



# BEPS Action 14 on More Effective Dispute Resolution Mechanisms

PEER REVIEW DOCUMENTS

January 2023

OECD/G20 Base Erosion and Profit Shifting Project

# **BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents**

Updated December 2022

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# Table of contents

Introduction	4
1 Terms of Reference to monitor and review the implementing of the BEPS Action 14 minimum standard to make dispute resolution mechanisms more effective	6
2 Assessment Methodology for the monitoring and review of the implementation of the BEPS action 14 minimum standard to make dispute resolution mechanisms more effective (updated December 2022)	18
3 MAP Statistics Reporting Framework (updated December 2022)	48
4 Guidance on Specific Information and Documentation Required to be Submitted with a Request for MAP Assistance	78

# Introduction

The Action Plan on Base Erosion and Profit Shifting (“BEPS Action Plan”)<sup>1</sup> identified 15 actions to address BEPS in a comprehensive manner. Recognising that the actions to counter BEPS must be complemented with actions that ensure certainty for taxpayers, Action 14 calls for effective dispute resolution mechanisms. In October 2015, the G20 Finance Ministers endorsed the BEPS package<sup>2</sup> which includes the report on Action 14: *Making Dispute Resolution Mechanisms More Effective*<sup>3</sup> (“the 2015 Action 14 Report”) (OECD, 2015<sub>[1]</sub>). This report contains a commitment by countries to implement a minimum standard to ensure that they resolve treaty-related disputes in a timely, effective and efficient manner. All members of the Inclusive Framework on BEPS<sup>4</sup> (“Members”) commit to the implementation of the Action 14 minimum standard and to have their implementation reviewed pursuant to the Terms of Reference and Assessment Methodology agreed by Members.

This compilation contains four documents, namely (i) the Terms of Reference; (ii) the Assessment Methodology; (iii) the Mutual Agreement Procedure (MAP) Statistics Reporting Framework; and (iv) the Guidance on Specific Information and Documentation Required to be Submitted with a Request for MAP Assistance.

The **Terms of Reference** translates the Action 14 minimum standard into 21 elements. These elements are complemented by 12 best practices. The best practices are not part of the minimum standard and thus will not affect the assessment of Members. The Terms of Reference assess a Member’s legal and administrative framework, including the practical implementation of this framework to determine how its MAP regime performs relative to the 21 elements in the following four key areas – (A) preventing disputes; (B) availability and access to MAP; (C) resolution of MAP cases; and (D) implementation of MAP agreements.

The **Assessment Methodology** establishes detailed procedures and guidelines for the Action 14 Peer Review and Monitoring process. The initial peer review process involves two stages. Stage 1 involves the review of a Member’s implementation of the minimum standard based on its legal framework for MAP and the application of this framework in practice. Stage 2 involves the review of the measures taken by the Member to address any shortcomings identified in its Stage 1 Peer Review. Following these reviews, all Members would be subject to continued monitoring: jurisdictions that have “meaningful MAP experience” would undergo a full peer review process from 2024 once every four years and those that do not would undergo a two-stage simplified peer review process from 2023.

The commitment by Members to implement the Action 14 minimum standard includes a commitment to provide timely and complete reporting of MAP statistics pursuant to an agreed reporting framework. The **MAP Statistics Reporting Framework** reflects a collaborative approach for the resolution of MAP cases through the adoption of common timeline for both competent authorities to resolve MAP cases. With effect from reporting period 2016, Members will report MAP statistics based on common definitions of terms, common rules on counting of MAP cases; and common reporting of MAP outcomes based on different categories of outcomes.

The Action 14 minimum standard also requires Members to publish MAP guidance that identify the specific information and documentation that a taxpayer is required to submit with a request for MAP assistance. Members should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information. The **Guidance on Specific Information and Documentation Required to be Submitted with a Request for MAP Assistance** could be used by Members in drawing up their own MAP guidance and could also provide guidance to taxpayers in their preparation of a MAP submission.

## Reference

OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264241633-en>. [1]

## Notes

<sup>1</sup> Available at <https://doi.org/10.1787/9789264202719-en>.

<sup>2</sup> Available at [www.oecd.org/tax/beps-2015-final-reports.htm](http://www.oecd.org/tax/beps-2015-final-reports.htm).

<sup>3</sup> Available at [www.oecd.org/tax/making-dispute-resolution-mechanisms-more-effective-action-14-2015-final-report-9789264241633-en.htm](http://www.oecd.org/tax/making-dispute-resolution-mechanisms-more-effective-action-14-2015-final-report-9789264241633-en.htm).

<sup>4</sup> Available at [www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf](http://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf).

# 1

## Terms of Reference to monitor and review the implementing of the BEPS Action 14 minimum standard to make dispute resolution mechanisms more effective

### Introduction

1. The Action Plan on *Base Erosion and Profit Shifting* (“BEPS Action Plan”)<sup>1</sup> published by the Organisation for Economic Cooperation and Development (“OECD”) in 2013 at the request of the G20 identified 15 actions to address BEPS in a comprehensive manner. Recognising that the actions to counter BEPS must be complemented with actions that ensure certainty and predictability for businesses, one of the BEPS actions, Action 14, calls for effective dispute resolution mechanisms:

#### **ACTION 14**

#### ***Make dispute resolution mechanisms more effective***

*Develop solutions to address obstacles that prevent countries from [re]solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.*

2. In October 2015, the BEPS package comprising an explanatory statement and 13 reports addressing BEPS concerns identified in the BEPS Action Plan was approved by the OECD and endorsed by the G20 Finance Ministers.<sup>2</sup> One of the reports, *Report on Action 14: Making Dispute Resolution Mechanisms More Effective* (“the 2015 Action 14 Report”) (OECD, 2015<sub>[1]</sub>), discusses the obstacles that prevent countries from resolving treaty-related disputes under the mutual agreement procedure (“MAP”) and recommended measures to overcome such obstacles.

3. Recognising the importance of removing double taxation as an obstacle to cross-border trade and investment, the 2015 Action 14 Report (OECD, 2015<sub>[1]</sub>) also reflected the commitment of countries to implement a minimum standard (“the Action 14 minimum standard”) to ensure that they resolve treaty-related disputes in a timely, effective and efficient manner. The minimum standard is complemented by a set of best practices. Furthermore, to ensure the effective implementation of the minimum standard, countries also committed to have their compliance with the minimum standard reviewed by their peers – i.e. the other members of the Forum on Tax Administration MAP Forum (“FTA MAP Forum”). In addition, a number of countries<sup>3</sup> also consider that mandatory binding arbitration is the best way of ensuring that tax treaty disputes are effectively resolved through MAP and have committed to adopt and implement mandatory binding arbitration as a way to resolve disputes that otherwise prevent the resolution of cases through the mutual agreement procedure.

4. In this regard, the 2015 Action 14 Report (OECD, 2015<sub>[1]</sub>) mandated that the Committee on Fiscal Affairs (“CFA”) through its Working Party No. 1 on Tax Conventions and Related Questions (“Working

Party 1”) and the FTA MAP Forum develop the Terms of Reference and the Assessment Methodology for the monitoring of the implementation of the Action 14 minimum standard by all OECD and G20 countries, as well as jurisdictions that commit to the minimum standard (see mandate in **Annex 1.A.**).

## The Action 14 minimum standard for the resolution of tax treaty-related disputes

5. Removing obstacles that double taxation presents is key to the development of economic relations between jurisdictions. In this regard, jurisdictions enter into tax treaties with the aim of removing such obstacles and to provide taxpayers with certainty on the tax treatment of their cross border trade, investment and activities. Where doubts or difficulties arise in relation to the interpretation or application of the tax treaty, or where taxpayers enter into disputes with tax authorities on the tax treaty treatment of their activities, Article 25<sup>4</sup> of the OECD Model Tax Convention on Income and on Capital (“OECD Model Tax Convention”) (OECD, 2019<sup>[2]</sup>), provides a mechanism – the mutual agreement procedure (“MAP”), that allows the resolution of such difficulties or disputes.

6. The MAP, which is independent from the ordinary legal remedies available under domestic law, allows the competent authorities of the Contracting Parties to resolve differences or difficulties regarding the interpretation or application of the Convention on a mutually-agreed basis. This mechanism seeks to ensure the proper application and interpretation of tax treaties so that taxpayers entitled to the benefits of the treaty are not subject to taxation by either of the Contracting Parties which is not in accordance with the terms of the treaty.

7. The Action 14 minimum standard aims to strengthen the effectiveness and efficiency of the MAP process. The minimum standard is constituted by specific measures that jurisdictions will take to ensure that they resolve treaty-related disputes in a timely, effective and efficient manner and is complemented by a set of best practices. The elements of the minimum standard set out in the 2015 Action 14 Report (OECD, 2015<sup>[1]</sup>) seeks to achieve the following three general objectives in order to ensure that dispute resolution mechanisms are more effective:

- Jurisdictions should ensure that treaty obligations related to MAP are fully implemented in good faith and that MAP cases are resolved in a timely manner;
- Jurisdictions should ensure that administrative processes promote the prevention and timely resolution of treaty-related disputes; and
- Jurisdictions should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2019<sup>[2]</sup>) can access the MAP.

8. In other words, for the MAP to be more effective it should: (i) allow the competent authorities to reach agreements on how to prevent tax treaty-related disputes from arising in the first instance, (ii) be available and accessible to taxpayers where tax-treaty disputes do arise; and (iii) be effective in resolving such disputes, including the timely implementation of the agreements that are reached by competent authorities through the MAP process.

9. Jurisdictions should enhance their competent authority relationships and work collectively to improve the effectiveness of the MAP by becoming members of the FTA MAP Forum and fully participate in the work of the FTA MAP Forum. A jurisdiction’s compliance with the Action 14 minimum standard will be reviewed by its peers in the context of the FTA MAP Forum. The Terms of Reference describe the Action 14 minimum standard and break them down into 21 elements to reflect the four key areas of an effective dispute resolution mechanism - preventing disputes, availability and access to MAP, resolution of MAP cases and implementation of MAP agreements. These elements are complemented by 12 best practices. The elements and best practices should be interpreted based on the 2015 Action 14 Report and in accordance with the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2019<sup>[2]</sup>).<sup>5</sup> The best practices are not part of the minimum standard and whether or not a jurisdiction has implemented

the best practices will not be peer reviewed or monitored, nor will it affect the assessment of the assessed jurisdiction. Jurisdictions are free, however, to identify best practices they have adopted.

10. The minimum standard contained in the 2015 Action 14 Report has been translated into the Terms of Reference to facilitate the review of an assessed jurisdiction's compliance with the Action 14 minimum standard. The Terms of Reference do not alter the Action 14 minimum standard and in case of any differences arising from the interpretation of any elements of the Terms of Reference and the Action 14 minimum standard, the review of the assessed jurisdiction shall be conducted based on the minimum standard contained in the 2015 Action 14 Report. The Terms of Reference have been designed to assess the jurisdictions' legal and administrative frameworks and the practical implementation of the frameworks to determine how a jurisdiction's dispute resolution mechanisms operate with respect to the basis of the minimum standard of the Action 14 Report in the following areas:

- Preventing disputes (**Part A**);
- Availability and access to MAP (**Part B**);
- Resolution of MAP cases (**Part C**); and
- Implementation of MAP agreements (**Part D**).

11. They will also serve as a basis for questionnaires to be developed by the FTA MAP Forum, which will form the basis of the reviews to be conducted by the FTA MAP Forum. Jurisdictions should provide timely and complete responses to the questionnaires including timely and complete reporting of MAP statistics pursuant to an agreed template and reporting framework and information on their MAP profiles which will be published on a shared public platform based on an agreed template.

#### **A. Preventing disputes – Elements of the minimum standard**

12. Taxpayers desire to have certainty on the tax treaty treatment of their cross-border trade and investment and clarity on the application and interpretation of the tax treaty. Such clarity and certainty is equally important for tax authorities. The legal authority for competent authorities to clarify any difficulties or doubts arising from the interpretation or application of their tax treaties is derived from tax treaty provisions that follow paragraph 3 of Article 25. In this regard, the Action 14 minimum standard requires that:

- A.1. 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.<sup>6</sup>
- A.2. Jurisdictions with bilateral advance pricing arrangement ("APA")<sup>7</sup> programmes should provide for the roll-back<sup>8</sup> 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.

### **Best practices**

- B.P.1. Jurisdictions should implement bilateral APA programmes.
- B.P.2. Jurisdictions should have appropriate procedures in place to publish agreements reached by competent authorities on difficulties or doubts arising as to the interpretation or application of their tax treaties<sup>9</sup> in appropriate cases.
- B.P.3. Jurisdictions' published MAP guidance should provide guidance on APAs.

- B.P.4. Jurisdictions should develop the “global awareness” of the audit/examination functions involved in international matters through the delivery of the Forum on Tax Administration’s “Global Awareness Training Module” to appropriate personnel.

## **B. Availability and access to MAP – Elements of the minimum standard**

13. Where tax treaty-related disputes arise between taxpayers and the tax authorities, a dispute resolution mechanism should be available to taxpayers based on the tax treaty irrespective of the remedies provided by the domestic laws of the treaty partners. Paragraph 1 of Article 25 provides a mechanism, the MAP, for the resolution of tax treaty-related disputes. Jurisdictions should ensure that taxpayers have access to MAP and that information relating to taxpayer access to MAP is readily available and accessible to the public.

14. To ensure that taxpayers have access to MAP, the Action 14 minimum standard requires that:

- B.1. 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.<sup>10</sup>
- B.2. 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<sup>11</sup>, 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).
- B.3. Jurisdictions should provide access to MAP in transfer pricing cases.
- B.4. 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.
- B.5. 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.<sup>12</sup>
- B.6. 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.
- B.7. 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.<sup>13</sup>

15. To facilitate taxpayers' access to MAP, jurisdictions should ensure transparency relating to their MAP regimes – information on how to access MAP must be available, clear and easily accessible to the public. In this regard, the Action 14 minimum standard requires that:

- B.8. 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.
- B.9. 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.
- B.10. 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.<sup>14</sup>

## Best practices

- B.P.5. Jurisdictions should implement appropriate administrative measures to facilitate recourse to the MAP to resolve treaty-related disputes, recognising the general principle that the choice of remedies should remain with the taxpayer.
- B.P.6. Jurisdictions' published MAP guidance should provide that taxpayers will be allowed access to the MAP so that the competent authorities may resolve through consultation the double taxation that can arise in the case of bona fide taxpayer-initiated foreign adjustments.<sup>15</sup>
- B.P.7. Jurisdictions' published MAP guidance should provide guidance on multilateral MAPs.
- B.P.8. Jurisdictions should take appropriate measures to provide for a suspension of collections procedures during the period a MAP case is pending. Such a suspension of collections should be available, at a minimum, under the same conditions as apply to a person pursuing a domestic administrative or judicial remedy.

### **C. Resolution of MAP cases – Elements of the minimum standard**

16. An effective dispute resolution mechanism must be capable of resolving disputes in a timely and principled manner. The legal authority for competent authorities to come together to discuss a MAP case with a view to resolving the case to avoid taxation which is not in accordance with the tax treaty may be derived from paragraph 2 of Article 25. The Action 14 minimum standard requires that:

- C.1. 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.<sup>16</sup>

- C.2. Jurisdictions should seek to resolve MAP cases<sup>17</sup> within an average time frame of 24 months.<sup>18</sup> This time frame applies to both jurisdictions (i.e. the jurisdiction which receives the MAP request from the taxpayer and its treaty partner).<sup>19</sup>
- C.3. Jurisdictions should ensure that adequate resources are provided to the MAP function.
- C.4. 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.
- C.5. 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.
- C.6. Jurisdictions should provide transparency with respect to their positions on MAP arbitration.<sup>20</sup>

## Best practices

- B.P.9. Jurisdictions should implement appropriate procedures to permit, in certain cases and after an initial tax assessment, requests made by taxpayer which are within the time period provided for in the tax treaty for the multi-year resolution through the MAP of recurring issues with respect to filed tax years, where the relevant facts and circumstances are the same and subject to the verification of such facts and circumstances on audit.
- B.P.10. Jurisdictions should publish an explanation of the relationship between the MAP and domestic law administrative and judicial remedies.<sup>21</sup>
- B.P.11. Jurisdictions' published MAP guidance should provide guidance on the consideration of interest and penalties in the mutual agreement procedure.
- B.P.12. Jurisdictions should include paragraph 2 of Article 9 of the OECD Model Tax Convention in their tax treaties.

### **D. Implementation of MAP agreements – Elements of the minimum standard**

17. Any competent authority agreement reached on a MAP case by itself would not provide any relief to the taxpayer unless the agreement is implemented. The second sentence of paragraph 2 of Article 25 of the OECD Model Tax Convention (OECD, 2019<sup>[2]</sup>) requires that the agreement reached shall be implemented notwithstanding any time limits in the domestic law of the jurisdictions. The Action 14 minimum standard requires that:

- D.1. Jurisdictions should implement any agreement reached in MAP discussions, including by making appropriate adjustments to the tax assessed in transfer pricing cases.
- D.2. Agreements reached by competent authorities through the MAP process should be implemented on a timely basis.
- D.3. 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<sup>22</sup>, 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.<sup>23</sup>

## Output of the Peer Review and Monitoring process

18. In accordance with the 2015 Action 14 Report (OECD, 2015<sup>[1]</sup>), the core output of the peer monitoring process will come in the form of a report. The report will identify and describe the strengths and any shortcomings that exist and provide recommendations as to how the shortcomings might be addressed by the assessed jurisdiction.

19. Given the importance of the MAP for taxpayers seeking to ensure that their taxation is in accordance with tax treaties, the report of an assessed jurisdiction should contain information on the MAP regime of the assessed jurisdiction to assist taxpayers' compliance with the requirements to access and the use of MAP. Such information will also facilitate a jurisdiction in its request to commence discussion of the MAP case with its treaty partner by ensuring that all the administrative and procedural requirements of its treaty partner have been met.

20. The FTA MAP Forum will produce on a regular basis reports on the outcome of the reviews conducted ("the FTA MAP Forum Report") on its members' compliance with the minimum standard and measures taken by its members to improve their MAP regime. This FTA MAP Forum Report which will be published on a shared public platform will include the purpose and background of this work conducted by the FTA MAP Forum, an executive summary on the outcome of the reviews conducted and will comprise the individual reports of the assessed jurisdictions. Each jurisdiction's report will include a description of its legal and administrative framework for the MAP and the practical application of the framework. This will be presented under 4 headings:

- (i) Preventing disputes
- (ii) Availability and access to MAP
- (iii) Resolution of MAP cases
- (iv) Implementation of MAP agreements.

21. The individual report of an assessed jurisdiction shall note all efforts made by the assessed jurisdiction to implement the minimum standard including the plans shared by the assessed jurisdiction to make legislative or procedural changes to implement the minimum standard taking into consideration that the assessed jurisdiction might not have fully implemented elements of the minimum standard given the time from its adoption to the time of its review. To assist the assessed jurisdiction in fully implementing the minimum standard, the individual report of an assessed jurisdiction will thus also identify and describe any shortcomings that exist in relation to the implementation of each of the elements of the minimum standard and provide recommendations as to how these shortcomings might be addressed. Recommendations should be specific and provide guidance to the jurisdiction as to what is expected.

## References

- OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>. [2]
- OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264241633-en>. [1]

## Notes

<sup>1</sup> Available at <https://doi.org/10.1787/9789264202719-en>.

<sup>2</sup> Available at [www.oecd.org/tax/beps-2015-final-reports.htm](http://www.oecd.org/tax/beps-2015-final-reports.htm).

<sup>3</sup> Australia, Austria, Belgium, Canada, France, Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the United States.

<sup>4</sup> The Report on Action 14 contains changes to Article 25 of the OECD Model Tax Convention and its Commentary. Other changes to the Commentary will be included in the next update of the OECD Model Tax Convention to reflect the conclusions of the Report on Action 14. In this regard, all references to Article 25 and its Commentary shall be read in the context of Article 25 and its Commentary as amended by the Report on Action 14 and the changes which will be made to the Commentary in the next update of the OECD Model Tax Convention.

<sup>5</sup> The reference to commentaries on Article 25 should be understood as those referred to in the 2015 Action 14 Report.

<sup>6</sup> See paragraph 3 of Article 25 and its Commentary.

<sup>7</sup> An APA is “an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.” (see definition of APA in the **OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations** (“Transfer Pricing Guidelines”)). A request for an APA is not a MAP case for purposes of the MAP Statistics Reporting Framework and element C.2.

<sup>8</sup> Situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The concept of “roll-back” is further elaborated in paragraph 4.136 of Section F (Advance pricing arrangement) of Chapter IV of the Transfer Pricing Guidelines and in paragraph 69 of Section D.4.2 (Possible retrospective application (“Roll back”)) of the Annex to Chapter IV (Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure (“MAP APAs”)) of the Transfer Pricing Guidelines. Simply put, the “roll-back” of the APA is understood to mean that the outcome of the APA is applied to previous filed tax years not included within the original scope of the APA. A request for the roll-back of an APA is not a MAP case for purposes of the MAP Statistics Reporting Framework and element C.2.

<sup>9</sup> See first sentence of paragraph 3 of Article 25 and its Commentary.

<sup>10</sup> See paragraph 1 of Article 25 and its Commentary.

<sup>11</sup> See paragraph 1 of Article 25 and its Commentary.

<sup>12</sup> The relevant commitment under 2.6 of the Action 14 minimum standard deals only with access to MAP, which, consistently with what has been explained in paragraph 16 of the Report on Action 14 regarding the element 1.2, is distinct from any obligation to endeavour to resolve the case pursuant to paragraph 2 of Article 25 and from any obligation to submit an issue to arbitration that may arise under treaties that contain an arbitration provision, whether mandatory or not. Elements B.5 and B.10 of the Terms of Reference should therefore not be interpreted as including any implicit commitment with respect to these other obligations.

<sup>13</sup> See second sentence of paragraph 3 of Article 25 and its Commentary.

<sup>14</sup> The relevant commitment under 2.6 of the Action 14 minimum standard deals only with access to MAP, which, consistently with what has been explained in paragraph 16 of the Report on Action 14 regarding the element 1.2, is distinct from any obligation to endeavour to resolve the case pursuant to paragraph 2 of Article 25 and from any obligation to submit an issue to arbitration that may arise under treaties that contain an arbitration provision, whether

mandatory or not. Elements B.5 and B.10 of the Terms of Reference should therefore not be interpreted as including any implicit commitment with respect to these other obligations.

