the Multilateral Instrument, it intends to contact the relevant treaty partners to update them via bilateral negotiations with a view to be compliant with element B.7. Viet Nam, however, reported not having in place a specific plan for such negotiations.

115. In addition, Viet Nam reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	Nine out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). All nine tax treaties will be modified by the Multilateral Instrument.	Viet Nam should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaties that currently do not contain such equivalent.

[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.

116. 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.

Viet Nam's MAP guidance

117. Viet Nam has not yet published MAP guidance and therefore the information that the FTA MAP Forum agreed should be included in a jurisdiction's guidance is not publicly available.³ This concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.

Information and documentation to be included in a MAP request

118. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.⁴ The agreed guidance is shown below. Although not publicly available, during the review period, the elements that should be included in a MAP request to Viet Nam are checked:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case
- analysis of the issue(s) to be resolved via MAP
- whether the MAP request was also submitted to the competent authority of the other treaty partner
- whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes

- whether the issue(s) involved were dealt with previously
- a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

Recent developments

119. Viet Nam issued its MAP Regulation which includes its MAP guidance on 31 December 2021. The MAP Regulation is publicly available (in Vietnamese and English) on the GDT's website:

www.gdt.gov.vn

120. Viet Nam's MAP Regulation which contains its MAP guidance, *inter alia* address the following items:

- contact information of the competent authority
- the manner and form in which the taxpayer should submit its MAP request
- the specific information and documentation that should be included in a MAP request
- how the MAP functions in terms of timing and the role of the competent authorities
- relationship with domestic administration remedies
- the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

121. Viet Nam further indicated that after the Vietnamese version of its MAP Regulation is issued, the English version will be available in about 15 working days.

122. In addition to the items enumerated above, Viet Nam reported that the following items are also required, in accordance with what is provided in its MAP Regulation:

- financial statements and tax returns relating to MAP request
- any document certifying tax payment where the applicant already paid the tax amount which is covered by the MAP request.

123. Although the information included in Viet Nam's MAP Regulation is detailed and comprehensive, some subjects are not specifically discussed. This concerns information on:

- access to MAP in transfer pricing cases, anti-abuse provisions, multilateral disputes and for multi-year resolution of cases
- rights and role of taxpayers in the process
- suspension of tax collection
- interest charges, refunds and penalties.
- whether MAP is available in cases of: (i) audit settlements and (ii) bona fide foreign initiated self-adjustments
- relationship with domestic judicial remedies.

Anticipated modifications

124. There are no anticipated 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.

125. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.⁵

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

126. As discussed under element B.8, Viet Nam has not yet published MAP guidance.

MAP profile

127. The MAP profile of Viet Nam is published on the website of the OECD and last updated on 17 February 2020. This MAP profile is complete and often with detailed information. This profile includes external links that provide extra information and guidance where appropriate.

Recent developments

128. Viet Nam has updated its MAP profile on 17 February 2020.

Anticipated modifications

129. As discussed above, Viet Nam reported that it published its MAP Regulation containing its MAP guidance on 31 December 2021. Viet Nam has reported that it intends to update its MAP profile to includes references to this guidance.

Conclusion

	Areas for improvement	Recommendations
[B.9]	The MAP guidance is not referenced in Viet Nam’s MAP profile.	Viet Nam should update its MAP profile to include where publicly available information and guidance can be found in relation to MAP.

[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.

130. 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

131. As previously discussed under B.5, it is under Viet Nam's domestic law possible that taxpayers and the tax administration enter into audit settlements. Currently no guidance or documents explaining the relationship between access to MAP and audit settlements has been published as Viet Nam has not published its guidance yet. However, Viet Nam's MAP Regulation at Article 20 clearly states that "The General Department of Taxation settles MAP request completely independently regardless of whether the content of the MAP request has been or is being processed under the process of administrative remedy of Viet Nam".

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

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

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

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

134. Viet Nam reported it notified its treaty partners of this process as the Circular no. 205/2013/TT-BTC of the Ministry of Finance is publicly posted on the website of the Ministry of Finance and the GDT.

135. Peers indicated no issues regarding element B.10 in relation to administrative or statutory dispute settlement or resolution processes.

Recent developments

136. Other than the development of the public release of Viet Nam’s MAP Regulation, there are no recent developments with respect to element B.10.

Anticipated modifications

137. Viet Nam did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

References

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

Notes

1. 32 treaties of the 50 treaties in the first row of the table also contain additional language that limits MAP requests to actions taken only by a “competent authority” as opposed to actions taken by a “contracting state,” which is considered not to have the full 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. However, these treaties are considered to be in line with this part of element B.1.
2. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Viet Nam reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person

considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified". An overview of Viet Nam's positions on the Multilateral Instrument is available at: <https://www.oecd.org/tax/treaties/beps-mli-position-viet-nam.pdf>.

3. See: <https://www.oecd.org/fr/fiscalite/beps/beps-action-14-accroitre-l-efficacite-des-mecanismes-de-reglement-des-differends-documents-pour-l-examen-par-les-pairs.pdf>.
4. See: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
5. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

Part C

Resolution of MAP cases

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

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

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

Current situation of Viet Nam’s tax treaties

139. Out of Viet Nam’s 78 tax treaties, 77 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty. The remaining tax treaty contains such a provision, but additional wording stipulating that the mutual agreement procedure “shall expire by the end of the third year following that in which the case was presented by the taxpayer” is included. As the inclusion of this sentence bears the risk that a MAP case cannot be resolved anymore if an agreement is not reached within the three-year period, the treaty is considered to not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

140. All peers that provided input during stage 1 indicated that their treaty with Viet Nam meets the Action 14 Minimum Standard for this element. For the treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peer did not provide input.

Recent developments

Bilateral modifications

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

Multilateral Instrument

142. Viet Nam signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). 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 (OECD, 2017).

143. With regard to the tax treaty identified above that is considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Viet Nam and its treaty partner have both listed the tax treaty as a covered tax agreement under the Multilateral Instrument, but neither have made, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). Therefore, this treaty will not be amended by the Multilateral Instrument.

Peer input

144. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Viet Nam, but this input holds no relevance for element C.1.

Anticipated modifications

145. For the treaty that does not contain the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument, Viet Nam intends to modify it via bilateral negotiations. Viet Nam reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[C.1]	One out of 78 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty will not be amended by the Multilateral Instrument. For this treaty, no actions have been taken or are planned to be taken.	For the tax treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) upon its entry into force, Viet Nam should without further delay, request the inclusion of the required provision via bilateral negotiations.

[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).

146. 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

147. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2016 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2017 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template.

148. Viet Nam joined in the Inclusive Framework in 2017. For this reason, the statistics referred to are pre-2017 cases for cases that were pending on 31 December 2016, and post-2016 cases for cases that started on or after 1 January 2017, instead of pre-2016 and post-2015 cases. It is also for this reason that the statistics included in this report do not include 2016 MAP statistics.

