

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



# **Making Dispute Resolution More Effective – MAP Peer Review Report, France (Stage 1)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**



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## Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and via treaty provisions. With the negotiation for a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the MLI on 7 June 2017, paving 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 an Inclusive Framework on BEPS, 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 100 members, will monitor and peer review the implementation of the minimum standards as well as complete 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.



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*Abbreviations and acronyms*

<b>APA</b>	Advance Pricing Arrangement
<b>BEPS</b>	Base Erosion and Profit Shifting
<b>DGFiP</b>	Directorate General of Public Finance
<b>EU</b>	European Union
<b>MAP</b>	Mutual Agreement Procedure
<b>MEJEI</b>	International Legal and Economic Expertise Mission
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>USSR</b>	Union of Soviet Socialist Republics



## Executive summary

France has an extensive tax treaty network with more than 115 treaties and has signed and ratified the EU Arbitration Convention. France has an established MAP programme and long-time experience with resolving MAP cases. It has a large MAP inventory, with a substantial number of new cases submitted each year and more than 800 cases pending on 31 December 2016. Of these cases, 60% concern allocation/attribution cases. Overall France meets almost all the elements of the Action 14 Minimum Standard. Where it has deficiencies, France is working to address them.

Almost all of France's tax treaties include a provision relating to MAP, which generally follows paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention on Income and on Capital 2014 (OECD Model Tax Convention, OECD 2015). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Almost half of its tax treaties do not include a provision allowing competent authorities to consult together for the elimination of double taxation in cases not provided in the convention or include a provision that is not fully equivalent to the second sentence of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015);
- One-third of its tax treaties do not include 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 include the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments; and
- More than 10% of its tax treaties do enable taxpayers to submit a MAP request in all cases where there is or will be taxation not in accordance with the tax treaty, but only in cases of double taxation and almost 15% provide a shorter period than three years to submit a MAP request.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, France needs to amend and update a substantial number of its tax treaties. In this respect, France indicated being currently in negotiation with some jurisdictions to replace or amend existing tax treaties bilaterally. France also signed the Multilateral Instrument, potentially covering two third of its tax treaties. France did not make any reservation on the modifications relating to the mutual agreement procedure and opted for the introduction of a mandatory and binding arbitration provision in tax treaties as provided by the Multilateral Instrument.

France does not fully meet the Action 14 Minimum Standard concerning the prevention of disputes as it does not enable taxpayers to request roll-backs of bilateral APAs and such rollbacks are also not granted in practice.

France meets all of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. In particular, France has introduced recently a notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, where the relevant tax treaty does not enable the taxpayers to submit their MAP request to the competent authority of either contracting state. France has clear and comprehensive guidance on inter alia the availability of MAP and on how the MAP function is construed and applied in practice, even though some items could be further clarified.

Concerning the average time needed to resolve MAP cases, the MAP statistics for the year 2016 are as follows:

2016	Opening inventory	Cases started	Cases closed	End inventory	Average time to resolve cases (in months)*
Attribution/ allocation cases	519	130	161	488	29.53
Other cases	325	163	141	347	22.16
<b>Total</b>	<b>844</b>	<b>293</b>	<b>302</b>	<b>835</b>	<b>26.09</b>

\* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, France used as a start date the date when the MAP request was received and as the end date, either the date of the closing letter sent to the taxpayer or the date of final closure of the case if no agreement was reached.

These figures show that France resolved a high number of cases, which is slightly higher than the number of all new cases started in 2016. Its MAP inventory as per 31 December 2016 very slightly decreased as compared to its inventory as per 1 January 2016 and is still almost triple the number of cases resolved during the year. Although the resources allocated to the MAP function are in principle adequate to handle the high influx of new MAP cases, more resources might be necessary to enable a net reduction of the number of MAP cases in inventory. Moreover, France's competent authority resolved MAP cases on average within a timeframe that was slightly higher than 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016). However, France provided a sufficient explanation for this along with a calculation of the impact of such a justification and specified that the median time taken to resolve MAP cases was significantly lower than 24 months (approximately 17 months). Nevertheless, the time needed to resolve attribution/allocation cases remains higher on average than the time needed to resolve other cases. This indicates that additional resources dedicated to the management of attribution/allocation cases might be necessary to accelerate the resolution of such cases.

With respect to the other required elements concerning the resolution of MAP cases, the French competent authority operates fully independently from the audit function of the tax authorities and has a pragmatic approach to resolve MAP cases. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. As a consequence, France meets the Action 14 Minimum Standard with respect to these elements.

Lastly, France also meets the Action 14 Minimum Standard as regards implementation of MAP agreements, even though there is a risk that some agreements cannot be implemented because of the expiration of the time period to keep accounting documents.

## *Introduction*

### **Available mechanisms in France to resolve tax treaty-related disputes**

France has concluded 119 tax treaties on income (and/or capital),<sup>1</sup> of which 118 are in force. These 119 treaties apply to 125 jurisdictions.<sup>2</sup> All but two<sup>3</sup> of these treaties provide for the possibility for a taxpayer to request the opening of a mutual agreement procedure to resolve disputes on the interpretation and application of the provisions of the tax treaty.

In 7 of these treaties, an arbitration procedure completes the mutual agreement procedure that is currently in force.<sup>4</sup> The recently signed treaty with Colombia, which has not yet entered into force, also provides for an arbitration procedure. Furthermore, France is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.<sup>5</sup>

In France, the competent authority in charge of the mutual agreement procedure is the Minister of Budget or his authorised representative. In practice, this is the International Legal and Economic Expertise Mission (MEJEI) of the Directorate General of Public Finance (DGFIP). The French competent authority is composed of 11 persons, in charge of both mutual agreement procedures and advance pricing arrangements (“APAs”). The organisation of this function is described in detail in the administrative guidelines BOI-INT-DG-20-30-20 on the mutual agreement procedure.

### **Recent developments in France**

France has recently concluded a tax treaty with Colombia, which has not yet entered into force. In the assessment of the treaty network of France in relation to the elements of the Action 14 Minimum Standard, this recently concluded treaty has been taken into account.

Furthermore, France has indicated that it signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”) in order, inter alia, to make any necessary amendments to the Article relating to the mutual agreement procedure in its tax treaties and to make them compliant with the Action 14 Minimum Standard. In particular, France did not make any reservation as to the application of Article 16 (relating to the mutual agreement procedure) and Article 17 (corresponding adjustments), and included within the scope of the Multilateral Instrument all the treaties concluded with the members of the ad hoc group,<sup>6</sup> i.e. more than 80 tax treaties.

Finally, France indicated that it is also currently conducting bilateral negotiations with Belgium, Ireland, Luxembourg, Malawi, Norway, the Netherlands and Zambia. These negotiations should result in the conclusion of new tax treaties or the amendment of existing tax treaties to include both the equivalent of the first three paragraphs of Article 25 of the

*OECD Model Tax Convention* (OECD, 2015) and the second paragraph of Article 9 of the *OECD Model Tax Convention* (OECD, 2015).

## Basis for the peer review process

The peer review process entails an evaluation of France’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 France, its peers and taxpayers. The period for evaluating France’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 March 2017 (“**Review Period**”). This report, however, may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of France’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 provided below, in assessing whether France 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 they concerned a modification or a replacement of an existing treaty currently in force. In particular, the analysis of tax treaties includes the treaties concluded with the former USSR, Yugoslavia, Czechoslovakia and the previous version of the treaty with the United Kingdom, insofar as these treaties continue to be applied by France with one or more jurisdictions (see above). As it concerns tax treaties that are applicable to multiple jurisdictions, they are only counted as one treaty for this purpose. Annex A presents an analysis of France’s tax treaties and in particular the provisions relating to the mutual agreement procedure.

The questionnaires for the peer review process were sent to France and its peers on 7 March 2017. While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, France wished to provide information on the period starting as from 1 January 2014 (the “**Look-back period**”) and also opted for the peers to provide input relating to the Look-back period.

In total 20 peers provided input: Australia, Belgium, Canada, Denmark, Germany, Greece, India, Ireland, Italy, Japan, the Netherlands, Portugal, the Slovak Republic, Spain, Russia, Sweden, Switzerland, Turkey, the United Kingdom and the United States. These peers represent more than 80% of post-2015 MAP cases in France’s inventory on 31 December 2016. Input was also received from taxpayers.

