

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



Making Dispute Resolution More Effective - MAP Peer Review Report, Tunisia (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Please cite this publication as:

OECD (2020), *Making Dispute Resolution More Effective - MAP Peer Review Report, Tunisia (Stage 1): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris,
<https://doi.org/10.1787/a8e3b149-en>.

ISBN 978-92-64-72113-5 (print)

ISBN 978-92-64-17272-2 (pdf)

OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

As a result, the OECD established the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already has more than 135 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on

standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 12 May 2020 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

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

Executive summary

Tunisia has a relatively large tax treaty network with over 50 tax treaties. Tunisia has recently established a MAP programme and has limited experience with resolving MAP cases. It has a small MAP inventory with a small number of new cases submitted each year and eight cases pending on 31 December 2018. Of these cases, 75% concern other cases than allocation/attribution cases. Overall, Tunisia meets more than half of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Tunisia is working to address them.

All but two of Tunisia's tax treaties contain a provision relating to MAP. Those treaties generally follow paragraphs 1 to 3 of Article 25 of the OECD Model Tax Convention. Its treaty network is partially consistent with the requirements of the Action 14 Minimum Standard, except for the fact that:

- More than half (54%) of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- more than a third (35%) of its tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention either because they do not contain the equivalent of Article 25(1), first sentence of the Model of the OECD Tax Convention or because they do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Tunisia needs to amend and update a considerable number of its tax treaties. In this respect, Tunisia signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, Tunisia reported that at first, it will update its notifications under that instrument and where this does not lead to a modification, Tunisia has indicated its intention to negotiate changes to tax treaties bilaterally. In this respect, Tunisia noted that it has already contacted certain treaty partners and that for the other treaty partners it is currently considering whether it would prioritise the conventions concluded with jurisdictions with a large number of nationals resident in Tunisia and jurisdictions with which Tunisia has considerable economic relations and transactions.

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

Tunisia meets almost all the requirements regarding availability and access to MAP under the Action 14 Minimum Standard. Tunisia provides access to MAP in all eligible cases, although it has since 1 January 2017 not received any MAP requests from taxpayers that related to transfer pricing cases, cases that related to the application of an anti-abuse provision or a case where the taxpayer and the tax administration had entered into an audit settlement. In addition, Tunisia has put in place documented notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Tunisia has published clear and comprehensive MAP guidance on how it applies the MAP procedure in practice. However, the guidelines on the mutual agreement procedure do not contain information on the relationship between MAP and audit settlements.

Concerning the average time needed to close MAP cases, the MAP statistics for Tunisia for the period 2017-18 are as follows:

2017-18	Opening Inventory 1/1/2017	Cases started	Cases closed	End Inventory 31/12/2018	Average time required to resolve cases (months)
Attribution/allocation cases	1	1	0	2	N/A
Other cases	3	3	0	6	N/A
Total	4	4	0	8	N/A

As of 1 January 2017 Tunisia had four pending MAP cases, including one attribution/allocation case and three other cases. Its MAP inventory as per 31 December 2018 doubled as compared to its inventory as per 1 January 2017, and no cases have been closed during the Review Period. In this regard, Tunisia should monitor whether resources are sufficient for the resolution of MAP cases in order to ensure that Tunisia resolves all cases submitted to MAP in a timely, efficient and effective manner.

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

In addition, Tunisia does not meet all the requirements of the Action 14 Minimum Standard in terms of the implementation of MAP agreements. Taxpayers are required to ask for the implementation of MAP agreements in person (or with a proxy) which bears the risk that some MAP agreements are not implemented or not in a timely manner, although Tunisia's competent authority made its best efforts to enable such implementation for the cases that occurred during the review period.

Introduction

Available mechanisms in Tunisia to resolve tax treaty-related disputes

Tunisia has entered into 51 tax treaties on income (and/or capital), 50 of which are in force.¹ These 51 treaties are being applied to 55 jurisdictions.^{2, 3} All but two of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. None of these 51 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.

In Tunisia, the competent authority function to handle MAP cases is the Ministry of Finance or its authorised representative and is delegated to the *Direction Générale des Etudes et de la Législation Fiscales* (General Directorate of Tax Studies and Legislation). Tunisia's competent authority currently employs three people who deal with MAP cases among other tasks. They are responsible for both attribution/allocation and other cases in addition to other non-MAP related duties.

Tunisia issued guidance on the governance and administration of the mutual agreement procedure (“**MAP**”) in September 2019, which is available in French and Arabic at:

<https://doc-fiscale.finances.gov.tn/cimf-internet/page/doc-portal/fr/#path=%2F>

Recent developments in Tunisia

Tunisia recently signed two new tax treaties, a replacement of an existent treaty with Germany (2018) and a new treaty with Singapore (2018), which have been ratified by Tunisia but not yet entered into force.

Furthermore, on 24 January 2018 Tunisia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Tunisia has specified that it will submit the multilateral instrument as well as the explanatory memorandum to the legal services of the Ministry of Foreign Affairs, which will then submit the draft law to the President of the Government in order to ratify the Multilateral Instrument. A council of ministers will be scheduled for this purpose, and following its approval the law is sent them to the assembly of people's representatives for ratification. Tunisia added that it intends to finalise these steps in the course of 2020.

With the signing of the Multilateral Instrument, Tunisia submitted its list of notifications and reservations to that instrument.⁴ In relation to the Action 14 Minimum Standard, Tunisia has not made any reservations pursuant to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

Where treaties will not be modified by the Multilateral Instrument, Tunisia reported that at first, it will update its notifications under that instrument and where this does not lead to a modification, it will strive to update them through future bilateral negotiations. In this respect, Tunisia noted that it has already contacted certain treaty partners and that for the other treaty partners it will put in place a plan. To that effect, Tunisia reported that it is currently considering whether it would prioritise jurisdictions from which there is a considerable number of residents living in Tunisia and countries with which Tunisia has economic ties and frequent transactions. Tunisia further reported that it is open to all requests from other treaty partners to make the necessary changes to comply with the minimum standard.

Basis for the peer review process

The peer review process entails an evaluation of Tunisia's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Tunisia, its peers and taxpayers. The questionnaires for the peer review process were sent to Tunisia and the peers on 30 August 2019.

The period for evaluating Tunisia's implementation of the Action 14 Minimum Standard ranges from 1 January 2017 to 31 August 2019 ("**Review Period**"). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Tunisia's implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether Tunisia is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty.

The treaty analysis also takes into account the multilateral tax treaty entered into between Algeria, Libya, Morocco, Mauritania and Tunisia ("Union of the Arab Maghreb (UMA)") (1990) and the treaty with the former Czechoslovakia that Tunisia continues to apply to both the Czech Republic and the Slovak Republic (2001). These treaties are counted as one treaty each, even though they are applicable to multiple jurisdictions. Reference is made to Annex A for the overview of Tunisia's tax treaties regarding the mutual agreement procedure.

In total, eight peers provided input: Belgium, Canada, Denmark, Germany, Serbia, Switzerland, Turkey and the United States. Two of these peers had MAP cases with Tunisia that started on or after 1 January 2017, and represent 50% of the cases initiated after this date. In general, all peers indicated good communication with Tunisia's competent authority, most of them emphasising that they had little experience with Tunisia and therefore not much contact. Nevertheless, one peer mentioned possible difficulties related to the implementation of MAP agreements with regard to the refund procedure that the taxpayer must follow.

Tunisia provided its questionnaire on time. Tunisia was very responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and provided further clarity where necessary. In addition, Tunisia provided the following information:

- MAP profile⁵
- MAP statistics⁶ according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Tunisia

The analysis of Tunisia's MAP caseload relates to the period starting on 1 January 2017 and ending on 31 December 2018 ("**Statistics Reporting Period**"). According to the statistics provided by Tunisia, its MAP caseload during this period was as follows:

2017-18	Opening inventory 1/1/2017	Cases started	Cases closed	End inventory 31/12/2018	Average time required to resolve cases (months)
Attribution/allocation cases	1	1	0	2	N/A
Other cases	3	3	0	6	N/A
Total	4	4	0	8	N/A

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ("**Terms of Reference**").⁷ Apart from analysing Tunisia's legal framework and its administrative practice, the report depicts the changes adopted and plans shared by Tunisia to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that Tunisia continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

Notes

1. The tax treaties Tunisia has entered into are available at: www.impots.finances.gov.tn. The treaties that are signed but have not yet entered into force are with Germany (2018) and Singapore (2018). The treaty recently negotiated with Germany will replace the existent treaty once it is in force. For this reason, the convention recently negotiated will be taken into account in the treaty analysis. Reference is made to Annex A for the overview of Tunisia's tax treaties. It is noted that the treaty with Germany and the treaty with Singapore have entered into force after the Review Period, being in force as of 1 January 2020.
2. Tunisia is a signatory to the Union of the Arab Maghreb (UMA) Convention (1990) that for Tunisia applies to Algeria, Libya, Mauritania and Morocco.
3. Tunisia continues to apply the treaty entered into with the former Czechoslovakia with both the Czech Republic and the Slovak Republic.
4. Available at www.oecd.org/tax/treaties/beps-mli-position-tunisia.pdf.
5. Available at www.oecd.org/tax/dispute/Tunisia-Dispute-Resolution-Profile.pdf.
6. The MAP statistics of Tunisia are included in Annex B and C of this report.
7. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at www.oecd.org/fr/fiscalite/beps/beps-action-14-accroitre-l-efficacite-des-mecanismes-de-reglement-des-differends-documents-pour-l-examen-par-les-pairs.pdf.