149. Viet Nam provided its MAP statistics for 2017, 2019 and 2020 pursuant to the MAP Statistics Reporting Framework within the given deadline. Viet Nam, however, did not submit such statistics for 2018. The statistics discussed below include both pre-2017 and post-2016 cases and they are attached to this report as Annex B and Annex C respectively¹ and should be considered jointly for an understanding of the MAP caseload of Viet Nam. With respect to post-2016 cases, Viet Nam reported having reached out to its MAP partner with a view to have their MAP statistics matching for 2019 and 2020 MAP statistics, but not for 2017 and 2018.

150. One peer provided input on the matching of MAP statistics with Viet Nam and confirmed that they were able to match the statistics. As part of the process for matching the 2020 MAP statistics, they were able to match the statistics. However, as part of this matching process, Viet Nam discovered a mismatch in relation to the 2019 MAP statistics. For the purposes of the statistics below one additional “Case Started” for post-2016 “Other Cases” has been added to Viet Nam’s 2019 MAP statistics to take into account this mismatch.

Monitoring of MAP statistics

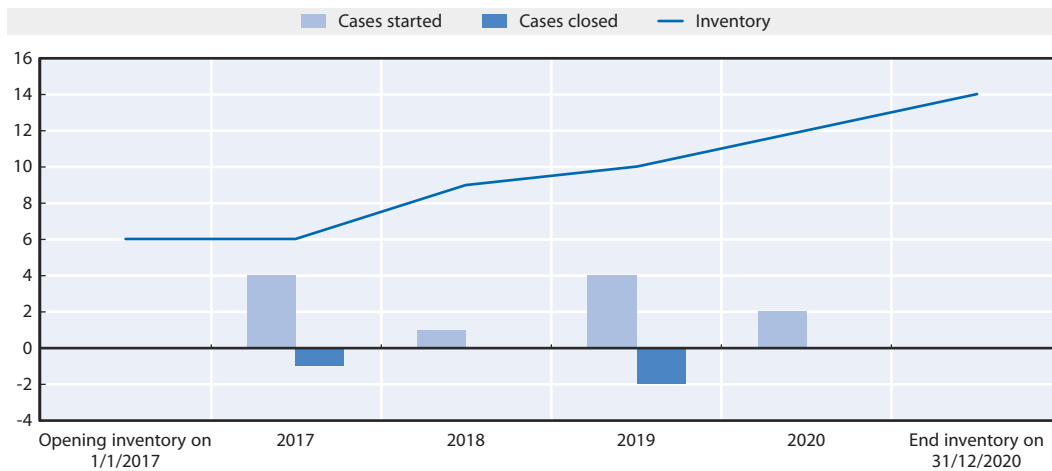
151. Viet Nam reported it does not have a system in place with its treaty partners that communicates, monitors and manages the MAP caseload.

Analysis of Viet Nam’s MAP caseload

Global overview

152. The analysis of Viet Nam’s MAP caseload relates to the period starting on 1 January 2017 and ending on 31 December 2020.

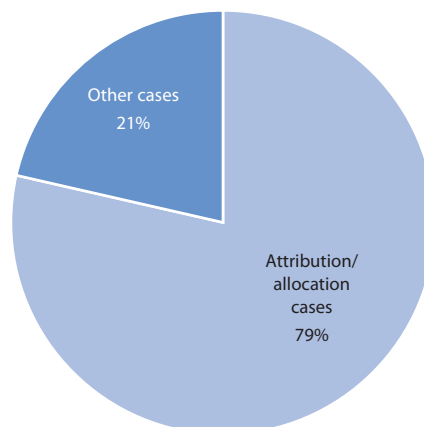
Figure C.1. Evolution of Viet Nam's MAP caseload



153. At the beginning of the Statistics Reporting Period Viet Nam had six pending MAP cases, all of which were attribution/allocation cases.² At the end of the Statistics Reporting Period, Viet Nam had 14 MAP cases in its inventory, 11 of which are attribution/allocation cases and three of which are other cases. Conclusively, Viet Nam's MAP caseload has increased by 133% during the Statistics Reporting Period.

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

Figure C.2. End inventory on 31 December 2020 (14 cases)

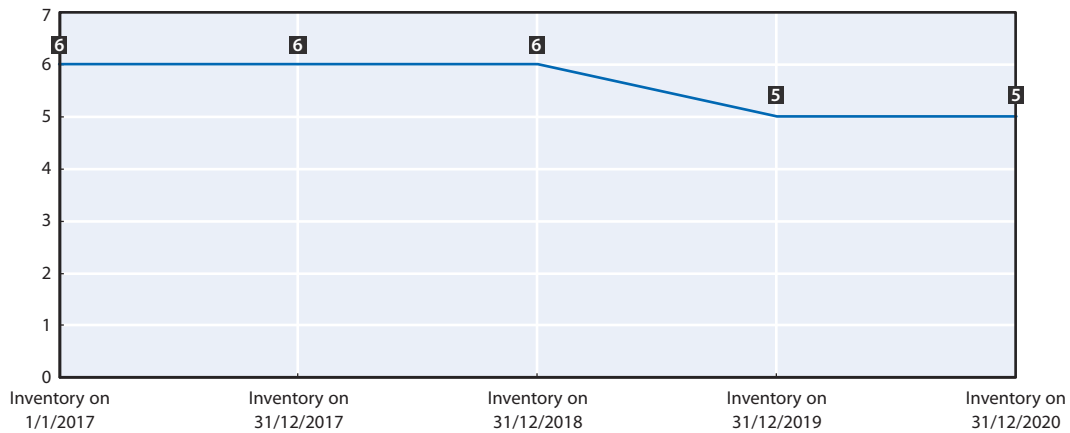


Pre-2017 cases

155. Figure C.3 shows the evolution of Viet Nam's pre-2017 MAP cases over the Statistics Reporting Period.

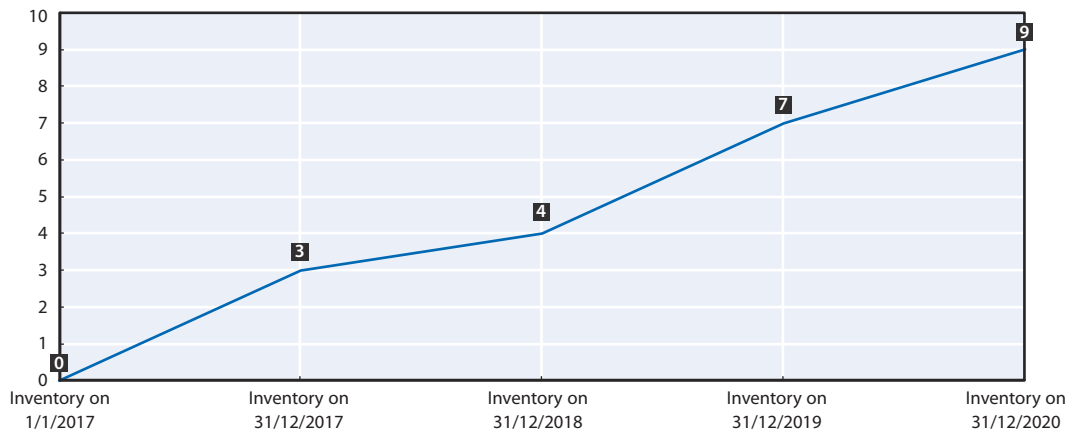
156. At the beginning of the Statistics Reporting Period, Viet Nam's MAP inventory of pre-2017 MAP cases consisted of six cases, all of which were attribution/allocation cases. At the end of the Statistics Reporting Period the total inventory of pre-2017 cases had decreased to five cases which are attribution/allocation cases. Conclusively, Viet Nam closed one pre-2017 case during the Statistics Reporting Period.