Peers have often pointed out that the time to resolve cases involving France was relatively long although they indicated that overall their experience with France was positive, some of them insisting on the pragmatism of the French competent authority.

France provided complete answers to the questionnaire which was submitted on time. France also responded promptly and accurately to requests for additional information and provided clarification when necessary. In addition, France provided the following information:

- MAP profile;<sup>7</sup>
- MAP statistics<sup>8</sup> according to the MAP Statistics Reporting Framework (see below).

Finally, France is an active member of the FTA MAP Forum and has been co-operative during the peer review process. It provided detailed information on the other jurisdictions as part of their own peer review and made some constructive proposals to improve the process with the concerned jurisdictions.

## Overview of MAP caseload in France

The analysis of France’s MAP caseload relates to the period that started on 1 January 2016 and ended on 31 December 2016 (the “**Statistics Reporting Period**”). According to the statistics provided by France, on 31 December 2016 its MAP inventory was 835 cases, 488 of which concern attribution/allocation cases and 347 other cases. During the Statistics Reporting Period 293 cases started and 302 cases were closed.

## General outline of the peer review report

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

- A. Preventing Disputes;
- B. Availability and Access to MAP;
- C. Resolution of MAP cases; and
- D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).<sup>9</sup> Apart from analysing France’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by France. Furthermore, the report depicts the changes adopted and plans shared by France 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 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 France 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 France has entered into are available at: <https://www.impots.gouv.fr/portail/les-conventions-internationales>
2. France continues to apply the tax treaty concluded with the former USSR with (i) Belarus, (ii) Kyrgyzstan and (iii) Turkmenistan; the treaty concluded with former Yugoslavia with (i) Bosnia-Herzegovina, (ii) Kosovo, (iii) Montenegro and (iv) Serbia; the treaty concluded

- with the United Kingdom on 14 November 1950, the scope of which was modified by exchange of letters in 1963 with (i) Malawi and (ii) Zambia and the treaty concluded with the former Czechoslovakia with the Slovak Republic.
3. These two tax treaties are (i) the one entered into with Monaco and (ii) the one previously entered into with the United Kingdom currently applied with Malawi and Zambia.
  4. These are the tax treaties entered into with Canada, Germany, Kazakhstan, Quebec, Switzerland, the United Kingdom and the United States.
  5. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July, 1990.
  6. [www.oecd.org/tax/treaties/multilateral-instrument-BEPS-tax-treaty-information-brochure.pdf](http://www.oecd.org/tax/treaties/multilateral-instrument-BEPS-tax-treaty-information-brochure.pdf).
  7. Available at: [www.oecd.org/tax/dispute/France-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/France-Dispute-Resolution-Profile.pdf).
  8. The MAP statistics of France are included in Annex B and C of this report.
  9. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ([www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf)).

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## *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, 2015) 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 France’s tax treaties*

2. Out of France’s 119 tax treaties, 64 contain a provision 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.

3. One treaty<sup>1</sup> does not contain any similar provision and 54 treaties<sup>2</sup> contain a provision close to Article 25 (3), first sentence, but use a different wording which is considered not equivalent. Article 25 (3), first sentence of the *OECD Model Tax Convention* (OECD, 2015) provides that “The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the treaty”. Thus, for example, provisions which provide only for the resolution of difficulties and not for the elimination of doubts or which do not provide for the possibility of opening such a mutual agreement procedure in cases regarding the interpretation and application of the Convention are not equivalent.

4. However, France reported that in practice it endeavours to resolve with its treaty partners by mutual agreement any difficulties or doubts arising as to the interpretation or application of tax treaties, whether or not the applicable treaty contains a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015).

### *Anticipated modifications*

5. France indicated that it is conducting bilateral negotiations with Belgium, Ireland, Malawi, the Netherlands, Norway and Zambia, in order, inter alia, for these tax treaties to contain a provision equivalent to Article 25 (3), first sentence of the *OECD Model Tax Convention* (OECD, 2015). In addition, France indicated that it will implement element A.1 by signing the Multilateral Instrument. In this regard, France indicated that it signed the Multilateral Instrument and that it did not make any reservations on the amendments introduced by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all the treaties to be covered by this instrument. In addition, France has indicated that it will ratify the Multilateral Instrument as soon as possible. France clarified that it wishes the Multilateral Instrument to cover all the treaties with the other States or jurisdictions that are members of the ad hoc group. In doing so, 43 of the 55 treaties mentioned above could be amended by the Multilateral Instrument according to France. If a treaty is not amended by the Multilateral Instrument, France has indicated that it will propose the inclusion of Article 25 (3), first sentence, in current or future negotiations on existing tax treaties. Furthermore, France has indicated that it will propose the inclusion of Article 25 (3), first sentence of the *OECD Model Tax Convention* (OECD, 2015) in all future tax treaties.

### *Conclusion*

	Areas for Improvement	Recommendations
[A.1]	55 tax treaties out of 119 do not contain a provision equivalent to Article 25 (3), first sentence of the OECD Model Tax Convention, OECD (2015).	Where treaties do not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, France should request the inclusion of the required provision via bilateral negotiations.  Specifically with respect to the treaty with the former USSR, Yugoslavia and Czechoslovakia, France should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.  In addition, France should maintain its stated intention to include the required provision in all future 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.

6. 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.<sup>3</sup> 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.

### *France's APA programme*

7. France has implemented a bilateral APA programme and part of its administrative guidelines<sup>4</sup> is devoted to describing the scope, effects and procedure for the conclusion of such arrangements. In particular, the instruction specifies the information and documents to be provided to MEJEI, the latter being responsible for the processing of applications, the drafting and conclusion of arrangements.

8. As stated in the administrative guidelines,<sup>5</sup> the application for the conclusion of an APA must be made at least six months before the opening of the first financial year covered by the request for an arrangement. France applies bilateral APAs from the first year covered by the application, under the conditions set out above, irrespective of the date of conclusion of the arrangement by the competent authorities.

### *Roll-back of bilateral APAs*

9. France does not provide for roll-back of bilateral APAs. In this regard, the administrative guidelines<sup>6</sup> state that the advance arrangement cannot be retroactive in scope. France has indicated that this practice has a limited impact in practice insofar as the ordinary statute of limitation is three years from the end of a fiscal year. Given the time required to complete bilateral APAs, which is generally between 18 months and two years, tax years not specified when applying for bilateral APAs are specified during this procedure.

### *Practical application of roll-back of bilateral APAs*

10. Some peers indicated that they had received requests for roll-back of bilateral APAs involving France. One of these peers and another peer pointed out that, according to their understanding, France does not provide for such roll-back and the cases are still under discussion.

11. In practice, if after the conclusion of a bilateral APA, an adjustment is made in France or abroad that concerns an earlier period not covered by the bilateral APA, France will agree to open a mutual agreement procedure and apply in this procedure the elements on which it has agreed with the other jurisdiction involved in the bilateral APA, provided that the facts and circumstances are similar. Some peers have welcomed this practice in a positive manner.

### *Anticipated modifications*

12. France did not indicate that it anticipates any modifications in relation to element A.2.

### *Conclusion*

	Areas for Improvement	Recommendations
[A.2]	No roll-back of APAs will be granted, except in cases where an adjustment is made and for which the opening of a mutual agreement procedure can be requested.	In the future, France must ensure that it provides for roll-back of bilateral APAs (subject to the applicable time limits) in appropriate cases.

## Notes

1. This is the tax treaty previously entered into with the United Kingdom and currently applied with (i) Malawi and (ii) Zambia.
2. This includes the tax treaties with the former USSR, the former Yugoslavia and the former Czechoslovakia.
3. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
4. BOI-SJ-RES-20-10-20170201, available online at <http://bofip.impots.gouv.fr/bofip/1053-PGP>.
5. BOI-SJ-RES-20-10-20170201 No. 70.
6. BOI-SJ-RES-20-10-20170201 No. 220.

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## *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.

13. 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 France’s tax treaties***

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

14. 117 of the 119 tax treaties concluded by France contain a provision based on the first sentence of Article 25 (1) of the *OECD Model Tax Convention* (OECD, 2015a), allowing taxpayers to submit a MAP request 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. Of the remaining two treaties, one does not contain a provision relating to the mutual agreement procedure.<sup>1</sup> The other treaty<sup>2</sup> provides for the possibility for the competent authorities to resolve taxation not in accordance with the treaty, which happens, however, very rarely according to France. In addition, as provided in the latter treaty, if the dispute is not resolved by agreement between the administrations, it shall automatically be submitted (at the request of either party but without possibility of refusal) to the Joint Tax Commission which shall meet yearly (Article 25 of the Convention). By this specific approach, France considers that the taxpayer whose situation entails a difference of opinion between the two administrations is certain that his case will be discussed mutually either upstream or in a commission, even if the treaty does not explicitly provide for the possibility for taxpayers to submit a MAP request.