Part A

Preventing disputes

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

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

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

Current situation of Tunisia’s tax treaties

2. Out of Tunisia’s 51 tax treaties, 48¹ contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. Of the remaining three treaties, two do not contain a provision that is based on one equivalent to Article 25(3), first sentence, while in the third treaty does not include the term “interpretation”. All three treaties are therefore considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

3. Tunisia reported that it considers itself able to enter into MAP agreements of a general nature where the applicable treaty contains a provision similar but not equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. This therefore does not apply to the two treaties that do not contain any similar provision.

Anticipated modifications

Multilateral Instrument

4. Tunisia signed the Multilateral Instrument on 24 January 2018.

5. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to

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

6. In regard of the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Tunisia did not list any of them as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, none of the tax treaties identified above will be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

7. In addition, Tunisia indicated that it will modify its notifications. According to Tunisia, these three treaties will then be modified by the Multilateral Instrument.

Bilateral modifications

8. Tunisia further reported that for the tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element A.1. As mentioned in the introduction, Tunisia has already contacted some of the relevant treaty partners and intends to put a plan in place for the remaining ones. In addition, Tunisia reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

9. For the three treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, no peer input was provided.

Conclusion

	Areas for improvement	Recommendations
[A.1]	Three out of 51 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. None of these three treaties will be modified by the Multilateral Instrument to include the required provision.	Tunisia should follow its stated intention to update its list of notifications under the Multilateral Instrument with a view to contain in all three treaties that do not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its stated intention and request the inclusion of the required provision via bilateral negotiations. To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.
	-	In addition, Tunisia should maintain its stated intention to include the required provision in all future tax treaties.

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

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

10. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.² The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Tunisia’s APA programme

11. Tunisia is authorised to enter into bilateral APAs. The legal basis for the APA programme is Act No. 2018-56 of 27 December 2018 and the Order of the Minister of Finance of 6 August 2019, available at:

<https://doc-fiscale.finances.gov.tn/cimf-internet/page/doc-portal/fr/#path=%2F>

12. Written requests to this effect must be submitted at least six months before the beginning of the first financial year to which the request relates. As a general rule, bilateral APAs have a duration of three to five years.

Roll-back of bilateral APAs

13. Tunisia reported that the bilateral APP programme does not provide for roll-back of the agreements.

Practical application of roll-back of bilateral APAs

14. Tunisia reported that it had not yet received any requests for bilateral APAs during the Review Period.

15. All the peers indicated that they had not received any requests for roll back of bilateral APAs with Tunisia.

Anticipated modifications

16. Tunisia indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

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

Notes

1. These 48 treaties include the treaty entered into with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic and the UMA Convention that for Tunisia applies to Algeria, Libya, Mauritania and Morocco.
2. This description of an APA is based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).

References

- OECD (2017a), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.
- OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, <https://dx.doi.org/10.1787/tpg-2017-en>.

Part B

Availability and access to MAP

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

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

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

Current situation of Tunisia's tax treaties

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

18. Out of Tunisia's 51 tax treaties, 26¹ contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. None of Tunisia's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report and allowing taxpayers to file a MAP request to the competent authority of either contracting state.

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

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are a resident.	15
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are a national.	4
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD 2015b), whereby taxpayers are not assigned specific rights to request the initiation of the MAP process.	3
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1
No MAP provision	2

20. The 15 treaties in the first row are considered not to contain the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons all 15 treaties are considered to be in line with this part of element B.1:

- The relevant treaty does not contain a non-discrimination provision and only applies to residents of one of the states (one treaty).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to allow only for the submission of MAP requests to the state of which the taxpayer is a resident (14 treaties).

21. The four treaties in the second row of the table are also considered not to contain the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a resident, but only in the state of which they are a national.

22. The three treaties in the third row of the table are also considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since the part of the sentence reading “where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention” is not contained.

23. With respect to the treaty mentioned in the last row of the table above, the provision incorporated in the protocol to this treaty reads:

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

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

25. Lastly, two of Tunisia's tax treaties do not contain a provision allowing taxpayers to submit a MAP request, following which they are considered not to be in line with this part of element B.1.

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

26. Out of Tunisia's 51 tax treaties, 32² contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

27. The remaining 19 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No provision for a filing period for a MAP request	11
Filing period less than 3 years for a MAP request (two years)	5
Filing period more than 3 years for a MAP request (five years)	1
Filing period of four years, but with the requirement to submit a MAP request to both competent authorities	1
No filing period for a MAP request but reference is made to the time limits in the domestic laws of the treaty partners	1

28. The 11 tax treaties in the first row of the table also include two treaties without a provision allowing taxpayers to submit a MAP request.

29. With respect to the treaty in the fourth row of the table above, the first sentence of paragraph 1 of the MAP provision in that treaty stipulates that a taxpayer should submit a MAP request in its state of residence. The second sentence, however, requires that taxpayers should submit the request within a period of four years from the first notification of action resulting in taxation not in accordance with the provisions of the particular tax treaty and to the other competent authority concerned. While the filing period for a MAP request is longer than three years, the requirement to file a MAP request to both competent authorities concerned puts a more restrictive obligation on taxpayers and for that reason the treaty is for this part not considered to be in line with element B.1.

30. In addition, the tax agreement in the last column of the table provides for a deadline according to the rules of domestic law of the treaty partners for the submission of the request for the opening the MAP proceeding, which may in practice be shorter than the period of 3 years, which is considered to be the action 14 minimum standard.

Practical application

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

31. As indicated in paragraphs 18 to 25 above, all but three of Tunisia's tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. Tunisia reported that submitting a MAP request does not deprive taxpayers from other remedies available under their respective domestic tax law. Likewise, if taxpayers have pursued internal remedies first, they can submit a MAP request, provided they respect the applicable deadlines. In this respect, Tunisia reported that its competent authority cannot deviate from court decisions rendered in Tunisia.

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

32. Tunisia reported that if the time limit for presenting a MAP request is not specified in the relevant tax treaty, according to its domestic law, the request for restitution of undue payments must be made within a maximum of three years from the date on which the tax became refundable. For unduly collected tax, this period begins to run from the date of collection. For taxes which have not been effectively collected and which have been the subject of automatic taxation, and when the MAP agreement agreed between the competent authorities is in favour of the taxpayer, the tax administration proceeds to the revision or cancellation, if necessary, of the assessment, after consulting the commission for the review of the tax assessments. In this case, the administration's decision is enforceable notwithstanding any limitation period and in particular the five-year period provided for referral to this committee.

Anticipated modifications

Multilateral Instrument

33. Tunisia signed the Multilateral Instrument on 24 January 2018.

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

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

35. With the signing of the Multilateral Instrument, Tunisia opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as

amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Tunisia's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which a resident, Tunisia opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state.

36. In this respect, Tunisia listed 28 of its 51 treaties as a covered tax agreement under the Multilateral Instrument and made a notification, on the basis of Article 16(6)(a), that they contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

37. All of the 28 relevant treaty partners are signatories to the Multilateral Instrument, and have listed their treaty with Tunisia as a covered tax agreement under that instrument, whereas ten of these treaty partners reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to their existing tax treaties, with a view to allowing taxpayers to submit a MAP request to the competent authority of either contracting state. All remaining 18 partners listed their treaty with Tunisia as having a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, modify these 18 treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report.

38. In view of the above and in relation to the ten treaties identified in paragraphs 21-25 that are considered not to contain the equivalent of Article 25(1), first sentence, of the Model Tax Convention, as it read prior to the adoption of the Action 14 final report, two will be modified by the Multilateral Instrument.

39. In addition, Tunisia indicated that it will modify its notification and that would allow the modification of other two treaties by the Multilateral Instrument.

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

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

41. In regard of the five tax treaties identified in paragraph 27 above that contain a filing period for MAP requests of less than three years, Tunisia listed three of these five treaties as a covered tax agreement under the Multilateral Instrument, but only for two of them did it make, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). The two relevant treaty partners are a signatory to the Multilateral Instrument, listed their tax treaty with Tunisia as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, modify two of the five tax treaties identified above will be modified to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

42. With respect to the two treaties that are considered not to be in line with element B.1, due to the fact that in one treaty there is a filing period of four years, but with the requirement to submit a MAP request to both competent authorities and in the other treaty due to the fact that for the filing period for a MAP request reference is made to the domestic laws of the treaty partners, Tunisia listed both treaties as a covered tax agreement under the Multilateral Instrument and for one of them it made, pursuant to Article 16(6)(b)(ii), a notification that it does contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner also listed its treaty with Tunisia under the Multilateral Instrument and also did not make a notification on the basis of either Article 16(6)(b)(i) or Article 16(6)(b)(ii). In this situation, Article 16(6)(b)(i) of the Multilateral Instrument stipulates that the second sentence of Article 16(1) – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – will supersede the provision of the covered tax agreement to the extent it is incompatible with that second sentence. Since the treaty concerned refers to the domestic law of the contracting states to determine the filing period of a MAP request, and given the fact that in the case of Tunisia such filing period may in some cases be less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, the provision of the covered tax agreement is considered to be incompatible with the second sentence of Article 16(1). Therefore, at this stage, one of the two tax treaties identified above will, upon entry into force for the treaty concerned, be superseded by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

43. In addition, Tunisia indicated that it will modify its notification and that would allow the modification of other five conventions by the Multilateral Instrument.