Figure C.3. Evolution of Viet Nam’s MAP inventory – Pre-2017 cases

*Post-2016 cases*

157. Figure C.4 shows the evolution of Viet Nam’s post-2016 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of Viet Nam’s MAP inventory – Post-2016 cases



158. In total, 11 MAP cases started during the Statistics Reporting Period, six of which concerned attribution/allocation cases and five other cases. At the end of this period the total number of post-2016 cases in the inventory was nine cases, six of which were attribution/allocation cases and three are other cases. Conclusively, Viet Nam closed two post-2016 cases during the Statistics Reporting Period, both of them being other cases. The total number of closed cases represents 18% of the total number of post-2016 cases that started during the Statistics Reporting Period.

159. The number of post-2016 cases closed as compared to the number of post-2016 cases started during the Statistics Reporting Period is shown in the table below.

	% of cases closed compared to cases started in 2017	% of cases closed compared to cases started in 2018	% of cases closed compared to cases started in 2019	% of cases closed compared to cases started in 2020	Cumulative percentage of cases closed compared to cases started over the four years (2017-20)
Attribution/allocation cases	(no case closed)	(no cases closed)	(no case closed)	(no case closed)	(no case closed)
Other cases	50%	(no case started)	100%	(no case closed)	40%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

160. During the Statistics Reporting Period Viet Nam in total closed three MAP cases. Two case were closed with the outcomes “Withdrawn by taxpayer” and one with “No agreement, including agreement to disagree”.

Reported outcomes for attribution/allocation cases

161. In total, one attribution/allocation case was closed during the Statistics Reporting Period. The reported outcomes for this case is “Withdrawn by taxpayer”.

Reported outcomes for other cases

162. In total, two other cases were closed during the Statistics Reporting Period. The reported outcome for these cases are “Withdrawn by taxpayer” and “No agreement, including agreement to disagree”.

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

163. The average time needed to close MAP cases during the Statistics Reporting Period was 17.77 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	1	23.15
Other cases	2	15.08
All cases	3	17.77

Pre-2017 cases

164. For the one pre-2017 case Viet Nam reported that it needed 23.15 months to close this attribution/allocation case. For the purpose of computing the average time needed to resolve pre-2017 cases, Viet Nam reported that it uses the following dates:

- *Start date*: when two tax authorities have received sufficient relevant information and documentation and are ready for the first MAP meeting. The starting date is calculated when the two competent authorities agreed to start the bilateral MAP process.

- *End date*: when two tax authorities agree to “close” (MAP is withdrawn by taxpayer) or “conclude” (MAP is solved/settled by the competent authorities). The date is calculated when the two competent authorities agreed to close or conclude the MAP.

Post-2016 cases

165. For post-2016 cases Viet Nam reported that on average it needed 15.08 months to close two post-2016 cases, both of them are other cases.

Peer input

166. In stage 1, of the peers that provided input, one reported that there are no currently no pending MAP cases with Viet Nam. For the MAP case that was closed during the period of review, it suggested that to be in line with the MAP Statistics Reporting Framework, the number of MAP cases with Viet Nam should count five instead of one, as it concerned the income of five employees (taxpayers) of one company, which concerned the interpretation of Article 15 of the peer’s tax treaty with Viet Nam. The peer clarified that these cases were closed with no agreement being reached and thus with remaining double taxation. The reason that no agreement could be reach was according to the peer that the proof by the taxpayer provided by the peer’s competent authority was not regarded as sufficient enough by Viet Nam’s competent authority to proof the peer’s standpoint. Additionally, although requested by the peer, Viet Nam’s competent authority did not mention which specific documents were needed to prove the peer’s standpoint. The other two peers reported each having one pending MAP case that is in an early stage.

167. For stage 2, of the peers that provided input, one reported that it currently had three pending MAP cases with Viet Nam. As noted above, during the statistics matching process, Viet Nam discovered it had under reported in its 2019 MAP statistics. Viet Nam noted that it received a MAP request letter from a treaty partner on 10 March 2020 (at this time Viet Nam has completed the 2019 MAP statistics report), but the treaty partner calculated the “start date” from 20 November 2019 (when the MAP request was received). As a result, there was a disparity in the MAP statistics at the end of 2019 and the beginning of 2020. As such, the case was recorded in the opening inventory of the 2020 statistics, although it should have been fixed for the 2019 statistics.

168. The peer input in relation to resolving MAP cases will be discussed under element C.3

Anticipated modifications

169. Viet Nam did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Although 2020 MAP statistics were submitted on time and correct, Viet Nam’s 2019 MAP Statistics were incorrectly reported for that year. This is despite matching with peers was undertaken.	Viet Nam should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.

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

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

170. 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 Viet Nam's competent authority

171. Under Viet Nam's tax treaties, the competent authority function is assigned to the Minister of Finance and is further delegated to the GDT. In practice, the competent authority function is performed by the International Taxation Department of the GDT. Within the International Taxation Department, there are several working groups, including two groups that are specialised in MAP cases. Each group includes four officials and one head.

172. Viet Nam reported that each MAP case is recorded separately and that the Director of International Taxation Department shall assign specified staff to be in charge of each case depending on its complexity.

Monitoring mechanism

173. Viet Nam reported the framework for the monitoring/assessment of whether resources for the competent authority are adequate is not available for now, but will be developed in the near future.

Recent developments

174. In the stage 1 report, Viet Nam was recommended to ensure that resources available for the competent authority function are adequately used in order to resolve MAP cases in a timely, efficient and effective manner.

175. Since the stage 1 peer view, Viet Nam has increased its MAP capacity by two full-time staff members. Viet Nam reported it had reflected to recommendations in the Stage 1 peer review and actively contacted its treaty partners to clarify the input information, give feedback in good faith, and co-ordinate exchanges to resolve the existing MAP case(s) as soon as possible. Further, Viet Nam noted that officials dealing with MAP cases are regularly sent to participate in international training courses to receive updates and share good experiences from international experts and partner tax authorities.