15. The 117 tax treaties that contain a provision based on the first sentence of Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) can be categorised as follows:

Provision	Number of treaties
Equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as modified by the Action 14 final report, OECD (2015b).	1 <sup>3</sup>
Equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the adoption of that report, OECD (2015b).	66
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).	50 <sup>4</sup>

16. 50 tax treaties contain deviating wording from Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the *Action 14 final report* (OECD, 2015b). Among these 50 treaties:

- 13 treaties provide that the MAP is only available in case of “double taxation” instead of “taxation not in accordance with the provisions of the convention”. 11 of these treaties also request the taxpayer to provide proof of the double taxation and 11 of these treaties do not include that MAP requests can be submitted irrespective of domestic available remedies or have that result;
- One treaty uses a formulation that is not considered to be equivalent to the first sentence of Article 25(1) whereby taxpayers have to prove that actions taken by one or both of the contracting states result (and not *will result*) for them in taxation not in accordance with the provisions of this convention. This treaty does not include that MAP requests can be submitted irrespective of domestic available remedies;
- One treaty only refers implicitly to the possibility for the taxpayer to submit a MAP request and does not include that MAP requests can be submitted irrespective of domestic available remedies;
- The remaining 35 treaties enable taxpayers to present their cases to the competent authorities of the contracting state of which they are a resident and not to the competent authority of the contracting state of which they are a national.
  - For nine of them, conventions, this can be explained by the fact that the treaty does not contain a non-discrimination clause available to nationals;
  - For 18 of them,<sup>5</sup> this can also be explained by the fact that the treaty contains the former version of the non-discrimination article, which only provides benefits to residents of one of the contracting states;
  - eight treaties<sup>6</sup> contain the current version of the article on non-discrimination but do not include the full sentence of Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a).

17. In practice, France has indicated that, in the absence of a provision allowing for the submission of a MAP request in the State of which the taxpayer is a national when his case concerns non-discrimination, France uses Article 25 (3) to resolve this difficulty and to offer the taxpayer the possibility to submit a MAP request in the state of which he is a national. However, these tax treaties do not include the equivalent of Article 25 (1) of the *OECD Model Tax Convention* (OECD, 2015a).

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

18. Out of France’s 117 tax treaties allowing taxpayers to submit a MAP request, 100 contain a provision 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 or do not provide for a filing period for a MAP request.<sup>7</sup>

19. The remaining 17 treaties can be categorised as follows:

Provision	Number of treaties
Period to file a MAP request being shorter than three years (six months)	two tax treaties
Period to file a MAP request being shorter than three years (two years)	15 tax treaties

*Anticipated modifications*

20. France indicated that it is conducting bilateral negotiations with Belgium, Luxembourg, Malawi, the Netherlands, Norway and Zambia, in order, inter alia, for these tax treaties to contain a provision equivalent to Article 25 (1), of the *OECD Model Tax Convention* (OECD, 2015a). In addition, France indicated that it will implement element B.1 by signing the Multilateral Instrument. In this regard, France indicated that it signed the Multilateral Instrument and that it did not make any reservations on the amendments introduced by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all the treaties to be covered by this instrument. In addition, France has indicated that it will ratify the Multilateral Instrument as soon as possible. France clarified that it wishes the Multilateral Instrument to cover all the treaties with the other States or jurisdictions that are members of the ad hoc group. If a treaty is not amended by the Multilateral Instrument, France has indicated that it will propose the inclusion of Article 25 (1), in current or future negotiations on existing tax treaties. Furthermore, France has indicated that it will propose the inclusion of Article 25 (1), of the *OECD Model Tax Convention* (OECD, 2015a) in all future tax treaties.

21. The two peers whose tax treaty provides for a six-month period to file a MAP request, pointed out that in practice taxpayers were denied access to the MAP in several cases for not complying with the time limits provided in the treaty. One of these peers, however, mentioned that their treaty would soon be replaced by a new treaty under negotiation, which would be compliant with the Action 14 Minimum Standard. The other peer indicated that the cases submitted had, however, been opened on the basis of the EU Arbitration Convention, which provides for a longer period to file a MAP request.



## Conclusion

	Areas for Improvement	Recommendations
[B.1]	<p>38 out of 119 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention, OECD (2015a).</p> <p>Of those 38 tax treaties:</p> <ul style="list-style-type: none"> <li>two treaties do not contain a provision based on Article 25(1) of the OECD Model Tax Convention, OECD (2015a);</li> <li>four treaties do not incorporate the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty (two years for two of them and 6 months for two other);</li> <li>19 treaties do not incorporate the equivalent to Article 25(1), first sentence; and</li> </ul> <p>13 treaties provide that the timeline to file a MAP request is shorter than three years.</p>	<p>Where treaties do not include the equivalent of Article 25(1) of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, France should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> <li>a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention, OECD (2015a) either: <ul style="list-style-type: none"> <li>a. As amended in the Action 14 final report, OECD (2015b); or</li> <li>b. As it read prior to the adoption of the Action 14 final report, OECD (2015b); and</li> </ul> </li> <li>a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>Specifically with respect to the treaty with the former Yugoslavia, France should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p> <p>In addition, France should maintain its stated intention to include the required provision in all future treaties.</p>

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

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

22. 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 include 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***

23. Only one<sup>8</sup> out of France’s 119 tax treaties contains a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as changed by the *Action 14 final report* OECD (2015b) allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

24. France indicated that it uses a limited bilateral consultation process, implemented only in case of doubt. In such cases, the French competent authority will send an email or a letter to the other competent authority concerned in order to obtain its opinion on the admissibility of the request. Following the response of the other competent authority, the case may be accepted or rejected. France has introduced a notification process to inform the other competent authority in all cases where it considers that the objection raised by the taxpayer is not justified since 1 May 2017, which is after the end of the Review Period.

### ***Practical application***

25. Peers have generally indicated that they are not aware of cases where the French competent authority has refused to open a mutual agreement procedure since 1 January 2014. Since 1 January 2016, France has considered that the objection raised by a taxpayer in a MAP request was not justified in 18 cases. Only one case resulted in consultation with its treaty partner, this because the process applied by France was implemented only in case of doubt. The corresponding peer confirmed this information.

### ***Anticipated modifications***

26. As mentioned under element B.1, France recently signed the Multilateral Instrument with a view to inter alia modify – on the basis of Article 16(4)(a)(i) of that instrument – those tax treaties that 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 final report on Action 14. By doing so these treaties will allow taxpayers to submit a MAP request to the competent authority of either contracting state and did not make any reservations on the amendments introduced by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all the treaties to be covered by this instrument. In addition, France specified that it will ratify the Multilateral Instrument as soon as possible. France also specified that it wishes the Multilateral Instrument to cover all the treaties with the other States or jurisdictions that are members of the ad hoc group. As a result, for the treaties that will be amended, the taxpayers will be able to file their MAP request to the competent authority of either Contracting State. However, France has indicated that, in the future, all cases in which it considers that the objection raised by the taxpayer is not justified will be notified to the other competent authority where the treaty does not permit the filing of a MAP request to the competent authority of either Contracting State.

### ***Conclusion***

	<b>Areas for Improvement</b>	<b>Recommendations</b>
[B.2]	France has not introduced a notification or bilateral consultation process prior to the expiration of the Review Period (whereas it introduced such procedure thereafter).	France should ensure that it will actually use the notification process recently introduced to notify the other competent authority in cases where it considers that the objection raised in the MAP request is not justified where the tax treaty does not permit the MAP request to be submitted to the competent authority of either contracting state.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

27. 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. Countries should thus provide access to MAP in transfer pricing cases.

***Legal and administrative framework***

28. Out of France's 119 tax treaties, 45 contain a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is made by the other treaty partner. In addition, three treaties provide for a formulation close to Article 9 (2).