Bilateral modifications

44. Tunisia further reported that when the tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to being compliant with element B.1. As mentioned in the introduction, Tunisia has already contacted some of the relevant treaty partners and intends to put a plan in place for the remaining ones. With respect to the first sentence of Article 25(1), Tunisia reported that it will in those bilateral negotiations propose to include the equivalent as it read after the adoption of the Action 14 final report. Tunisia also reported that it is open to all requests from other treaty partners to make the necessary modifications to comply with the Action 14 Minimum Standard.

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

Peer input

46. For the 15 treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, the relevant peers did not provide input. Three peers mentioned that their tax treaties with Tunisia contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, which is in line with the analysis above.

Conclusion

	Areas for improvement	Recommendations
[B.1]	Nine out of Tunisia's 51 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. Two of these treaties will be modified by the Multilateral Instrument to include the required provision.	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument, in order to include the equivalent of the new version of Article 25(1), first sentence, of the OECD Model Tax Convention into two of its nine relevant treaties. With this ratification Tunisia should also follow its stated intention to update its list of notifications under that instrument with a view to contain in the remaining seven treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention.</p> <p>Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its stated intention and request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either:</p> <ul style="list-style-type: none"> a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of this provision. <p>To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.</p>
	Five of Tunisia's 51 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, either (i) because the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty, (ii) there is a requirement to submit a MAP request to both competent authorities or (iii) because of the timeline for submitting a MAP request follows the rules under domestic law of the treaty partners. Two of these treaties will be modified and one will be superseded by the Multilateral Instrument to include such equivalent upon its entry into force.	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument, in order to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention into three of these treaties. With this ratification Tunisia should also follow its stated intention to update its list of notifications under that instrument with a view to contain in the remaining two treaties that do not contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention.</p> <p>Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its stated intention to request the inclusion of the provision required via bilateral negotiations.</p> <p>To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.</p>
	One of Tunisia's 51 tax treaties does not contain the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument.	<p>Tunisia should follow its stated intention to update its list of notifications under the Multilateral Instrument with a view to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention in this treaty that currently does not contain such equivalent. Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its intention to request the inclusion of the provision required via bilateral negotiations.</p> <p>This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either:</p> <ul style="list-style-type: none"> a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of this provision. <p>To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.</p>

	Areas for improvement	Recommendations
[B.1]	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Tunisia should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.
	-	In addition, Tunisia should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.

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

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

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

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

Domestic bilateral consultation or notification process in place

48. As discussed under element B.1, none of Tunisia's 51³ tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. However, as was also discussed under element B.1, 18 of these 51 treaties will be modified by the Multilateral Instrument, upon its entry into force for the treaties concerned, to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

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

Tunisia reported that it has not yet used this process, but will apply the procedure and notify the other competent authority as quickly as possible if necessary.

Practical application

50. Tunisia reported that, since 1 January 2017, its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2017 and 2018 MAP statistics submitted by Tunisia also show that in none of the MAP cases submitted the outcome was “objection not justified”.

51. All the peers who provided input reported that they were not aware of any cases in which the competent authority of Tunisia had refused access to MAP. They also reported that they had not been consulted or notified of a case where Tunisia’s competent authority had considered the objection raised in the MAP request not to be justified. This can be explained by the fact that Tunisia had not up to that date considered an objection raised in a MAP request not to be justified.

Anticipated modifications

52. As previously discussed under element B.1, Tunisia has signed the Multilateral Instrument, *inter alia* with the intention to modify covered tax agreements to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Where tax treaties will not be amended via the Multilateral Instrument, Tunisia reported that it will apply its notification process when its competent authority considers the objection raised in a MAP request not to be justified.

Conclusion

	Areas for improvement	Recommendations
[B.2]	There is a documented process in place to notify the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the notification process is applied in practice because during the Review Period no such cases have occurred.	

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

54. Out of Tunisia’s 51 tax treaties, 22⁴ contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a corresponding adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, 20⁵ do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention. The remaining nine treaties contain a provision that is based on

Article 9(2) of the OECD Model Tax Convention, but for the following reasons are not considered being equivalent thereof:

- Five treaties do not provide for the voluntary consultation process between competent authorities.
- In two treaties corresponding adjustments can only be made through MAP.
- One treaty granting of corresponding adjustments is only optional, as the word “shall” is replaced by “may”.
- One treaty provides for necessary use of MAP in such cases, but states that the competent authorities shall consult each other within the limits under the applicable laws.

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

Application of legal and administrative framework in practice

56. Tunisia reported that since 1 January 2017, it has not denied access to MAP on the basis that the case concerned a transfer pricing case. In fact, its competent authority has not received any MAP request concerning transfer pricing cases from a taxpayer.

57. All the peers who provided input reported that they were not aware of any cases for which the competent authority of Tunisia had refused access to MAP on the basis that the case concerned a transfer pricing case. One peer mentioned that there is only one case on record with Tunisia and that there has never been a transfer pricing case.

Anticipated modifications

58. Tunisia reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, Tunisia signed the Multilateral Instrument on 24 January 2018. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Where such a

notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention).

59. In regard of the 29 tax treaties identified in paragraph 55 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Tunisia listed 13 of them as a covered tax agreement under the Multilateral Instrument, but only for six of these treaties did it make a notification on the basis of Article 17(4). All relevant six treaty partners are signatories to the Multilateral Instrument, listed their tax treaty with Tunisia as a covered tax agreement under that instrument, but only three of them also made a notification of this treaty on the basis of Article 17(4). The remaining three treaty partners have, pursuant to Article 17(3), the right not to apply Article 17(2), as they considered that their treaty with Tunisia already contained the equivalent of Article 9(2). Therefore, at this stage, the Multilateral Instrument will, upon entry force for the treaties concerned, replace the provisions in these three treaties to include Article 9(2) of the OECD Model Tax Convention.

60. In addition, for the remaining seven of the 13 tax treaties that Tunisia has listed as a covered tax agreement under the Multilateral Instrument and for which it has not made a notification on the basis of Article 17(4), the seven treaty partners are all signatories to the Multilateral Instrument and have made a notification to that effect. In regard of these seven treaties, one partner reserved the right under Article 17(3) not to apply Article 17(2), as it considered that its treaty with Tunisia already contained the equivalent of Article 9(2). Therefore, at this stage, the Multilateral Instrument upon its entry into force will supersede the remaining six treaties insofar as the provisions of these treaties relating to corresponding adjustments are incompatible with Article 17(1).

61. Tunisia has also indicated that it will modify its notification and that would allow the modification of the remaining conventions by the Multilateral Instrument.

Conclusion

	Areas for improvement	Recommendations
[B.3]	Tunisia reported that it will give access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP request for such cases during the Review Period. Tunisia is therefore recommended to follow its policy and grant access to MAP in such cases.	

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

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

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

Subsequently, to avoid cases in which the application of domestic anti-abuse legislation is in conflict with the provisions of a tax treaty, it is also important that taxpayers have access to MAP in such cases.

Legal and administrative framework

63. None of Tunisia's 51 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of Tunisia do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision are in conflict with the provisions of a tax treaty. As discussed under element B.8, this is not expressly stated in Tunisia's MAP guidance.

Practical application

64. Tunisia reported that since 1 January 2017 it has not denied access to MAP in any cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In this respect, its competent authority has not received any MAP requests for such cases in the course of the Review Period.

65. All the peers who provided input reported that they were not aware of any cases in which the competent authority of Tunisia had refused access to MAP since 1 January 2017 with regard to the application of a treaty anti-abuse provision or a domestic law anti-abuse provision.

Anticipated modifications

66. Tunisia indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	Tunisia reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Tunisia is therefore recommended to follow its policy and grant access to MAP in such cases.	

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

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

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

Legal and administrative framework

Audit settlements

68. Under Tunisia's domestic law it is possible that taxpayers and the tax administration enter into an audit settlement. Tunisia reported that in any case, entering into an audit settlement does not prevent the taxpayer from submitting a MAP request. The relationship between audit settlements and MAP is described in the MAP profile and in Tunisia's MAP guidance, as discussed under element B.10.