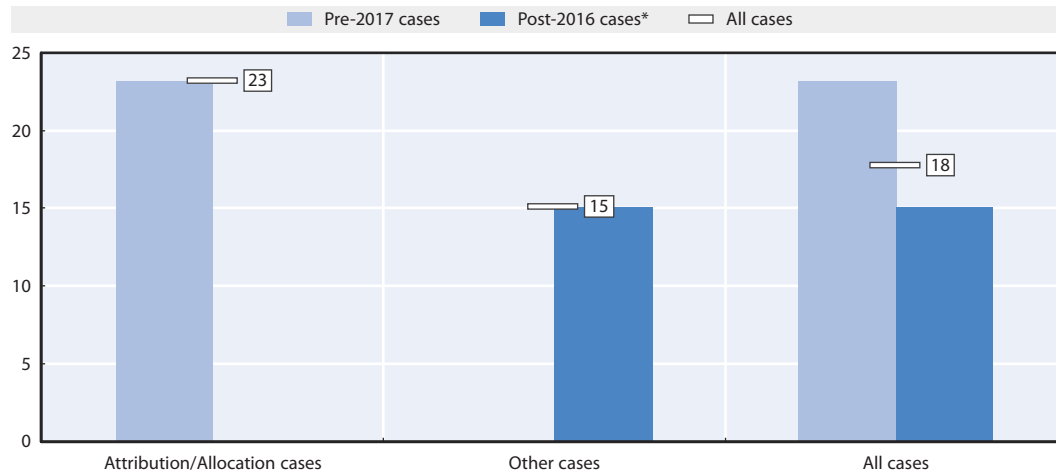
176. Viet Nam further clarified that its competent authority activities were slowed down in 2020 owing to COVID-19 related restrictions.

Practical application

MAP statistics

177. As discussed under element C.2 Viet Nam closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. This can be illustrated by Figure C.5.

Figure C.5. Average time (in months) to close cases in 2017-20



*Note that post-2016 cases only concern cases started and closed during 2017-20.

178. Based on these figures, it follows that on average it took Viet Nam 17.77 months to close MAP cases during the Statistics Reporting Period. Viet Nam, however, reported that the processing time for MAP cases was prolonged due to the disagreement of views between the two competent authorities and intermittent meeting/negotiation periods. It further reported that its competent authority makes every effort to resolve MAP cases as soon as possible in accordance with common practices of other countries, in which there are recommendations of the OECD and the UN.

179. It is noted that Viet Nam did not close any cases in 2020.

Peer input – Period 1 January 2017-31 December 2019 (stage 1)

180. Of the peers that provided input in Stage 1, five provided input in relation to their experience with Viet Nam as to handling and resolving MAP cases.

181. One peer reported that as to the handling of the case, the communication was conducted via regular mail as well as via e-mail. It further reported both competent authorities replied swiftly to requests for information or clarification by the other competent authority, which enabled that position papers could be exchanged within a short period of time. The peer nonetheless suggested to communicate via encrypted e-mail to ensure efficient and frequent communication also in the future. Viet Nam responded to this input and agreed with this suggestion.

182. Another peer reported that it has one post-2015 case pending with Viet Nam, which concerns a tax dispute between a resident and local tax office in Viet Nam. The peer noted that while its position paper has been provided for quite some time, the official corresponding comments from Viet Nam are still being expected, although the competent authority of Viet Nam has been aware of this case and the two parties have been contacting each other about this case during the breaks of certain international meetings. The peer expressed its hopes the efficiency of the resolution of MAP cases with Viet Nam can be improved.

183. The third peer reported that it has with Viet Nam two MAP cases in its inventory on 31 December 2019. This peer stated that it does not encounter any obstacle to contact with Viet Nam's competent authority. However, the peer also noted that it has experienced some difficulties in scheduling face-to-face meetings in a timely manner with a view to resolve

cases in a satisfactory way. According to the peer this was due to domestic procedure in Viet Nam and the delay of Viet Nam’s response to the peer’s questions on each case, noting that for a MAP request in 2015 the first MAP meeting was held in 2018. In that regard, the peer expressed that it would appreciate if Viet Nam could review the internal process in order to deal with these issues. Furthermore, this peer also provided input on the authority of staff in charge of MAP to resolve cases, for which it expressed its concern. It reported that during face-to-face meetings, Viet Nam’s competent authority explained that its Ministry of Finance has a discretionary authority to agree with the treaty partners on specific cases, but that Viet Nam’s competent authority sometimes put off the decision because they do not have sufficient discretion to decide on some items. In that regard, the peer noted it would appreciate if Viet Nam could delegate its authority for resolving individual MAP cases to the representatives in face-to-face meetings or, alternatively, the staff from the Ministry of Finance could participate in such meetings.

184. Viet Nam responded to this input and stated that the GDT, as the competent authority of Viet Nam, has the authority to negotiate and decide related issues within its authority during the competent authorities’ meetings. Viet Nam, however, clarified that according to its internal procedures, GDT will consult with relevant units and report to the Ministry of Finance for approval before conducting MAP negotiations. In a response, the peer noted such internal procedure, but expressed its concern that in its view, if staff of the competent authority that is present at a face-to-face meeting are not fully empowered to solve cases, it would lead to a delay in the process and affect the resolution of MAP cases within an average time frame of 24 months. This peer concluded that it would appreciate if Viet Nam’s competent authority would ensure that staff being present at the meeting has enough authority for the sake of the resolution within 24 months and dealing with an increasing number of MAP cases effectively and efficiently.

185. Further to the above, another peer reported that it has a post-2016 pending other MAP case with Viet Nam concerning a non-transfer pricing adjustment reported. This peer mentioned that it has notified Viet Nam’s competent authority about a MAP case for which a MAP request was submitted with the peer’s competent authority in 2017 and that Viet Nam was properly available to have exchange of letters regarding the case after the notification.

186. Lastly, the fifth peer reported that it has been trying to contact Viet Nam’s competent authority by e-mail or phone for a face-to-face meeting, but that in its experience it has not been easy in keeping in touch with Viet Nam. In the peer’s view, this caused a delay in reaching a resolution for the case under review. The peer further reported that it has doubts and concerns as to whether Viet Nam’s competent authority has adequate resources invested in the MAP function. The peer concluded that based on its experience, (i) it has been difficult to contact and keep in touch with Viet Nam’s competent authority, (ii) since 2018, the peer has barely received position papers on the cases or explanations about the tax assessments raised by Viet Nam, and (iii) opening letters or receipt letters are seldom received. Viet Nam responded to this input and mentioned that the two sides would need to discuss with each other to take measures to improve the scheduling of face-to-face meetings and promote exchange of position papers.

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

187. Of the peers that provided input in Stage 2, five provided input in relation to their experience with Viet Nam as to handling and resolving MAP cases.