29. France is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.

30. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is included in France's tax treaties and irrespective of whether its domestic legislation enables it to do corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, France considers that economic double taxation and adjustments to be made in the context of transfer pricing are in any event within the scope of the mutual agreement procedure, both for the assessment of the appropriateness of the adjustment and for the determination of its amount. Some treaties for example provide in the equivalent of Article 25 (3) a provision allowing the competent authorities to consult on the allocation of profits between associated enterprises in accordance with the arm's length principle. Thus, France confirms that it will always grant access to MAP in transfer pricing cases. In particular, the administrative guidelines refer to transfer pricing cases.<sup>9</sup>

***Practical application***

31. According to France, it provides access to MAP in all transfer pricing cases. Since 1 January 2014, France has not denied access to MAP on the basis that the case concerned a transfer pricing case.

32. Peers indicated that they had no knowledge of cases in which access to the mutual agreement procedure had been refused by France on the ground that it concerned a transfer pricing case since 1 January 2014.

***Anticipated modifications***

33. France indicated that it is conducting bilateral negotiations with Belgium, Ireland, Luxembourg, Malawi, the Netherlands, Norway and Zambia, in order, inter alia, for these tax treaties to contain a provision equivalent to Article 9(2), of the *OECD Model Tax Convention* (OECD, 2015a). France also indicated that it signed the Multilateral Instrument and did

not make any reservations on the amendments introduced by Article 17 of the Multilateral Instrument concerning corresponding adjustments for all the treaties to be covered by this instrument. In addition, France has indicated that it will ratify the Multilateral Instrument as soon as possible. France clarified that it seeks to have the Multilateral Instrument cover all the treaties with the other States or jurisdictions that are members of the ad hoc group. If a treaty is not amended by the Multilateral Instrument, France has indicated that it will propose the inclusion of Article 9 (2), in current or future negotiations on existing tax treaties. Furthermore, France has indicated that it will propose the inclusion of Article 9 (2), of the *OECD Model Tax Convention* (OECD, 2015a) in all future tax treaties.

### ***Conclusion***

	Areas for Improvement	Recommendations
[B.3]	-	As France has thus far granted access to the MAP in eligible transfer pricing cases, it should continue granting access for these 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.

34. 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***

35. None of France's 119 tax treaties allows competent authorities to restrict access to MAP for cases when an anti-abuse provision applies.

36. France indicated that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty within the scope of the MAP. In addition, no domestic law provision allows France 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 treaty anti-abuse provision apply or whether a domestic law anti-abuse provision comes into conflict with the provisions of a tax treaty.

#### ***Practical application***

37. France reported that since 1 January 2014 it has not denied access to MAP 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 addition, France indicated that the cases accepted were also resolved, except in cases where the other competent authority did not agree to open the MAP.

38. Peers indicated not being aware of a denial of access to MAP by France in relation to an anti-abuse provision since 1 January 2014.

### *Anticipated modifications*

39. France did not indicate that it anticipates any modifications in relation to element B.4.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.4]		As France has thus far granted access to the MAP in eligible 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, it should continue granting access for these 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.

40. 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 a statutory disputes settlement/resolution process that functions independent from the audit and examination function and which is only accessible through a request by taxpayers.

### *Legal and administrative framework*

41. Audit settlements are possible in France, but France will not refuse access to MAP in case of a settlement between the taxpayer and the tax authorities. As indicated below, this is specified in the administrative guidelines.

42. France has no administrative or statutory dispute settlement or resolution process(es) in place that allows France to deny access to MAP for issues resolved through that process.

### *Practical application*

43. France reported that since 1 January 2014, it has not denied access to MAP in cases where there was an audit settlement between the taxpayer and the tax authorities.

44. Peers indicated not being aware of denial of access to MAP by France in cases where there was an audit settlement between the taxpayer and the tax authorities since 1 January 2014.

*Anticipated modifications*

45. France did not indicate that it anticipates any modifications in relation to element B.5.

*Conclusion*

	Areas for Improvement	Recommendations
[B.5]	-	As France has thus far granted access to the MAP in eligible cases, even if there was an audit settlement between the tax authority and a taxpayer, it should continue granting access for these cases.

**[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.

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

*Legal framework on access to MAP and information to be submitted*

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

*Practical application*

48. France indicated that it had denied access to MAP on the grounds that the information provided was insufficient in a limited number of cases since 1 January 2014 (eight cases in 2014, three cases in 2015 and five cases in 2016). In these circumstances, the French competent authority has sent a letter to the taxpayers concerned in order to ask them to complete their request. In accordance with the administrative guidelines, the taxpayer must provide the additional information within two months<sup>10</sup>. France indicated that a second letter would be sent in the absence of a reply to the first letter within a minimum of 60 days. In case there is no response to the second letter, the case is closed.

49. Peers generally indicated that they had no knowledge of a case in which access to MAP would have been denied by France in cases where the taxpayers have supplied the information requested since 1 January 2014. However, one peer has reported that it is currently in discussions with the French competent authority as to whether the taxpayer has provided the information required under the EU Arbitration Convention within the three-year period provided for in this convention.

*Anticipated modifications*

50. France did not indicate that it anticipates any modifications in relation to element B.6.

### Conclusion

	Areas for Improvement	Recommendations
[B.6]		As France has thus far not limited access to the MAP in eligible cases when taxpayers have complied with France's 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.

51. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015a), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

#### *Current situation of France's tax treaties*

52. 110<sup>11</sup> of France's 119 tax treaties contain a provision allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties. Nine treaties<sup>12</sup> do not contain the equivalent of Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a).

#### *Anticipated modifications*

53. France indicated that it is conducting bilateral negotiations with Belgium, Malawi and Zambia, in order, inter alia, for these tax treaties to contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a). In addition, France indicated that it intends to implement element B.7 by signing the Multilateral Instrument. In this regard, France indicated it signed the Multilateral Instrument and did not make any reservations on the amendments introduced by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all the treaties to be covered by this instrument. In addition, France has indicated that it will ratify the Multilateral Instrument as soon as possible. France clarified that it wishes the Multilateral Instrument to cover all the treaties with the other States or jurisdictions that are members of the ad hoc group. In doing so, seven of the nine treaties mentioned above could be amended by the Multilateral Instrument according to France. If a treaty is not amended by the Multilateral Instrument, France has indicated that it will propose the inclusion of Article 25(3), second sentence in current or future negotiations on existing tax treaties. Furthermore, France has indicated that it will propose the inclusion of Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all future tax treaties.



### *Conclusion*

	Areas for Improvement	Recommendations
[B.7]	Nine out of 119 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a).	Where treaties do not include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, France should request the inclusion of the required provision via bilateral negotiations.  In addition, France should maintain its stated intention to include the required provision in all future 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.

54. 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.

#### *France's MAP guidance*

55. France's rules, guidelines and procedures are included in its administrative guidelines and are available at:

<http://bofip.impots.gouv.fr/bofip/5344-PGP.html>.

56. 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 function in terms of timing and the role of the competent authorities;
  - e. Information on availability of arbitration (including the EU Arbitration Convention) ;
  - f. Relationship with domestic available remedies;
  - g. Access to MAP in transfer pricing cases;
  - h. Access (not available) to MAP where the taxpayer has made a self-adjustment;
  - i. Implementation of MAP agreements;
  - j. Rights and role of the taxpayer in the process;
  - k. (Non)-suspension of tax collection ; and
  - l. The treatment of interest and penalties.

57. The administrative guidelines of France include detailed information on the availability and the use of the MAP and how its competent authority conducts the process in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance<sup>13</sup>, 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. In particular, the administrative guidelines explain<sup>14</sup> that a copy of the MAP request must be sent to (i) the competent audit office in case of double taxation generated by an adjustment made by the French tax authorities and, in any case, (ii) the office in charge of its tax file. In practice, France clarified that if a taxpayer submits his MAP request to another DGFIP service or to the Minister of Budget, his request will be addressed directly by this office to the competent authority in charge of MAP.

58. In addition, the administrative guidelines explain the cases where access to MAP can be denied.<sup>15</sup> This concerns the following cases:

- Where the taxpayer refers to double taxation but is unable to provide evidence supporting his allegations;
- Where measures leading to double taxation have been supplemented with severe penalties that have become final;
- Where the taxpayer has made a self-adjustment to his income or profits on the ground that another State has made an adjustment on the same income or profits; and
- Where the taxation in respect of which the request is made concerns a year earlier than six years from the date of the request.