<sup>15</sup> Taxpayer-initiated foreign adjustments are taxpayer-initiated adjustments permitted under the domestic laws of a treaty partner which allow a taxpayer under appropriate circumstances to amend a previously-filed tax return to adjust (i) the price for a transaction between associated enterprises or (ii) the profits attributable to a permanent establishment, with a view to reporting a result that is, in the view of the taxpayer, in accordance with the arm's length principle. For such purposes, a taxpayer-initiated foreign adjustment should be considered bona fide where it reflects the good faith effort of the taxpayer to report correctly the taxable income from a controlled transaction or the profits attributable to a permanent establishment and where the taxpayer has otherwise timely and properly fulfilled all of its obligations related to such taxable income or profits under the tax laws of the two Contracting Parties. (see Best Practice 9 in the Action 14 Report)

<sup>16</sup> See paragraph 2 of Article 25 and its Commentary.

<sup>17</sup> A MAP case for this purpose refers to a MAP case that is received by a competent authority from the taxpayer on or after 1 January 2016 and is defined in Annex 3.D. of the MAP Statistics Reporting Framework.

<sup>18</sup> The average time frame to resolve MAP cases shall be computed in accordance with the method of computation provided in the MAP Statistics Reporting Framework. The "start date" and "end date" for purposes of computing the time taken to resolve a MAP case is defined in the MAP Statistics Reporting Framework. These statistical purposes should be distinguished from the purposes of time frames in arbitration provisions; the time frames relevant in that latter context must be determined based on the provisions of the relevant arbitration clause and/or relevant competent authority agreements on the application of such clause.

<sup>19</sup> Given that the average time frame in element C.2. applies to both jurisdictions, in the review of an assessed jurisdiction, if the average time taken to resolve MAP cases exceeds 24 months arising from delays caused by its treaty partners, such delays shall not lead to a recommendation that the assessed jurisdiction needs to improve the average time taken to resolve MAP cases.

<sup>20</sup> A jurisdiction should provide its position on arbitration in its MAP profile which should be published on a shared public platform. In addition, OECD members and non-OECD economies which have set out their positions on the OECD Model Tax Convention should provide their position on arbitration in the OECD Model Tax Convention.

<sup>21</sup> The public guidance should address, in particular, whether the competent authority considers itself to be legally bound to follow a domestic court decision in the MAP or whether the competent authority will not deviate from a domestic court decision as a matter of administrative policy or practice.

<sup>22</sup> See second sentence of paragraph 2 of Article 25 and its Commentary.

<sup>23</sup> See paragraph 62 of the Commentary on Article 7 and paragraph 10 of the Commentary on Article 9.

## Annex 1.A. Mandate for the development of the Terms of Reference and the Assessment Methodology

Pursuant to element 1.6 of the Action 14 minimum standard, countries commit to have their compliance with the minimum standard reviewed by their peers – i.e. the other members of the FTA MAP Forum (as provided in element 1.4 of the minimum standard, countries should become members of the FTA MAP Forum and participate fully in its work). This review will take place through a monitoring mechanism, the framework for which is described in Section I.C of this Report. Such monitoring is essential to ensure the meaningful implementation of the minimum standard and will be conducted pursuant to Terms of Reference and an Assessment Methodology to be developed by the OECD Committee on Fiscal Affairs through its Working Party No. 1 on Tax Conventions and Related Questions (Working Party 1) and the Forum on Tax Administration MAP Forum (the FTA MAP Forum). The mandate for the development of the Terms of Reference and the Assessment Methodology is set out below:

### Preamble

Recognising that the conclusions of the work on Action 14 of the BEPS Action Plan reflect the agreement that countries should commit to a minimum standard comprising a number of specific elements that are intended to ensure that treaty-related disputes are resolved in a timely, effective and efficient manner;

Noting that the conclusions of the work on Action 14 also include agreement that the implementation of the minimum standard should be evaluated through a peer monitoring mechanism in order to ensure that the commitments embodied in the minimum standard are effectively satisfied, and that all OECD and G20 countries, as well as jurisdictions that commit to the minimum standard, will undergo reviews pursuant to that monitoring mechanism;

Considering that the peer monitoring process will require the development of Terms of Reference that will be used to assess the implementation of the Action 14 minimum standard and of an Assessment Methodology that will establish procedures and guidelines for the peer monitoring process;

The countries participating in the OECD-G20 BEPS Project have agreed that Terms of Reference and an Assessment Methodology will be developed by the OECD Committee on Fiscal Affairs, through its Working Party No. 1 on Tax Conventions and Related Questions and the Forum on Tax Administration MAP Forum (the FTA MAP Forum) pursuant to the following mandate.

### A. Objective

The OECD Committee on Fiscal Affairs through its Working Party No. 1 on Tax Conventions and Related Questions and the Forum on Tax Administration MAP Forum (the FTA MAP Forum) shall develop the core documents for the monitoring of the implementation of the Action 14 minimum standard: the Terms of Reference and the Assessment Methodology. The Terms of Reference will be based on the elements of the minimum standard and will break down these elements into specific aspects against which jurisdictions' legal frameworks, MAP programme guidance and actual implementation of the minimum standard are assessed; they will provide a clear roadmap for the monitoring process and thereby ensure that the assessment of all jurisdictions is consistent and complete. The *Assessment Methodology* will establish detailed procedures and guidelines for the peer monitoring of OECD and G20 countries and other

committed jurisdictions by the FTA MAP Forum, which will be open to all such countries participating on an equal footing and will include a system for assessing the implementation of the minimum standard.

## **B. Participation**

The Terms of Reference and the Assessment Methodology shall be developed jointly by the OECD Committee on Fiscal Affairs, through its Working Party 1 on Tax Conventions and Related Questions, and the FTA MAP Forum, with all countries participating on an equal footing.

## **C. Duration and term**

The development of the Terms of Reference and the Assessment Methodology shall start no later than November 2015. Working Party 1 and the FTA MAP Forum shall aim to conclude their work on the Terms of Reference and the Assessment Methodology by the end of the first quarter of 2016.

# 2

## Assessment Methodology for the monitoring and review of the implementation of the BEPS action 14 minimum standard to make dispute resolution mechanisms more effective (updated December 2022)

### Introduction

1. The Action 14 BEPS Report: *Making Dispute Resolution Mechanisms More Effective - 2015 Final Report* (“**the 2015 Action 14 Report**”) (OECD, 2015<sup>[1]</sup>) was approved by the OECD Committee on Fiscal Affairs (“CFA”) in September, presented to the OECD Council and endorsed by the G20 Finance Ministers at their meeting on 8 October 2015.<sup>1</sup> The 2015 Action 14 Report (OECD, 2015<sup>[1]</sup>) contains a commitment by countries engaged in the work to make important changes in their approach to dispute resolution. In particular, these countries commit to the implementation of a minimum standard (“the minimum standard”) to ensure that they resolve treaty-related disputes in a timely, effective and efficient manner and to have their compliance with the minimum standard reviewed by their peers – i.e. the other members of the Forum on Tax Administration MAP Forum<sup>2</sup> (“the FTA MAP Forum” or “the Forum”). The FTA MAP Forum brings together all OECD and G20 countries and will be open to all jurisdictions that commit to the minimum standard. All members of the Forum will participate in the work on an equal footing. This review will be conducted through a peer-based monitoring mechanism that will report regularly to the G20.

2. In accordance with the mandate contained in the 2015 Action 14 Report (OECD, 2015<sup>[1]</sup>), the CFA, through its Working Party No. 1 on Tax Conventions and Related Questions (“**Working Party 1**”) and the FTA MAP Forum will develop the Terms of Reference and Assessment Methodology<sup>3</sup> for the monitoring and peer review of the implementation of the minimum standard. The peer reviews will include an evaluation of the legal framework provided by the jurisdiction’s tax treaties and domestic law and regulations, and its MAP programme guidance. The minimum standard is also complemented by a set of best practices.

3. The peer review and monitoring of the implementation of the minimum standard by members of the FTA MAP Forum and non-members<sup>4</sup> identified by the Forum as relevant to this work will be conducted by the FTA MAP Forum. The process begins in 2016 with the objective of publishing the first reports in the second half of 2017.

4. The Assessment Methodology contained in this note establishes detailed procedures and guidelines for a 2-stage approach to peer review and monitoring of the implementation of the minimum standard. Stage 1 involves the review of the assessed jurisdiction’s implementation of the minimum standard based on the jurisdiction’s legal framework for MAP and the application of this framework in practice (“**Stage 1 Peer Review**”). Stage 2 involves the review of the measures taken by the assessed jurisdiction to address any shortcomings identified in its Stage 1 Peer Review (“**Stage 2 Peer Monitoring**”). The review of non-members of the FTA MAP Forum will occur in a manner similar to the review of members to the greatest extent possible. While participation of non-members should be encouraged, it is important

that the review of non-members be based on best available information in the absence of such participation.

5. The Assessment Methodology contained in this note should be reviewed by 2020 in light of the experience in conducting peer monitoring, keeping in mind the need for an Assessment Methodology which effectively improves the shortcomings identified in the peer review reports with the aim of ensuring an effective MAP regime to benefit both governments and taxpayers.

## Peer Review and Monitoring process

6. All OECD and G20 countries, and other jurisdictions which have committed to the minimum standard, will work collectively to improve the effectiveness of the MAP by becoming members of the FTA MAP Forum. To assist members in improving the effectiveness of their MAP regime, every member's compliance with the minimum standard will be reviewed by other members of the Forum, in accordance with an assessment schedule to be developed by the FTA MAP Forum. The FTA MAP Forum should take into consideration the MAP experience and the MAP inventory of jurisdictions in the scheduling of their review, including whether jurisdictions already compile statistical information relating to MAP or published their MAP profile.

7. The assessment schedule should ensure that the Stage 1 Peer Reviews begin in 2016 and that the Stage 1 Peer Review of all 44 countries<sup>5</sup> that have committed to the BEPS outputs starts no later than end 2018. Furthermore, any country or jurisdiction that participates as BEPS Associates in an extension of the OECD's Committee on Fiscal Affairs (CFA) under the framework where BEPS Associates will work on an equal footing with the OECD and G20 members on the remaining standard-setting under the BEPS Project, as well as the review and monitoring of the implementation of the BEPS package, will also undergo the same peer review and monitoring process. However, the MAP Forum should defer the review of any such member that is a developing country and is not an OECD or G20 country if that member has not yet encountered meaningful levels of MAP requests and there is no feedback from other members of the FTA MAP Forum indicating that the jurisdiction's MAP regime requires improvement. In any case, all members of the FTA MAP Forum should report statistics in accordance with the agreed framework for reporting of MAP statistics and publish their MAP Profiles on a shared public platform pursuant to the agreed template. In addition, the assessment schedule should ensure that the Stage 2 Peer Monitoring of all 44 countries that have committed to the BEPS outputs be completed by 2020.

8. The Stage 1 Peer Review and Stage 2 Peer Monitoring will be desk-based and will be co-ordinated by the Secretariat of the FTA MAP Forum ("**the Secretariat**"). This section contains details concerning the methodology for conducting these reviews as follows:

- Part A – Obtaining inputs for the Stage 1 Peer Review
- Part B – Drafting and approval of a Stage 1 Peer Review report
- Part C – Publication of Stage 1 Peer Review reports
- Part D – Monitoring of measures taken by assessed jurisdiction to improve the MAP regime (i.e. Stage 2 Peer Monitoring)

9. A flowchart summary of the Stage 1 Peer Review and Stage 2 Peer Monitoring process is attached in **Annex 2.A.** and **Annex 2.B.** respectively and the model assessment schedule for conducting these reviews is attached in **Annex 2.C.**

### **A. Obtaining inputs for the Stage 1 Peer Review**

10. This section of the note describes the mechanisms and procedures to obtain inputs for the Stage 1 Peer Review of an assessed jurisdiction.

### *Obtaining inputs from the assessed jurisdiction*

11. Each member of the FTA MAP Forum will be invited to designate a central point of contact for the Peer Review and Monitoring process, and to advise whether it wishes to conduct its review in English or French. The peer review process will commence when the assessed jurisdiction receives a questionnaire (“**the questionnaire**”) in an electronic format from the Secretariat through this central point of contact.

12. The questionnaire will be in a standard format covering each aspect of the elements, as described in the Terms of Reference. This will include requests for information on the jurisdiction’s legal framework for MAP (as contained in tax treaties, domestic law and regulations), the jurisdiction’s MAP programme guidance, how the jurisdiction’s MAP framework operates in practice, and relevant statistics. The standard form questionnaire may also be supplemented by jurisdiction-specific questions, for example regarding issues raised by peers and taxpayers.

13. The information and materials provided by the assessed jurisdiction will be one of the main sources of information used in conducting the jurisdiction’s Stage 1 Peer Review. Therefore, in response to the questionnaire, a jurisdiction should provide a detailed description of the relevant measures and actions, with analysis where appropriate, and including citations from relevant laws or other material. All relevant laws, regulations, guidelines and other relevant documents should be available in the language of the review. A jurisdiction’s response to the questionnaire, and any documents or other materials provided by the jurisdiction, should be submitted to the Secretariat in an electronic format.

14. The assessed jurisdiction should provide its response within a maximum of 4 weeks of receipt of the questionnaire from the Secretariat. Where supplementary questions are sent to the assessed jurisdiction after receipt of the questionnaire, the assessed jurisdiction should also provide responses to these questions in a timely manner. The time required for translation of documents by the assessed jurisdiction should be taken into account to ensure it meets this time frame.

### *Obtaining input from the assessed jurisdiction’s peers*

15. An important element of the Peer Review and Monitoring process is the opportunity for other members of the FTA MAP Forum that have a tax treaty with the assessed jurisdiction (“peers”) to provide their input into the Forum’s assessment of the assessed jurisdiction’s compliance with the minimum standard. A questionnaire (“**the peer questionnaire**”) will be sent to members of the FTA MAP Forum in an electronic format when the review of a jurisdiction has commenced. This will be in a standard format and will invite jurisdictions that have a tax treaty with the assessed jurisdiction to provide comments on the assessed jurisdiction’s compliance with the elements of the minimum standard. A jurisdiction should notify the Secretariat if the peer review questionnaire should be sent to a person other than the designated point of contact referred to in paragraph 11 of this note.

16. Jurisdictions should provide responses to the peer questionnaire within 4 weeks of its receipt from the Secretariat. These responses should be provided in English or French and in an electronic format. While ensuring that taxpayer confidentiality is preserved, jurisdictions should aim to be specific in their responses and provide as much detail as possible to aid the Secretariat in understanding and evaluating any issues that have been identified. Where necessary, supplementary questions concerning issues raised in responses to the peer questionnaire may be sent to the assessed jurisdiction. Responses to the peer questionnaire will be made available to the assessed jurisdiction and the assessed jurisdiction should address any issues raised by its peers in its response to the Secretariat.

### *Obtaining inputs from taxpayers<sup>6</sup>*

17. The main users of the MAP are the taxpayers and transparency and effectiveness of the assessed jurisdictions’ MAP regime helps provide certainty and predictability for taxpayers. In this regard, for the monitoring and peer review to be meaningful, it is important that taxpayers are able to provide input on

their experience on the MAP process. Therefore taxpayers (e.g. individuals and corporations) and associations of taxpayers (e.g. business and industry associations) from all assessed jurisdictions will be invited to provide input focused on aspects of the minimum standard where taxpayers are in the best position to make contributions. The questionnaire to be used for that purpose will therefore centre on questions relating to access to MAP, clarity and availability of MAP guidance and the timely implementation of MAP agreements. The questionnaire will not request technical issues relating to specific cases and responses should not contain any information to which an assessed jurisdiction could not respond for reasons of taxpayer confidentiality. For the inputs to be considered by the assessed jurisdiction, respondents shall only submit their inputs based on the questions in the standard questionnaire and respondents will need to identify themselves in their response.

18. The questionnaire itself will be available on the OECD website and written responses to the questionnaire should be submitted to the OECD Secretariat. Written responses should be submitted no later than 4 weeks of a request for inputs being published on the OECD website. The responses should be provided in English or French and in electronic format. The Secretariat will share the responses received from taxpayers (if any) with the assessed jurisdiction at the commencement of the peer review process of the assessed jurisdiction (see paragraph 11 above). The assessed jurisdiction, if it so wishes, could provide comments on any such responses and submit these comments to the Secretariat within a maximum of 4 weeks. Thereafter, the Secretariat will share any responses received from taxpayers and any comments by the assessed jurisdiction with the members of the FTA MAP Forum.

### **B. Drafting and approval of Stage 1 Peer Review report**

19. This section of the note describes the procedure starting from the drafting of the Stage 1 Peer Review report of an assessed jurisdiction to the approval of that report.

#### *Draft Stage 1 Peer Review report of an assessed jurisdiction*

20. Using the information provided by the assessed jurisdiction in the questionnaire, inputs from the peer questionnaires, responses from the assessed jurisdiction to peer and taxpayer inputs, the information in the assessed jurisdiction MAP profile which is published on a shared public platform and the statistics reported by the assessed jurisdiction pursuant to the agreed reporting framework, the Secretariat will prepare a draft Stage 1 Peer review report of the assessed jurisdiction. The draft report will include information on the legal and administrative framework for the MAP regime of the assessed jurisdiction, the practical application of the framework, inputs from the peer questionnaires and the assessed jurisdiction's response to all relevant inputs received on its review. It shall note all efforts made by the assessed jurisdiction to implement the minimum standard including the plans shared by the assessed jurisdiction to make legislative or procedural changes to implement the minimum standard taking into consideration that the assessed jurisdiction might not have fully implemented elements of the minimum standard given the time from its adoption to the time of its review. To assist the assessed jurisdiction in fully implementing the minimum standard, the draft report will thus identify and describe any shortcomings that exist in relation to the implementation of the minimum standard and provide recommendations as to how these shortcomings might be addressed. An outline of a draft Stage 1 Peer Review report is attached in **Annex 2.D**.

21. The draft Stage 1 Peer Review report will be sent to the assessed jurisdiction and its peers that have raised issues on the assessed jurisdiction's compliance with the minimum standard within 4 weeks of receipt of responses to the questionnaire and peer questionnaires. The assessed jurisdiction should provide any written comments on the draft report within 6 weeks of receipt, including confirmation of whether it agrees with the outcomes of the review. The peer should inform the Secretariat whether the draft report addresses the issues raised by it in the peer questionnaire within 4 weeks of receipt. The Secretariat, the assessed jurisdiction, and its peers should take all reasonable steps to resolve any differences or disagreements regarding the draft report.

*Approval of the Stage 1 Peer Review report of an assessed jurisdiction by the FTA MAP Forum*

22. The draft Stage 1 Peer Review reports of all assessed jurisdictions will be circulated to the FTA MAP Forum at least 6 weeks prior to the Forum meeting, for approval under the written procedure. For each draft report, the Secretariat will inform the Forum as to whether the assessed jurisdiction and its peers that have raised issues on the assessed jurisdiction's compliance with the minimum standard agree with the outcomes of its review. Where a jurisdiction has failed to provide full responses to the questionnaire and any supplementary questions by the deadlines set out in the Assessment Methodology, and this has resulted in it not being possible to conduct an effective review within the required time frame, this will be highlighted to the Forum.

23. Members of the FTA MAP Forum should submit to the Secretariat any written comments or objections to a draft report within 3 weeks of receipt. Members should explain clearly the basis for their comments or objections so that the Secretariat has a proper appreciation of them. Where there are no written comments or objections to a draft report, that draft report will be considered to be approved by the FTA MAP Forum under written procedure. Where there are written comments or objections to a draft report, the draft report will be included on the agenda for the FTA MAP Forum meeting for discussion. At least 1 week before the meeting, the Secretariat will send to the FTA MAP Forum a list of Stage 1 Peer Review reports that were approved by the FTA MAP Forum via written procedure, a compilation of the objections and written comments received and the Secretariat's proposed response, and the amended draft reports incorporating the proposed changes for discussion at the FTA MAP Forum.

24. At the FTA MAP Forum meeting, the Secretariat will present the key issues relating to each draft report on the agenda, including objections and comments received from members of the Forum, and any changes that have been made to the draft report in order to take these into account. The assessed jurisdiction will also have the opportunity to raise any comments it has with respect to the outcomes of its review, and address any concerns or questions raised by other members of the Forum. The Forum will then discuss the issues raised with respect to the draft report, agree any changes that should be made and approve the revised report. In cases where the differences or disagreement on the draft report arise from technical issues relating to the implementation of the minimum standard, the FTA MAP Forum shall, where necessary, request the appropriate Working Party of the CFA to provide its view on the issue under dispute for the FTA MAP Forum's consideration in the discussion of the report.

25. Following the approval of the Stage 1 Peer Review reports by the FTA MAP Forum, the Secretariat shall invite the FTA MAP Forum to approve **the FTA MAP Forum Report** comprising three sections as follows, for publication:

- **Section I** which sets out the purpose and background to the monitoring and peer review process;
- **Section II** which provides an executive summary on the main conclusions based on the Stage 1 Peer Review reports on assessed jurisdictions as approved; and
- **Section III** which contains the individual Stage 1 Peer Review reports on the assessed jurisdictions as approved.

Any comments on the FTA MAP Forum Report should be limited to Section I and II of the report given that the individual reports in Section III were already approved by the FTA MAP Forum.

**C. Adoption of FTA MAP Forum Report on Stage 1 Peer Review reports by the CFA for publication**

26. Following the approval of the FTA MAP Forum Report by the FTA MAP Forum, it will be sent to the CFA<sup>7</sup> within 1 week. In the exceptional circumstances that the FTA MAP Forum was unable to approve the report on an assessed jurisdiction, or where an effective review of an assessed jurisdiction was not

possible (for example, where the assessed jurisdiction did not provide full responses to the questionnaire and supplementary questions), this will be highlighted to the CFA together with an explanation on why the FTA MAP Forum has been unable to approve the report, or why an effective review of an assessed jurisdiction was not possible.

27. The CFA will be invited to adopt the FTA MAP Forum Report for publication via written procedure. In the absence of any written objections within 2 weeks, the report is considered to be adopted. If there are written objections on the report, the Chair of the CFA shall decide via written procedure if the FTA MAP Forum should examine the objection and submit its proposal to the CFA for consideration via written procedure or the objection shall be discussed at the next meeting of the CFA. Following the adoption of the FTA MAP Report by the CFA, it shall be published as soon as possible.

#### **D. Monitoring of measures taken by assessed jurisdiction to improve the MAP regime (Stage 2 Peer Monitoring)**

28. The key objective of the monitoring and peer review of a jurisdiction's compliance with the minimum standard is to help the jurisdiction identify areas where it can improve to achieve an efficient and effective MAP process. In this regard, it is important for both the FTA MAP Forum and the assessed jurisdiction to follow up on the recommendations in the Stage 1 Peer Review report to address the shortcomings identified and to publicly acknowledge progress made by the assessed jurisdiction. This section of the note describes the procedure for conducting the Stage 2 Peer Monitoring of an assessed jurisdiction.