Administrative or statutory dispute settlement/resolution process

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

Practical application

70. Tunisia reported that since 1 January 2017 it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration. In this respect, Tunisia reported that it did not receive any MAP case of this kind from a taxpayer during the period under review.

71. All the peers who provided input reported that they were not aware of any cases in which the competent authority of Tunisia had refused access to MAP since 1 January 2017 in cases where an audit settlement between the taxpayer and the tax administration had been concluded.

Anticipated modifications

72. Tunisia indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	Tunisia reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Tunisia is therefore recommended to follow its policy and grant access to MAP when such cases surface.	

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

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

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

Legal framework on access to MAP and information to be submitted

74. The information and documentation Tunisia requires taxpayers to include in a request for MAP assistance are discussed under element B.8.

75. Tunisia included in its MAP guidance all required information/documentation to be provided by the taxpayer. Tunisia further included that after an initial analysis of the MAP request, its competent authority will notify the taxpayer if additional information or documentation needs to be submitted.

Practical application

76. Tunisia reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that since 1 January 2017 that it has not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

77. All the peers who provided input reported that they were not aware of Tunisia limiting access to MAP since 1 January 2017 in cases where taxpayers complied with the information and documentation requirements.

Anticipated modifications

78. Tunisia indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	As Tunisia has thus far not limited access to MAP in eligible cases when taxpayers have complied with its information and documentation requirements for MAP requests, it should continue this practice.

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

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

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

Current situation of Tunisia's tax treaties

80. Out of Tunisia's 51 tax treaties, 43⁶ contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. Of the remaining eight treaties, seven do not contain a provision that is based on or equivalent to Article 25(3), second sentence, two of which do not contain any MAP provision.⁷ The remaining treaty contains a provision that is based on the second sentence, but is considered not being equivalent thereof as consultations have to take place within the time limits prescribed in the first sentence of the MAP provision.

81. Further to the above, Tunisia has placed a position on Article 25(3), second sentence in the Commentary to Article 25 of the OECD Model Tax Convention, which reads as follows:

“Tunisia reserves its position on the second sentence of Paragraph 3 on the basis that it has no authority, under domestic law, to eliminate double taxation in cases not provided for in the treaty.”

Anticipated modifications

Multilateral Instrument

82. Tunisia signed the Multilateral Instrument on 24 January 2018. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

83. In regard of the eight tax treaties identified above that do not contain the equivalent of the second sentence of Article 25(3), second sentence, of the OECD Model Tax Convention, Tunisia has listed five of them as a covered tax agreement under the Multilateral Instrument and has made, pursuant to Article 16(6)(d)(ii), for four of these treaties a notification that they do not contain a provision described in Article 16(4)(c)(ii). The four relevant treaty partners are a signatory to the Multilateral Instrument, have listed their treaty with Tunisia as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(ii). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, modify four of the nine tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

84. In addition, Tunisia indicated that it will modify its notification and that would allow the modification of other four conventions by the Multilateral Instrument.

Bilateral modifications

85. Tunisia has indicated that when tax treaties that do not contain the equivalent of Article 25(3) of the OECD Model Tax Convention are not modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to being compliant with element B.7. As mentioned in the introduction, Tunisia has already contacted some of the relevant treaty partners and intends to put a plan in place for the remaining ones. In addition, Tunisia reported that it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

86. Tunisia noted that it intends to withdraw the position on Article 25(3) second sentence, as included in the non-OECD economies' positions on the OECD Model Tax Convention.

Peer input

87. For the eight treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, the relevant peers have not provided any input.

Conclusion

	Areas for improvement	Recommendations
[B.7]	Eight out of the 51 tax treaties do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. Of these eight treaties, four will be modified by the Multilateral Instrument to include the required provision.	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument in order to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention into the four treaties that do not currently contain this equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the relevant treaties.</p> <p>With this ratification Tunisia should also follow its stated intention to update its list of notifications under that instrument with a view to contain in the remaining four treaties that do not contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its stated intention and request the inclusion of the relevant provision via bilateral negotiations.</p> <p>To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.</p>
		In addition, for clarification purposes, Tunisia may consider follow its intention of withdrawing its position on Article 25(3), second sentence, of the OECD Model Tax Convention.
	-	In addition, Tunisia should maintain its stated intention to include the required provision in all future tax treaties.

[B.8] Publish clear and comprehensive MAP guidance

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

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

Tunisia's MAP guidance

89. Tunisia's rules, guidelines and procedures are included in its MAP guidance, which is available at:

<https://doc-fiscale.finances.gov.tn/cimf-internet/page/doc-portal/fr/#path=%2F>

90. This contains information on:

- a. contact information of the competent authority or the office in charge of MAP cases
- b. the manner and form in which the taxpayer should submit its MAP request
- c. the specific information and documentation that should be included in a MAP request (see also below)
- d. how the MAP functions in terms of timing and the role of the competent authorities
- e. information on availability of arbitration
- f. access to MAP in transfer pricing cases
- g. relationship with domestic remedies
- h. implementation of MAP agreements
- i. rights and role of taxpayers in the process
- j. suspension of tax collection
- k. interest charges, refunds and penalties.

91. The above-described MAP guidance includes detailed information on the availability and the use of MAP and the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.⁸

92. Although the information included in Tunisia's MAP guidance is detailed and comprehensive, various subjects are not specifically discussed, including:

- whether MAP is available for multilateral cases, for cases concerning multi-year resolution of recurring issues, for cases concerning the discussion of anti-abuse provisions, and for cases concerning bona fide foreign-initiated self-adjustments, and the timing of the steps of the process for the implementation of MAP agreements, including any actions to be taken by taxpayers.

Information and documentation to be included in a MAP request

93. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.⁹ This agreed guidance is shown below. Tunisia's MAP guidance enumerating which items must be included in a request for MAP assistance are checked in the following list:

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

94. Tunisia also requests additional information on:

- copies of documents proving that the taxpayer has actually incurred tax
- details of any administrative appeals lodged and any judicial decisions concerning the case.

Anticipated modifications

95. Tunisia has indicated that it is open to any proposal to improve its MAP guidance. Tunisia also notes its intention to regularly keep the guidance up to date, as well as always available to the public and easily accessible.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Tunisia could follow its intention to include information on:</p> <ul style="list-style-type: none"> • the availability of MAP in multilateral cases, in cases concerning multi-year resolution of recurring issues, in cases concerning the discussion of anti-abuse provisions, and in cases concerning bona fide foreign-initiated self-adjustments • the timing of the steps of the process for the implementation of MAP agreements, including any actions to be taken by taxpayers.

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

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

96. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.¹⁰

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

97. The MAP guidance of Tunisia is published and can be found at:

<https://doc-fiscale.finances.gov.tn/cimf-internet/page/doc-portal/fr/#path=%2F>

98. This guidance was published in September 2019. As regards its accessibility, Tunisia's MAP guidance can easily be found (in French) on the tax administration website by clicking on the tab “*ressources documentaires*”, then on “*documentation fiscale*” or by using the search engine.

MAP Profile

99. The MAP profile of Tunisia is published on the website of the OECD and was last updated in September 2019. This MAP profile is complete with some detailed information. This profile includes external links that provide extra information and guidance where appropriate.

Anticipated modifications

100. Tunisia indicated that it does not anticipate any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Tunisia should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.

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

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

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

MAP and audit settlements in the MAP guidance

102. As previously mentioned under B.5, audit settlements are available in Tunisia. While Tunisia specifies that entering into an audit settlement does not prevent the taxpayer from having access to MAP, the relationship between access to MAP and audit settlements can be found in section 10 of the MAP guidance.

103. Peers stated that they were not aware of audit settlements or their effects on MAP. Peers raised no issues with element B.10 in respect of this process.

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

104. As previously mentioned under B.5, Tunisia does not have an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer. As Tunisia does not have an internal administrative or statutory dispute settlement/resolution process in place, there is no need for notifying treaty partners of such process.

Anticipated modifications

105. Tunisia indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These 26 treaties include the treaty entered into with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic and the UMA Convention that for Tunisia applies to Algeria, Libya, Mauritania and Morocco.
2. These 32 treaties include the tax treaty with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic and the UMA Convention that for Tunisia applies to Algeria, Libya, Mauritania and Morocco.
3. These 51 treaties include the treaty entered into with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic and the UMA Convention that for Tunisia applies to Algeria, Libya, Mauritania and Morocco.
4. These 20 treaties include the treaty entered into with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic.
5. These 20 treaties include the UMA Convention that for Tunisia applies to Algeria, Libya, Mauritania and Morocco.
6. These 43 treaties include the UMA Convention that for Tunisia applies to Algeria, Libya, Mauritania and Morocco.
7. These two treaties include the treaty entered into with the former Czechoslovakia that Tunisia continues to apply to the Czech Republic and the Slovak Republic.
8. See: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
9. See: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
10. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.
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Part C

Resolution of MAP cases

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

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

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

Current situation of Tunisia's tax treaties

107. Out of Tunisia's 51 tax treaties, 49¹ contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty. The remaining two treaties do not contain a MAP provision and therefore also not a provision that is based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention.