188. The first reported that it has initiated two MAP cases with Viet Nam. For both cases, the Viet Nam competent authority provided prompt acknowledgment of receipt of the MAP cases and their position papers. However, in relation to the first case, the peer sent a position paper to Viet Nam in March 2020 but is yet to receive a response. Reminders were also sent in December 2020, March 2021 and August 2021. In relation to the second case, the peer sent its position paper to Viet Nam in October 2020 and received Viet Nam’s position paper in September 2021.

189. Viet Nam provided a response in relation to these cases, noting that it is still synthesising the opinions of relevant units and will provide a response as soon as possible.

190. The second peer reported that it had two MAP cases with Viet Nam of which one is still pending and that Viet Nam’s competent authority has not made effort to resolve MAP cases within 24 months.

- In one case, both competent authorities had reached a tentative agreement in the bilateral meeting in November 2019 to close the case without agreement. In January 2020, the peer issued the closing letter to Viet Nam. At the time, the peer provided a form of confirmation letter and information as regards procedures to close the case. Viet Nam only replied in December 2021. This case was closed with “no agreement” and is outside the stage 2 review period.
- In the other case, the peer and Viet Nam have not been able to hold a bilateral meeting since November 2019. The peer noted that although it was unavoidable that the third meeting scheduled for March 2020 was postponed due to the Covid-19, Viet Nam has not replied to a proposal to hold a teleconference and has never suggested alternatives. The peer sent a proposal to resolve the case in writing in December 2020 and got a response stating that Viet Nam would consider it on 31 March 2021. Since that time the peer had no response from Viet Nam.

191. The peer also reiterated its input in stage 1 that it expressed concerns in relation to the authority of staff in charge of MAP to resolve cases. The peer reported that Viet Nam seems unwilling to discuss MAP cases where Viet Nam would be responsible for full/partial withdrawal of taxation, although the peer had not been able to monitor this point through a bilateral meeting in the period for Stage 2.

192. This peer also reported that while Viet Nam deserved praise to increasing its resources in light of the Stage 1 recommendations, it did not seem to be leading to any increase in case resolutions.

193. In response to the peer’s input, Viet Nam noted that in relation to the first case, it had sent the peer a letter dated 30 December 2021 confirming the MAP case closed. With regard to the second case, Viet Nam noted that Due to the impact of the Covid-19 pandemic, the two countries have not been able to negotiate in 2021. However, Viet Nam had sent an email on 5 January 2022 to the peer proposing to continue negotiating MAP cases between the two countries in the second quarter of 2022 via video conference.

194. The third peer provided input that it currently has three pending MAP cases with Viet Nam. One case began in February 2016 and although the peer has provided Viet Nam with its position paper and has reached out numerous times, it is yet to receive a reply. In relation to the two remaining pending MAP cases, the peer provided position papers to Viet Nam in January 2020 and is still to receive any feedback or a reply. In response to the peer’s input, Viet Nam noted that had recently provided a reply to the peer’s position papers on 25 January 2022.

195. The fourth peer provided input noting that it had email communication with Viet Nam in relation to a potential MAP case. Viet Nam informed the peer of its position and provided proper information and forms as well on the procedure of reclaim withholding tax in Viet Nam. However, the taxpayer is yet to decide whether to apply for MAP or not. The peer noted that it expects to be able to resolve all of the remaining issues with Viet Nam. In response, Viet Nam noted that it is ready to conduct MAP when the relevant taxpayer sends the required information.

Anticipated modifications

196. Viet Nam did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	<p>Although MAP cases were closed within 24 months on average (which is the pursued average for resolving MAP cases received on or after 1 January 2017), no MAP cases were closed in 2020 and only one pre-2017 case has been closed since 1 January 2017. All cases closed between 1 January 2017-31 December 2020 have either been closed “Withdrawn by taxpayer” and “No agreement including agreement to disagree”.</p> <p>Further, peers indicated that they experienced some difficulties in resolving MAP cases, which concerns:</p> <ul style="list-style-type: none"> • issuing of positions papers/letters in due time • receiving timely responses to position papers issued by peers. <p>The peer input indicates that the competent authority may not be adequately resourced, which causes that there is a risk that pending or future MAP cases cannot be resolved in a timely, effective and efficient manner.</p>	<p>While Viet Nam has made efforts to resolve MAP cases through increasing the number of full-time staff, further actions should be taken to ensure a timely resolution of MAP cases, which concerns both attribution/allocation cases and other cases. Accordingly, Viet Nam should ensure that resources are made available for the competent authority function in a way that allows an adequate use of such resources for the resolution of MAP cases in a timely, efficient and effective manner. This includes ensuring that position papers/letters are issued in due time and timely responses are provided to position papers issued by peers. Where necessary, additional resources should be added to the competent authority, in particular to ensure timely and principled resolution of long-pending cases.</p>

[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.

197. 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

198. Viet Nam reported that staff in charge of MAP must have qualifications set out by GDT such as sufficient knowledge and experiences in accounting, laws, tax treaties and transfer pricing to be able to handle MAP cases. When handling MAP cases, the competent authority

asks the audit team in the related departments, including the relevant Provincial Tax Offices, to provide the underlying documentation of the case under review and to clarify the issue to be able to establish the actual facts of the case. In this respect, Viet Nam stated that staff involved in the adjustment will not be part of the decision making process of the MAP case.

199. In regard of the above, Viet Nam 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 and the process for negotiating MAP agreements is not influenced by policy considerations that Viet Nam would like to see reflected in future amendments to the treaty.

Recent developments

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

Practical application

Peer input – Period 1 January 2017-31 December 2019 (stage 1)

201. In stage 1, one peer provided input on this element and observed that Viet Nam's competent authority has in practice allowed the tax administration personnel directly involved in the adjustment at issue to attend face-to-face meetings, not only to explain the facts and circumstances of the cases under review, but also to assert their views on these cases. In the peer's view, such participation in face-to-face meetings could act as a hindrance to the timely, effective and efficient resolution of MAP cases.

202. Viet Nam responded to this input by stating that if it is necessary the representative of the local tax office, who has the jurisdiction over the taxpayer can be asked to be present at the competent authority meetings. This is then for purposes to provide the facts and information of the case in question (if any), since the information provided by the taxpayers on the case is often incomplete. Viet Nam further clarified that such presence can be requested, for example for attribution/allocation MAP cases, in the beginning of a MAP discussion and when the other competent authority asks for clarification on background and reasons for the adjustment as well as to present actual interactions between the taxpayer and the auditor team that led to the adjustment. Viet Nam also noted that this presence is solely to support verifying the facts and circumstances of the cases under review and only at the beginning/initial stage of the competent authorities' discussion, but not to assert or to decide on the competent authority's views on the case. Viet Nam therefore concluded that by following this rule, its competent authority is in practice in charge of the MAP case management and is seeking resolution with the other competent authority pursuant to the relevant treaties and domestic laws/regulations.