##### *Approval of Stage 2 Peer Monitoring report of an assessed jurisdiction*

29. An assessed jurisdiction should within one year of the adoption of its Stage 1 Peer Review report by the CFA submit a detailed written report ("**Update Report**") to the FTA MAP Forum of (i) the steps it has taken or is taking to address any shortcomings identified in its peer review report; and (ii) any plans or changes to its legislative or procedural framework relating to the implementation of the minimum standard. An assessed jurisdiction could also include in the Update Report any other plans or changes to the implementation of its MAP regime since its Stage 1 Peer Review report. The Update Report should be provided in English or French and in an electronic format.

30. Members of the FTA MAP Forum should provide their comments on the Update Report provided by the assessed jurisdiction within 4 weeks from the receipt of that report. Comments provided by its peers shall be in English or French and in an electronic format and will be made available to the assessed jurisdiction and the assessed jurisdiction should address any issues raised by its peers in its response to the Secretariat within 4 weeks from receipt of the comments.

31. Based on the Update Report submitted by the assessed jurisdiction, inputs from the peers, the statistics reported by the assessed jurisdiction pursuant to the agreed reporting framework, the Secretariat will revise the Stage 1 Peer review report of the assessed jurisdiction with a view to incorporate these updates in the Stage 2 Peer Monitoring report of the assessed jurisdiction.<sup>8</sup>

32. Where comments were provided by the peers of the assessed jurisdiction, this draft Stage 2 Peer Monitoring report will be sent to the assessed jurisdiction and its peers that have raised issues on the assessed jurisdiction's compliance with the minimum standard within 4 weeks of receipt of the assessed jurisdiction's response to comments from its peers. The assessed jurisdiction should provide any written comments on the draft report within 6 weeks of receipt, including confirmation of whether it agrees with its draft Stage 2 Peer Monitoring report. The peer should inform the Secretariat whether the draft Stage 2 Peer Monitoring report addresses the issues it raised within 4 weeks of receipt. The Secretariat, the assessed jurisdiction and its peers should take all reasonable steps to resolve any differences or disagreements regarding the draft Stage 2 Peer Monitoring report.

33. Where there are no comments from the peers of the assessed jurisdiction, the draft Stage 2 Peer Monitoring report will be sent to the assessed jurisdiction within 8 weeks of receipt of the updates provided by the assessed jurisdiction to members of the FTA MAP Forum. The assessed jurisdiction should provide any written comments on the draft report within 6 weeks of receipt, including confirmation of whether it agrees with its draft Stage 2 Peer Monitoring report. The draft Stage 2 Peer Monitoring reports of the jurisdictions will be circulated to FTA MAP Forum at least 6 weeks prior to the Forum meeting, for approval under the written procedure following the same approval procedure as described in paragraphs 22 to 24 of this note.

34. Following the approval of the Stage 2 Peer Monitoring reports by the FTA MAP Forum, the Secretariat shall circulate to the FTA MAP Forum a report comprising three sections (“**the FTA MAP Forum Update Report**”) as follows:

- **Section I** which sets out the purpose and background to the monitoring and peer review process;
- **Section II** which provides an executive summary on the main conclusions based on the Stage 2 Peer Monitoring reports on assessed jurisdictions as approved; and
- **Section III** which contains the individual Stage 2 Peer Monitoring reports on the assessed jurisdictions as approved.

Any comments on the FTA MAP Forum Update Report should be limited to Section I and II of the report given that the individual Stage 2 Peer Monitoring reports in Section III were already approved by the FTA MAP Forum.

*Adoption of FTA MAP Forum Update Report on Stage 2 Peer Monitoring Reports by the CFA for publication*

35. Following the approval of the FTA MAP Forum Update Report by the FTA MAP Forum, it will be sent to the CFA within 1 week. In the exceptional circumstances that the FTA MAP Forum was unable to approve the Stage 2 Peer Monitoring report on an assessed jurisdiction, this will be highlighted to the CFA together with an explanation on why the FTA MAP Forum was unable to approve the report.

36. The CFA will be invited to adopt the FTA MAP Forum Update Report for publication following the same approval procedure as described in paragraph 27 of this note. Following the adoption of the FTA MAP Forum Update Report by the CFA, it shall be published as soon as possible.

### **E. Confidentiality**

37. It is important for members of the FTA MAP Forum and the CFA to recognise that no part of any report should be made publicly available in any form or manner prior to its publication. In addition, members of the FTA MAP Forum should treat all documents produced in the course of the review of any jurisdiction (e.g. documents describing a jurisdiction’s MAP regime, responses to the questionnaire, MAP statistics and draft reports) as confidential and should not make them publicly available, unless approval of their release has been obtained from the CFA. Strict respect for the confidentiality of this work is essential to the credibility of the monitoring and peer review process. Any breach of confidentiality shall be brought to the attention of the FTA MAP Forum and the CFA for their decision on the most appropriate action to take.

## **Continued Monitoring Process from 2023 onwards**

38. A review of the Assessment Methodology contained in this note in 2020 was foreseen at the time of development of this Assessment Methodology, as noted in paragraph 5. The purpose of this review is to update the methodology in light of the experience in conducting peer monitoring, keeping in mind the need for an Assessment Methodology which effectively improves the shortcomings identified in the peer

review reports with the aim of ensuring an effective MAP regime to benefit both governments and taxpayers. The below methodology reflects the agreement of the OECD/G20 Inclusive Framework on BEPS (the “Inclusive Framework”) on how monitoring of the Action 14 minimum standard should continue from 2023 onwards (“**Continued Monitoring Process**”), following the successful completion of the Peer Review and Monitoring process as described in Section II in 2022. As this section is intended to exhaustively cover the Continued Monitoring Process, unless explicitly referred to, it is clarified that paragraphs 1 to 34 would not be of relevance to this process.

39. All Inclusive Framework member jurisdictions will work collectively to improve the effectiveness of the MAP. To assist members in improving the effectiveness of their MAP regime, every member’s compliance with the minimum standard will be reviewed by other members in the FTA MAP Forum, in accordance with an assessment schedule to be developed by the FTA MAP Forum.

40. As noted in paragraph 7 of this note, the Assessment Methodology applicable to the concluded Peer Review and Monitoring process under Section II allowed the deferral of peer review of a jurisdiction if it: (i) is a developing country (ii) is not an OECD/G20 country (iii) has not yet encountered a meaningful level of MAP requests and (iv) has not received feedback from other members of the FTA MAP Forum indicating that its MAP regime requires improvement. Accordingly, the peer reviews of 59 members of the Inclusive Framework were deferred under that process.

41. However, the deferral of peer reviews is not provided for under the Continued Monitoring Process. Therefore, all Inclusive Framework member jurisdictions (whether previously peer reviewed or otherwise) shall be subject to monitoring under this process. Nevertheless, a simplified peer review process is put in place for jurisdictions that are considered not to have “meaningful MAP experience”<sup>9</sup> and that do not wish to undergo the full peer review process.

42. A jurisdiction would be considered to have “meaningful MAP experience” on the basis of the following conditions:

- a. a threshold of ten MAP cases in its MAP end inventory as reported in its MAP Statistics over the three previous years on average is met by the jurisdiction, as detailed in paragraph 44; or
- b. feedback is received from other members of the FTA MAP Forum indicating that the jurisdiction’s policy or practice concerning MAP requires improvement, as detailed in paragraph 45.

43. Accordingly, a full peer review process would be limited to jurisdictions that wish to be subject to this process or have “meaningful MAP experience” based on these conditions. All remaining jurisdictions would be subject to a simplified peer review process. Jurisdictions that become eligible for the full peer review process based on the conditions for “meaningful MAP experience” defined above will remain ineligible for the simplified peer review process in all subsequent years.

44. The first condition (see (a) above) for the “meaningful MAP experience” threshold is based on a jurisdiction’s MAP caseload as reported in its annual MAP Statistics. The threshold of ten MAP cases in the end inventory over the previous three years on average ensures that only jurisdictions having meaningful practical experience with MAP would be subject to the full peer review. This average would be calculated by using the arithmetic mean of the number of all MAP cases<sup>10</sup> remaining in the MAP inventory on 31 December [Year<sup>11</sup>], on 31 December [Year-1] and 31 December [Year-2], without the rounding of decimal points upwards and thus, only averages of ten or above would be considered to meet this condition.

45. The second condition (see (b) above) for the “meaningful MAP experience” trigger is based on peer input. Where peers provide input to the FTA MAP Forum noting that a jurisdiction’s policy or practice with respect to MAP requires further improvement, such input would be discussed and considered by the FTA MAP Forum, which would then decide whether the jurisdiction should be subject to the full peer review process. The peer input questionnaire developed for input in the Peer Review and Monitoring process

under Section II (and referred to in Section II(A)(ii)) would be used for the purpose of determining whether the second condition has been met.

46. A call for input would be released in January 2023 providing a window of time within which peers may provide input in electronic form on jurisdictions that do not meet the first condition for “meaningful MAP experience”, measured on the basis of the 2019-2021 MAP Statistics. Based on input received, the FTA MAP Forum would decide whether a jurisdiction would qualify for the simplified peer review process or the full peer review process and consequently, whether it should be included in the first full peer review cycle starting in 2024 as described under Section III(B) below. Similarly, for jurisdictions that join the Inclusive Framework in 2023 and onwards that do not meet the first condition, a call for input would be released following each jurisdiction’s date of joining providing a window of time within which peers may provide input in electronic form. Based on input received, the FTA MAP Forum would decide whether a new Inclusive Framework member jurisdiction would qualify for the simplified peer review process or the full peer review process and decide the appropriate way to accommodate them in the existing peer review process.

47. Peers would also be allowed to provide input in electronic form on the jurisdictions initially included in the simplified peer review process at any later point of time, to allow the MAP Forum to consider whether these jurisdictions should be moved to the full peer review process. If peers provide input with respect to a jurisdiction or where a jurisdiction meets the first condition based on MAP cases at a later stage, the FTA MAP Forum would decide the appropriate way to move such jurisdiction from the simplified peer review process to the full peer review process.

48. Jurisdictions that have not filed MAP Statistics for any or all of the years concerning condition (a) above would still be eligible for the simplified peer review process so long as no peer input is received with respect to their policy or practice concerning MAP as under condition (b) and under the condition that peers do not report having ten or more MAP cases with these jurisdictions. However, it would not be possible to determine whether jurisdictions that do not file MAP Statistics met the first condition for “meaningful MAP experience” and the filing of MAP Statistics is required under the Action 14 minimum standard. Therefore, jurisdictions that have not filed MAP Statistics for the last reporting year being considered for stage 2 of their simplified peer review process or fail to do so for any future year would be subject to the full peer review process in the following full peer review cycle as described under Section III(B), where their compliance with the Action 14 minimum standard in general may be reviewed more closely by the FTA MAP Forum.

49. The procedures to be followed in the simplified peer review process and the full peer review process are described in detail below. A flowchart summary showing the collection of peer input for the simplified peer review process is attached in **Annex 2.E**. In addition, a flowchart summary of the simplified peer review process and the full peer review process for the Continued Monitoring Process are attached in **Annex 2.F.** and **Annex 2.G.** respectively and the model assessment schedules for conducting these reviews are attached in **Annex 2.H.** and **Annex 2.I.** respectively.

### **A. Simplified peer review process**

50. The simplified peer review process would be limited to a consideration of a jurisdiction’s tax treaty network, MAP profile, MAP guidance, compliance with the MAP Statistics Reporting Framework and, where applicable, practical application of the minimum standard, with the aim of assisting the jurisdictions in setting up a more robust MAP programme for future MAP cases. The simplified peer review process would commence from 2023 onwards and would follow a simplified format.

51. The simplified peer review process will be conducted and peer review reports will be published in two stages (stage 1 and stage 2). Stage 1 involves the review of the assessed jurisdiction’s implementation of the minimum standard based on the jurisdiction’s legal framework for MAP and the application of this

framework in practice (“**Stage 1 Peer Review**”). Stage 2 involves the review of the measures taken by the assessed jurisdiction to address any shortcomings identified in its Stage 1 Peer Review (“**Stage 2 Peer Monitoring**”).

52. During the Stage 1 Peer Review and Stage 2 Peer Monitoring, inputs would be obtained from the assessed jurisdictions as well as the assessed jurisdiction’s peers in line with the process followed in Section II(A)(i) and II(A)(ii) respectively. However, inputs obtained from peers indicating that such jurisdiction’s policy or practice concerning MAP requires improvement and accepted by the FTA MAP Forum as described in paragraph 45 would lead to the FTA MAP Forum considering how to move the assessed jurisdiction to a full peer review process. Therefore, only other inputs would be considered as part of the simplified peer review process.

53. There would be no formal mechanism for taxpayer input in the simplified peer review process. Nevertheless, taxpayers that face difficulties in their interactions with one competent authority can always approach the other competent authority concerned. The competent authority that is approached by a taxpayer can also always include the input provided by the taxpayer in its peer input with respect to an assessed jurisdiction where it considers this relevant, which would be taken into account in the peer review process.<sup>12</sup>

54. The Stage 1 Peer Review process would follow the Drafting and Approval process described in Section II(B) and the Adoption process described in Section II(C), including the timelines prescribed, as well as the confidentiality obligations highlighted in Section II(E), except the following:

- a. The Stage 1 Peer Review under the simplified peer review process would follow a simplified format as contained in **Annex 2.J.** and would be focused on ensuring that the assessed jurisdiction can set up a more robust MAP programme to handle and resolve future MAP cases efficiently, effectively and in a timely manner where needed.
- b. It is clarified that references to the CFA are seen to mean the Inclusive Framework in connection with the adoption of the reports prior to publication.

55. The Stage 2 Peer Monitoring process would commence two years after the date of approval of the Stage 1 Peer Review report. The Stage 2 Peer Monitoring process would follow the process described in Section II(D), including the timelines prescribed, and the confidentiality obligations highlighted in Section II(E) except that it is clarified that references to the CFA is seen to mean the Inclusive Framework in connection with the adoption of the reports prior to publication.

56. Following the approval of the Stage 2 Peer Monitoring report, where any recommendations connected to elements of the Terms of Reference other than those connected to changing existing tax treaties<sup>13</sup> are remaining in a report, the assessed jurisdiction shall continue to provide update reports (as discussed under Section II(D)) to the FTA MAP Forum once every three years starting from the date of the approval of the Stage 2 Peer Monitoring report by the Inclusive Framework. This update report would be a detailed written report by the assessed jurisdiction on (i) the steps it has taken or is taking to address shortcomings identified in its peer review report; and (ii) any plans or changes to its legislative or procedural framework relating to the implementation of the minimum standard. An assessed jurisdiction could also include in the update report any other plans or changes to the implementation of its MAP regime since its Stage 1 Peer Review report. The update report should be provided in English or French and in an electronic format. Peers would be invited to provide inputs on the update report, as under paragraph 52.

57. If there are no recommendations other than those connected to changing existing tax treaties remaining in the Stage 2 Peer Monitoring report and where peers confirm or provide no additional input with respect to an update report, there would be no further review of an assessed jurisdiction until it is found to meet one of the conditions for “meaningful MAP experience” described above.

58. In the event that the Action 14 minimum standard or Terms of Reference are revised in the future, the simplified peer review process would be reviewed by the FTA MAP Forum to ensure that it aligns with the revisions.

### **B. Full peer review process**

59. For all remaining members of the Inclusive Framework i.e. members that do not qualify for the “simplified peer review process” described above or wish to be subject to a full peer review (“**qualifying jurisdictions**”), a full peer review would be conducted in a continuing, concise and effective manner. The full peer review process would commence from 2024 onwards.

60. The full peer review process would be conducted in cycles with each cycle constituting a three year period during which all qualifying jurisdictions would be peer reviewed. Once each cycle of three years of peer reviews is completed, a gap year would be provided to allow the FTA MAP Forum to focus on other areas. Therefore, each qualifying jurisdiction would be subject to the full peer review process once every four years, with around one-third of all qualifying jurisdictions being reviewed in the first, second and third year respectively and the fourth year being a gap year.<sup>14</sup>

61. For the full peer review process, inputs would be obtained from the assessed jurisdictions as well as the assessed jurisdiction’s peers in line with the process followed in Section II(A)(i) and II(A)(ii) respectively.

62. There would be no formal mechanism for taxpayer input in the full peer review process. Nevertheless, taxpayers that face difficulties in their interactions with one competent authority can always approach the other competent authority concerned. The competent authority that is approached by a taxpayer can also always include the input provided by the taxpayer in its peer input with respect to an assessed jurisdiction where it considers this relevant, which would be taken into account in the peer review process.<sup>15</sup>

63. The full peer review process would follow the process described in Section II(D), including the timelines prescribed, and the confidentiality obligations highlighted in Section II(E) except that:

- a. Update reports would be submitted by each assessed jurisdiction based on deadlines connected to the organisation of the full peer review cycles, to ensure that the peer reviews of all jurisdictions are completed at the end of each cycle.
- b. An assessed jurisdiction would, in its update report, identify the steps it has taken or is taking to address any shortcomings identified in its previously published peer review report and any plans or changes to its legislative or procedural framework relating to the implementation of the minimum standard. An assessed jurisdiction could also include in the report any other plans or changes to the implementation of its MAP regime since its previously published peer review report.
- c. The full peer review process would lead to the drafting, adoption and publication of fresh Peer Monitoring Reports in each cycle, instead of Stage 2 Peer Monitoring reports that updated Stage 1 peer review reports under the Peer Review and Monitoring process under Section II.
- d. It is clarified that references to the CFA are seen to mean the Inclusive Framework in connection with the adoption of the reports prior to publication.

64. It is also acknowledged that a full peer review process may not be necessary going forward for jurisdictions that are already fully in line with the Action 14 minimum standard, with no recommendations remaining in their last published peer review report. Such jurisdictions are required to provide update reports as noted above with respect to the relevant full peer review cycle. However, subject to no input showing policy/practices that require improvement being provided by peers with respect to the update report, no full peer review report would be published for such jurisdictions in the concerned full peer review cycle.

65. The FTA MAP Forum shall ensure that the jurisdictions being reviewed in each year would include jurisdictions with varying experience in MAP to minimise administrative workload for peers. The FTA MAP Forum shall also ensure that jurisdictions that are undergoing or have undergone the simplified peer review process that qualify for the full peer review process are then moved into the full peer review process in a manner that allows them sufficient time to prepare.

66. In the event that the Action 14 minimum standard or Terms of Reference are revised in the future, the full peer review process would be reviewed by the FTA MAP Forum to ensure that it aligns with the revisions. If no such revisions are made by the time two full three-year peer review cycles are completed, the FTA MAP Forum will consider at that time whether the full peer review process is working well or requires review in the interest of adding further simplification and efficiency measures, including whether full peer review reports may be replaced with update reports for more jurisdictions in the future.

## Reference

OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264241633-en>. [1]

## Notes

<sup>1</sup> Available at [www.oecd.org/tax/beps-2015-final-reports.htm](http://www.oecd.org/tax/beps-2015-final-reports.htm).

<sup>2</sup> For the purposes of this note, all references to members of the FTA MAP Forum should be read to mean members of the FTA MAP Forum that have committed to the implementation of the Action 14 minimum standard.

<sup>3</sup> The methodology proposed in this note would apply to reviews conducted in the context of the Inclusive Framework for BEPS Implementation. The modalities for reviews of countries and jurisdictions of relevance, as identified by the CFA, which have not joined the Inclusive Framework, will be agreed in due course by the CFA.

<sup>4</sup> For the purposes of this note, non-members of the FTA MAP Forum refer to jurisdictions, including existing members of the FTA MAP Forum, that have not committed to the implementation of the Action 14 minimum standard.

<sup>5</sup> Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China (People's Republic of), Colombia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Russia, Saudi Arabia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.

<sup>6</sup> Footnote by India: "India consistently opposed the direct participation of taxpayers in the Peer Review process on the principles that, (i) this was not part of the final report on Action 14 and (ii) taxpayers are not peers of sovereign countries. However, in a spirit of compromise, India agreed for the inclusion of taxpayers inputs as mentioned in this document."

<sup>7</sup> Please see paragraph 7 above on the inclusive framework to broaden the participation in the OECD/G20 BEPS Project.

<sup>8</sup> For an assessed jurisdiction that did not submit an Update Report because there are no shortcomings identified in its Stage 1 Peer Review report and no changes to its legislative or procedural framework relating to the implementation of the minimum standard, its Stage 2 Peer Monitoring report would be updated with the statistics reported by the assessed jurisdiction pursuant to the agreed reporting framework.

<sup>9</sup> Please note that the reference to "meaningful MAP experience" in this document is in reference to the defined term that covers the conditions described in paragraph 42 and does not intend to objectively define as to when MAP experience is meaningful in general.

<sup>10</sup> All MAP cases would be counted for this calculation, irrespective of the year of introduction of the MAP request or categorisation done for the purposes of the MAP Statistics.

<sup>11</sup> "Year" refers to the latest available year of MAP Statistics published on the OECD website.

<sup>12</sup> Please see footnote 6 in this regard where India's concerns with respect to the consideration of taxpayer input in the peer review process have been reflected.

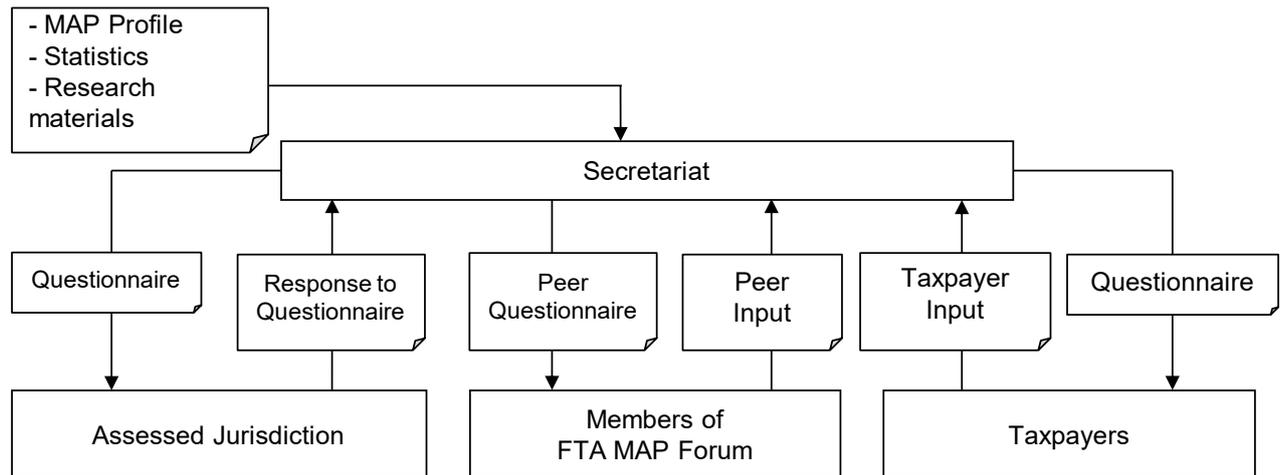
<sup>13</sup> The elements of the Terms of Reference connected to tax treaties are elements A.1, B.1, B.7, C.1 and D.3.