Anticipated modifications

Multilateral Instrument

108. Tunisia signed the Multilateral Instrument on 24 January 2018. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty

to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

109. In regard of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Tunisia listed neither of them as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, not modify these two treaties to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

110. In addition, Tunisia indicated that it will modify its notification and that would allow the modification of these two conventions by the Multilateral Instrument

Bilateral modifications

111. Since those two treaties which do not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention will not be modified by the Multilateral Instrument, Tunisia reported it will strive to update them via bilateral negotiations to be compliant with element C.1. As mentioned in the introduction, Tunisia has already contacted some of the relevant treaty partners and intends to put a plan in place for the remaining ones. In addition, Tunisia reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

112. For the two treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant peers did not provide input.

Conclusion

	Areas for improvement	Recommendations
[C.1]	Two out of Tunisia's 51 tax treaties do not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. These treaties will not be modified by the Multilateral Instrument to include the required provision.	Tunisia should follow its stated intention to update its list of notifications under the Multilateral Instrument with a view to contain in all two treaties that do not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its stated intention and request the inclusion of the required provision via bilateral negotiations. To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.
	-	Tunisia should maintain its stated intention to include the required provision in all its future tax treaties.

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

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

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

Reporting of MAP statistics

114. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January of the year in which the jurisdiction joins the Inclusive Framework, in the case of Tunisia, 2017 (“**post-2016 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2017 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Tunisia submitted its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Tunisia of which its competent authority was aware.² The statistics discussed below include both pre-2017 and post-2016 cases and the full statistics are attached to this report as Annex B and Annex C respectively and should be considered jointly to understand Tunisia’s MAP caseload. With respect to post-2016 cases, Tunisia reported that it had communicated with all of its treaty partners in order to report consistent MAP statistics. In this regard, Tunisia indicated that it has been able to report consistent MAP statistics for post-2016 cases with all but one of the partners concerned. In that regard, based on the information provided by Tunisia’s MAP partners, its post-2016 MAP statistics actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

115. Tunisia has put a system in place with its treaty partners that communicates, monitors and manages the MAP caseload.

116. In order to follow up on pending MAP cases, these cases are listed in a matrix that is monitored and updated according to the progress of the processing of the file with the taxpayer and the competent authority of the other jurisdiction. In this matrix, all the steps of the case are recorded, and this, from the request to open the MAP until the notification to the taxpayer of its results, and the type of agreement reached between the two competent authorities and possible obstacles to its implementation. For the implementation of MAP agreements, the General Direction of Studies and Tax Legislation sends a letter to the General Direction of the Taxes in order for them to take as soon as possible, the necessary measures for the implementation of the MAP agreement.

Analysis of Tunisia’s MAP statistics

117. Tunisia has set up a system with its treaty partners which communicates, monitors and manages with its treaty partners the MAP caseload. Tunisia specified that in order to ensure the follow-up of the of MAP cases in progress, these cases are listed in a matrix which is the subject of follow-up and update according to the progress of treatment of the

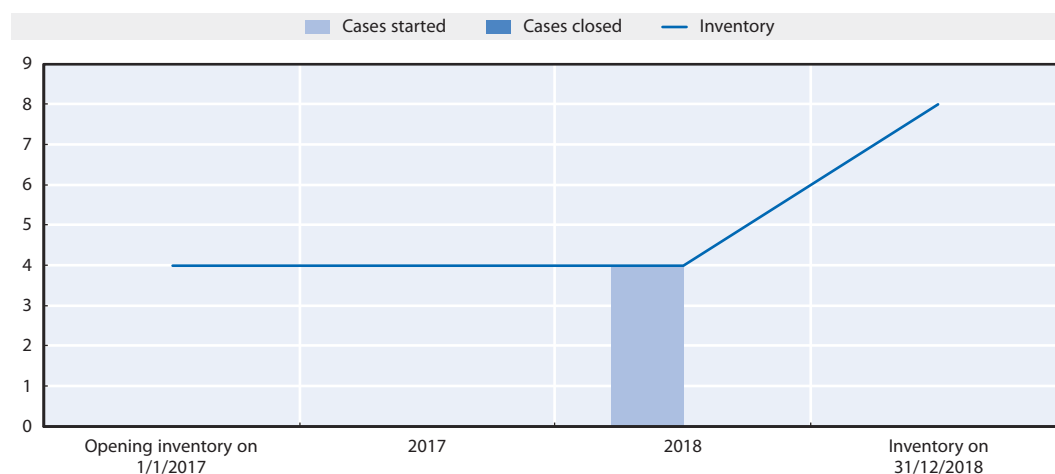
file with the taxpayer and the competent authority of the other jurisdiction. In this matrix, all the stages of processing the file are recorded, from the request for the opening of the MAP case until the notification to the taxpayer of the results of the said procedure, as well as the outcome of the MAP agreement concluded between the two competent authorities and possible obstacles to its implementation.

118. Tunisia also noted that the competent authority in Tunisia does not use a specific monitoring criteria or indicators related to the mutual agreement procedure, rather monitoring and evaluation form part of the evaluation of the various tasks entrusted to the structure in charge of MAP. To this end, the competent authority of Tunisia claims to adopt a qualitative rather than quantitative approach in the evaluation and monitoring of the processing of files. This qualitative approach is based on a correct application of the provisions of double tax agreements and a uniform application for all cases of similar mutual agreement procedure so as to avoid differences in the application of double taxation agreements, domestic law and administrative doctrine.

Analysis of Tunisia's MAP caseload

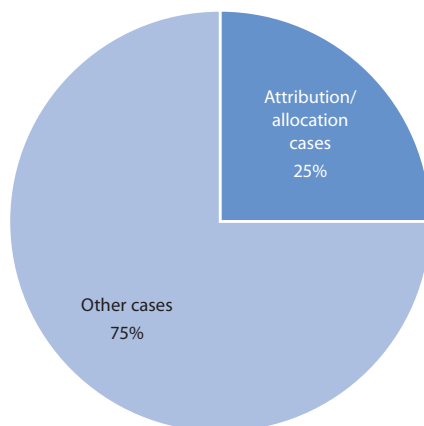
119. Figure C.1 shows the evolution of Tunisia's MAP caseload over the Statistics Reporting Period.

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

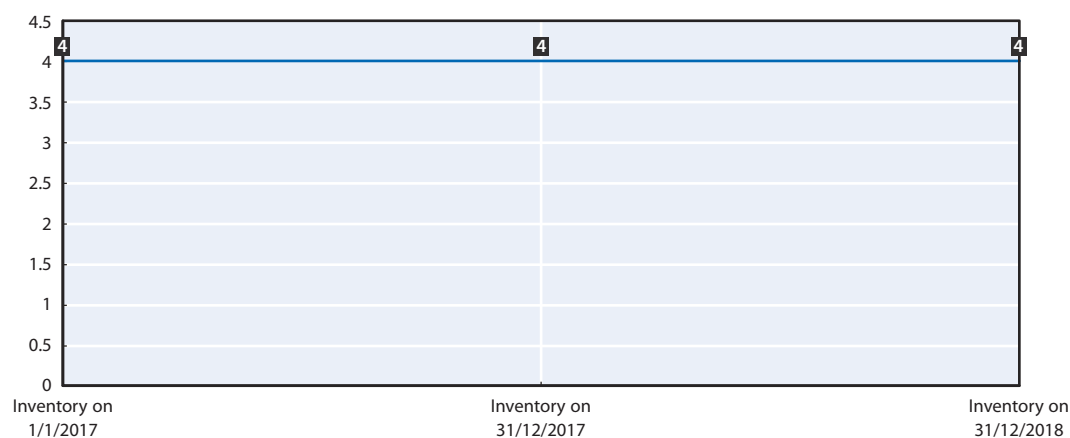


120. At the start of the Statistics Reporting Period, there were four MAP cases pending in Tunisia, of which one was an attribution/allocation case and three were other cases.³ At the end of the Statistics Reporting Period, eight cases were pending. No cases were closed during the review period.

121. The current cases can be categorised as shown in Figure C.2.

Figure C.2. **End inventory on 31 December 2018 (eight cases)***Pre-2017 cases*

122. Figure C.3 shows the evolution of Tunisia's pre-2017 MAP caseload over the Statistics Reporting Period.

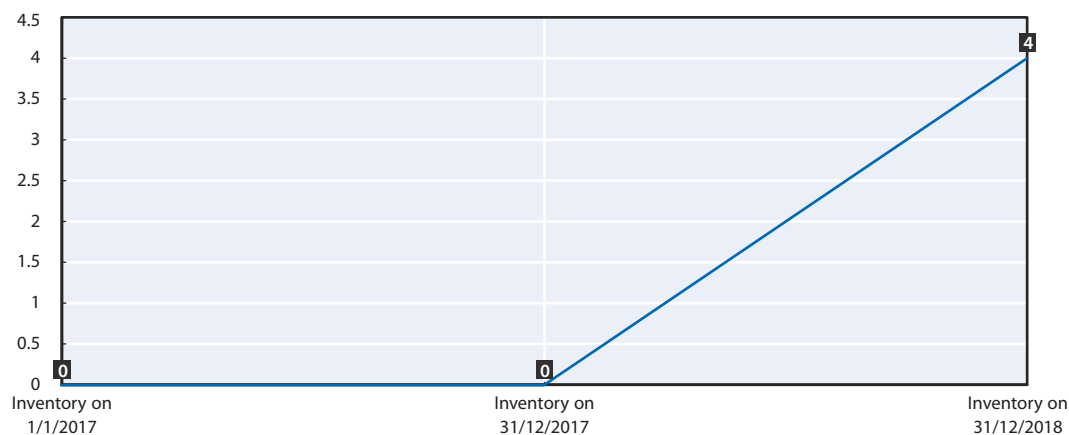
Figure C.3. **Evolution of Tunisia's MAP inventory**
Pre-2017 cases

123. At the start of the Statistics Reporting Period, there were four pre-2017 MAP cases pending in Tunisia, of which one was an attribution/allocation case and three were other cases. At the end of the Statistics Reporting Period, the four pre-2017 cases were still pending.