59. Regarding cases where a heavy penalty was imposed that has become final, the guidance states that this approach is justified by the fact that the objective of a tax treaty is to avoid situations of double taxation but also to prevent tax avoidance and tax fraud and that the French competent authority will not be obliged to provide access to MAP when the measures generating double taxation have been accompanied by serious penalties which have become final. As regards the cases in which the taxation covered by the request concerns a year earlier than six years from the date of the request, France explained that this general condition was explained by the difficulties in light of the rule of retention of the tax documents provided for in domestic law, which is 6 years<sup>16</sup> (see also the discussion on the implementation of MAP agreements in element D.1). Despite this, France has indicated that, when the French competent authority receives a request for such tax years, France shall, depending on the circumstances contributing to the overstep of the six-year period between the tax years concerned and the MAP request use all reasonable means at its disposal to give access to MAP. In particular, it shall contact the taxpayer in order to ascertain whether the taxpayer has the information necessary for the proper conduct of the procedure.

60. Specific guidelines on the functioning of the mutual agreement procedure in cases subject to the EU Arbitration Convention are also included in the administrative guidelines.<sup>17</sup> Further guidance on the functioning of the arbitration procedure in tax treaties is also available in the administrative guidelines.<sup>18</sup>

61. One taxpayer indicated that, to the best of his knowledge, only a French version of the MAP guidance is available, while having an English version would make it more accessible. In response, France clarified that French is the working language of the French administration, in accordance with the law on the use of the French language. However, the French competent authority accepts to receive only an English version of all information and documents during a mutual agreement procedure and also communicates in English.



France indicated that it has published on the website of the French administration the main information for access to MAP in an English version.<sup>19</sup>

62. One taxpayer indicated that the consequences of opening a MAP case in terms of suspension of collection and the relationship of MAP with domestic remedies is not always clear. In reply, France indicated that, as far as it was concerned, these details had already been provided. They do indeed appear in paragraphs 670 and following of the MAP guidance. In particular, the MAP guidance explains<sup>20</sup> that domestic remedies can be applied simultaneously with a MAP request. On the other hand, the implementation of the MAP agreement will be subject to the withdrawal of the domestic remedies by the taxpayer.

63. In addition, the MAP guidance specifies the possible interactions between the competent authority and the taxpayer during the MAP.<sup>21</sup> One taxpayer reported that, apart from the acknowledgment of receipt of his request filed in 2016, he received no further information from the competent authority. Regarding four other previously submitted requests, the same taxpayer stated that he had received no information from the French competent authority. France has indicated that the French competent authority is endeavouring to inform taxpayers of the progress of their MAP case and of the discussions which have taken place with the other competent authorities concerned. Moreover, in response, France has indicated that it is prepared to respond to taxpayers who contact its competent authority in order to obtain information on the progress of their case. Finally, with regard to the four cases indicated by the taxpayer, France clarified that these concerned transactions involving a treaty partner with whom it was impossible to organise a face-to-face meeting in previous years, despite requests from the France competent authority. A face-to-face was held at the end of 2016 with this treaty partner.

64. Another taxpayer reported that he had not received a formal letter indicating the opening of the MAP case. In response, France indicated that the competent authority had mentioned this orally at a meeting organised with the taxpayer prior to the opening of the case. However, France takes note of this expectation and will endeavour to send written notification of the opening of the case even if a meeting has been held.

65. Finally, certain topics are not dealt with in the French MAP guidance. These include (i) the availability of MAP in case of multilateral disputes, (ii) whether taxpayers can request for the multi-year resolution of recurring issues through MAP, even where no tax audit has yet been carried out on these tax years and (iii) an indicative timetable for the implementation of the MAP agreements.

### ***Information and documentation to be included in a MAP request***

66. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.<sup>22</sup> This agreed guidance is shown below. The information and documents requested in the French MAP guidance<sup>23</sup> are checked below:

- 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; and
- 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.

67. In addition, France requires the taxpayer to provide detailed information on any administrative or judiciary appeals and any judicial decisions concerning the case. In particular, France has also concluded an agreement with the United States on all the information required by the two competent authorities so that the case concerned is eligible for arbitration.

### *Anticipated modifications*

68. France did not indicate that it anticipates any modifications in relation to element B.8.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.8]	MAP guidance is comprehensive and available, but some further clarity could be provided. In particular, the guidance could cause confusion for cases involving tax years earlier than six years from the date of the request since the guidance indicates that such requests “will not be taken into consideration”, while France accepts to analyse these cases and starts discussions under the condition that it will be possible to implement the MAP agreement likely to result from these discussions.	Although not required by the Action 14 Minimum Standard, in order to further improve the level of clarity of its MAP guidance France could consider including in its MAP guidance specific information on: <ul style="list-style-type: none"> <li>• the availability of MAP in cases involving (i) the application of anti-abuse provisions, (ii) tax years earlier than six years from the date of the request, under the condition that it will be possible to implement the MAP agreement, and (iii) multilateral disputes;</li> <li>• the possibility to resolve recurring issues through MAP, even where no tax audit has yet been carried out on these tax years; and</li> <li>• an indicative timetable for the implementation of the MAP agreements.</li> </ul>

## **[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.

69. 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<sup>24</sup> further promotes the transparency and dissemination of the MAP programme.

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

70. France’s MAP guidance is published and available at:

<http://bofip.impots.gouv.fr/bofip/5344-PGP.html>.

71. This document is accessible from the MAP profile, by using in a search engine the references mentioned in the MAP profile. It is also accessible from the DGFIP website<sup>25</sup>, by using the words “*double imposition*” or “*procédure amiable*” in the search engine of that website. Finally, the website of the DGFIP also provides a brief presentation of the mutual agreement procedure<sup>26</sup>.

### ***MAP Profile***

72. The MAP profile of France is published on the website of the OECD. This MAP profile is complete, often with detailed information and the links to the website of the French tax administration provide additional information and guidance. In addition, the answers in the MAP profile are provided in French and in English.

### ***Anticipated modifications***

73. France did not indicate that it anticipates any modifications in relation to element B.9.

### ***Conclusion***

	Areas for Improvement	Recommendations
[B.9]	-	As the French MAP guidance has been easily accessible and its MAP profile has been published, France should ensure that future updates of its MAP guidance are made publically available and easily accessible. Its MAP profile, published on the shared public platform, should be 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.

74. 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***

75. As previously mentioned in element B.5, the French MAP guidance<sup>27</sup> clearly explains that access to MAP remains possible after the conclusion of an audit settlement:

“The explicit or implicit acceptance of a supplement by a taxpayer, even pursuant to an audit settlement, does not deprive the taxpayer of the right to request the opening of a MAP.”

76. Peers indicated no issues regarding element B.10 in relation to audit settlements.

***MAP and administrative or statutory dispute settlement/resolution process in available guidance***

77. There is no other administrative or statutory dispute settlement/resolution process in France that impacts the access to MAP.

***Notification of treaty partners of administrative or statutory dispute settlement/resolution process***

78. There is no need for notification of treaty partners as France does not deny access to MAP in cases that may be solved through an administrative or statutory dispute settlement or resolution process.

***Anticipated modifications***

79. France did not indicate that it anticipates any modifications in relation to element B.10.

***Conclusion***

	Areas for Improvement	Recommendations
[B.10]	-	-

**Notes**

1. This is the tax treaty previously entered into with the United Kingdom and currently applied with (i) Malawi and (ii) Zambia.
2. This is the tax treaty entered into with Monaco.
3. This is the tax treaty entered into with the former USSR.
4. This includes the tax treaty entered into with the former Yugoslavia and the tax treaty entered into with the former Czechoslovakia.
5. This includes the tax treaty entered into with the former Czechoslovakia.
6. This includes the tax treaty entered into with the former Yugoslavia.
7. This includes the tax treaty entered into with the former USSR, the tax treaty entered into with the former Yugoslavia and the tax treaty entered into with the former Czechoslovakia.