<sup>14</sup> For example, if 52 jurisdictions qualify for the full peer review process, Year 1 would involve the peer reviews of 18 jurisdictions that would be completed by the end of the year; and Year 2 as well as Year 3 would similarly involve the peer reviews of 17 jurisdictions respectively, following which Year 4 would be a gap year. The same set of jurisdictions would be reviewed again in Years 5, 6 and 7 respectively with Year 8 being a gap year and this would continue.

<sup>15</sup> Please see footnote 6 in this regard where India's concerns with respect to the consideration of taxpayer input in the peer review process have been reflected.

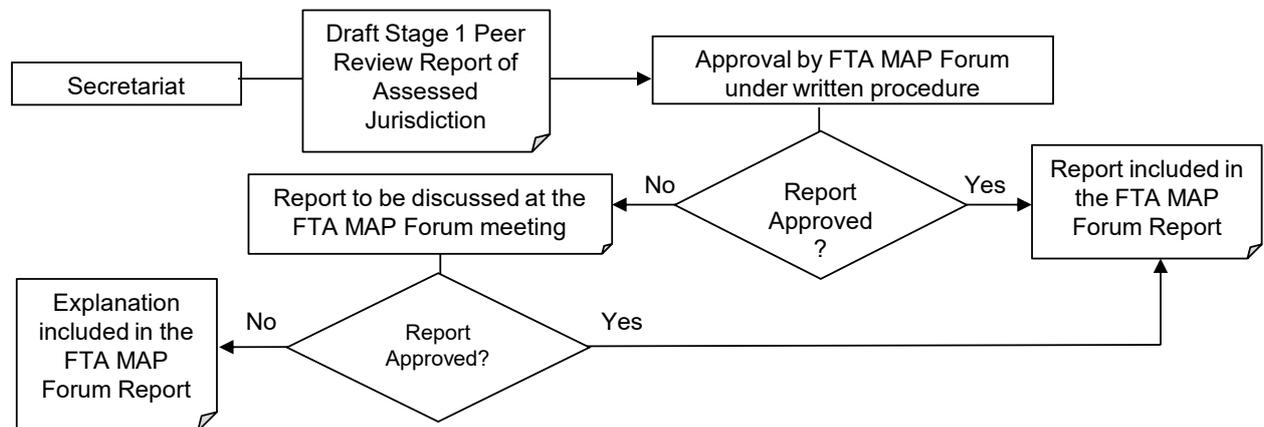
# Annex 2.A. Summary of Stage 1 Peer Review process

Figure 1. Information and input gathering



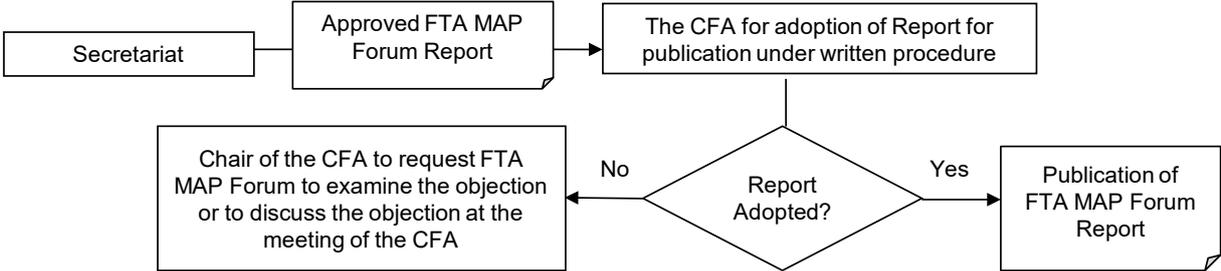
Source: OECD

Figure 2. Discussion and approval of an assessed jurisdiction's Stage 1 Peer Review report by the FTA MAP Forum



Source: OECD

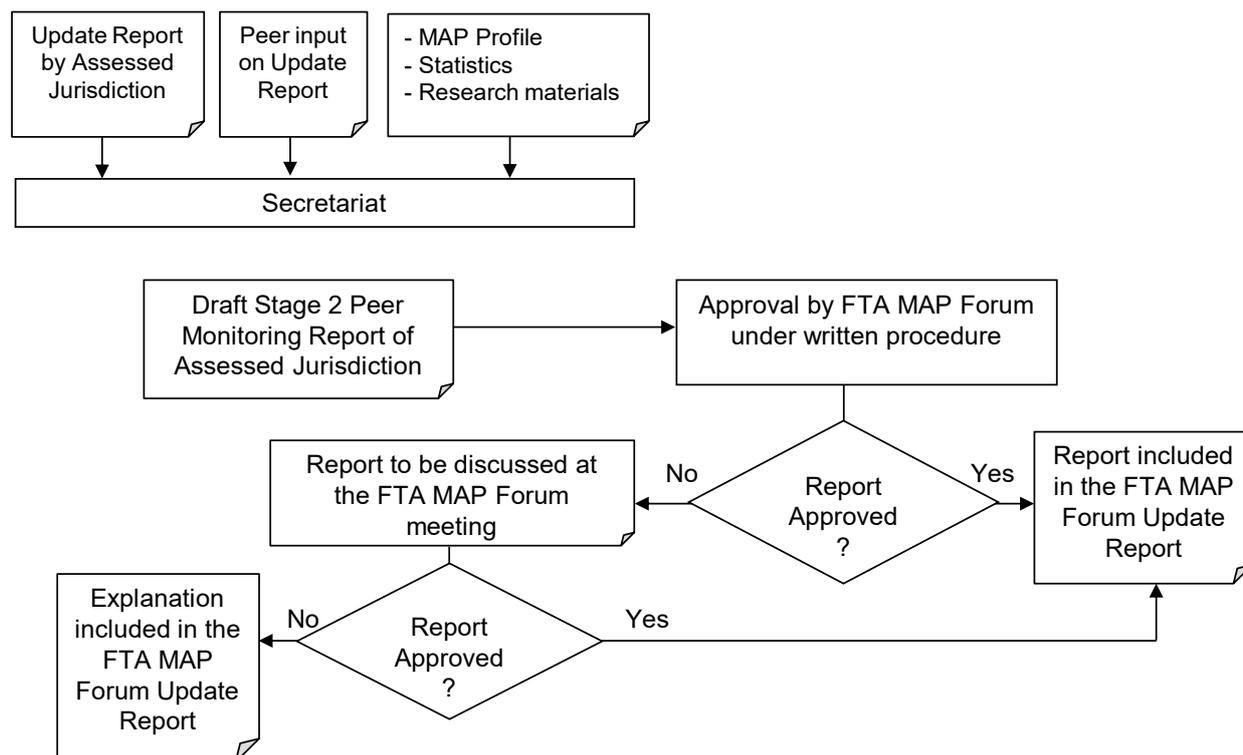
Figure 3. Adoption of FTA MAP Forum report on Stage 1 Peer Reviews by the CFA for publication



Source: OECD

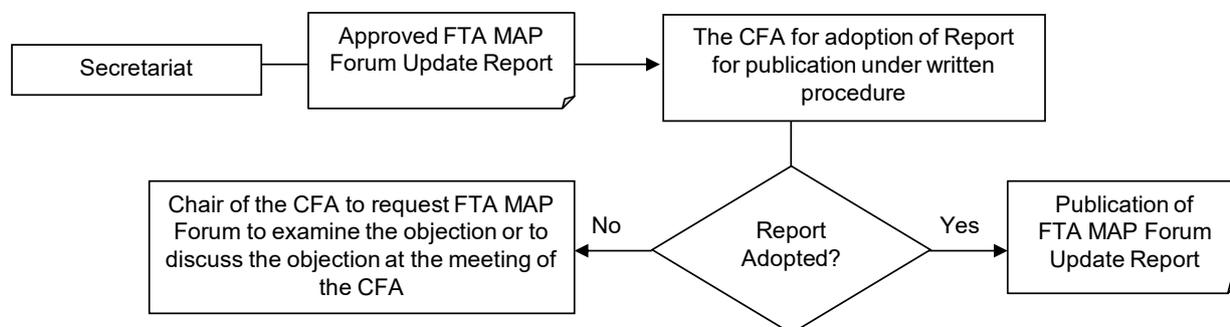
## Annex 2.B. Summary of Stage 2 Peer Monitoring process

Figure 4. Discussion and approval of an assessed jurisdiction’s Stage 2 Peer Monitoring report by the FTA MAP Forum



Source: OECD

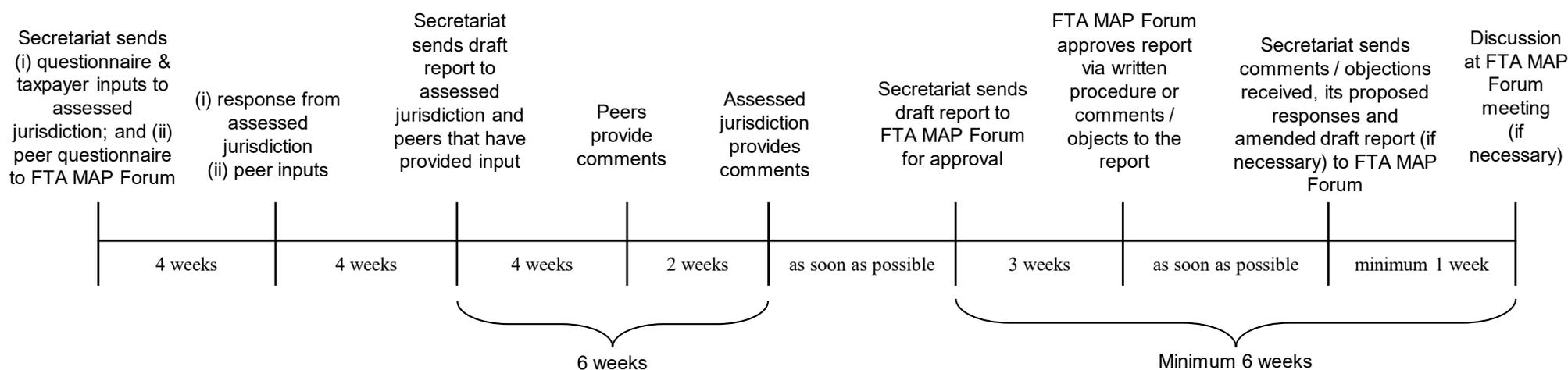
Figure 5. Adoption of FTA MAP Forum Update report on Stage 2 Peer Monitoring by the CFA for publication



Source: OECD

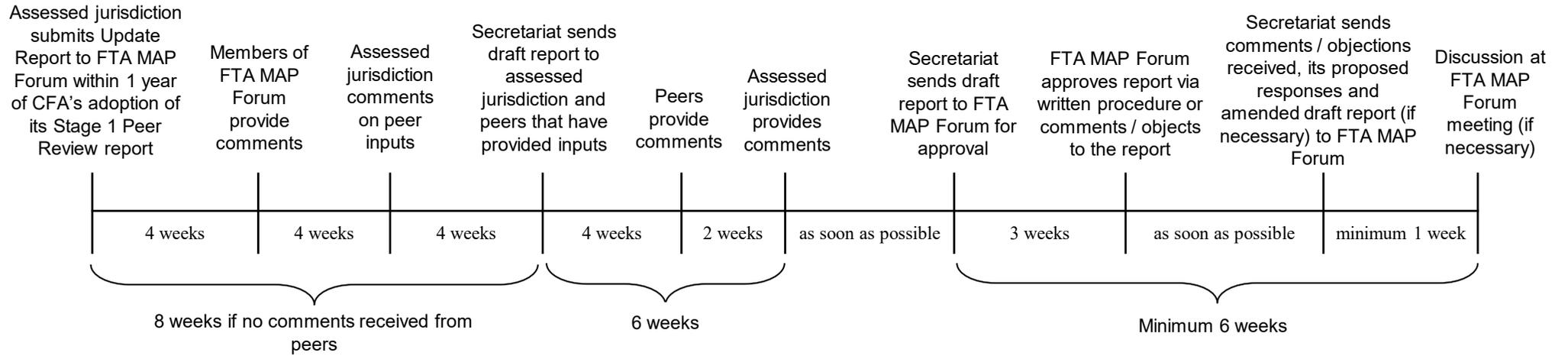
## Annex 2.C. Model assessment schedules for approval of peer review reports by the FTA MAP Forum

Figure 6. Stage 1 Peer Review



Source: OECD

Figure 7. Stage 2 Peer Monitoring



Source: OECD

## Annex 2.D. Outline of Stage 1 Peer Review report

This annex provides a draft outline for the Stage 1 Peer Review reports for approval by the FTA MAP Forum and subsequently for adoption by the CFA for publication. Drafts reports should as much as possible follow a similar presentation and have a similar length and level of details, even though each report will be tailored to the individual jurisdiction being assessed.

### **Executive Summary** (1-2 pages)

The executive summary should:

- (i) state the purpose of the report, i.e. (a) the report summarises the jurisdiction's legal and regulatory framework for resolving tax treaty related disputes as well as the practical implementation of that framework; (b) examines the jurisdiction's framework against the minimum standard set out in the Terms of Reference to identify areas of improvement so that the jurisdiction can improve its MAP regime with the objective of resolving tax treaty-related disputes in a timely, effective and efficient manner;
- (ii) summarise the mechanisms available in the jurisdiction to resolve tax treaty-related disputes (e.g. number of tax treaties, arbitration provisions in tax treaties, EU arbitration convention);
- (iii) summarise the outcome of the reviews of the jurisdiction's compliance with the minimum standard in each of the following areas – preventing disputes; availability and access to MAP; resolution of MAP cases; and implementation of MAP agreements.
- (iv) describe the follow up actions required from the assessed jurisdiction.

### **Introduction** (2-3 pages)

This section should provide:

- (i) the basis for the review, including the methodology used for the review and the information that is used to conduct the review (e.g. response from questionnaire, peer inputs, responses to peer and taxpayers' inputs, information available in the jurisdiction's MAP profile, MAP statistics from reporting template, information published by the jurisdiction);
- (ii) further information on the mechanisms available in the jurisdiction to resolve tax treaty-related disputes (e.g. network of tax treaties, arbitration provisions in specific tax treaties, EU arbitration convention);
- (iii) recent developments relating to dispute resolution mechanism (e.g. number of tax treaties updated to incorporate elements of the minimum standard, number of tax treaties under negotiation, signatory of the multilateral instrument with specific reference to the provisions relating to Article 25 (Mutual Agreement Procedure), administrative measures taken to improve dispute resolution mechanism).

### **Compliance with the minimum standard (15-20 pages)**

This section comprises four sub-sections – (A) Preventing Disputes; (B) Availability and Access to MAP; (C) Resolution of MAP Cases; and (D) Implementation of MAP Agreements. Each of the sub-sections will be divided into elements of the minimum standard as described in the Terms of Reference.

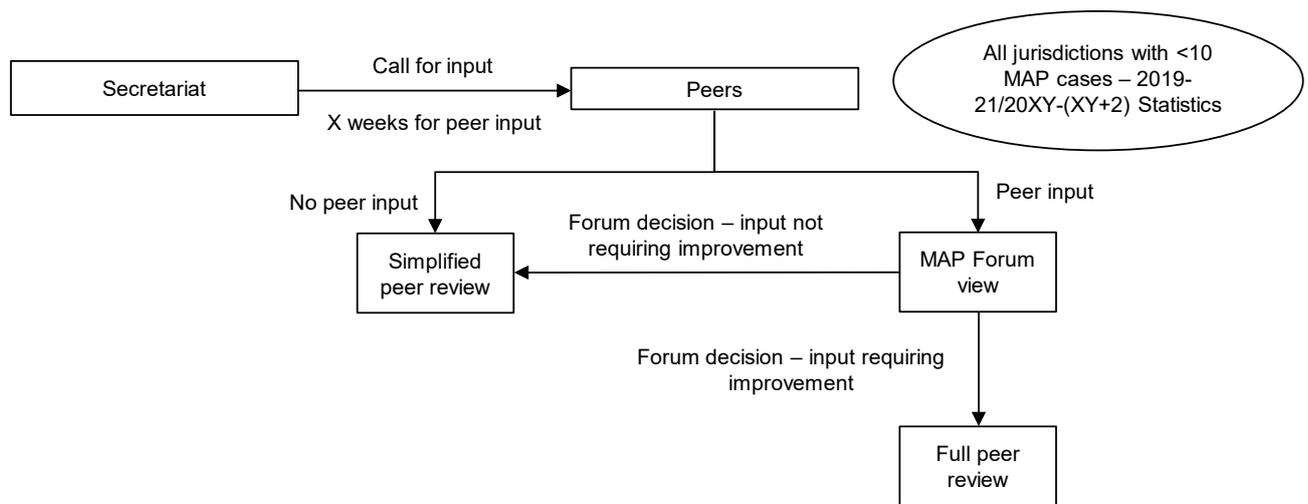
The report shall note all efforts made by the assessed jurisdiction to implement the minimum standard including the plans shared by the assessed jurisdiction to make legislative or procedural changes to implement the minimum standard taking into consideration that the assessed jurisdiction might not have fully implemented elements of the minimum standard given the time from its adoption to the time of its review. For each of the element of the minimum standard, the report should also note the inputs from peers and the assessed jurisdiction's response to all relevant inputs received, if any.

An analysis of the jurisdiction's compliance with each element of the minimum standard should be made. Any shortcomings that exist in relation to the implementation of the element of the minimum standard should be identified in the report and recommendations as to how these shortcomings might be addressed should also be made in the report. For each of the element, a summary shall be made as follows:

Areas for Improvement	Recommendations

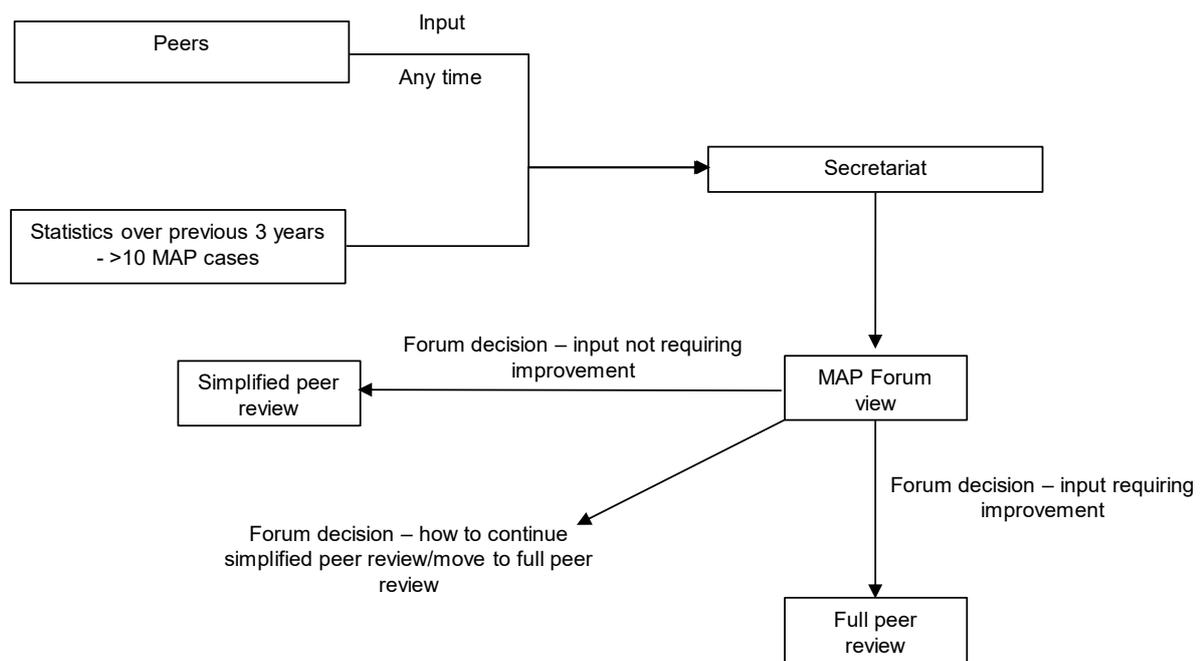
## Annex 2.E. Summary of peer input collection in the simplified peer review process (Continued Monitoring)

Figure 8. Start of the simplified peer review process – January 2023/New Inclusive Framework members



Source: OECD

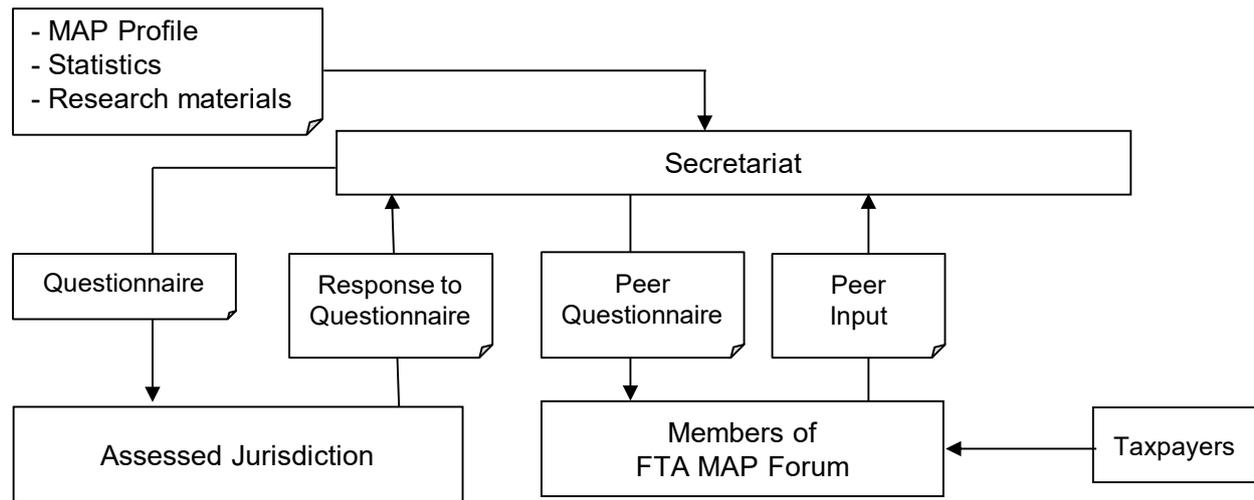
Figure 9. After the simplified peer review process has commenced for a jurisdiction