Post-2016 cases

124. Figure C.4 shows the evolution of Tunisia's post-2016 MAP caseload over the Statistics Reporting Period.

Figure C.4. **Evolution of Tunisia's MAP inventory**
Post-2016 cases



125. A total of four MAP cases were started during the Statistics Reporting Period, of which one was an attribution/allocation case and three were other cases. At the end of the period, the total number of post-2016 cases awaiting resolution was still four. No cases were closed during the review period.

Overview of cases closed during the Statistics Reporting Period

126. As mentioned above, no cases were closed during the review period.

Average timeframe needed to resolve MAP cases

127. As mentioned above, no cases were closed during the review period.

Peer input

128. Three peers commented on the resolution of MAP cases. One peer mentioned that he had sent a position paper and that Tunisia had responded quickly and that he was dealing with internal issues to pursue the case. Another peer indicated that an opening letter was sent concerning two cases and that the competent authority of Tunisia acknowledged receipt in one case. Another peer mentioned that due to the small number of cases, he is unable to determine whether Tunisia is making efforts to resolve MAP cases in a timely manner, which the other two peers also mentioned.

129. Tunisia explained why some cases were not closed. For one pre-2017 case and one post-2016 case, Tunisia reported that it provided all the relevant information to the treaty partner but has not yet received an answer from this treaty partner. For some other pre-2017 cases, Tunisia reported that it was only informed about the fact that a case was open but did not receive any further information.

Anticipated modifications

130. Tunisia indicated that it did not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Tunisia submitted comprehensive MAP statistics on time and on the basis of the MAP Statistics Reporting Framework for the years 2017 and 2018. Based on the information received by its partners, its post-2016 statistics actually match those of its treaty partners as reported by the latter. Tunisia's MAP statistics indicate that none of its post-2016 cases were closed during the reporting period. In that regard, Tunisia is recommended to seek to resolve all post-2016 cases still open on 31 December 2018 (four cases) within a timeframe that results in an average timeframe of 24 months for post-2016 cases.	

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

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

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

Description of Tunisia's competent authority

132. Under Tunisia's tax treaties, the competent authority function is assigned to the *Direction Générale des Etudes et de la Législation Fiscales* (General Directorate of Tax Studies and Legislation), where three people deal partly with MAP cases along with other tasks in relation to the negotiation and general interpretation of tax treaties. This is further discussed under element C.4.

133. Tunisia further reported that any necessary adjustments to the level of resources available in its competent authority and specific training of staff will be discussed when necessary. In addition, Tunisia notes that a modification of the organisation chart of the General Directorate of Tax Studies and Legislation has been envisaged with a view to reorganising the various structures so as to assign the tasks of reviewing MAP cases would be assigned to a department dedicated to this purpose. Tunisia affirms that the draft organisational chart was signed by finance minister and sent to head of government for approval.

Monitoring mechanism

134. Tunisia commented that, so far, it considers the resources provided to its competent authority to be sufficient.

Practical application

MAP statistics

135. As discussed under element C.2, no cases were closed during the review period.

Peer input

136. One peer noted that Tunisia had reacted quickly to its position paper; the peer noted that the case is still open because of their own difficulties in processing the case. One peer mentioned that they had sent position papers on two cases and that Tunisia had acknowledged receipt in one case. The peer noted that it is too early to express an opinion

as they have not yet established contact with Tunisia's competent authority. Tunisia responded that it usually acknowledges receipt of all cases as soon as it receives a case.

137. One peer noted that due to the limited number of cases, they are unable to determine whether the time frame applied is reasonable.

Anticipated modifications

138. Tunisia indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	Since the number of cases has doubled during the review period and no cases have been resolved, it is possible that post-2016 cases will not be closed within an average time frame of 24 months (target average for the resolution of MAP cases received on or after 1 January 2017), which could indicate that Tunisia's competent authority does not have sufficient resources.	Tunisia should make sure that the resources available for the competent authority function remain adequate in order to resolve future MAP cases in a timely, efficient and effective manner.

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

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

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

Functioning of staff in charge of MAP

140. As mentioned under element C.3, Tunisia's competent authority is the *Direction Générale des Etudes et de la Législation Fiscales*. Tunisia clarified that its competent authority is also responsible for treaty negotiation, general interpretation of tax treaties and policy work.

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

Practical application

142. Peers did not report any impediments to Tunisia's ability to carry out its MAP function absent any approval/direction by the tax administration personnel directly involved in the adjustment and absent any policy considerations.

Anticipated modifications

143. Tunisia indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	As it has done thus far, Tunisia should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Tunisia would like to see reflected in future amendments to the treaty.

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

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

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

Performance indicators used by Tunisia

145. Tunisia stated that does not use specific performance indicators. Tunisia indicated that it endeavours to apply the provisions of the tax treaties correctly in all MAP cases, as well as compliance with the relevant administrative regulations to ensure consistency between the solutions adopted in cases involving the same facts and similarly-situated taxpayers.

146. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below and checked when they are used by Tunisia:

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

147. Tunisia indicated that the competent authority in Tunisia monitors the different tasks dealt by the competent authority. For this purpose, the Directorate General of Tax Studies and Legislation, being a directorate of studies and legislation, adopts a qualitative rather than a quantitative approach in the evaluation and monitoring of the processing of cases.

This qualitative approach is based on the correct application of the provisions of the tax treaties and a uniform application for all similar cases of mutual agreement procedure in order to avoid divergences in the application of tax treaties, internal law and administrative doctrine.

Practical application

148. Peers generally provided no specific input in relation to this element of the Action 14 Minimum Standard.

Anticipated modifications

149. Tunisia indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	As it has done thus far, Tunisia should continue to use appropriate performance indicators.

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

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

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

Position on MAP arbitration

151. Tunisia's MAP profile and guidance indicate that it has not opted for arbitration as a mechanism for resolving tax treaty disputes in any of its tax treaties.

Practical application

152. Up to date, Tunisia has not incorporated an arbitration provision in any of its treaties as a final stage to the MAP.

Anticipated modifications

153. Tunisia indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 49 treaties include the treaty entered into with Czechoslovakia that Tunisia continues to apply to the Czech Republic and to the Slovak Republic and the UMA Convention that for Tunisia applies to Algeria, Libya, Mauritania and Morocco.
2. Tunisia's MAP statistics for 2018 were corrected during its peer review and differ from the published statistics for 2018. See further explanations in Annexes B and C.
3. For pre-2017 and post-2016 cases, Tunisia follows the definition provided by the MAP Statistics Reporting Framework to distinguish between attribution/allocation cases and other cases. Annex D of the MAP Statistics Reporting Framework states that: "An attribution/allocation MAP case is a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case".

References

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

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

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

Legal framework to implement MAP agreements

155. Tunisia reported that the request for restitution of undue payments must be made within a maximum of three years from the date on which the tax became refundable. For unduly collected tax, Tunisia reported that this period begins to run from the date of collection and that a five-year period for referral to the committee may also be applicable. In any case, Tunisia indicated that all MAP agreements will be implemented notwithstanding the time limits in its domestic law regardless of whether the solution resulted in an upward or downward tax adjustment, even in the absence of the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) in the relevant tax treaty.

156. Tunisia further reported that when a MAP agreement is reached, its competent authority will inform the taxpayer, who is required to reply in writing whether or not the solution reached is acceptable. Tunisia indicated that no specific time limit applies for this notification, although Tunisia confirms that the taxpayer will be notified as quickly as possible. If the taxpayer accepts the agreement, they are called upon to present themselves or appoint another person to carry out the practical refund procedures, in particular filing the request for the refund of amounts unduly collected by the Tax Directorate. Tunisia's competent authority is also in charge of monitoring to ensure effective implementation, through monitoring the tax refund by the Tax Directorate.

157. Tunisia's MAP guidance describes the above information in its Part VIII, section 5.

Practical application

158. Tunisia indicated that it had signed two MAP agreements since 1 January 2017 that need to be implemented. Tunisia specified that in one case, the taxpayer did not present himself to file a request for refund of tax unduly paid in Tunisia, and that in the other case the agreement must be implemented by the other competent authority.