8. This is the tax treaty entered into with the former USSR.
9. BOI-INT-DG-20-30-10-20170201 No. 1 and No. 90 in particular.
10. BOI-INT-DG-20-30-10-20170201 No. 190.
11. This includes the tax treaty entered into with the former USSR, the tax treaty entered into with the former Yugoslavia and the tax treaty entered into with the former Czechoslovakia.
12. This includes the tax treaty previously entered into with the United Kingdom and currently applied with (i) Malawi and (ii) Zambia.
13. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
14. BOI-INT-DG-20-30-10-20170201 No. 180.
15. BOI-INT-DG-20-30-10-20170201 No. 140, 150 and 220.
16. Article L.102 B of French Tax Procedure Code.
17. Available at <http://bofip.impots.gouv.fr/bofip/5353-PGP.html>.
18. Available at <http://bofip.impots.gouv.fr/bofip/5353-PGP.html>.
19. Available at <https://www.impots.gouv.fr/portail/international-particulier/double-taxation-mutual-agreement-procedure>.
20. BOI-INT-DG-20-30-10-20170201 No. 680.
21. BOI-INT-DG-20-30-10-20170201 No. 530.
22. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
23. BOI-INT-DG-20-30-10-20170201 No. 190.
24. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).
25. <https://www.impots.gouv.fr/portail/>.
26. <https://www.impots.gouv.fr/portail/international-professionnel/la-procedure-amiable>.
27. BOI-INT-DG-20-30-10-20170201 No. 130.

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- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en>.



## *Part C*

### Resolution of MAP Cases

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

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

80. 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, 2015), 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 France's tax treaties*

81. Out of France's 119 tax treaties, 101<sup>1</sup> contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) requiring its competent authority to endeavour – when the objection raised is 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.

82. Of the remaining 18 tax treaties, two do not contain a similar provision<sup>2</sup> and 16 include a variation to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015). These 16 treaties<sup>3</sup> do not provide the necessity for the competent authorities to explore the possibility of a unilateral satisfactory solution to a dispute. In addition, 13 of these treaties provide that the objective of the MAP is to avoid double taxation (and not a taxation not in accordance with the convention), coherent with the fact that these treaties enable taxpayers to submit a MAP request only in case of double taxation.

83. In practice, France clarified that the examination whether the objection raised in a MAP request is justified necessarily implies for the French competent authority to question its capacity to resolve the case unilaterally, to the extent that the MAP guidance refers to Article 25(2), of the *OECD Model Tax Convention* (OECD, 2015).<sup>4</sup> Thus, according to France, even if the treaty does not contain an indication that the competent authorities

must explore the possibility of a unilateral satisfactory solution to a dispute, the French competent authority does explore this possibility.

### *Anticipated modifications*

84. France indicated that it is conducting bilateral negotiations with Belgium, Luxembourg, Malawi and Zambia, in order, inter alia, for these tax treaties to contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015). In addition, France indicated that it intends to implement element C.1 by signing the Multilateral Instrument. In this regard, France indicated it signed the Multilateral Instrument and did not make any reservations on the amendments introduced by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all the treaties to be covered by this instrument. In addition, France has indicated that it will ratify the Multilateral Instrument as soon as possible. France clarified that it wishes the Multilateral Instrument to cover all the treaties with the other States or jurisdictions that are members of the ad hoc group. If a treaty is not amended by the Multilateral Instrument, France has indicated that it will propose the inclusion of Article 25(2), first sentence in current or future negotiations on existing tax treaties. Furthermore, France has indicated that it will propose the inclusion of Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all future tax treaties.

### *Conclusion*

	Areas for Improvement	Recommendations
[C.1]	18 out of 119 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a).	Where treaties do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, France should request the inclusion of the required provision via bilateral negotiations.  Specifically with respect to the treaty with the former USSR, France should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.  In addition, France should maintain its stated intention to include the required provision in all future 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).

85. 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*

86. Statistics regarding all tax treaty related disputes are published on the website of the OECD<sup>5</sup> as of 2007. Other statistics regarding transfer pricing disputes with EU Member States are also published on the website of the EU Joint Transfer Pricing Forum.<sup>6</sup>

87. The FTA MAP Forum has agreed on rules for the reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January, 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”) the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. France provided its MAP statistics pursuant to the MAP Statistics Reporting Framework. In particular, France reported having included in its statistics all MAP cases involving France. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively<sup>7</sup> and should be considered jointly for an understanding of the MAP caseload of France. With respect to post-2015 cases, France reported having reached out to all its MAP partners with a view to have their MAP statistics matching. France reported indicated that it could ensure of such a matching with most of its MAP partners. However, there is a risk that the statistics for post-2015 cases do not match those submitted by eight MAP partners for attribution/allocation cases and seven MAP partners for other cases, as these jurisdictions did not respond to requests from France to match their statistics. France clarified that the cases pending on 31 December 2016 with these jurisdictions represent less than 15% of attribution/allocation cases and 6% of other cases pending at that date.

### *Monitoring of MAP statistics*

88. France analyses annually the average time to resolve MAP cases and the evolution of the MAP inventory. In addition, the MAP guidance<sup>8</sup> explains that “in the context of the treatment of all the dispute resolution procedures made available to the taxpayer [...], France intends to implement the code of conduct adopted by the Council of the European Union”. The MAP guidance refers in particular to the following elements:

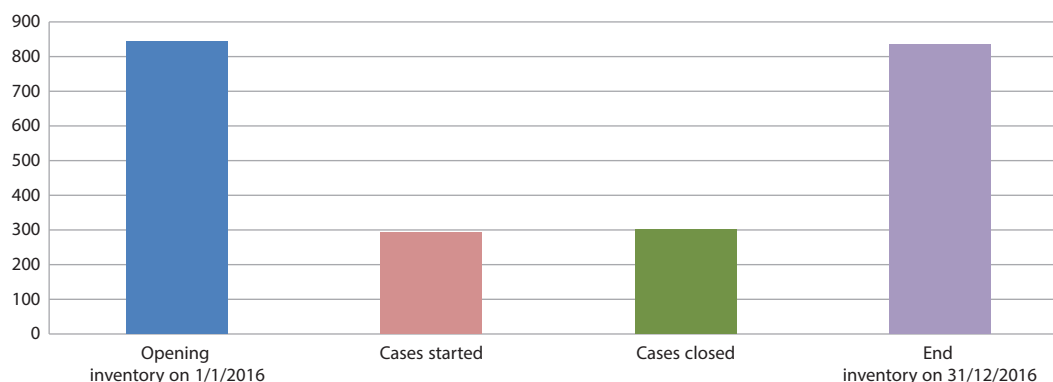
- If the French competent authority considers that the taxpayer has not forwarded the minimum information necessary for the opening of the MAP, it shall inform him of the missing elements within two months of receipt of the MAP request.<sup>9</sup>
- The French competent authority shall notify the competent authorities of the other States concerned within one month of receipt of the MAP request that is considered complete and where the objection is considered justified.<sup>10</sup>
- If the event which caused double taxation is generated by another state, the French competent authority shall endeavour to reply (i) within six months of the date of receipt of the position paper of the other competent authority for attribution/allocation cases and (ii) within four months for other cases.<sup>11</sup> If France is at the origin of the event that caused double taxation, the French competent authority shall transmit its position paper as soon as possible, including a complete proposal which may lead to the elimination of double taxation.<sup>12</sup>
- Overall, the MAP must generally be settled within a period not exceeding 24 months.<sup>13</sup>

## *Analysis of France’s MAP caseload*

### *Global overview of the MAP caseload*

89. The following graph shows the evolution of France’s MAP caseload over the Statistics Reporting Period.

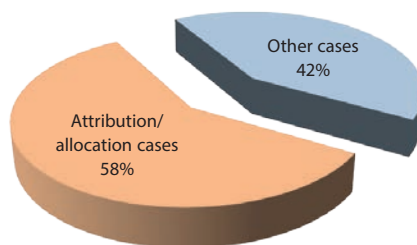
Figure C.1. France’s MAP inventory



90. At the beginning of the Statistics Reporting Period France had 844 pending MAP cases, of which 519 were attribution/allocation cases<sup>14</sup> and 325 other MAP cases. At the end of the Statistics Reporting Period, France had 835 MAP cases in inventory, of which 488 are attribution/allocation cases and 347 other MAP cases. While the total number of cases decreased slightly during the Statistics Reporting Period, the number of attribution/allocation cases decreased by approximately 5% and the number of other cases increased by approximately 5% over the same period.