203. The clarification given by Viet Nam, however, was not shared by the peer, who noted that it would appreciate if Viet Nam's competent authority would ensure its independency from tax administration personnel directly involved in the adjustments at issue. With respect to the administrative personnel who made the adjustment at issue and was present at the competent authority meetings, the peer clarified that presence of such personnel was notified at the outset of the meetings, and did not request such personnel to leave the meetings.

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

204. One peer provided input that Viet Nam has not entered into a MAP agreement to make a correlative relief in practice by arguing that approval by the Ministry of Finance is required to reduce the amount of tax. On this basis, the peer considers that Viet Nam's

staff in charge of MAP does not have adequate authority to resolve MAP cases. Further, the peer noted that it was not in position to evaluate whether or not there is improvement in the recommended areas because it had not been able to hold a bilateral meeting including teleconference and exchange of letters since January 2020.

205. Viet Nam noted that its competent authority has the authority to negotiate and decide related issues within its authority during the MAP/APA negotiation with treaty partners. When negotiating, the competent authorities of Viet Nam develop a negotiation plan and report it to the Ministry of Finance for approval. With regard to the specific instance mentioned by the peer, Viet Nam noted that in that case no MAP agreement has been signed yet.

Anticipated modifications

206. Viet Nam did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

207. 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 Viet Nam

208. Viet Nam reported that it has a general framework for reporting work performance as well as a general system of work performance evaluation for staff. It further reported performance indicators have not yet been set for the MAP office due to a small number of MAP cases.

209. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below in bullet form:

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

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

Recent developments

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

Practical application

212. In stage 1, peers that provided input indicated not being aware of the use of performance indicators by Viet Nam that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

213. In stage 2, there was no peer input in relation to element C.5.

Anticipated modifications

214. Viet Nam 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.

215. 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

216. Viet Nam's MAP profile clearly states that it has no domestic law limitations for including MAP arbitration in their tax treaties but its treaty policy does not allow to include MAP arbitration in its tax treaties.

Recent developments

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

Practical application

218. Viet Nam has not incorporated an arbitration clause in any of its tax treaties as a final stage to the MAP.

Anticipated modifications

219. Viet Nam did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

References

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

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

Notes

1. For post-2016 cases, if the number of MAP cases in Viet Nam’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, Viet Nam reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
2. For pre-2017: The average time taken to close MAP cases that started before 1 January 2017 was computed by applying the following rules: (i) the start date: when two tax authorities receive sufficient relevant information and document and ready for the first MAP meeting. The starting date is calculated when the two competent authorities agreed to start the MAP process, and (ii) the end date: when two tax authorities agree to “close” (MAP is withdrawn by taxpayer) or “conclude” (MAP is solved/settled by the competent authorities). The date is calculated when the two competent authorities agreed to close or conclude the MAP. For post-2016: Viet Nam 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”.

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.

220. 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

221. Viet Nam reported that the internal law of Viet Nam stipulates that the time limit for tax assessment is five years while it can be waived when cases are dealt with in MAP and the relevant tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Viet Nam would not implement a MAP agreement if the relevant treaty does not contain such equivalent.

222. In addition, Viet Nam reported that it is in the process approval of its drafting MAP Regulation, which includes the timeframe for implementing MAP agreements. It also reported that according to the draft content, Viet Nam will follow up the agreements reached in MAP discussions with foreign competent authorities.

Recent developments

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

Practical application

Period 1 January 2017-31 December 2019 (stage 1)

224. Viet Nam reported that for the period 1 January 2017-31 December 2019 there are no MAP agreements that needed to be implemented by Viet Nam and therefore it was not possible to assess the implementation of MAP agreements by Viet Nam.

225. All peers that provided input reported that they were not aware of any MAP agreement reached for the period 1 January 2017-31 December 2019 that was not implemented by Viet Nam, and three peers noted that they have not reached any agreements after 1 January 2017 with Viet Nam.

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

226. Viet Nam reported that no MAP agreements requiring implementation were reached since 1 January 2020 as well.

227. All peers that provided input in stage 2 stated that the update report provided by Viet Nam fully reflects their experience with Viet Nam since 1 January 2020 and/or there are no additions to the previous input given.

Anticipated modifications

228. Viet Nam did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

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

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

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

229. 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

230. As discussed under element D.1, Viet Nam reported that there is no theoretical timeframe for implementing mutual agreements, but it will follow up on the agreements reached in MAP discussions with foreign competent authorities.

Recent developments

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

Practical application***Period 1 January 2017-31 December 2019 (stage 1)***

232. Viet Nam reported that in the period 1 January 2017-31 December 2019 there are no MAP agreements that needed to be implemented by Viet Nam and therefore it was not possible to assess the timely implementation of MAP agreements by Viet Nam.

233. All peers that provided input have not indicated experiencing any problems with Viet Nam regarding the implementation of MAP agreements reached on a timely basis, and three peers noted that they have not reached any agreements in the period 1 January 2017-31 December 2019 with Viet Nam.

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

234. As discussed under element D.1, Viet Nam reported that no MAP agreements requiring implementation were reached since 1 January 2020.

235. All peers that provided input in stage 2 stated that the update report provided by Viet Nam fully reflects their experience with Viet Nam since 1 January 2020 and/or there are no additions to the previous input given.

Anticipated modifications

236. Viet Nam reported that it is in the process of drafting the MAP process to be applied in Viet Nam.

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.

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

Legal framework and current situation of Viet Nam's tax treaties

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

239. Out of Viet Nam's 78 tax treaties, 67 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Furthermore, one tax treaty contains such equivalent and also the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments. Additionally, ten do not contain such equivalent or the alternative provisions.

240. In stage 1, for the ten treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or both alternatives two of the relevant peers provided the following input. One peer reported that the relevant treaty does not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), however any problem has not occurred from this lack of provision as there has been no agreement between two competent authorities since 1 January 2017.

241. Another peer reported it has listed the treaty with Viet Nam as a covered tax agreement under the Multilateral Instrument and therefore the treaty will be modified if Viet Nam were to sign and ratify the Multilateral Instrument. The peer has approached Viet Nam to amend the treaty in this regard via bilateral negotiation, but it has not received a response from Viet Nam yet. In addition, another peer reported that in order to meet the Minimum Standard it made all necessary notifications under Article 16 of the Multilateral Instrument. Other peers provided no specific input in relation to element D.3.

Recent developments

Bilateral modifications

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

Multilateral Instrument

243. Viet Nam signed the Multilateral Instrument on 9 February 2022 and is expected to ratify the instrument in 2022.

244. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). 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 (OECD, 2017). Article 16(4)(b)(ii) of the Multilateral Instrument will 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.