159. One peer noted that implementation in Tunisia appears to present difficulties with regard to the refund procedure that the taxpayer must follow. According to this peer, the fact that taxpayers must appear in person in Tunisia or mandate a representative as a prerequisite for the implementation of MAP agreements has caused delays in terms of implementation. The agreements in question are not yet implemented and according to the peer this is because of these administrative requirements.

160. Tunisia noted that the implementation of MAP agreements depend on the completion of the restitution procedures by the taxpayer himself or his agent before the competent services of the Directorate General of Taxes. Tunisia confirmed that the competent authority as well as the Tax Legislation and the General Directorate of Taxes have made the necessary efforts to contact the taxpayers concerned, explaining the required procedures to be followed. However, according to Tunisia, the concerned taxpayers have neither appeared nor mandated another person to complete these steps, which has prevented the closure of certain files for which an MAP agreement has been reached in favour of the taxpayer. For these special cases, correspondence has also been sent to the other competent authority concerned to notify the taxpayers concerned of the results of the MAP agreement and to encourage them to contact the competent services of the Directorate General of Taxes in order to be reimbursed. Tunisia also confirmed that meetings with representatives of the embassies of the country concerned have been held within the DGELF for the preparation of files not yet closed and thus to encourage the residents of the relevant countries to present themselves or to mandate someone and to receive the reimbursement. Tunisia has also stated that it is ready to provide the concerned competent authority with a list of resolved cases under which MAP agreements with the other competent authority have been drawn up, but which are not implemented for the mentioned reasons.

161. The peer in question noted that the implementation difficulties in question seem to remain and do not appear easy to overcome for taxpayers who are not resident in Tunisia.

162. Tunisia further specified that it provided all the necessary details, it has also organised meetings with country representatives on the subject, in order to overcome eventual obstacles and to facilitate the implementation of these agreements.

Anticipated modifications

163. Tunisia indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	There is a risk that not all MAP agreements will be implemented due to the obligation for taxpayers to present themselves in person in Tunisia or to appoint a representative as a prerequisite for the implementation of a MAP agreement.	Tunisia should check whether the requirements imposed on taxpayers to appear in person or to appoint a representative entail practical obstacles concerning the implementation of MAP agreements. If this is the case, Tunisia should consider modifying this process in order to allow the implementation of all MAP agreements.

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

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

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

Theoretical timeframe for implementing mutual agreements

165. As discussed under element D.1, Tunisia does not have a specific timeframe for informing the taxpayer of the outcome of a MAP agreement, but it implements MAP agreements as quickly as possible. As discussed under element B.8, the guidance covers the implementation of MAP agreements.

Practical application

166. As discussed under element D.1, Tunisia reached MAP agreements during the review period, however for the reasons explained above these agreements have not yet been implemented.

167. Peers generally provided no specific input in relation to this element of the Action 14 Minimum Standard.

Anticipated modifications

168. Tunisia indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	Domestic legislation and/or the administrative framework include steps which may prevent the timely implementation of MAP agreements.	Tunisia should check whether the requirements imposed on taxpayers to appear in person or to appoint a representative entail obstacles in practice concerning the implementation of MAP agreements. If this is the case, Tunisia should consider modifying this process in order to allow the implementation of all MAP agreements in a timely manner.

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

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

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

Legal framework and current situation of Tunisia's tax treaties

170. As discussed under element D.1, Tunisia indicated that in practice, all MAP cases will be implemented notwithstanding any time limits in its domestic laws even in the absence of a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in the relevant tax treaty. Tunisia has confirmed that the solution adopted within the MAP agreement framework is enforceable regardless of the statute of limitation period provided for by domestic law, which is clarified in the MAP guidance.

171. Out of Tunisia's 51 tax treaties, 22¹ contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention requiring that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Furthermore, 29 do not contain a provision that is based on Article 25(2), second sentence, nor contain alternative provisions in Article 9(1) and Article 7(2) setting a time limit for making transfer pricing adjustments. Two of these treaties do not contain a MAP provision at all. Furthermore, one of these 29 treaties contains in the MAP article an alternative provision that limits the time during which a contracting state can make a primary adjustment. This provision is considered equivalent to the alternative treaty provisions for Article 9(1) and Article 7(2) setting a time limit the time during which a contracting party can make a primary adjustment. This treaty also includes the alternative provision for Article 9(1).

Anticipated modifications

Multilateral Instrument

172. Tunisia signed the Multilateral Instrument on 24 January 2018. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

173. In regard of the 28 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention nor the alternative provisions for Article 9(1) and Article 7(2), Tunisia listed 13 as a covered tax agreement under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(c)(ii), a notification that they treaties do not contain the provision described in Article 16(4)(b)(ii). All of the relevant 13 treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Tunisia as a covered tax agreement under that

instrument, but only 12 made a notification on the basis of Article 16(6)(c)(ii). Therefore, at this stage, the Multilateral Instrument will, upon its entry into force for the treaties concerned, modify 12 of the 29 tax treaties identified above, to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

174. In addition, Tunisia indicated that it will modify its notification and that would allow the modification of other four conventions by the Multilateral Instrument.

Bilateral modifications

175. Tunisia further reported that when tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. As mentioned in the introduction, Tunisia has already contacted some of the relevant treaty partners and intends to put a plan in place the remaining ones. In addition, Tunisia reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention in all its future tax treaties.

176. One of the relevant peers mentioned that the provision in their tax treaty is not compliant, but they are willing to accept the alternative provisions. The peer has submitted a draft amendment protocol to Tunisia, with a view to adapt the tax treaty to meet the Action 14 Minimum Standard.

Conclusion

	Areas for improvement	Recommendations
[D.3]	Out of Tunisia's 51 tax treaties, 29 treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these 29 treaties, 12 will be modified by the Multilateral Instrument to include the required provision.	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument in order to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention into the 12 treaties that do not currently contain this equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the relevant treaties.</p> <p>With this ratification Tunisia should also follow its stated intention to update its list of notifications under that instrument with a view to contain in the remaining four treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its stated intention and request the inclusion of the relevant provision via bilateral negotiations.</p> <p>To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.</p>
	-	In addition, Tunisia should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Note

1. These 22 treaties include the treaty entered into with Czechoslovakia that Tunisia continues to apply to the Czech Republic and to the Slovak Republic and the UMA Convention that for Tunisia applies to Algeria, Libya, Mauritania and Morocco.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A. Preventing disputes		
[A.1]	Three out of 51 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. None of these three treaties will be modified by the Multilateral Instrument to include the required provision.	<p>Tunisia should follow its stated intention to update its list of notifications under the Multilateral Instrument with a view to contain in all three treaties that do not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention .,</p> <p>Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its stated intention and request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.</p>
	-	In addition, Tunisia should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	Roll-back of bilateral APAs is not provided for in appropriate cases.	Tunisia should without further delay introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.
Part B. Availability and access to MAP		
[B.1]	Nine out of Tunisia's 51 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. Two of these treaties will be modified by the Multilateral Instrument to include the required provision.	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument, in order to include the equivalent of the new version of Article 25(1), first sentence, of the OECD Model Tax Convention into two of its nine relevant treaties. With this ratification Tunisia should also follow its stated intention to update its list of notifications under that instrument with a view to contain in the remaining eight treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention.</p> <p>Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its stated intention and request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either:</p> <ul style="list-style-type: none"> a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of this provision. <p>To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.</p>

	Areas for improvement	Recommendations
[B.1]	Five of Tunisia's 51 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, either (i) because the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty, (ii) there is a requirement to submit a MAP request to both competent authorities or (iii) because of the timeline for submitting a MAP request follows the rules under domestic law of the treaty partners. Two of these treaties will be modified and one will be superseded by the Multilateral Instrument to include such equivalent upon its entry into force.	Tunisia should as quickly as possible ratify the Multilateral Instrument, in order to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention into three of these treaties. With this ratification Tunisia should also follow its stated intention to update its list of notifications under that instrument with a view to contain in the remaining eight treaties that do not contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention. Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its stated intention to request the inclusion of the provision required via bilateral negotiations. To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.
	One of Tunisia's 51 tax treaties does not contain the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument.	Tunisia should follow its stated intention to update its list of notifications under the Multilateral Instrument with a view to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention in this treaty that currently does not contain such equivalent. Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its intention to request the inclusion of the provision required via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either: a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of this provision. To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.
	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Tunisia should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.
	-	In addition, Tunisia should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.
[B.2]	There is a documented process in place to notify the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the notification process is applied in practice because during the Review Period no such cases have occurred.	
[B.3]	Tunisia reported that it will give access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP request for such cases during the Review Period. Tunisia is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.4]	Tunisia reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Tunisia is therefore recommended to follow its policy and grant access to MAP in such cases.	