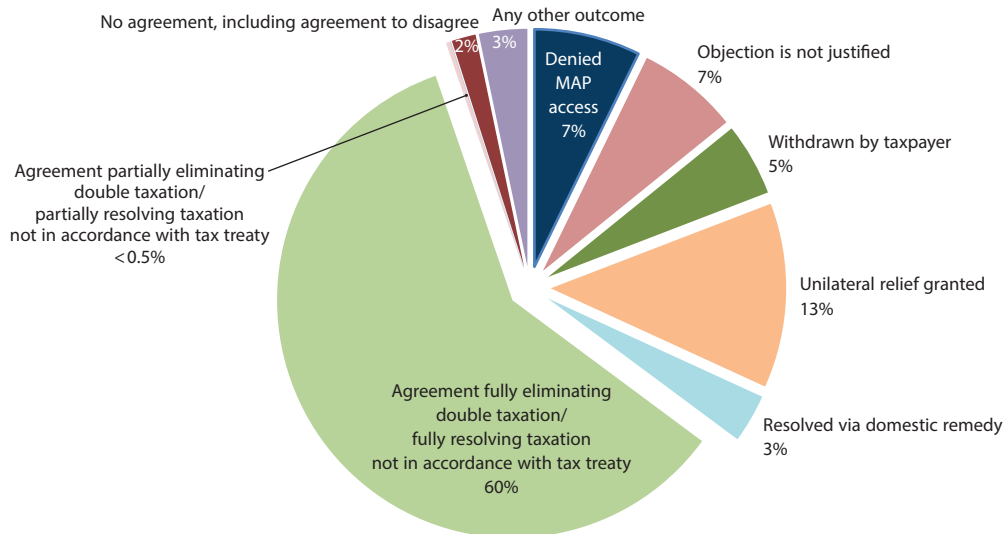
91. The breakdown of the end inventory can be illustrated as follows:

Figure C.2. End inventory on 31 December 2016 (835 cases)



92. During the Statistics Reporting Period France resolved 302 MAP cases and the following outcomes were reported:

Figure C.3. Cases resolved during the Reporting Period (302 cases)



93. This chart shows that during the Statistics Reporting Period, 180 out of 305 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

#### *Pre-2016 cases*

94. At the beginning of the Statistics Reporting Period, France's MAP inventory of pre-2016 MAP cases consisted of 844 cases, of which were 519 attribution/allocation cases and 325 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 625 cases, consisting of 397 attribution/allocation cases and 228 other cases. This decrease concerns around 25% of the total opening inventory, which can be broken down in a decrease by around 25% of the number of attribution allocation cases and a decrease by almost 30% of the number of other cases.

#### *Post-2015 cases*

95. As mentioned previously, 293 MAP cases were started on or after 1 January 2016, 130 of which concerned attribution/allocation cases and 163 other cases. At the end of the Statistics Reporting Period the total post-2015 cases inventory had decreased to 210 cases, consisting of 91 attribution/allocation cases and 119 other cases. France in total resolved 83 post-2015 cases during the Statistics Reporting Period, 39 of them being attribution/allocation cases and 44 of them of them being other cases. The total number of resolved cases represents 28.3% of the total number of post-2015 cases that started during the Statistics Reporting Period (and this is approximately the same share for each type of cases).

### *Average timeframe needed to resolve MAP cases*

#### *Pre-2016 cases*

96. France reported that on average it needed 38.52 months to resolve attribution/allocation cases and 30.92 months to resolve other cases. This resulted in an average time needed of 35.15 months to close pre-2016 cases. For the purpose of computing the time to resolve pre-2016 cases, France used:

- as the start date, the date when the MAP request was received; and
- as the end date, either the date of the closing letter sent to the taxpayer or the date of final closure of the case if no agreement was reached.

#### *Post-2015 cases*

97. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 12 months. It is noted that France closed 28.3% of post-2015 cases during the Statistics Reporting Period. During these 12 months, France closed on average attribution/allocation cases within 1.41 months and other cases within 2.86 months.

#### *All cases resolved during Statistics Reporting Period*

98. The average time needed to resolve MAP cases during the Statistics Reporting Period was 26.09 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	161	29.53
Other cases	141	22.16
<b>All cases</b>	<b>302</b>	<b>26.09</b>

#### *Peer input*

99. Several peers indicated that they had no difficulty resolving MAP cases within a reasonable timeframe with France, one of them pointing out that cases were generally resolved before the end of the delay after which the arbitration procedure contained in their treaty with France may be opened. One peer also observed that most MAP cases initiated with France were resolved within two years. One peer reported that cases submitted after 1 January 2016 had already been discussed at meetings held during the year.

100. Several peers have, however, encountered delays in the resolution of MAP cases. Several peers pointed out that intermediate steps (such as the communication of a position paper) were not always achieved within the expected timeframe (e.g. as foreseen in the European Union Code of Conduct on the implementation of the arbitration convention). Other peers reported that some cases lasted for a long time and that a solution had not yet been found. In particular, these peers mentioned that significant delays could be observed before the French competent authority communicates its position paper or replies to a request for information. For one of these cases, a peer has been waiting since May 2016 for the French competent authority to communicate its position on a case that results from an adjustment made in France. Finally, this peer suggested that the French competent authority should engage itself to respond in a timely manner to requests for information in order to resolve cases more quickly. Another peer indicated that the competent authorities in France

and in his country had agreed to make greater use of e-mails in order to send documents or requests for information and to advance in the procedures.

101. One peer reported that there have been four MAP cases in relation to France, where the peer has repeatedly requested resolution of these cases and sent the position papers. The French competent authority responded that it requested information from the French local tax office and provided one position paper to the peer. As a result, the cases concerned have been open over several years, the oldest one being open for six years. This peer submitted a request for a face-to-face meeting in June 2017. France replied that in September it will propose a date for holding the meeting.

### *Anticipated modifications*

102. As it will be discussed in element C.6, France’s tax treaty policy is to provide for mandatory and binding MAP arbitration in its bilateral tax treaties, as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe.

### *Conclusion*

	Areas for Improvement	Recommendations
[C.2]	France submitted timely comprehensive MAP statistics and indicated they have been matched with almost all of its MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether France’s MAP statistics match those of its treaty partners as reported by the latter.	
		Within the context of the state of play outlined above and in relation to the MAP statistics provided by France it resolved during the Statistics Reporting Period 28.3% (83 out of 293 cases) of its post-2015 cases in 2.18 months on average. In that regard, France is recommended to seek to resolve the remaining 71.7% of the post-2015 cases pending on 31 December 2016 (210 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

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

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

103. 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 France’s competent authority*

104. During the course of 2013, a reorganisation took place within the French competent authority, bringing together the teams responsible for APAs (previously under the responsibility of the CF3 Bureau within the sub-directorate CF of the central administration) and MAPs (previously under the responsibility of the E1 Bureau of the DLF) within the Legal Department of Taxation of the central administration and more particularly in the MEJEI. Contact information of the French competent authority is available on the OECD website<sup>15</sup> and the website of the EU Joint Transfer Pricing Forum.<sup>16</sup> France indicated that it informs the other competent authorities of any changes to this information.

105. During the reorganisation, the number of caseworkers in charge of the analysis of cases submitted to MAP doubled. Prior to the reorganisation, two caseworkers were in charge of MAPs, and two others were in charge of APAs. At the end of the reorganisation, eight caseworkers were in charge of both the APAs and the MAPs. The French competent authority now consists of 11 persons, including seven caseworkers, two team leaders and one head of mission. Team leaders have a double profile, having both experience in tax auditing of large enterprises, particularly on transfer pricing issues, and experience in international taxation, for example by having been involved in tax treaties negotiations or in MAPs regarding general issues. The seven caseworkers are organised by country, and generally have one or the other of the following profiles: (i) a first profile of experienced caseworkers, who have experience in auditing large enterprises, especially on transfer pricing issues and (ii) a second profile of caseworkers hired at the end of their training courses, that have a particularly attractive profile for international aspects. The caseworkers of this second profile are trained within the administration for one year and deal during that year with the issues of (i) transfer pricing, (ii) interpretation and application of tax treaties, (iii) domiciliation and territoriality applicable to individuals (iv) domiciliation and territoriality applicable to legal entities and permanent establishments, and (v) use of the appropriate databases (e.g. to carry out research on comparables for transfer pricing issues). France requires from all its caseworkers that they can work in English. In addition, the French competent authority has delegated the processing of certain cases to the Regional Direction of Public Finance of Hauts-de-France and the Department of the North. In practice, four inspectors from this direction are in charge, among other activities, of the MAPs relating to Belgian cross-border workers.

106. The MAP guidance stipulates that the French competent authority shall take all necessary steps to accelerate, as far as possible, the treatment of MAPs. In this respect, it is indicated<sup>17</sup> that:

“The French competent authority proposes to its main partners to organise regularly, at least once a year, meetings between competent authorities in order to discuss face-to-face all the pending MAP cases”.