Source: OECD

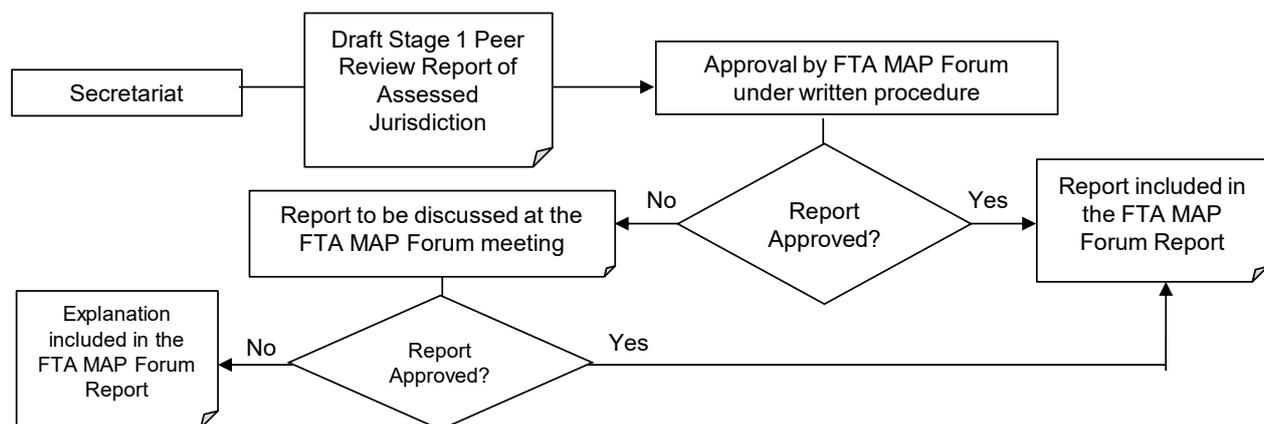
## Annex 2.F. Summary of simplified peer review process (Continued Monitoring)

Figure 10. Information and input gathering



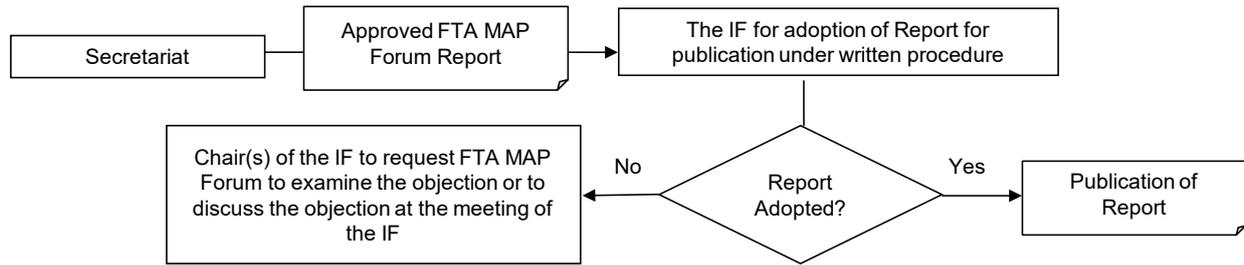
Source: OECD

Figure 11. Discussion and approval of an assessed jurisdiction's Stage 1 Peer Review report by the FTA MAP Forum



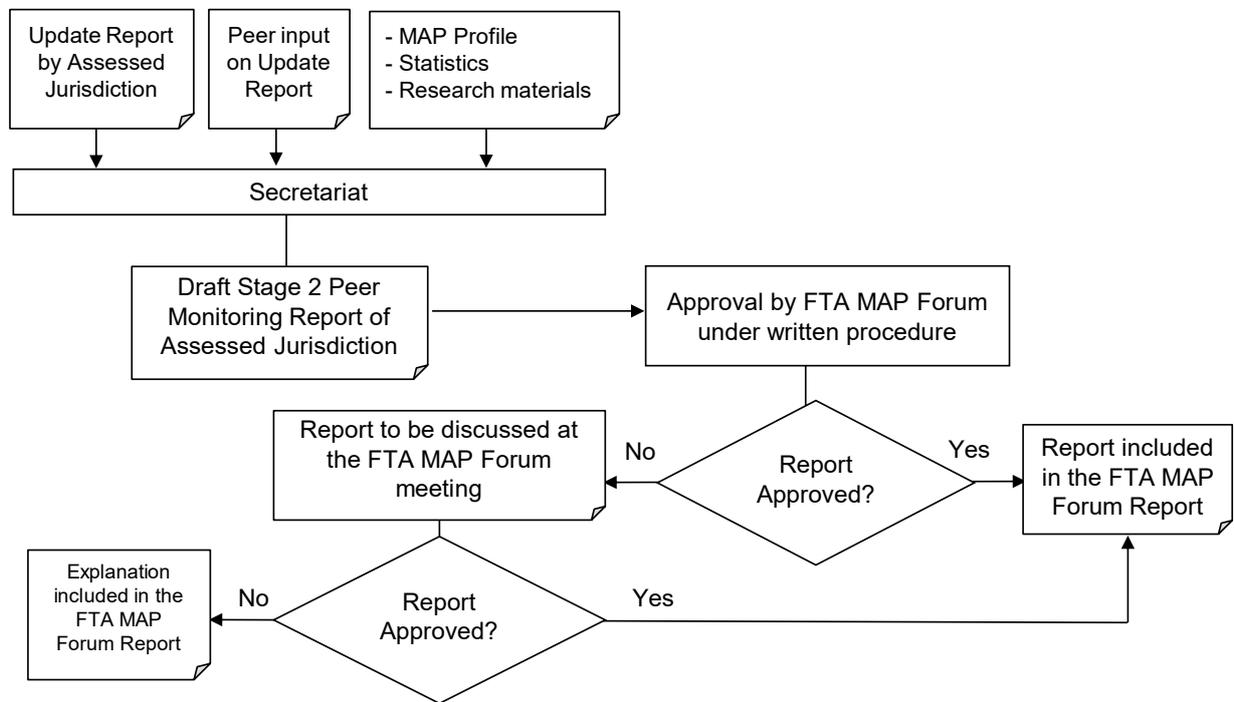
Source: OECD

Figure 12. Adoption of Stage 1 Peer Review report by the Inclusive Framework (IF) for publication



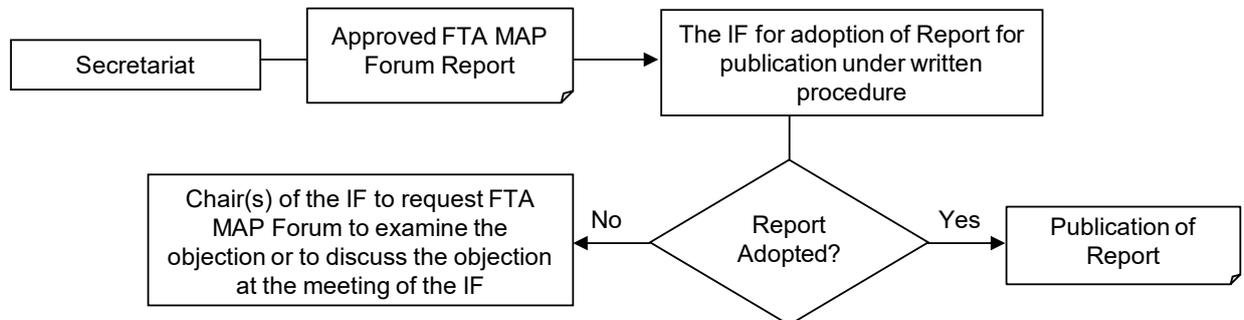
Source: OECD

Figure 13. Discussion and approval of an assessed jurisdiction’s Stage 2 Peer Monitoring report by the FTA MAP Forum



Source: OECD

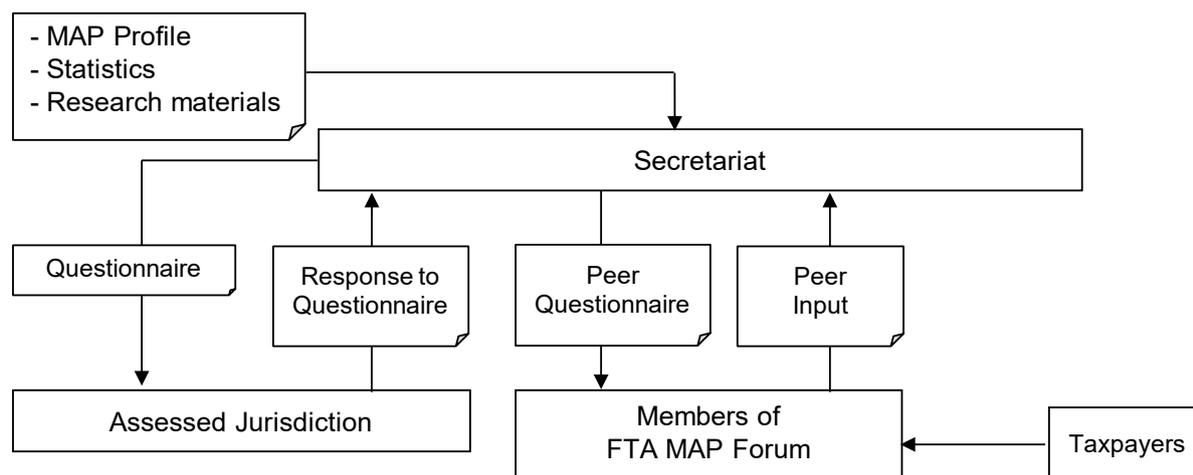
Figure 14. Adoption of Stage 2 Peer Monitoring Report by the IF for Publication



Source: OECD

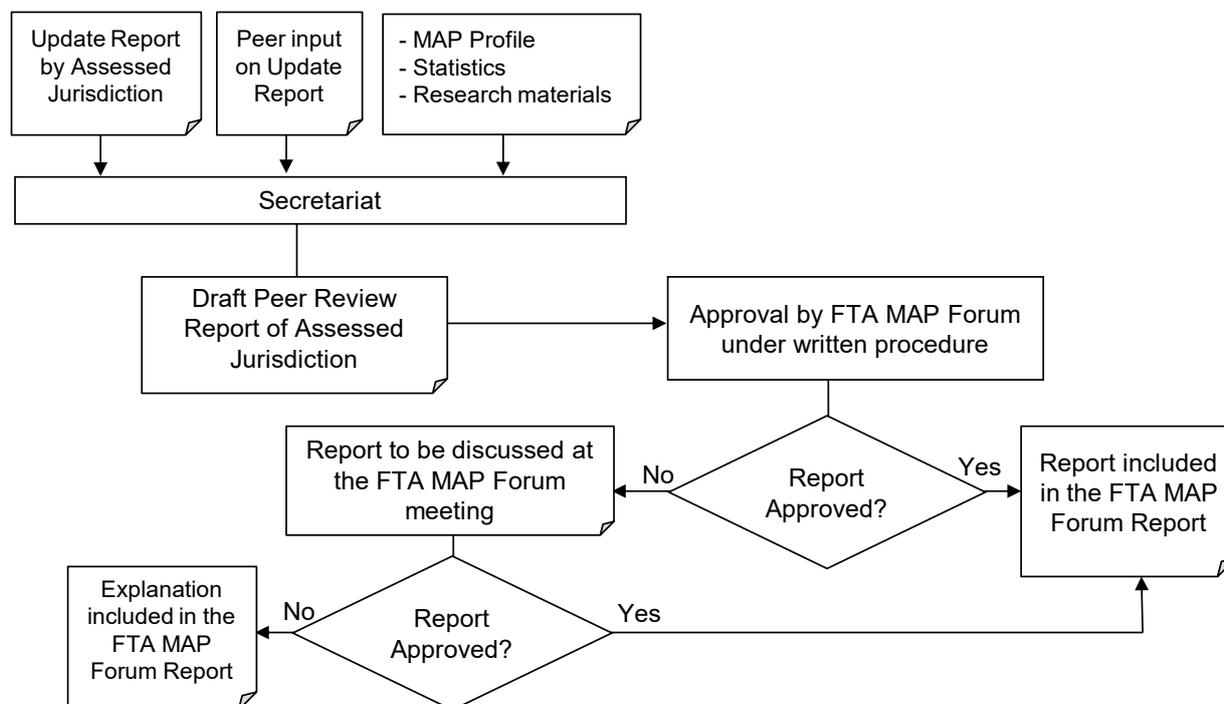
## Annex 2.G. Summary of the full peer review process (Continued Monitoring)

Figure 15. Information and input gathering



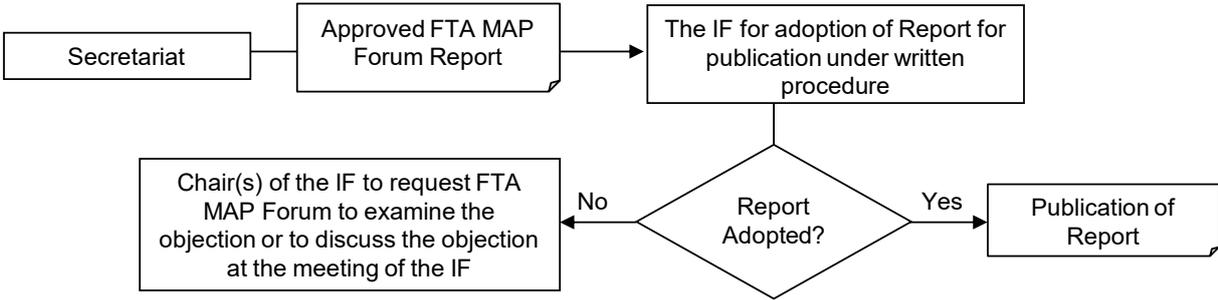
Source: OECD

Figure 16. Discussion and approval of an assessed jurisdiction's peer review report by the FTA MAP Forum



Source: OECD

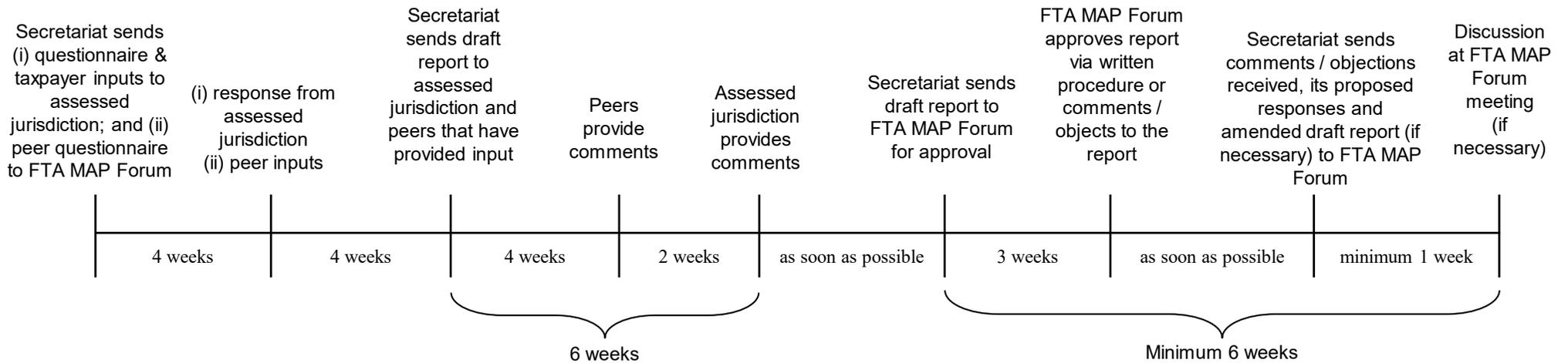
Figure 17. Adoption of Peer Review Report by the IF for Publication



Source: OECD

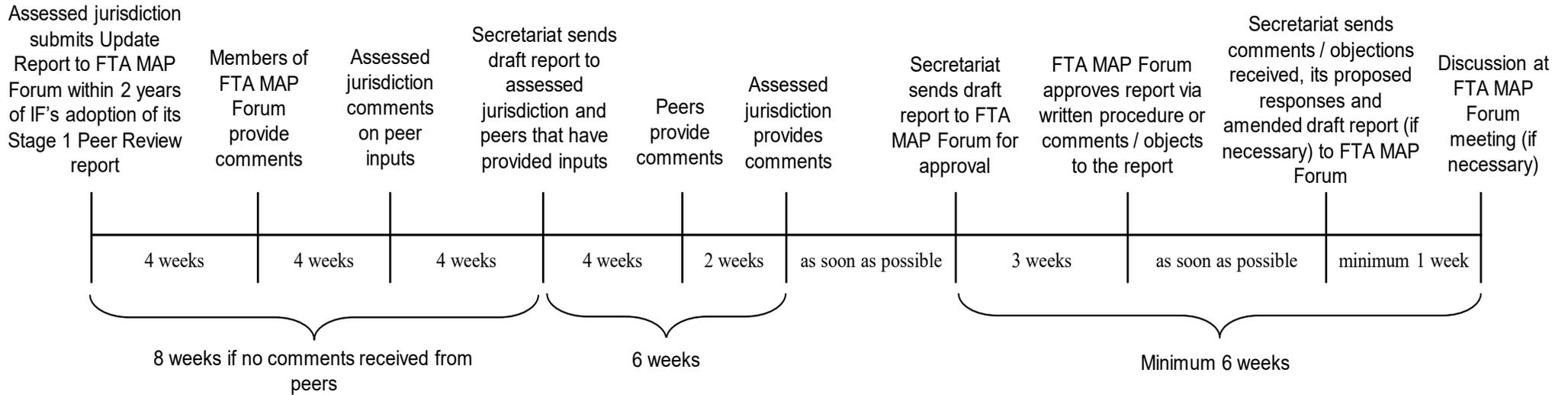
## Annex 2.H. Model assessment schedules for approval of peer review reports by the FTA MAP Forum in the simplified peer review process (Continued Monitoring)

Figure 18. Simplified peer review process - Stage 1 Peer Review (Continued Monitoring)



Source: OECD

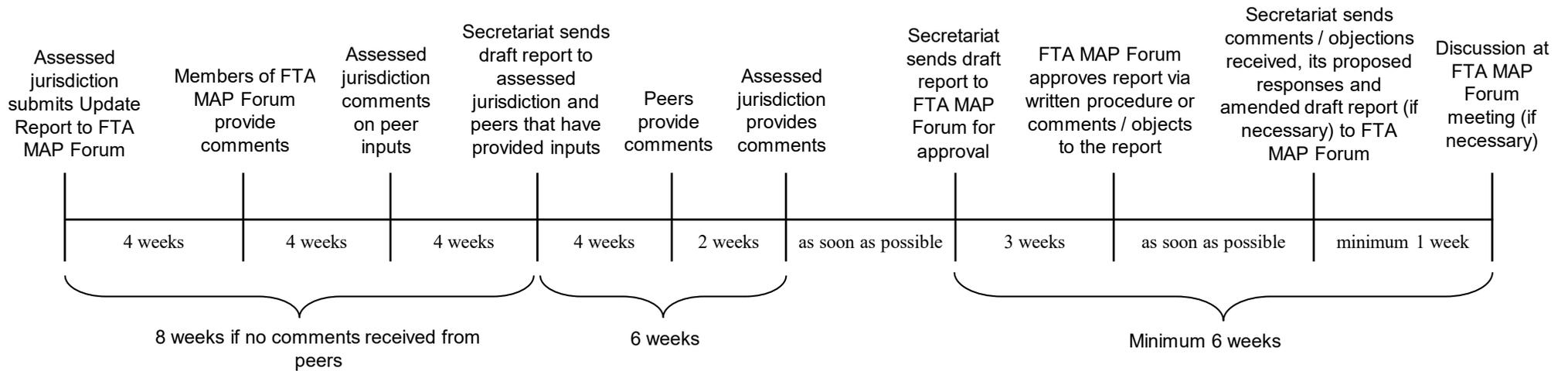
Figure 19. Simplified peer review process - Stage 2 Peer Monitoring (Continued Monitoring)



Source: OECD

## Annex 2.I. Model assessment schedules for approval of peer review reports by the FTA MAP Forum in the full peer review process (Continued Monitoring)

Figure 20. Full Peer Review Process (Continued Monitoring)



Source: OECD

## Annex 2.J. Outline of Stage 1 simplified peer review report (Continued Monitoring)

### 1. Executive summary

### 2. Tax treaty network

- Overview of tax treaty network: Number of treaties entered into (jurisdictions covered/in force), whether the Multilateral Instrument has been signed/ratified/in force
- A table showing the overall tax treaty network of the jurisdiction, including the impact of the Multilateral Instrument in **green** (the inclusion of Article 9(2) is shown for information purposes only). For example:

Treaty		Article 25(1) OECD MTC		Article 25(2) OECD MTC		Article 25(3) OECD MTC		Article 9(2) OECD MTC
		1 <sup>st</sup> sentence	2 <sup>nd</sup> sentence	1 <sup>st</sup> sentence	2 <sup>nd</sup> sentence	1 <sup>st</sup> sentence	2 <sup>nd</sup> sentence	
1	Treaty Partner							
2	Treaty Partner							
3	Treaty Partner							
4	Treaty Partner					X		
5	Treaty Partner							
6	Treaty Partner						X	

- Actions taken/expected by the jurisdiction regarding treaties that are not in line with the Action 14 minimum standard
- Recommendations

### 3. MAP guidance and MAP profile

#### MAP guidance

- Whether the jurisdiction has MAP guidance and if yes, place of publication, date of last update
- Contents of the MAP guidance shown in a simplified tabular form. For example:

Chapter	Content
1. Introduction	<ul style="list-style-type: none"> <li>• The purpose of the MAP guidance</li> <li>• XXX</li> </ul>

- List of information and documentation required for a MAP request
- Recommendations

#### *MAP profile*

- Whether the jurisdiction has published a MAP profile and if yes, date of last update
- Brief evaluation if the MAP profile is complete and whether contents of MAP profile reflect reported practice
- Recommendations

#### **4. MAP statistics**

- Whether the jurisdiction has submitted MAP statistics on time and has done matching of MAP statistics with treaty partners
- Where the jurisdiction is involved in MAP cases, whether such jurisdiction has closed MAP cases within the targeted average timeframe of 24 months and whether the MAP statistics suggest that the jurisdiction has sufficient resources in its competent authority function
- Recommendations

#### **5. Practical application of the Action 14 minimum standard**

- A brief review of the jurisdiction's policy regarding MAP from the MAP guidance/MAP profile (in general as well as tailored to specific elements of the Terms of Reference concerning transfer pricing cases, anti-abuse cases, audit settlements etc.) along with any practical application based on the jurisdiction's reporting and the peer input received to see if policy/practice in general are in line with the Action 14 minimum standard
- Recommendations

# 3

## MAP Statistics Reporting Framework (updated December 2022)

### Introduction

1. The Report on Action 14: *Making Dispute Resolution Mechanisms More Effective* (“**the 2015 Action 14 Report**”) (OECD, 2015<sup>[1]</sup>) was approved by the OECD Committee of Fiscal Affairs (“**CFA**”) in September, presented to the OECD Council and endorsed by the G20 Finance Ministers on 8 October 2015. This Report contained a commitment by countries engaged in the work to the implementation of a minimum standard to ensure that they resolve treaty-related disputes in a timely, effective and efficient manner and to have their compliance with the minimum standard reviewed by their peers – i.e. the other members of the Forum on Tax Administration MAP Forum (“**the FTA MAP Forum**”).
2. One of the elements of the minimum standard<sup>1</sup> requires jurisdictions to seek to resolve mutual agreement procedure (“**MAP**”) cases within an average timeframe of 24 months. To monitor compliance with this, jurisdictions’ progress toward meeting this target will be periodically reviewed on the basis of the statistics prepared in accordance with an agreed reporting framework. The 2015 Action 14 Report (OECD, 2015<sup>[1]</sup>) explains that the reporting framework will include agreed milestones for the initiation and conclusion/closing of a MAP case, as well as other relevant stages of the MAP process. The minimum standard also requires jurisdictions to provide timely and complete reporting of MAP statistics, pursuant to the agreed reporting framework.
3. The agreed reporting framework is set out in this note. Section II describes the MAP process to the extent it is relevant for MAP Statistics reporting purposes, in particular focusing on the relevant milestones. Section III sets out the statistics reporting templates for the reporting and publication of MAP case inventory and MAP outcomes, and the average time taken for each of the key stages of the MAP process, including the definition of terms used.
4. As part of the 2020 Review of the Action 14 minimum standard, the Inclusive Framework reviewed this reporting framework with a view to collecting additional data on the MAP process. Accordingly, it was agreed that jurisdictions would report the additional data points listed below as part of their annually reported MAP Statistics from the 2023 reporting year onwards. In line with the 2015 Action 14 report (OECD, 2015<sup>[1]</sup>), some of this additional data would facilitate a more in-depth review of jurisdictions’ MAP practices and would provide transparency with respect to each reporting jurisdiction’s MAP programme as well as a comprehensive picture of the overall state of the MAP in all of the reporting jurisdictions. However, due care has also been taken to avoid onerous reporting obligations and to only focus on additional data that would provide benefits without imposing excessive resource burdens. These additional data points are described in detail in Section IV below.