245. In regard of the ten tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives provided for in Articles 9(1) and 7(2), Viet Nam listed all of them as a covered tax agreements under the Multilateral Instrument made a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant ten treaty partners, nine have listed their treaty with Viet Nam as covered tax agreements under the Multilateral Instrument and made a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii). For the remaining tax treaty, the treaty partner is a signatory to the Multilateral Instrument, but has not included its treaty as a covered tax agreement. Therefore, at this stage, nine of the ten tax treaties identified above will be modified by the Multilateral Instrument upon entry into force for these treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

246. In stage 2, the peer mentioned above reconfirmed it has listed the treaty with Viet Nam as a covered tax agreement under the Multilateral Instrument and therefore the treaty will be modified if Viet Nam were to sign and ratify the Multilateral Instrument. No other peer input was provided as part of Stage 2.

Anticipated modifications

247. Viet Nam reported that for the tax treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives provided for in Articles 9(1) and 7(2) and that will not be modified by the Multilateral Instrument, it intends to contact the relevant treaty partner to update it via bilateral negotiations with a view to be compliant with element D.3. Viet Nam, however, reported not having in place a specific plan for such negotiations.

248. In addition, Viet Nam reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>Ten out of 78 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). With respect to these ten tax treaties:</p> <ul style="list-style-type: none"> • Nine tax treaties will be modified by the Multilateral Instrument to include the required provision. • For one, no actions have been taken or are planned to be taken. 	<p>Viet Nam should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternative provisions in the treaties that currently do not contain such equivalent.</p> <p>For the remaining tax treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternative provisions, Viet Nam should without further delay request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p>

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]	<p>20 out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these 20 tax treaties:</p> <ul style="list-style-type: none"> • Eight will be modified by the Multilateral Instrument upon ratification to include the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Twelve will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these 12 tax treaties: <ul style="list-style-type: none"> - For five tax treaties, of which the treaty partner is a signatory to the Multilateral Instrument, Viet Nam intends to request the treaty partners to amend their notifications under the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) into the treaty concerned. - For seven tax treaties, no actions have been taken or are planned to be taken. 	<p>Viet Nam should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) in the eight 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 five tax treaties to which the treaty partner is a signatory to the Multilateral Instrument but the treaty will not be modified by the Multilateral Instrument, Viet Nam should without further delay follow its intention to strive to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) via the Multilateral Instrument, in five tax treaties and where such turns out not to be possible, initiate bilateral negotiations.</p> <p>For the remaining seven tax treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) upon its entry into force, Viet Nam should without further delay request the inclusion of the required provision via bilateral negotiations.</p>
[A.2]	Roll-back of bilateral APAs is not available.	Viet Nam should without further delay introduce the possibility of, and in practice provide for, roll-back of bilateral APAs in appropriate cases.
Part B: Availability and access to MAP		
[B.1]	<p>Two out of 78 tax treaties do not contain a provision that is equivalent to Article 25(1) first sentence, of the OECD Model Tax Convention (OECD, 2015a).</p> <p>None of these two treaties are expected to be modified by the Multilateral Instrument to include the required provision. For these treaties, no actions have been taken but Viet Nam intends to modify them via bilateral negotiations.</p>	<p>For the two tax treaties that do not contain a provision that is equivalent to Article 25(1) first sentence, of the OECD Model Tax Convention (OECD, 2015a), Viet Nam should without further delay request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.1]	<p>Four out of 78 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. With respect to these four tax treaties:</p> <p>Three are expected to be modified by the Multilateral Instrument to include the required provision.</p> <p>For one, no actions have been taken or are planned to be taken.</p>	<p>Viet Nam should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) 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.</p> <p>For the remaining tax treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) upon its entry into force, Viet Nam should without further delay request the inclusion of the required provision via bilateral negotiations.</p>
	<p>Under Viet Nam's domestic law access to MAP is denied in eligible cases where the issue under dispute is pending or has already been decided via the judicial and administrative remedies provided by Viet Nam's domestic law, even though the requirements for initiating a MAP case under the treaty provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) are met.</p>	<p>Viet Nam should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017), as incorporated in its tax treaties, can access the MAP regardless of whether domestic remedies have been initiated or finalised. In particular, Viet Nam should ensure that its domestic law does not obstruct access to MAP in cases where the issue under dispute is pending or has already been decided via the judicial and administrative remedies.</p>
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	<p>Nine out of 78 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). All nine tax treaties will be modified by the Multilateral Instrument.</p>	<p>Viet Nam should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaties that currently do not contain such equivalent.</p>
[B.8]	-	-
[B.9]	<p>The MAP guidance is not referenced in Viet Nam's MAP profile.</p>	<p>Viet Nam should update its MAP profile to include where publicly available information and guidance can be found in relation to MAP.</p>
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	<p>One out of 78 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty will not be amended by the Multilateral Instrument. For this treaty, no actions have been taken or are planned to be taken.</p>	<p>For the tax treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) upon its entry into force, Viet Nam should without further delay, request the inclusion of the required provision via bilateral negotiations.</p>
[C.2]	<p>Although 2020 MAP statistics were submitted on time and correct, Viet Nam's 2019 MAP Statistics were incorrectly reported for that year. This is despite matching with peers was undertaken.</p>	<p>Viet Nam should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.</p>

	Areas for improvement	Recommendations
[C.3]	<p>Although MAP cases were closed within 24 months on average (which is the pursued average for resolving MAP cases received on or after 1 January 2017), no MAP cases were closed in 2020 and only one pre-2017 case has been closed since 1 January 2017. All cases closed between 1 January 2017-31 December 2020 have either been “withdrawn by taxpayer” or closed with “no agreement”.</p> <p>Further, peers indicated that they experienced some difficulties in resolving MAP cases, which concerns:</p> <ul style="list-style-type: none"> • issuing of positions papers/letters in due time • receiving timely responses to position papers issued by peers. <p>The peer input indicates that the competent authority may not be adequately resourced, which causes that there is a risk that pending or future MAP cases cannot be resolved in a timely, effective and efficient manner.</p>	<p>While Viet Nam has made efforts to resolve MAP cases through increasing the number of full-time staff, further actions should be taken to ensure a timely resolution of MAP cases, which concerns both attribution/allocation cases and other cases. Accordingly, Viet Nam should ensure that resources are made available for the competent authority function in a way that allows an adequate use of such resources for the resolution of MAP cases in a timely, efficient and effective manner. This includes ensuring that position papers/letters are issued in due time and timely responses are provided to position papers issued by peers. Where necessary, additional resources should be added to the competent authority, in particular to ensure timely and principled resolution of long-pending cases.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	<p>As will be discussed under element D.3 not all of Viet Nam’s tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to time limits in its domestic law.</p>	<p>When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in an assessed jurisdiction’s relevant tax treaty, prevent the implementation of a MAP agreement, Viet Nam should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Viet Nam should for clarity and transparency purposes notify the treaty partner thereof without delay.</p>
[D.2]	-	-
[D.3]	<p>Ten out of 78 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). With respect to these ten tax treaties:</p> <ul style="list-style-type: none"> • Nine tax treaties will be modified by the Multilateral Instrument to include the required provision. • For one, no actions have been taken or are planned to be taken. 	<p>Viet Nam should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternative provisions in the treaties that currently do not contain such equivalent.</p> <p>For the remaining tax treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternative provisions, Viet Nam should without further delay request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p>