	Areas for improvement	Recommendations
[B.5]	Tunisia reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Tunisia is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.6]	-	As Tunisia has thus far not limited access to MAP in eligible cases when taxpayers have complied with its information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Eight out of the 51 tax treaties do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. Of these eight treaties, four will be modified by the Multilateral Instrument to include the required provision.	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument in order to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention into the four treaties that do not currently contain this equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the relevant treaties.</p> <p>With this ratification Tunisia should also follow its stated intention to update its list of notifications under that instrument with a view to contain in the remaining four treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its stated intention and request the inclusion of the relevant provision via bilateral negotiations.</p> <p>To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.</p>
		In addition, for clarification purposes, Tunisia may consider follow its intention of withdrawing its position on Article 25(3), second sentence, of the OECD Model Tax Convention.
	-	In addition, Tunisia should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	-	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Tunisia could follow its intention to include information on:</p> <ul style="list-style-type: none"> the availability of MAP in multilateral cases, in cases concerning multi-year resolution of recurring issues, in cases concerning the discussion of anti-abuse provisions, and in cases concerning bona fide foreign-initiated self-adjustments the timing of the steps of the process for the implementation of MAP agreements, including any actions to be taken by taxpayers.
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Tunisia should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	-	-

	Areas for improvement	Recommendations
Part C. Resolution of MAP cases		
[C.1]	Two out of Tunisia's 51 tax treaties do not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. These treaties will not be modified by the Multilateral Instrument to include the required provision.	<p>Tunisia should follow its stated intention to update its list of notifications under the Multilateral Instrument with a view to contain in all two treaties that do not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.</p> <p>Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its stated intention and request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.</p>
	-	Tunisia should maintain its stated intention to include the required provision in all its future tax treaties.
[C.2]	Tunisia submitted comprehensive MAP statistics on time and on the basis of the MAP Statistics Reporting Framework for the years 2017 and 2018. Based on the information received by its partners, its post-2016 statistics actually match those of its treaty partners as reported by the latter. Tunisia's MAP statistics indicate that none of its post-2016 cases were closed during the reporting period. In that regard, Tunisia is recommended to seek to resolve all post-2016 cases still open on 31 December 2018 (four cases) within a timeframe that results in an average timeframe of 24 months for post-2016 cases.	
[C.3]	Since the number of cases has doubled during the review period and no cases have been resolved, it is possible that post-2016 cases will not be closed within an average time frame of 24 months (target average for the resolution of MAP cases received on or after 1 January 2017), which could indicate that Tunisia's competent authority does not have sufficient resources.	Tunisia should make sure that the resources available for the competent authority function remain adequate in order to resolve future MAP cases in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Tunisia should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Tunisia would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Tunisia should continue to use appropriate performance indicators.
[C.6]	-	-
Part D. Implementation of MAP agreements		
[D.1]	There is a risk that not all MAP agreements will be implemented due to the obligation for taxpayers to present themselves in person in Tunisia or to appoint a representative as a prerequisite for the implementation of a MAP agreement.	Tunisia should check whether the requirements imposed on taxpayers to appear in person or to appoint a representative entail practical obstacles concerning the implementation of MAP agreements. If this is the case, Tunisia should consider modifying this process in order to allow the implementation of all MAP agreements.
[D.2]	Domestic legislation and/or the administrative framework include steps which may prevent the rapid implementation of MAP agreements.	Tunisia should check whether the requirements imposed on taxpayers to appear in person or to appoint a representative entail obstacles in practice concerning the implementation of MAP agreements. If this is the case, Tunisia should consider modifying this process in order to allow the implementation of all MAP agreements in a timely manner.

	Areas for improvement	Recommendations
[D.3]	Out of Tunisia's 51 tax treaties, 29 treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these 29 treaties, 12 will be modified by the Multilateral Instrument to include the required provision.	<p>Tunisia should as quickly as possible ratify the Multilateral Instrument in order to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention into the 12 treaties that do not currently contain this equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the relevant treaties.</p> <p>With this ratification Tunisia should also follow its stated intention to update its list of notifications under that instrument with a view to contain in the remaining four treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. Where the effect of this update does not lead to a modification of the treaties concerned, Tunisia should follow its stated intention and request the inclusion of the relevant provision via bilateral negotiations.</p> <p>To this end, Tunisia should follow its intention to put a plan in place on how it envisages updating these treaties to include the required provision.</p>
	-	In addition, Tunisia should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Annex A

Tax treaty network of Tunisia

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

			Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
			If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons			If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)			
Cameroon	Y	N/A	O*	i	N/A	Y	i	Y	N	Y	Y	N
Canada	Y	N/A	O	ii*	2-years	i	i	Y	iii	Y	Y	N
China (People's Republic of)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Côte d'Ivoire	Y	N/A	N	Y	N/A	Y	i	Y	N	Y	Y	N
Czech Republic	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	N*	N
Denmark	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Egypt	Y	N/A	O*	ii	5-years	i	i	Y	N*	Y	Y	N
Ethiopia	Y	N/A	O	ii	2-years	i	i	Y	N	Y	Y	N
France	Y	N/A	O*	i	N/A	i**	i	Y	N*	N	Y	N
Germany	N	8-Feb-18	O	i	N/A	Y	i	Y	N	Y	Y	N
Greece	Y	N/A	N*	Y	N/A	Y	i	Y	Y	Y	Y	N
Hungary	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Indonesia	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N
Iran	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N
Italy	Y	N/A	N	Y	N/A	i**	i	Y	Y	Y	Y	N
Jordan	Y	N/A	No MAP Art.	No MAP Art.	N/A	i	i	No MAP Art.	No MAP Art.	No MAP Art.	No MAP Art.	No MAP Art.
Korea	Y	N/A	O*	Y	N/A	i**	i	Y	Y	Y	Y	N
Kuwait	Y	N/A	O*	Y	N/A	i*	i	Y	Y	Y	Y	N
Lebanon	Y	N/A	O	ii	2-years	i	i	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O*	Y	N/A	Y	i	Y	N*	Y	Y	N
Lybia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N

			Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
			If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons			If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?					
Mali	Y	N/A	N	Y	N/A	i	i	Y	N	Y	Y	N
Malta	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Mauritania	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Mauritius	Y	N/A	N	Y	N/A	i	i	Y	N	Y	N	N
Morocco	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Netherlands	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Norway	Y	N/A	O	i	N/A	Y	i	Y	N	Y	Y	N
Oman	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Pakistan	Y	N/A	N*	Y	N/A	Y	i	Y	N*	Y	Y	N
Poland	Y	N/A	O	Y	N/A	Y	i	Y	N*	Y	N	N
Portugal	Y	N/A	O	ii*	2-years	Y	i	Y	N*	Y	Y	N
Qatar	Y	N/A	No MAP Art.	No MAP Art.	No MAP Art.	i	i	No MAP Art.	No MAP Art.	No MAP Art.	No MAP Art.	No MAP Art.
Romania	Y	N/A	N	iv	“autre”	i**	i	Y	N*	Y	Y	N
Saudi Arabia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Senegal	Y	N/A	O*	Y	N/A	i	i	Y	Y	Y	Y	N
Serbia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Singapore	N	27-Feb-18	O	Y	N/A	i	i	Y	Y	Y	Y	N
Slovak Republic	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	N*	N
South Africa	Y	N/A	N	Y	N/A	i*	i	Y	N*	Y	Y	N
Spain	Y	N/A	N	i	N/A	i**	i	Y	N*	Y	Y	N
Sudan	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N

	Article 25(1) of the OECD Model Tax Convention ("MTC")					Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6			
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11		
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?		
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?							
Sweden	Y	N/A	O*	i	N/A	i	i	Y	N*	Y	Y	N
Switzerland	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N
Syrian Arab Republic	Y	N/A	O	ii	2-years	Y	i	Y	Y	Y	Y	N
Turkey	Y	N/A	O*	iv	N/A	Y	i	Y	Y	Y	Y	N
United Arab Emirates	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N
United Kingdom	Y	N/A	O*	i	N/A	i*	i	Y	N*	Y	N*	N
United States	Y	N/A	O	i	N/A	Y	i	Y	Y	Y	Y	N
Viet Nam	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
Yemen	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N

Legend

- E*** The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
- E**** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
- O*** The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
- Y*** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.
- Y**** The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.

Y***	The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
i*/i*/iv*/N*	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
i**/iv**/N**	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
i***	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B

MAP statistics reporting for pre-2017 cases

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

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

Annex C

MAP statistics reporting for post-2016 cases

2017 MAP Statistics														
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2017	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome										No. of post-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2016 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.

2018 MAP Statistics														
Category of cases	No. of post-2016 cases in MAP inventory on 1 January 2018	No. of post-2016 cases started during the reporting period	Number of post-2016 cases closed during the reporting period by outcome										No. of post-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2016 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2017 cases	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2016
Post-2016 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2017
Review Period	Period for the peer review process that started on 1 January 2017 and ended on 31 August 2019
Statistical Reporting Period	Period for reporting MAP statistics that started on 1 January 2017 and that ended on 31 December 2018
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective - MAP Peer Review Report, Tunisia (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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



PRINT ISBN 978-92-64-72113-5
PDF ISBN 978-92-64-17272-2



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