## MAP process

5. Article 25 of the OECD Model Tax Convention (OECD, 2019<sup>[2]</sup>) provides for a MAP mechanism, independent from the legal remedies available under domestic law, through which the competent authorities of the Contracting States to a tax treaty (“**Contracting States**”) may resolve differences or difficulties regarding the interpretation or application of the tax treaty on a mutually-agreed basis. The MAP mechanism is of fundamental importance to the proper application and interpretation of tax treaties, notably to ensure that taxpayers entitled to the benefits of the tax treaty are not subject to taxation by either of the Contracting States which is not in accordance with the provisions of the tax treaty. In this regard, paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2019<sup>[2]</sup>) provides that where a taxpayer considers that the actions of one or both Contracting States result or will result for that taxpayer in taxation not in accordance with the provisions of the treaty, the taxpayer may, irrespective of the remedies provided by the domestic law of those States, make a request to the competent authority of either Contracting State.

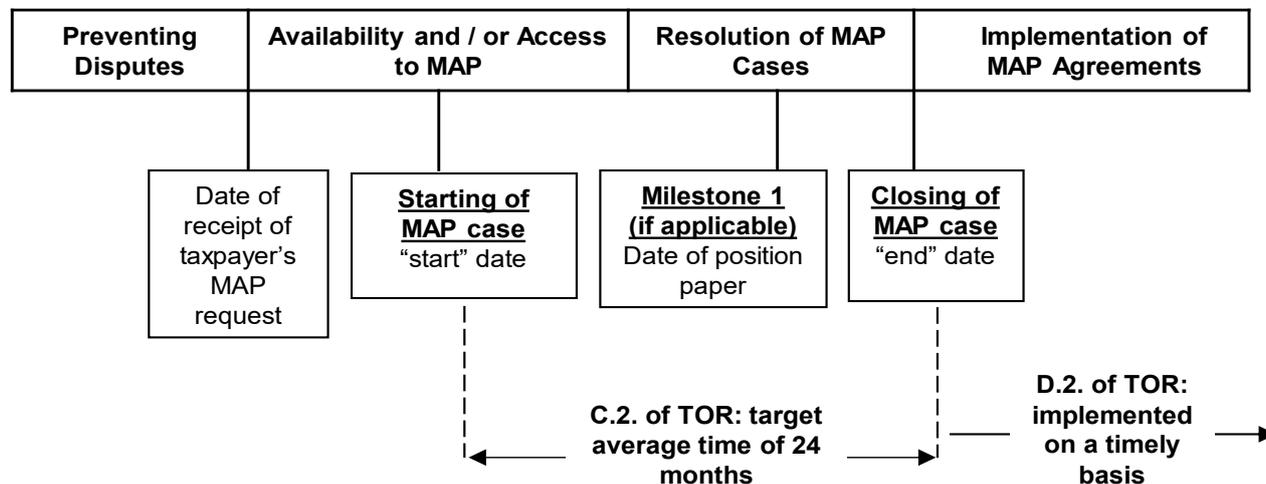
6. Prior to the adoption of the Action 14 minimum standard, Article 25(1) stipulated that a taxpayer could submit a MAP request to the competent authority of the Contracting State of which he is a resident or, if the case comes under the provisions relating to the Non-Discrimination Article<sup>2</sup>, to that of the Contracting State of which the taxpayer is a national. With the 2017 update of the OECD Model Tax Convention (OECD, 2019<sup>[2]</sup>), Article 25(1) has been amended to allow taxpayers to submit their MAP request to the competent authority of either Contracting State, such to ensure that both competent authorities are aware of the MAP request being submitted and are able to give their views on whether the request is accepted or rejected and on whether the taxpayer’s objection is considered to be justified. The Commentary on Article 25 further explains that the taxpayer may present its case to the competent authority of either Contracting State and the taxpayer is not precluded from presenting its case to the competent authority of both Contracting States at the same time. Where the taxpayer submits the MAP request to both competent authorities at the same time, he should appropriately inform both competent authorities, in order to facilitate a co-ordinated approach to the case.<sup>3</sup>

7. The Action 14 minimum standard allows jurisdictions the option to include in their tax treaties either Article 25(1) of the OECD Model Tax Convention (OECD, 2019<sup>[2]</sup>) as amended with the 2017 update, or as it previously read in the 2014 version. Where the treaty in place between the Contracting States contains Article 25(1) as it read in its 2014 version – thus allowing taxpayers to submit a MAP request to the competent authority of the Contracting State in which he is a resident (or, if the case comes under the provisions relating to the Non-discrimination Article, to that of the Contracting State of which the taxpayer is a national) – jurisdictions are under the Action 14 minimum standard required to implement a bilateral consultation or notification process to be applied when its competent authority does not consider the taxpayer’s objection to be justified and 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).

8. To be admissible, a case presented under paragraph 1 of Article 25 must be presented within the timeframe stipulated in the tax treaty from the first notification of the action which gives rise to taxation not in accordance with the tax treaty. Once a case that meets the requirements of paragraph 1 of Article 25 has been accepted, the competent authority to which the case was presented must determine whether the taxpayer’s objection appears to be justified. If that is the case, that competent authority may be able to resolve the case unilaterally, e.g. where the taxation contrary to the provisions of the tax treaty is due in whole or in part to a measure taken in the Contracting State to which the taxpayer has presented its MAP case. A MAP case that has been accepted will only move to the second, bilateral stage of the MAP process where it meets two requirements provided by paragraph 2 of Article 25: (i) the taxpayer’s objection appear to be justified to the competent authority to which it has been presented and (ii) that competent authority is not itself able to arrive at a satisfactory unilateral solution. Paragraph 2 of Article 25 no doubt entails a duty to negotiate; but as far as reaching mutual agreement through the procedure is concerned, the competent authorities are under a duty merely to use their best endeavours and not to achieve a result.<sup>4</sup>

9. The MAP process to the extent it is relevant for MAP Statistics reporting purposes, in particular the relevant milestones along with their Commentary, is set out below.

**Figure 1. Steps of the MAP process for the reporting of MAP Statistics**



Source: OECD

10. Element C.2 of the Terms of Reference requires that jurisdictions seek to resolve MAP cases within an average time frame of 24 months. Given the collaborative approach to be taken by competent authorities to achieve the common objective to resolve MAP cases in a timely manner, this timeframe applies to both jurisdictions (i.e. the jurisdiction that receives the MAP request from the taxpayer and its treaty partner). To compute the average time taken to resolve MAP cases, the "start" date and "end" date for each MAP case should be determined as below. Competent authorities should communicate effectively with each other to ensure that they have common data points for the purposes of MAP Statistics reporting. The data points for each MAP request include (i) the "start" date; (ii) the date of Milestone 1 (if applicable); (iii) the "end" date; and (iv) the number of MAP cases involved in a MAP request.<sup>5</sup>

**(i) Starting of MAP case ("start" date)**

11. Given the collaborative approach to be taken by competent authorities to achieve the common objective to resolve MAP cases in a timely manner, it is important that both competent authorities are well aware of the MAP request. In this regard, the competent authority that receives the MAP request from the taxpayer should notify the other competent authority of the request within a target time frame of four weeks from the receipt of the taxpayer's MAP request. Such notification should include at least the following: (a) identification of the taxpayer(s) concerned (e.g. name and address, tax identification number(s) or birth date (where appropriate)); (b) tax years covered; (c) brief issue(s) (e.g. the article(s) concerned and whether the MAP case is an attribution/allocation case); and (d) the date of receipt of the taxpayer's MAP request and the taxpayer's covering letter (where appropriate). This notification should also include the contact details (e.g. contact number and email) of the official(s) handling the MAP request to facilitate efficient communication between the competent authorities on the MAP case concerned. The competent authority that receives the notification is given the opportunity, if it so wishes, to confirm receipt of the notification and any such confirmation should be made within one week of the date of the notification. The notification and any confirmation of receipt should as much as possible be made by electronic means to accelerate the communication process.

12. Recognising that the taxpayer's MAP submission might not include all the information and documentation required for the competent authority to examine the MAP request, and that the notification including the confirmation of receipt of the notification (where applicable) in paragraph 10 above could be made before the competent authority receives all such information, the "start" date shall be:

- (v) One week from the date of notification by the competent authority that receives the MAP request from the taxpayer or five weeks from the receipt of the taxpayer's MAP request, whichever is the earlier date;<sup>6</sup> except
- (vi) where a competent authority receives a MAP request that does not include all the information and documentation required to be furnished pursuant to its published MAP guidance and the competent authority requests such information and/or documentation within three months from the receipt of the MAP submission, in which case the "start" date shall be the date under (i) or the date when such missing information and/or documentation is received by that competent authority, whichever is the later date.

13. There are also instances where members of the same taxpayer group submit MAP requests on the same issue(s) to their respective competent authorities (for example, in transfer pricing cases where the parties to a transaction each submit a MAP request to their respective competent authorities arising from a primary adjustment made by one of the Contracting States). Furthermore, as described in paragraph 5 above, a taxpayer could also submit the same MAP request to both competent authorities. In these circumstances, where there are different dates for the competent authorities under the application of the rules in paragraph 10 above, the earlier date shall be the "start" date.

#### ***(ii) Closing of MAP case ("end" date)***

14. The "end" date of a MAP case is (i) the date of an official communication (typically in the form of a letter) from the competent authority to the taxpayer to inform him of the outcome of its MAP request; or (ii) the date the competent authority receives a notification from the taxpayer on the withdrawal of its MAP request. The competent authority that receives the MAP request from the taxpayer should also duly inform the other competent authority of its notification to the taxpayer on the outcome of the MAP case or in case of a withdrawal of the MAP request by the taxpayer, of the date of such withdrawal. For (i), the outcome of a MAP request could be one of the following:

- access to MAP is denied (i.e. not an admissible request or denied for any other reasons)
- objection is not justified objection
- objection is resolved via domestic remedy
- unilateral relief will be granted
- competent authority agreement that will (or would, if accepted by taxpayer, regardless of whether the taxpayer accepts that outcome) fully eliminate double taxation or fully resolve taxation not in accordance with the tax treaty
- competent authority agreement that will (or would, if accepted by taxpayer, regardless of whether the taxpayer accepts that outcome) partially eliminate double taxation or partially resolve taxation not in accordance with the tax treaty
- competent authority agreement that there is no taxation not in accordance with the tax treaty
- no competent authority agreement is reached including agreement to disagree
- any other outcome.

15. In instances where more than one taxpayer submits a MAP request on the same issue(s) to their respective competent authorities as described in paragraph 12 above or where a taxpayer could also submit the same MAP request to both competent authorities as described in paragraph 5 above, and there are different "end" dates for the competent authorities, the "end" date shall be the earlier of these dates.

**(iii) Milestone 1 (if applicable): Date of position paper**

16. In the second stage of the MAP as described in paragraph 7 which is aimed at “resolving the dispute on an agreed basis, i.e. by agreement between competent authorities”, one of the competent authorities would present its position on the case to the other competent authority (via a “position paper”) before the commencement of discussions between the competent authorities.<sup>7</sup> The position paper should provide the basis for and explanation of the position taken by the jurisdiction and should address the arguments made by the taxpayer in its submission, to facilitate the discussion of the case with the other competent authority. The date to be captured for purposes of Milestone 1 for both competent authorities is the date the position paper is presented by one competent authority to the other competent authority. In instances where there is more than one position paper, the date of the earliest position paper shall be the date for Milestone 1.

**MAP Statistics reporting and publication**

17. In accordance with one of the elements of the Action 14 minimum standard<sup>8</sup>, the Terms of Reference<sup>9</sup> require jurisdictions to provide timely and complete reporting of MAP statistics pursuant to an agreed template and reporting framework. This framework is described below:

- (i) **Annex 3.A.** is for the reporting and publication of MAP statistics relating to MAP requests that are not reported under Annex 3.B. (“pre-2016 cases”);
- (ii) **Annex 3.B.** which comprises Part (I) and Part (II) is for the reporting and publication of MAP statistics relating to MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016 (“post-2015 cases”); and
- (iii) **Annex 3.C.** and **Annex 3.D.** contain definitions of terms and the rules for counting MAP cases for the purposes of Annex 3.A. and Annex 3.B.

18. A jurisdiction should report its MAP statistics in accordance with the reporting templates in Annex 3.A. and Annex 3.B. for a calendar year by no later than 31 May of the following calendar year, for subsequent publication on the OECD website. Jurisdictions are to submit their first reports by 31 May 2017 for the 2016 calendar year (also referred to as the 2016 reporting period). For the 2016 reporting period, Annex 3.B. will be published on an aggregated basis instead of on a jurisdiction specific basis.

19. For new members that joined the Inclusive Framework after 2016, they are to submit their first reports by 31 May of the year following the year of their membership. For example, if a member joins the Inclusive Framework in 2017, it should submit its first report by 31 May 2018. In this first report, it should report MAP statistics relating to MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2017 in Annex 3.B. (for “post-2016 cases”) and report in Annex 3.A. (“for pre-2017 cases”) statistics relating to MAP requests not reported under Annex 3.B. In this regard, for members that joined the Inclusive Framework after 2016, all references to “pre-2016” in this note should be understood to mean “pre-year of membership” and all references to “post-2015” means “post-year preceding the year of membership”.

**Additional data reporting from the 2023 reporting year onwards**

20. The following data points need to be reported as from the 2023 reporting year onwards:

***(i) Break down of the average time taken to resolve post-2015 MAP cases into two further groups: MAP cases closed under the unilateral stage and MAP cases closed under the bilateral stage***

21. Each jurisdiction should also report the aggregate average time taken to resolve post-2015 MAP cases that are closed in a year in two additional groups, for each type of case:

- Average time taken for cases closed in the unilateral stage in aggregate (i.e. outcomes: “denied MAP access”, “objection is not justified” and “unilateral relief granted”); and
- Average time taken for cases closed in the bilateral stage in aggregate (i.e. all other outcomes).

22. The average time taken for cases in these categories would be calculated based on the “Start Date” and “End Date” as agreed in this framework and matching of this data with the concerned treaty partners is not required.

23. This data should be reported from the 2023 reporting year onwards and would be published as described in **Annex 3.B**. A footnote has been added in this regard to note that this data is not subject to matching and to provide clarity on how this data should be interpreted. **Annex 3.D** contains definitions of terms and the rules relevant to this data point as well.

***(ii) Identification of the age of pending post-2015 MAP cases***

24. Each jurisdiction should also report the age of post-2015 MAP cases that are remaining in its MAP inventory on 31 December of each year on an aggregate basis. This would be done by identifying the aggregate number of such MAP cases that were initiated in different ranges of years, calculated based on the “Start Date” as agreed in this framework and matching of this data with the concerned treaty partners is not required.

This data should be reported from the 2023 reporting year onwards and would be published as described in **Annex 3.B**. A footnote has been added in this regard to note that this data is not subject to matching and to provide clarity on how this data should be interpreted. **Annex 3.D** contains definitions of terms and the rules relevant to this data point as well.

## References

- OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>. [2]
- OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264241633-en>. [1]

## Notes

<sup>1</sup> See element C.2 of the Terms of Reference to monitor and review the implementation of the BEPS Action 14 minimum standard to make dispute resolution mechanisms more effective (“Terms of Reference”).

<sup>2</sup> See paragraph 1 of Article 24 of the OECD Model Tax Convention.

<sup>3</sup> See paragraph 17 of the Commentary on Article 25.

<sup>4</sup> See paragraph 37 of the Commentary on Article 25.

<sup>5</sup> This MAP Statistics Reporting Framework defines “start date” and “end date” for purposes of computing the time taken to resolve a MAP case. These statistical purposes should be distinguished from the purposes of timeframes in arbitration provisions; the time frames relevant in that latter context must be determined based on the provisions of the relevant arbitration clause and/or relevant competent authority agreements on the application of such clause.

<sup>6</sup> For MAP requests received by a competent authority on or after 1 January 2016 but prior to 1 July 2016, the “start” date shall be 5 weeks from the receipt of the taxpayer’s MAP request.

<sup>7</sup> It is anticipated that, in transfer pricing cases, the competent authority of the jurisdiction raising the adjustment will prepare the first position paper.

<sup>8</sup> See element 1.5 of the minimum standard in the 2015 Action 14 Report.

<sup>9</sup> See paragraph 11 of the Terms of Reference.

## Annex 3.A. MAP Statistics reporting for the [YEAR] reporting period (1 January [YEAR] to 31 December [YEAR]) by [Name of Jurisdiction] for pre-2016 cases closed in the [YEAR] reporting period

Annex A should be submitted to the Secretariat (email: [fta.map@oecd.org](mailto:fta.map@oecd.org)) by **31 May** of the calendar year following the year of the reporting period for subsequent publication on the OECD website so long as there are pre-2016 cases in the jurisdiction’s MAP inventory on 1 January of the reporting year.

For countries that are currently reporting MAP statistics for publication on the OECD website (see: <http://www.oecd.org/ctp/dispute/>), with effect from the 2016 reporting period (1 January 2016 to 31 December 2016) they are only required to report MAP statistics for publication based on Annex A of this note.

**Jurisdictions should report their MAP statistics for pre-2016 cases based on the definition of terms and rules for counting MAP cases as contained in Annex C.**

category of cases	no. of pre-2016 cases in MAP inventory on 1 January [YEAR]	number of pre-2016 cases closed during the reporting period by outcome:										no. of pre-2016 cases remaining in MAP inventory on 31 December [YEAR]	average time taken (in months) for closing pre-2016 cases during the reporting period
		denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Row 1 Attribution / Allocation													
Row 2 Others													
Row 3 Total													

Note:

A reporting jurisdiction can include in this notes section any information which in its view would be useful in providing clarification or understanding on any of the statistics reported above.

**Notes on Annex 3.A. (see also Annex 3.C. - Definition of Terms and Rules for Counting MAP Cases)**

*(i) Column 2: Number of pre-2016 cases in MAP inventory on 1 January [Year]*

Enter in this column the number of pre-2016 cases (i.e. MAP request received which are not reported in Annex 3.B.) in your MAP inventory that are pending resolution as of 1 January of the reporting period, reporting separately for “**Attribution / Allocation**” (see Row 1, Column 1) and “**Others**” (see Row 2, Column 1) MAP cases. The “**Total**” (see Row 3, Column 1) is the sum of the number of cases for “**Attribution / Allocation**” and “**Others**”.

*(ii) Columns 3 to 12: Number of pre-2016 cases closed during the reporting period with an outcome as described in columns 3 to 12*

Enter in each of these columns the number of pre-2016 cases closed in the reporting period based on the outcome of each case as stated in the heading of each of these columns, reporting separately for “**Attribution / Allocation**” and “**Others**” MAP cases. The “**Total**” for each of these columns is the sum of the number of cases reported under each of these columns for “**Attribution / Allocation**” and “**Others**”.

*(iii) Column 13: Number of pre-2016 cases remaining in MAP inventory on 31 December [Year]*

Enter in this column the number of pre-2016 cases in your MAP inventory that are pending resolution as of 31 December of the year, reporting separately for “**Attribution / Allocation**” and “**Others**” MAP cases.

The number of pre-2016 cases relating to “**Attribution / Allocation**” and “**Others**” should reflect:

- the number of pre-2016 cases in MAP inventory on 1 January of the reporting period (Column 2) for that category of cases;
- **minus** the number of pre-2016 cases that are closed during the reporting period with outcome as stated in Columns 3 to 12 for that category of cases.

The “**Total**” number of pre-2016 cases remaining in your MAP inventory on 31 December of the year is the sum of the number of pre-2016 cases relating to “**Attribution / Allocation**” and “**Others**” that are remaining in the MAP inventory on 31 December of the year.

*(iv) Column 14: Average time taken (in months) for closing pre-2016 cases during the reporting period*

Enter in this column the average time taken (in months) from the start to the close of pre-2016 cases for such cases closed during the reporting period, reporting separately for “**Attribution / Allocation**”, “**Others**” and “**Total**”.

## Annex 3.B. MAP Statistics reporting for the [YEAR] reporting period (1 January [YEAR] to 31 December [YEAR]) by [Name of Jurisdiction] for post-2015 cases closed in the [YEAR] reporting period<sup>1</sup>

Annex B should be submitted to the Secretariat (email: [fta.map@oecd.org](mailto:fta.map@oecd.org)) by **31 May** of the calendar year following the year of the reporting period for subsequent publication on the OECD website. For the 2016 reporting period, Annex B will be published on an aggregated basis instead of on jurisdiction specific basis.