Annex A

Tax treaty network of Viet Nam

Treaty partner	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	DTC in force?	If N, date of signing	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										
			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 assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no									
Australia	Y	N/A	O	Y	Y	Y	i = no and such cases will be accepted for MAP	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Austria	Y	N/A	O	Y	Y	N/A	i = no but such cases will not be accepted for MAP	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Azerbaijan	Y	N/A	O	Y	Y	N/A	ii = no but such cases will not be accepted for MAP	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Bangladesh	Y	N/A	O	Y	Y	N/A	iii = no, starting point for computing the 3 year period is different	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
							iv = no, other reasons																

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.1	Article 9(2) of the OECD MTC	B.4	Article 25(2) of the OECD MTC	C.1	D.3	A.1	B.7	A.1	B.7	C.6						
Belarus	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Belgium	Y	N/A	O	Y	N/A	Y	Y	Y	Y	N*	Y	Y	N*	Y	Y	Y	Y	N*	Y	N
Brunei Darussalam	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Bulgaria	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Cambodia	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Canada	Y	N/A	O	ii*	2-years	Y	Y	Y	Y	iii	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
China (Peoples Republic of)	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Croatia	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Cuba	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Czech Republic	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Denmark	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	Y	Y	Y	Y	N
Estonia	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Finland	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
France	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	Y	Y	Y	Y	N
Germany	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hong Kong (China)	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hungary	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Iceland	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
India	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	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		Arbitration
	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	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						
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 assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)										
Indonesia	Y	O	Y	N/A	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Iran	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Ireland	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	Y	N	
Israel	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Italy	Y	N	ii*	2-years	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	N*	Y	N	
Japan	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Kazakhstan	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Korea (Dem. People's Rep.)	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Korea	Y	O	Y	N/A	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Kuwait	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Laos	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N	
Latvia	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Luxembourg	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Macau (China)	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Malaysia	Y	O	Y	N/A	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Malta	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Mongolia	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N	
Morocco	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Mozambique	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Myanmar	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Netherlands	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	N*	Y	Y	Y	Y	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		
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	A.1	B.7	A.1	B.7	A.1	B.7	A.1	B.7	A.1	B.7	
New Zealand	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
North Macedonia	N	10/15/2014	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Norway	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Oman	Y	N/A	O	ii*	2 years	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Pakistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Panama	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Palestinian Authority	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Philippines	Y	N/A	O	ii	2 years	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Poland	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Qatar	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Romania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Russia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
San Marino	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Saudi Arabia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Serbia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Seychelles	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Singapore	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovak Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Spain	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	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	
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	Article 25(1) of the OECD MTC	Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Arbitration											
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6											
Sri Lanka	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Sweden	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y
Switzerland	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
Chinese Taipei	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y
Thailand	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y
Tunisia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y
Türkiye	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y
Ukraine	Y	N/A	N	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y
United Arab Emirates	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
United Kingdom	Y	N/A	O	i	N/A	Y	i	Y	Y	Y	N*	Y	Y	Y	Y	Y	N*	Y	Y	Y
United States	N	7/7/2015	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Uruguay	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Uzbekistan	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y
Venezuela	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

Legend

E* The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.

E** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.

O*	The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
Y*	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.
Y**	The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.
Y***	The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
I*/II*/IV*/N*	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
I**/IV**/N**	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
I***	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B

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

2017 MAP Statistics													
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2017	Number of pre-2017 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2017 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	6	0	0	0	0	0	0	0	0	0	0	6	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	6	0	0	0	0	0	0	0	0	0	0	6	n.a.

2018 MAP Statistics													
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2018	Number of pre-2017 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2017 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	6	0	0	0	0	0	0	0	0	0	0	6	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	6	0	0	0	0	0	0	0	0	0	0	6	n.a.

2019 MAP Statistics													
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2019	Number of pre-2017 cases closed during the reporting period by outcome								No. of pre-2016 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing pre-2017 cases during the reporting period		
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12
		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		
Attribution/Allocation	6	0	0	1	0	0	0	0	0	0	0	5	23.15
Others	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	6	0	0	1	0	0	0	0	0	0	0	5	23.15

2020 MAP Statistics													
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2020	Number of pre-2017 cases closed during the reporting period by outcome								No. of pre-2016 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing pre-2017 cases during the reporting period		
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12
		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		
Attribution/Allocation	5	0	0	1	0	0	0	0	0	0	0	5	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	5	0	0	1	0	0	0	0	0	0	0	5	n.a.

Annex C

MAP Statistics Reporting for the 2017, 2018, 2019 and 2020 Reporting Periods (1 January 2017 to 31 December 2020) for post-2016 cases

2017 MAP Statistics															
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2017	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome							No. of post-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-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	Column 15	
Attribution/ Allocation	0	2	0	0	0	0	0	0	0	0	0	0	0	2	n.a.
Others	0	2	0	0	0	0	0	0	0	0	1	0	0	1	7.00
Total	0	4	0	0	0	0	0	0	0	0	1	0	0	3	7.00

2018 MAP Statistics															
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2018	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome							No. of post-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-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	Column 15	
Attribution/ Allocation	2	1	0	0	0	0	0	0	0	0	0	0	0	3	n.a.
Others	1	0	0	0	0	0	0	0	0	0	0	0	0	1	n.a.
Total	3	1	0	0	0	0	0	0	0	0	0	0	0	4	n.a.

2019 MAP Statistics														
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2019	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome							No. of post-2016 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-2016 cases during the reporting period			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
Attribution/Allocation	3	3	0	0	0	0	0	0	0	0	0	0	6	n.a.
Others	1	1	0	0	1	0	0	0	0	0	0	0	1	23.15
Total	4	4	0	0	1	0	0	0	0	0	0	0	7	23.15

Note: An additional of post-2016 cases was updated by Viet Nam in 2019, which explains the mismatch with the published version of its 2020 statistics.

2020 MAP Statistics														
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2020	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome							No. of post-2016 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing post-2016 cases during the reporting period			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
Attribution/Allocation	6	0	0	0	0	0	0	0	0	0	0	0	6	n.a.
Others	1	2	0	0	1	0	0	0	0	0	0	0	3	n.a.
Total	7	2	0	0	1	0	0	0	0	0	0	0	9	n.a.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
GDT	The General Department of Taxation
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-2017 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2016
Post-2016 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2017 and ended on 31 December 2020
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, Viet Nam (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under BEPS Action 14, members of the OECD/G20 Inclusive Framework on BEPS have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The BEPS Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' Stage 1 peer review report. This report reflects the outcome of the Stage 2 peer monitoring of the implementation of the BEPS Action 14 Minimum Standard by Viet Nam.



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