For countries that are currently reporting MAP Statistics for publication on the OECD website (see: <http://www.oecd.org/ctp/dispute/>), with effect from the 2016 reporting period (1 January 2016 to 31 December 2016) they are only required to report MAP Statistics for publication based on Annex B of this note.

Jurisdictions should report their MAP Statistics for post-2015 cases based on the definition of terms and rules for counting MAP cases as contained in **Annex D**.

### (i) MAP Statistics for Post-2015 Cases for purposes of MAP case inventory and MAP outcomes for the reporting period

table 1: attribution / allocation map cases

number of post-2015 cases closed during the reporting period by outcome:

Treaty Partner	no. of post-2015 cases in MAP inventory on 1 January [YEAR]	no. of post-2015 cases started during the reporting period	number of post-2015 cases closed during the reporting period by outcome:										no. of post-2015 cases remaining in MAP inventory on 31 December [YEAR]
			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
Row 1 Treaty Partner 1													

<sup>1</sup> Reservation by Germany: Germany is reserving its position on jurisdiction-specific reporting pending staff council agreement required by Federal Law governing the production of statistics relating to the work of less than three staff members.

	Treaty Partner 2													
	...													
Row 2	Treaty Partners ( <i>de minimis</i> rule applies)													
Row 3	Treaty Partners (Others)													
	Total													

Note: A reporting jurisdiction can include in this notes section any information which in its view would be useful in providing clarification or understanding on any of the statistics reported above.

Table 2: Other MAP cases														
Treaty Partner	no. of post-2015 cases in MAP inventory on 1 January [YEAR]	no. of post-2015 cases started during the reporting period	number of post-2015 cases closed during the reporting period by outcome:										no. of post-2015 cases remaining in MAP inventory on 31 December [YEAR]	
			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	
Row 1	Treaty Partner 1													
	Treaty Partner 2													
	...													
Row 2	Treaty Partners ( <i>de minimis</i> rule applies)													

Row 3	Treaty Partners (Others)													
	Total													

Note: A reporting jurisdiction can include in this notes section any information which in its view would be useful in providing clarification or understanding on any of the statistics reported above.

<b>Table 3: All post-2015 MAP Cases pending on 31 December [YEAR] <sup>2</sup></b>	
<b>Categories for age of MAP cases</b>	<b>Aggregate number of cases remaining in MAP inventory on 31 December [YEAR] falling under each category based on "Start"</b>
Column 1	Column 2
Row 1 <b>&lt;2 years old</b>	
Row 2 <b>&gt;=2 and &lt;4 years old</b>	
Row 3 <b>&gt;=4 and &lt;6 years old</b>	
Row 4 <b>&gt;=6 years old</b>	

Note: A reporting jurisdiction can include in this notes section any information which in its view would be useful in providing clarification or understanding on any of the statistics reported above.

<sup>2</sup> Please note that this data has not been matched with the concerned treaty partners. In addition, please note that delays in individual MAP cases may be owing to several reasons, many of them being out of the concerned competent authority's control, and thus, the age of pending MAP cases should be seen in conjunction with the attempts made by jurisdictions to resolve such cases as evident in the average time taken to resolve cases.

**Notes on Part (I) of Annex 3.B. (see also Annex 3.D. - Definition of terms and rules for counting MAP cases)**

*(v) Column 1 of Table 1 and Table 2: Treaty Partner*

For each table (i.e. Table 1 for Attribution / Allocation MAP cases and Table 2 for Other MAP cases), separate reporting of MAP cases with a treaty partner is required only if:

- (a) the number of post-2015 cases in your MAP inventory on 1 January of the year (see e.g. Row 1, Column 2) plus the number of post-2015 cases started during the reporting period (see e.g. Row 1, Column 3) with that treaty partner is at least five; and
- (b) that treaty partner is also reporting MAP Statistics for the reporting period in accordance with this framework.

If such a number is less than five, the MAP statistic relating to that treaty partner shall be aggregated and be reported under the category “Treaty Partners (*de minimis* rule applies)” (see Row 2), together with other treaty partners that are also reporting MAP Statistics in accordance with this framework and where the number of MAP cases with each of them is also less than five.

For MAP Statistics relating to all other treaty partners (i.e. those not reporting MAP Statistics for the reporting period in accordance with this framework), the MAP statistic relating to those treaty partners shall be aggregated and be reported together under the category “Treaty Partners (Others)” (see Row 3).

*(vi) Column 2 of Table 1 and Table 2: Number of post-2015 cases in MAP inventory on 1 January [Year]*

Enter in this column the number of post-2015 cases (i.e. MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016) in your MAP inventory that are pending resolution as of 1 January of the year.

Note that for the first reporting period, i.e. 2016 reporting period, the number of post-2015 cases in your MAP inventory should be reflected as “0” since all MAP cases that are received by a competent authority from the taxpayer prior to 1 January 2016 should be reported in **Annex 3.A.** of this note.

*(vii) Column 3 of Table 1 and Table 2: Number of post-2015 cases started during the reporting period*

Enter in this column the number of post-2015 cases started during the reporting period (i.e. where the start date of the case falls within the reporting period).

*(viii) Columns 4 to 13 of Table 1 and Table 2: Number of post-2015 cases closed during the reporting period with an outcome as described in Columns 4 to 13*

Enter in each of these columns the number of post-2015 cases closed in the reporting period based on the outcome of each case as stated in the heading of each of these columns.

Note that these cases should not include pre-2016 cases which are closed in the reporting period as such cases should be reported in **Annex 3.A.** of this note.

*(ix) Column 14 of Table 1 and Table 2: Number of post-2015 cases remaining in MAP inventory on 31 December [Year]*

Enter in this column the number of post-2015 cases in your MAP inventory that are pending resolution as of 31 December of the year.

The number of post-2015 cases remaining in the MAP inventory on 31 December of the year should reflect:

- the number of post-2015 cases in MAP inventory on 1 January of the reporting period (Column 2);
- **plus** the number of post-2015 cases started during the reporting period (Column 3);
- **minus** the number of post-2015 cases that are closed during the reporting period with outcome as stated in Columns 4 to 13.

*(x) Row 1 of Table 3: Number of post-2015 cases remaining in MAP inventory on 31 December [Year] falling under the age category “<2 years old”*

In Column 2 to Row 1, the number of post-2015 cases in your MAP inventory that are pending resolution as of 31 December of the [Year], which were initiated on or after 1 January [Year-2] based on the “Start Date”, would be published.

*(xi) Row 2 of Table 3: Number of post-2015 cases remaining in MAP inventory on 31 December [Year] falling under the age category “>=2 and <4 years old”*

In Column 2 to Row 2 the number of post-2015 cases in your MAP inventory that are pending resolution as of 31 December of the [Year], which were initiated on or after 1 January [Year-4], but before 31 December [Year-3] based on the “Start Date”, would be published.

*(xii) Row 3 of Table 3: Number of post-2015 cases remaining in MAP inventory on 31 December [Year] falling under the age category “>=4 and <6 years old”*

In Column 2 to Row 3 the number of post-2015 cases in your MAP inventory that are pending resolution as of 31 December of the [Year], which were initiated on or after 1 January [Year-6], but before 31 December [Year-5] based on the “Start Date”, would be published.

*(xiii) Row 4 of Table 3: Number of post-2015 cases remaining in MAP inventory on 31 December [Year] falling under the age category “>=6 years old”*

In Column 2 to Row 4 the number of post-2015 cases in your MAP inventory that are pending resolution as of 31 December of the [Year], which were initiated on or before 31 December [Year-7] based on the “Start Date”, would be published.

**(II) MAP Statistics for purposes of average time taken for key stages of the MAP process for post-2015 cases closed during the reporting period**

<b>Table 1: Attribution / Allocation MAP Cases</b>				
<b>Treaty Partner</b>	<b>average time taken (in months) for post-2015 cases from:</b>			
	<b>“Start” to “End”</b>	<b>Receipt of taxpayer’s MAP request to “Start”</b>	<b>“Start” to Milestone 1</b>	<b>Milestone 1 to “End”</b>
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<b>Row 1</b>	<b>Treaty Partner 1</b>			
	<b>Treaty Partner 2</b>			
	...			
	<b>Treaty Partners (de minimis rule applies)</b>			
<b>Row 2</b>	<b>Treaty Partners (Others)</b>			
<b>Row 3</b>	<b>Total Average Time</b>			

Note: A reporting jurisdiction can include in this notes section any information which in its view would be useful in providing clarification or understanding on any of the statistics reported above.

<b>Annex to Table 1: Attribution / Allocation MAP Cases<sup>3</sup></b>	
<b>Stage during which the MAP case was resolved</b>	<b>Average time taken (in months) for post-2015 cases from “Start” to “End”</b>
<b>Column 1</b>	<b>Column 2</b>
<b>Row 1</b>	<b>Cases closed in the Unilateral stage</b>
<b>Row 2</b>	<b>Cases closed in the Bilateral stage</b>
<b>Notes</b>	
A reporting jurisdiction can include in this notes section any information which in its view would be useful in providing clarification or understanding on any of the statistics reported above.	

Note: A reporting jurisdiction can include in this notes section any information which in its view would be useful in providing clarification or understanding on any of the statistics reported above.

<sup>3</sup> Please note that this data has not been matched with the concerned treaty partners. In addition, please note that delays in individual MAP cases may be owing to several reasons, many of them being out of the concerned competent authority’s control, and thus, the time taken in the unilateral and bilateral stages should not be seen in isolation of the overall average time and inventory management.

Table 2: Other MAP Cases				
Treaty Partner	average time taken (in months) for post-2015 cases from:			
	“Start” to “End”	Receipt of taxpayer’s MAP request to “Start”	“Start” to Milestone 1	Milestone 1 to End”
Column 1	Column 2	Column 3	Column 4	Column 5
Row 1	Treaty Partner 1			
	Treaty Partner 2			
	...			
	Treaty Partners ( <i>de minimis</i> rule applies)			
Row 2	Treaty Partners (Others)			
Row 3	Total Average Time			

Note: A reporting jurisdiction can include in this notes section any information which in its view would be useful in providing clarification or understanding on any of the statistics reported above.

Annex to Table 2 <sup>4</sup> : Other MAP Cases	
Stage during which the MAP case was resolved	average time taken (in months) for post-2015 cases from "Start" to "End"
Column 1	Column 2
Row 1	Cases closed in the Unilateral stage
Row 2	Cases closed in the Bilateral stage

Note: A reporting jurisdiction can include in this notes section any information which in its view would be useful in providing clarification or understanding on any of the statistics reported above.

<sup>4</sup> Please note that this data has not been matched with the concerned treaty partners. In addition, please note that delays in individual MAP cases may be owing to several reasons, many of them being out of the concerned competent authority’s control, and thus, the time taken in the unilateral and bilateral stages should not be seen in isolation of the overall average time and inventory management.

Table 3: All MAP Cases				
average time taken (in months) for post-2015 cases from:				
	“Start” to “End”	Receipt of taxpayer’s MAP request to “Start”	“Start” to Milestone 1	Milestone 1 to “End”
	Column 1	Column 2	Column 3	Column 4
Row 1	<b>Total Average Time</b>			

Note: A reporting jurisdiction can include in this notes section any information which in its view would be useful in providing clarification or understanding on any of the statistics reported above.

**Notes on Part (II) of Annex 3.B. (see also Annex 3.D. - Definition of Terms and Rules for Counting MAP Cases)**

*(xiv) Column 1 of Table 1 and Table 2: Treaty Partner*

For each table (i.e. **Table 1 for Attribution / Allocation MAP cases** and **Table 2 for Other MAP cases**), separate reporting of MAP cases with a treaty partner is required only if the MAP Statistics in Part (I) of Annex 3.B. are separately reported for that treaty partner.

*(xv) Columns 2 to 5 of Table 1 and Table 2: Average time taken (in months) for post-2015 cases closed during the reporting period for the completion of the action as described in Columns 2 to 5*

Enter in each of these columns the average time taken (in months) for the completion of the action as stated in the heading of each of these columns for post-2015 cases closed during the reporting period.

In instances where a treaty partner is not reporting MAP Statistics under this reporting framework for the reporting period concerned (see Row 2), the “start” date shall be determined based on paragraphs 10 or 11 of this note **to the extent possible**. Otherwise, these dates shall be determined on a reasonable basis.

*(xvi) Row 3 of Table 1: Total average time*

Enter in Columns 2 to 5 of Row 3 the total average time (in months) for the completion of the action as stated in the heading of each of these columns for all post-2015 “**Attribution / Allocation**” cases closed during the reporting period.

*(xvii) Row 1 of Annex to Table 1: Cases closed in the Unilateral stage*

Enter in Column 2 to Row 1 the total average time (in months) for the completion of all post-2015 “**Attribution / Allocation**” cases closed during the reporting period under the outcomes “denied MAP access”, “objection is not justified” and “unilateral relief granted”.

*(xviii) Row 2 of Annex to Table 1: Cases closed in the Bilateral stage*

Enter in Column 2 to Row 2 the total average time (in months) for the completion of all post-2015 “**Attribution / Allocation**” cases closed during the reporting period under the outcomes “withdrawn by taxpayer”, “resolved via domestic remedy”, “agreement fully eliminating double taxation eliminated / 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” and “any other outcome”.

*(xix) Row 3 of Table 2: Total average time*

Enter in Columns 2 to 5 of Row 3 the total average time (in months) for the completion of the action as stated in the heading of each of these columns for all post-2015 “**Other**” cases closed during the reporting period.

*(xx) Row 1 of Annex to Table 2: Cases closed in the Unilateral stage*

Enter in Column 2 to Row 1 the total average time (in months) for the completion of all post-2015 “Other” cases closed during the reporting period under the outcomes “denied MAP access”, “objection is not justified” and “unilateral relief granted”.

*(xxi) Row 2 of Annex to Table 2: Cases closed in the Bilateral stage*

Enter in Column 2 to Row 2 the total average time (in months) for the completion of all post-2015 “**Other**” cases closed during the reporting period under the outcomes “withdrawn by taxpayer”, “resolved via domestic remedy”, “agreement fully eliminating double taxation eliminated / 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” and “any other outcome”.

*(xxii) Row 1 of Table 3: Total average time*

Enter in Columns 1 to 4 of Row 1 the total average time (in months) for the completion of the action as stated in the heading of each of these columns for all post-2015 cases (i.e. “**Attribution / Allocation**” and “**Others**”) closed during the reporting period.

## Annex 3.C. Definition of terms and rules for counting MAP cases for purposes of MAP Statistics reporting under the reporting template in Annex 3.A.

1. Jurisdictions shall apply the following definitions and counting methods for purposes of their MAP Statistics reporting as required under Annex 3.A. of this note:

### **(a) MAP case**

- (i) Countries that are currently reporting MAP Statistics<sup>1</sup> pursuant to the MAP reporting framework arising from the proposals in the Committee on Fiscal Affairs' (CFA) 2007 report "Improving the Resolution of Tax Treaty Disputes"<sup>2</sup> ("existing reporting framework") could adopt the definition of MAP cases based on the definition as contained in that framework and should clearly indicate this in the "Notes" section. As required under the existing reporting framework, where a tax administration does not accept a definition or is unable to report based upon the definition, that administration is requested to explain the difference between its reporting and the definition of terms provided in the existing reporting framework. Such explanation should be contained in the "Notes" section.
- (ii) For all other jurisdictions, they should clearly indicate in the "Notes" section the definition of a MAP case adopted by them.

### **(b) Counting of MAP cases**

- (i) Countries that are currently reporting MAP Statistics pursuant to the existing reporting framework could adopt the counting method contained in that framework and to clearly indicate that in the "Notes" section. If a different counting method is adopted instead, please explain the different method used in the "Notes" section.
- (ii) For all other jurisdictions, they should clearly indicate in "Notes" section the method of counting MAP cases.

### **(c) Category of Cases (Attribution / Allocation and Others) – See Column 1**

Jurisdictions could categorise pre-2016 cases based on any definition adopted by them and explain the definition used in the "Notes" section.

### **(d) Number of pre-2016 cases in MAP inventory on 1 January [YEAR] – See Column 2**

The number of pre-2016 cases in the MAP inventory on 1 January of the year is the number of MAP requests that are not reported in Annex 3.B. which are pending resolution as of 1 January of that year.

### **(e) Number of cases closed during the reporting period with outcomes as stated in Columns 3 to Column 12**

- (i) Cases denied MAP access (**Column 3**):  
A MAP case shall be counted as a case denied MAP access if the date of notification from the competent authority to the taxpayer that its MAP request is denied access to MAP (see

paragraphs 13 and 14 of this note) falls within the reporting period. A MAP request is denied MAP access if it not an admissible objection or is denied access to MAP for any other reason. In instance whereby the taxpayer had sought the decision of an administrative appeal or judicial review following the notification from the competent authority that the MAP request is denied MAP access, and the decision is such that the case should be granted MAP access, this case shall be considered as a new case with the “start” date determined as (i) date of the decision of the administrative appeal or judicial review; or (ii) where the taxpayer is required to submit a new MAP request, the date as determined by the competent authority.

(ii) Objection is not justified (**Column 4**):

A MAP case shall be counted as a case where the objection is not justified if the date of notification from the competent authority to the taxpayer that its objection is not a justified objection (see paragraphs 13 and 14 of this note) falls within the reporting period. In instance whereby the taxpayer had sought the decision of an administrative appeal or judicial review following the notification from the competent authority that the objection from the taxpayer is not justified, and the decision is such that the case is a justified request, this case shall be considered as a new case with the “start” date determined as (i) date of the decision of the administrative appeal or judicial review; or (ii) where the taxpayer is required to submit a new MAP request, the date as determined by the competent authority.

(iii) Withdrawn by taxpayer (**Column 5**):

A MAP case shall be counted as a case withdrawn by the taxpayer if the date of receipt of the taxpayer’s notification to the competent authority (see paragraphs 13 and 14 of this note) falls within the reporting period. However, if the case is withdrawn by taxpayer following the resolution of the issues through remedies provided by the domestic law of a Contracting State, that case shall be reflected as a case closed with the outcome “*resolved via domestic remedy*” (see **Column 7**).

(iv) Unilateral relief granted (**Column 6**):

A MAP case shall be counted as a case closed with unilateral relief granted if the date of notification from the competent authority to the taxpayer informing the taxpayer of such an outcome (see paragraphs 13 and 14 of this note) falls within the reporting period. Such cases shall not include cases whereby unilateral relief will be granted by a Contracting State following the outcome reached via (i) domestic remedy (such outcome shall be reflected under **Column 7**); and (ii) competent authority agreement (such outcome shall be reflected in either **Column 8 or 9**).

(v) Resolved via domestic remedy (**Column 7**):

A MAP case shall be counted as a case closed with the outcome “*resolved via domestic remedy*” if the date of that outcome (see paragraphs 13 and 14 of this note) falls within the reporting period. If the case is withdrawn by the taxpayer following an outcome reached via domestic remedy which lead to unilateral relief granted by a jurisdiction, that case shall be reflected as a case under this column and not as a case withdrawn (see **Column 5**) or closed with unilateral relief granted (see **Column 6**).

(vi) Agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty (**Column 8**):

A MAP case shall be counted as a case closed with agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty if the date of notification from the competent authority to the taxpayer informing the taxpayer of such an agreement reached via competent authority discussion (regardless of whether the taxpayer accepts that outcome) (see paragraphs 13 and 14 of this note) falls within the reporting period. This includes cases where

such an outcome is arrived at following the submission of the case to arbitration in instances where the tax treaty contains an arbitration provision.

- (vii) Agreement partially eliminating double taxation / partially resolving taxation not in accordance with the tax treaty (**Column 9**):

A MAP case shall be counted as a case closed with agreement partially eliminating double taxation / partially resolving taxation not in accordance with the tax treaty if the date of notification from the competent authority to the taxpayer informing the taxpayer of such an agreement reached via competent authority discussion (regardless of whether the taxpayer accepts that outcome) (see paragraphs 13 and 14 of this note) falls within the reporting period. This includes cases where such an outcome is arrived at following the submission of the case to arbitration in instances where the tax treaty contains an arbitration provision.

- (viii) Agreement that there is no taxation not in accordance with the tax treaty (**Column 10**):

A MAP case shall be counted as a case closed with agreement that there is no taxation not in accordance with the tax treaty if the date of notification from the competent authority to the taxpayer informing the taxpayer of such an agreement reached via competent authority discussion (regardless of whether the taxpayer accepts that outcome) (see paragraphs 13 and 14 of this note) falls within the reporting period. This includes cases where such an outcome is arrived at following the submission of the case to arbitration in instances where the tax treaty contains an arbitration provision.

- (ix) No agreement including agreement to disagree (**Column 11**):

A MAP case shall be counted as a case closed with no agreement if the date of notification from the competent authority to the taxpayer informing the taxpayer of such an outcome (see paragraphs 13 and 14 of this note) falls within the reporting period. "No agreement" includes agreement to disagree.

- (x) Any other outcome (**Column 12**):

A MAP case shall be counted as a case closed with any other outcome (not falling within any of the outcomes described above) if the date of notification from the competent authority to the taxpayer informing the taxpayer of such an outcome (see paragraphs 13 and 14 of this note) falls within the reporting period.

For purposes of this statistics reporting framework, if there is more than one outcome relating to a MAP request (for example, part of the MAP request is denied MAP access, part of the MAP request is granted unilateral relief and part of the MAP request is resolved with the outcome that double taxation is fully eliminated), the MAP case shall be considered closed based on the date of notification (if there is more than one notification, the date of the last notification) from the competent authority and the outcome communicated in that notification to the taxpayer.

***(f) Number of pre-2016 cases remaining in MAP inventory on 31 December [YEAR] – see Column 13)***

The number of pre-2016 cases remaining in the MAP inventory on 31 December of the year is the number of MAP cases in a competent authority's inventory that are pending resolution as of 31 December of that year.

***(g) Average time taken (in months) for closing pre-2016 cases during the reporting period – see Column 14***

- (i) Jurisdictions that are currently reporting MAP Statistics pursuant to the existing reporting framework could report in Column 14 the "average cycle time for cases completed, closed or

withdrawn during the reporting period” as per that reporting framework and should clearly indicate this in the “Notes” section. As required under the existing reporting framework, where a tax administration does not accept a definition or is unable to report based upon the definition, that administration is requested to explain the difference between its reporting and the definition of terms provided in the existing reporting framework. Such explanation should be contained in the “Notes” section.

- (ii) For all other jurisdictions, they should clearly indicate in the “Notes” section their method of computing the average time taken to close a MAP case, including their definition of the “start” and “end” date for purposes of computing this average.

## Notes

<sup>1</sup> These countries are all the OECD Member States and Argentina, People's Republic of China, Costa Rica, Latvia and South Africa.

<sup>2</sup> Available at [www.oecd.org/ctp/dispute/38055311.pdf](http://www.oecd.org/ctp/dispute/38055311.pdf).

## Annex 3.D. – Definition of terms and rules for counting MAP cases for purposes of MAP Statistics reporting under the reporting template in Annex 3.B.

1. Jurisdictions shall apply the following definitions and counting methods for purposes of their MAP Statistics reporting as required under Annex 3.B. of this note:

### **(a) MAP case**

A MAP case is a case arising from a request made by a person pursuant to the MAP provisions of a tax treaty concerning the taxation of income and capital. Cases within a competent authority's MAP inventory are (i) cases arising from a request submitted directly to that competent authority by a taxpayer; and (ii) cases arising from a request submitted by a taxpayer to the competent authority of the treaty partner and subsequently presented by that other competent authority to the competent authority. These are cases arising from requests submitted under a provision based upon Article 25(1) of the OECD Model Tax Convention (OECD, 2019<sup>[21]</sup>), or under Article 25(3), provided that in the latter case the requests are taxpayer-specific and not one for a generic interpretation of the provision of a tax treaty. In addition, cases arising under Article 4(2), sub d, or Article 4(3) of the OECD Model Tax Convention (OECD, 2019<sup>[21]</sup>) to determine residence of a taxpayer also counts as a MAP case.

A MAP also concerns case arising from a request submitted under the EU Arbitration Convention<sup>1</sup> and arising from a complaint on a question in dispute submitted under Article 3(1) of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.<sup>2</sup>

A MAP case however shall not include (i) a request for an Advance Pricing Arrangement (APA) including a request to apply the outcome of the APA to previous filed tax years not included within the original scope of the APA (i.e. a request for the “roll-back” of the APA); or (ii) a “protective” MAP request. A “protective” MAP request is a MAP request submitted by the taxpayer in order to ensure that its request is made within the time frame permitted under the relevant tax treaty but the taxpayer has indicated to the competent authority or agreed with the competent authority that the request should not be examined until further notification is received from the taxpayer to do so. Once such notification (that a taxpayer asks that a previously protective MAP request should now be examined) is received by the competent authority, the MAP request shall be regarded as “received by a competent authority” in the sense of paragraphs 10 and 11 of this note.

### **(b) Counting of MAP cases**

A MAP request submitted by the taxpayer to one or both Contracting States to a tax treaty shall be counted as only one MAP case if

- (iii) the request concerns the taxation of only one taxpayer in either Contracting State or in each Contracting State; or
- (iv) where the issue submitted for MAP discussion relates to transaction(s) of an entity which is not liable to tax at the level of the entity itself (for example, a transparent entity or an entity which

is subject to domestic rules on fiscal unity or similar concepts), the request concerns the transactions of only one such entity in either Contracting State or in each Contracting State.

In these circumstances, a MAP request will be counted as one case, irrespective of whether (i) the MAP request is submitted by the taxpayer to one or more competent authorities; (ii) the number of issues and taxation years involved, so long as these issues and taxation years are covered in the same MAP request; and (iii) the MAP request is submitted to the competent authorities under both a tax treaty and the EU Arbitration Convention/Dispute Resolution Directive.

Where in either or both Contracting States, a MAP request concerns the taxation of more than one taxpayer or concerns more than one entity, then -

- if the number of taxpayers or entities concerned in each Contracting State is the same, the number of MAP cases shall be equal to this number, or
- if the number of taxpayers or entities concerned in each Contracting State is different, the number of MAP cases shall be equal to the larger number.

Any subsequent request by the same taxpayer or the same entity with respect to a similar issue but for a different taxation year or with respect to the same taxation year for a different issue shall be considered to be a new MAP request and the number of MAP cases arising from this new request shall be counted as described above.

***(c) Attribution/Allocation MAP Cases – see Table 1 of Part (I) and Part (II) of Annex 3.B.***

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 (OECD, 2019<sub>[2]</sub>)); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention (OECD, 2019<sub>[2]</sub>)), which is also known as a transfer pricing MAP case.

***(d) Other MAP Cases – see Table 2 of Part (I) and Part (II) of Annex 3.B.***

Any MAP case that is not an attribution / allocation MAP case shall be reported as “Others” in Table 2 of Part (I) and Part (II) of Annex 3.B.

2. Jurisdictions shall apply the following definitions and counting methods for purposes of their MAP Statistics reporting as required under Part (I) of Annex 3.B. of this note:

***(a) Number of post-2015 cases closed during the reporting period with outcomes as stated in Columns 4 to 13 of Table 1 and Table 2***

- (i) Cases denied MAP access (**Column 4**):  
A MAP case shall be counted as a case denied MAP access if the date of notification from the competent authority to the taxpayer that its MAP request is denied access to MAP (see paragraphs 13 and 14 of this note) falls within the reporting period. A MAP request is denied MAP access if it not an admissible objection or is denied access to MAP for any other reason. In instance whereby the taxpayer had sought the decision of an administrative appeal or judicial review following the notification from the competent authority that the MAP request is denied MAP access, and the decision is such that the case should be granted MAP access, this case shall be considered as a new case with the “start” date determined as (i) date of the decision of the administrative appeal or judicial review; or (ii) where the taxpayer is required to submit a new MAP request, the date as determined based on paragraphs 11 or 12 of this note.
- (ii) Objection is not justified (**Column 5**):

A MAP case shall be counted as a case where the objection is not justified if the date of notification from the competent authority to the taxpayer that its objection is not a justified objection (see paragraphs 13 and 14 of this note) falls within the reporting period. In instance whereby the taxpayer had sought the decision of an administrative appeal or judicial review following the notification from the competent authority that the objection from the taxpayer is not justified, and the decision is such that the case is a justified request, this case shall be considered as a new case with the “start” date determined as (i) date of the decision of the administrative appeal or judicial review; or (ii) where the taxpayer is required to submit a new MAP request, the date as determined based on paragraph 11 or 12 of this note.

(iii) Withdrawn by taxpayer (**Column 6**):

A MAP case shall be counted as a case withdrawn by the taxpayer if the date of receipt of the taxpayer’s notification to the competent authority (see paragraphs 13 and 14 of this note) falls within the reporting period. However, if the case is withdrawn by taxpayer following the resolution of the issues through remedies provided by the domestic law of a Contracting State, that case shall be reflected as a case closed with the outcome “resolved via domestic remedy” (see **Column 8**).

(iv) Unilateral relief granted (**Column 7**):

A MAP case shall be counted as a case closed with unilateral relief granted if the date of notification from the competent authority to the taxpayer informing the taxpayer of such an outcome (see paragraphs 13 and 14 of this note) falls within the reporting period. Such cases shall not include cases whereby unilateral relief will be granted by a Contracting State following the outcome reached via (i) domestic remedy (such outcome shall be reflected under **Column 8**); and (ii) competent authority agreement (such outcome shall be reflected in either **Column 9 or 10**).

(v) Resolved via domestic remedy (**Column 8**):

A MAP case shall be counted as a case closed with the outcome “resolved via domestic remedy” if the date of that outcome (see paragraphs 13 and 14 of this note) falls within the reporting period. If the case is withdrawn by the taxpayer following an outcome reached via domestic remedy which lead to unilateral relief granted by a jurisdiction, that case shall be reflected as a case under this column and not as a case withdrawn (see **Column 6**) or closed with unilateral relief granted (see **Column 7**).

(vi) Agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty (**Column 9**):

A MAP case shall be counted as a case closed with agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty if the date of notification from the competent authority to the taxpayer informing the taxpayer of such an agreement reached via competent authority discussion (regardless of whether the taxpayer accepts that outcome) (see paragraphs 13 and 14 of this note) falls within the reporting period. This includes cases where such an outcome is arrived at following the submission of the case to arbitration in instances where the tax treaty contains an arbitration provision.

(vii) Agreement partially eliminating double taxation / partially resolving taxation not in accordance with the tax treaty (**Column 10**):

A MAP case shall be counted as a case closed with agreement partially eliminating double taxation / partially resolving taxation not in accordance with the tax treaty if the date of notification from the competent authority to the taxpayer informing the taxpayer of such an agreement reached via competent authority discussion (regardless of whether the taxpayer accepts that outcome) (see paragraphs 13 and 14 of this note) falls within the reporting period.

This includes cases where such an outcome is arrived at following the submission of the case to arbitration in instances where the tax treaty contains an arbitration provision.

(viii) Agreement that there is no taxation not in accordance with the tax treaty (**Column 11**):

A MAP case shall be counted as a case closed with agreement that there is no taxation not in accordance with the tax treaty if the date of notification from the competent authority to the taxpayer informing the taxpayer of such an agreement reached via competent authority discussion (regardless of whether the taxpayer accepts that outcome) (see paragraphs 13 and 14 of this note) falls within the reporting period. This includes cases where such an outcome is arrived at following the submission of the case to arbitration in instances where the tax treaty contains an arbitration provision.

(ix) No agreement including agreement to disagree (**Column 12**):

A MAP case shall be counted as a case closed with no agreement if the date of notification from the competent authority to the taxpayer informing the taxpayer of such an outcome (see paragraphs 13 and 14 of this note) falls within the reporting period. “No agreement” includes agreement to disagree.

(x) Any other outcome (**Column 13**):

A MAP case shall be counted as a case closed with any other outcome (not falling within any of the outcomes described above) if the date of notification from the competent authority to the taxpayer informing the taxpayer of such an outcome (see paragraphs 13 and 14 of this note) falls within the reporting period.

For purposes of this statistics reporting framework, if there are more than one outcomes relating to a MAP request (for example, part of the MAP request is denied MAP access, part of the MAP request is granted unilateral relief and part of the MAP request is resolved with the outcome that double taxation is fully eliminated), the MAP case shall be considered closed based on the date of notification (if there is more than one notification, the date of the last notification) from the competent authority and the outcome communicated in that notification to the taxpayer.

***(b) Number of post-2015 cases remaining in MAP inventory on 31 December [YEAR] – see Column 14 of Table 1 and Table 2***

The number of post-2015 cases remaining in the MAP inventory on 31 December of the year is the number of post-2015 cases in a competent authority’s inventory that are pending resolution as of 31 December of that year.

***(c) Number of post-2015 cases remaining in MAP inventory on 31 December [Year] falling under the age category “<2 years old” – see Column 2/Row 1 of Table 3***

The number of post-2015 cases in the MAP inventory that are pending resolution as of 31 December of the [Year] that were initiated, based on the “Start Date”, on or after 1 January [Year-2].

***(d) Number of post-2015 cases remaining in MAP inventory on 31 December [Year] falling under the age category “>=2 and <4 years old” – see Column 2/Row 2 of Table 3***

The number of post-2015 cases in the MAP inventory that are pending resolution as of 31 December of the [Year] that were initiated, based on the “Start Date”, on or after 1 January [Year-4], but before 31 December [Year-3].

**(e) Number of post-2015 cases remaining in MAP inventory on 31 December [Year] falling under the age category “>=4 and <6 years old” – see Column 2/Row 3 of Table 3**

The number of post-2015 cases in the MAP inventory that are pending resolution as of 31 December of the [Year] that were initiated, based on the “Start Date”, on or after 1 January [Year-6], but before 31 December [Year-5].

**(f) Number of post-2015 cases remaining in MAP inventory on 31 December [Year] falling under the age category “>=6 years old” – see Column 2/Row 4 of Table 3**

The number of post-2015 cases in the MAP inventory that are pending resolution as of 31 December of the [Year] that were initiated, based on the “Start Date”, on or before 31 December [Year-7].

3. Jurisdictions shall apply the following definitions and counting methods for purposes of their MAP Statistics reporting as required under Part (II) of Annex 3.B. of this note:

**(a) Average time take from “Start” to “End” of MAP case – see Column 2 of Table 1 and Table 2 and Column 1 of Table 3**

The average time taken from “start” to “end” of MAP case shall be calculated by first aggregating the number of months from the “start” date (as determined in paragraph 10 or 11 of this note) to the “end” date (as determined in paragraph 12 or 13 of this note) for each case where the “end” date for the case falls within the reporting period.

The number of months taken for each case shall be computed as the number of days taken from the “start” date to the “end” date divided by 365 and multiply by 12 (rounded to two decimal places). The second step is to divide this aggregated number of months by the total number of cases where the “end” date for the case falls within the reporting period. The result is the average time taken from the “start” to the “end” of a MAP case in months (rounded to two decimal places).

**(b) Average time taken from receipt of taxpayer’s MAP request to “Start” – see Column 3 of Table 1 and Table 2 and Column 2 of Table 3**

The average time taken from the receipt of a taxpayer’s MAP submission to the “start” of MAP case (as determined in paragraph 10 or 11 of this note) shall be calculated by first aggregating the number of months from the date the taxpayer’s MAP submission is received by the competent authority (as referred to in paragraph 10 of this note) to the “start” date for each case where the “end date” (as determined in paragraph 13 or 14 of this note) falls within the reporting period.

The number of months taken for each case shall be computed as the number of days taken from the date of receipt of the taxpayer’s MAP submission to the “start” date divided by 365 and multiply by 12 (rounded to two decimal places). The second step is to divide this aggregated number of months by the total number of all cases where the “end” date for the case falls within the reporting period. The result is the average time taken from a taxpayer’s MAP submission to the “start” of MAP case in months (rounded to two decimal places).

**(c) Average time taken from “Start” to Milestone 1 – see Column 4 of Table 1 and Table 2 and Column 3 of Table 3**

The average time taken from “start” of a MAP case to Milestone 1 shall be calculated by first aggregating the number of months it took from the “start” date (as determined in paragraph 11 or 12 of this note) to the “date of Milestone 1” (as determined in paragraph 15 of this note) for each case that has an applicable

“date of Milestone 1” and where the “end” date (as determined in paragraph 13 or 14 of this note) falls within the reporting period.

The number of months taken for each case that has an applicable “date of Milestone 1” shall be computed as the number of days taken from the “start” date to the date of Milestone 1 divided by 365 and multiply by 12 (rounded to two decimal places). The second step is to divide this aggregated number of months by the total number of cases that have an applicable “date of Milestone 1” and where the “end” date for the case falls within the reporting period. The result is the average time taken from the “start” of a MAP case to Milestone 1 in months (rounded to two decimal places).

***(d) Average time taken from Milestone 1 to “End” – see Column 5 of Table 1 and Table 2 and Column 4 of Table 3***

The average time taken from Milestone 1 to the “end” of a MAP case shall be calculated by first aggregating the number of months from the date of Milestone 1 (as determined in paragraph 15 of this note) to the “end” date (as determined in paragraph 13 or 14 of this note) for each case that has an applicable “date of Milestone 1” and where the “end” date (as determined in paragraph 13 or 14 of this note) falls within the reporting period.

The number of months taken for each case that has an applicable “date of Milestone 1” shall be computed as the number of days taken from the date of Milestone 1 to the “end” date divided by 365 and multiply by 12 (rounded to two decimal places). The second step is to divide this aggregated number of months by the total number of cases that have an applicable “date of Milestone 1” and where the “end” date for the case falls within the reporting period. The result is the average time taken from Milestone 1 to the “end” of a MAP case in months (rounded to two decimal places).

***(e) Cases closed in the Unilateral stage – see Annex to Table 1 and Annex to Table 2***

MAP cases that are resolved under the outcomes “denied MAP access”, “objection is not justified” and “unilateral relief granted” as defined in paragraph 2(a) of Annex 3.D.

***(f) Cases closed in the Bilateral stage – see Annex to Table 1 and Annex to Table 2***

MAP cases that are resolved under the outcomes “withdrawn by taxpayer”, “resolved via domestic remedy”, “agreement fully eliminating double taxation eliminated / 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” and “any other outcome”. as defined in paragraph 2(a) of Annex 3.D.

***(g) Average time taken from “Start” to “End” for Cases closed in the Unilateral stage and Cases closed in the Bilateral stage – see Annex to Table 1 and Annex to Table 2***

The average time calculated as under paragraph 3(a) of Annex 3.D for Cases closed in the Unilateral Stage or Cases closed in the Bilateral Stage as under paragraphs 3(e) and 3(f) respectively.

## Notes

<sup>1</sup> EU Member States are free to note any specificity on MAP requests received by them under the EU Arbitration Convention, including providing a breakdown of the MAP Statistics relating to such cases in the Notes section of the MAP Statistics Reporting template.

<sup>2</sup> EU Member States are free to note any specificity on MAP requests received by them under Dispute Resolution Directive, including providing a breakdown of the MAP Statistics relating to such cases in the Notes section of the MAP Statistics Reporting template.

# 4

## Guidance on Specific Information and Documentation Required to be Submitted with a Request for MAP Assistance

### Introduction

1. The Report on Action 14: Making Dispute Resolution Mechanisms More Effective (“the 2015 Action 14 Report”) (OECD, 2015<sub>[1]</sub>) was approved by the OECD Committee of Fiscal Affairs (“CFA”) in September, presented to the OECD Council and endorsed by the G20 Finance Ministers on 8 October 2015. This Report contained a commitment by countries engaged in the work to the implementation of a minimum standard to ensure that they resolve treaty-related disputes in a timely, effective and efficient manner and to have their compliance with the minimum standard reviewed by their peers – i.e. the other members of the Forum on Tax Administration MAP Forum (“the FTA MAP Forum”).
2. One of the elements of the minimum standard<sup>1</sup> requires that jurisdictions’ published MAP guidance should identify the specific information and documentation that a taxpayer is required to submit with a request for MAP assistance and jurisdictions should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided this information. The 2015 Action 14 Report (OECD, 2015<sub>[1]</sub>) tasked the FTA MAP Forum to develop guidance on the specific information and documentation required to be submitted with a request for MAP assistance.

### Guidance on the specific information and documentation required to be submitted with a request for MAP assistance

3. The Action 14 minimum standard requires that jurisdictions should not deny access to MAP based on the argument that insufficient information was provided. To provide certainty and clarity to taxpayers on the information and documentation requirement, jurisdictions are to publish clear rules, guidelines and procedures on access to and use of the MAP, including the specific information and documentation that should be submitted in a taxpayer’s request for MAP assistance. As tasked by the 2015 Action 14 Report (OECD, 2015<sub>[1]</sub>), the FTA MAP Forum has developed the following guidance on the information and documentation required to be submitted with a request for MAP assistance.
4. To ensure that a taxpayer’s MAP request is received and will be reviewed by the competent authority in a timely manner, a jurisdiction’s MAP guidance should clearly provide information on how a taxpayer can make a request for MAP assistance and should include the following:
  - (i) **Contact information of the competent authority or the office in charge of MAP cases** – to ensure that MAP requests are received by the competent authority in a timely manner, jurisdictions should provide information on the name and the designation of the person or the office to which the MAP request should be submitted, including the specific mailing address or email address to which a MAP request should be sent.

- (ii) **The manner and form in which the taxpayer should submit its MAP request** – MAP guidance should clearly state any requirements with respect to the format of a request, including whether paper or electronic forms should be used and the required language of the request and any accompanying documentation. In addition, MAP guidance should include any requirements relating to the timing of the submission of a MAP request (other than the timeframe stipulated in the applicable MAP provision), for example, a requirement that if the taxpayer is intending to submit the same MAP request to another competent authority, then the two requests should be submitted at the same time. MAP guidance should also require a taxpayer to clearly indicate in its MAP request if its request is a “protective” MAP request<sup>2</sup>.

5. To facilitate the review of a MAP request, a jurisdiction’s MAP guidance should clearly list the information and documentation that should be submitted with a taxpayer’s request for MAP assistance. The information and documentation to be included in the taxpayer’s MAP request could include, for example, the following:

- (i) **Identity of the taxpayer(s) covered in the MAP request** – the identity of the taxpayer(s) covered in a MAP request must be sufficiently specific to allow the competent authority to identify and contact the taxpayer(s) involved. The information provided should include the name, address, taxpayer identification number or birth date, contact details and the relationship between the taxpayers covered in the MAP request (where applicable).
- (ii) **The basis for the request** – the MAP request should state the specific tax treaty including the provision(s) of the specific article(s) which the taxpayer considers is not being correctly applied by either one or both Contracting Party (and to indicate which Party and the contact details of the relevant person(s) in that Party).
- (iii) **Facts of the case** – the MAP request should contain all the relevant facts of the case including any documentation to support these facts, the taxation years or period involved and the amounts involved (in both the local currency and foreign currency).
- (iv) **Analysis of the issue(s) requested to be resolved via MAP** – the taxpayer should provide an analysis of the issue(s) involved, including its interpretation of the application of the specific treaty provision(s), to support its basis for making a claim that the provision of the specific tax treaty is not correctly applied by either one or both Contracting Party. The taxpayer should support its analysis with relevant documentation (for example, documentation required under transfer pricing legislative or published guidance, copies of tax assessments, audits conducted by the tax authorities leading to the incorrect application of the tax treaty provision).
- (v) **Whether the MAP request was also submitted to the competent authority of the other Contracting Party** – If so, the MAP request should make this clear, together with the date of such submission, the name and the designation of the person or the office to which the MAP request was submitted. A copy of that submission (including all documentations filed with that submission) should also be provided unless the content of both MAP submissions are exactly the same.
- (vi) **Whether the MAP request was also submitted to another authority under another Instrument that provides for a mechanism to resolve treaty-related disputes** – If yes, the MAP request should clearly state so and the date of such submission, the name and the designation of the person or the office to which the MAP request was submitted, should be provided. A copy of that submission (including all documentations filed with that submission) should also be provided unless the content of both MAP submissions are exactly the same.
- (vii) **Whether the issue(s) involved were previously dealt with** – the request should state whether the issue(s) presented in the MAP request has been previously dealt with, for example, in an advance ruling, advance pricing arrangement, settlement agreement or by any tax tribunal or court. If yes, a copy of these rulings, agreements or decisions should be provided.

(viii) **A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner** – the request for any other information or documentation should be well-targeted and responses to the request should be complete and be submitted within the time stipulated in the request for such information or documentation.

## Reference

OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264241633-en>. [1]

## Notes

<sup>1</sup> See minimum standard 3.2 in the 2015 Action 14 Report and elements B.6. and B.8. of the Terms of Reference to monitor and review the implementation of the BEPS Action 14 minimum standard to make dispute resolution mechanisms more effective (“Terms of Reference”).

<sup>2</sup> A “protective” MAP request is understood as a MAP request submitted by the taxpayer to ensure that its request is made within the time frame provided under the tax treaty but the taxpayer has indicated at the point of making the request or subsequently to the competent authority that the request need not be examined until further notification from the taxpayer to do so.

# BEPS Action 14 on More Effective Dispute Resolution Mechanisms

PEER REVIEW DOCUMENTS