107. At this moment, the budget allocated to the French competent authority allows the staff to organise about 15 face-to-face meetings per year, half of which are held abroad.

### ***Monitoring mechanism***

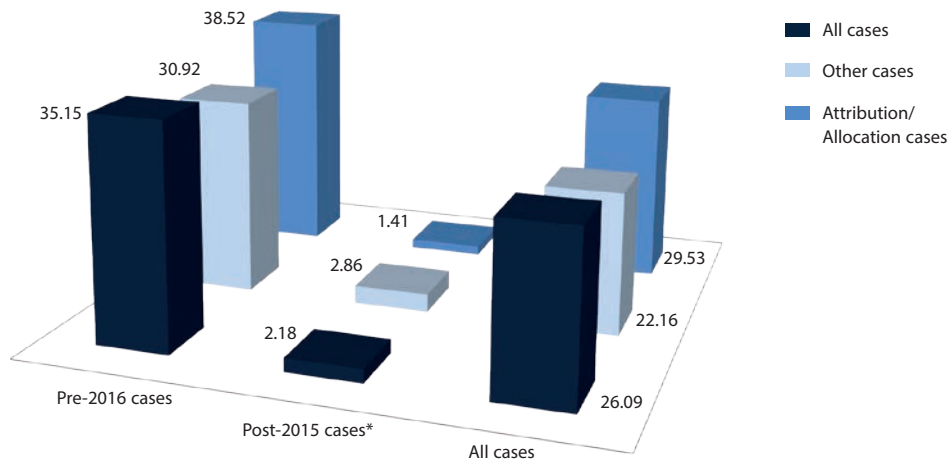
108. France has indicated that, each year, the resources allocated to the competent authority are analysed in the framework of review of the resources of the French tax administration. In particular, the activity of the French competent authority is summarised in an annual report, which is reviewed by the Director of DGFIP. This annual report specifies in particular the number of face-to-face meetings held, the average time-frame for resolving MAP cases and the evolution of the MAP inventory.

### ***Practical application***

#### ***MAP Statistics***

109. As discussed under element C.2 France has not resolved its MAP cases within the pursued 24-month average. However, a discrepancy exists between the average time taken to solve attribution/allocation cases and other cases. This can be illustrated by the following graph:

Figure C.4. Average time (in months)



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

110. Based on these figures, it follows that on average it took France 26.09 months to resolve MAP cases. However, it took France on average 29.53 months to resolve attribution/allocation cases, where the average time needed to resolve other cases was 22.16 months. This might indicate that additional resources specifically dedicated to Attribution/allocation cases may be necessary to accelerate the resolution of these cases.

111. France provided the following explanations.

112. In general, since the reorganisation within the competent authority that occurred in 2013, France sought to resolve the oldest cases in its inventory of MAP cases. As a result, the resolution of older cases impacts and increases the average time needed to resolve cases. In this respect, the elements described above indicate the average time required to resolve MAP cases, which can be negatively influenced by cases resolved in a particularly long time. For example, a particularly complex case was resolved after a triangular discussion within a total of 95 months. On the other hand, the median time required to resolve MAP cases is significantly shorter, since it amounts to 16.73 months for all cases.

113. In addition, France reported on particular events during the Statistics Reporting Period, described below:

- difficulties have been encountered with a specific MAP partner, with whom it has not been possible to deal with MAP cases for six years. 18 cases were resolved during the Statistics Reporting Period, which represents more than 10% of the attribution/allocation cases closed during this period and the average time taken for these cases was 60 months;
- another case was closed following a judgment favourable to the taxpayer, whereas the MAP was suspended at the initiative of the other competent authority during ten years.

114. The elimination of these cases for the computation of the average time needed to resolve all MAP cases results in an average time of 23.96 months and a median time of 16.43 months.



*Peer input*

115. In terms of staff, one peer suggested that more resources should be allocated to the MAP function. Another peer pointed out that the staff of the French competent authority was well trained for the resolution of MAP cases. However, one peer pointed out that staff in the French competent authority frequently changes and regretted that this lack of stability had an impact on the effective resolution of MAP cases.

116. Regarding their relation with the French competent authority, many peers confirmed that their competent authority was in frequent contact with the French competent authority, whether by exchanging letters, e-mails, telephone conversations or face-to-face meetings. Several peers welcomed the efforts made by the French competent authority in this area, one of them taking into account the constraints of the French competent authority in terms of resources. Several peers, however, suggested that even more meetings be organised in view of the particularly large caseloads that these peers have with France. One of them also proposed to organise video conferences. France indicated that on the one hand it organised around 15 face-to-face meetings per year, which makes it one of the most active competent authorities, and on the other hand that, for technical reasons, it also preferred to organise audio-conferences on a regular basis instead of video-conferences, for technical reasons.

117. Another peer also suggested that analysts from the competent authorities exchange their views on outstanding issues by telephone or in writing before they meet for formal discussions. One peer also suggested exploring ways to improve the way information is communicated in order to be more effective in cases involving individuals. In terms of organisation, several peers suggested that their competent authority should be in direct contact with the person in charge of the case within the French competent authority in order to improve the time needed to treat the case. France responded that exchanges between French teams and their counterparts are generally easy and that these persons are often in direct contact. Only formal exchanges (opening letters, written positions, discussions in face-to-face meeting and closing letters) involve the head of the French competent authority, as he is the only one to whom head of the DGFIP delegated the authority to enter into MAP agreements.

*Anticipated modifications*

118. France did not indicate that it anticipates any modifications in relation to element C.3.

*Conclusion*

	Areas for Improvement	Recommendations
[C.3]	-	France should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner. Furthermore, as France resolved attribution/allocation cases in 29.53 months on average during the Statistics Reporting Period, it could consider devoting additional resources to the competent authority for the resolution of these cases.

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

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

119. 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 at issue and absent any policy considerations, contributes to a principled and consistent approach to MAP cases.

##### *Functioning of staff in charge of MAP*

120. A reorganisation in 2013 has made it possible to isolate the competent authority within the Legal Department of Taxation of the central administration, independent of the staff in charge of the tax audit within the DGFIP. France indicated that the factors taken into consideration for the resolution of MAP cases are mainly the provisions of the tax treaties, the commentary on the *OECD Model Tax Convention* (OECD, 2015a) and the OECD transfer pricing guidelines.<sup>18</sup> In practice, France’s MAP guidance also mentions the “opinion” of the local tax office.<sup>19</sup> In this respect, France confirms that certain information is obtained from the service responsible for the adjustment made in France through a specific report, but that the competent authority remains independent of the offices in charge of tax audit.

121. Finally, the opinion of the Tax Legislation Directorate within the DGFIP can also be sought for questions relating to the interpretation of tax treaties, which can be explained by the fact that the Tax Legislation Directorate is responsible for the negotiation and the general interpretation of tax treaties.

##### *Practical application*

122. Several peers indicated that the French competent authority was professional, and respected internationally recognised standards for transfer pricing, tax treaties and exchange of information. In particular, one peer mentioned that individual cases were often resolved unilaterally by the French competent authority without recourse to the bilateral phase. Another peer pointed out that the position of the French competent authority sought to reconcile the interests of both parties.

123. As noted in Element C.2, several peers have reported that the French Competent Authority communicated its position late after an adjustment in France. One peer has assumed that this is due to the fact that the competent authority is awaiting information from the audit team in charge of the audit, since once the first position has been communicated, the communication is fluid.

124. As mentioned previously, for the MAPs requested following a French adjustment, a report is requested from the audit service. The position of the French competent authority is sent to the foreign competent authority after reviewing and approving this report in full independence.

*Anticipated modifications*

125. France did not indicate that it anticipates any modifications in relation to element C.4.

*Conclusion*

	Areas for Improvement	Recommendations
[C.4]	-	As it has done thus far, France 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 adjustments at issue, or being influenced by considerations of the policy that France 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.

126. 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 France*

127. France specified that the number of cases resolved, the time taken to resolve cases, the priority given to old cases of the inventory in the resolution of MAP cases or the number of organised face-to-face meetings are some of the indicators reviewed annually to assess the performance of the staff in charge of MAP. France also reported that the impact of external factors that cannot be controlled by the competent authority does not impact the evaluation of staff. In any event, France has indicated that it does not use performance indicators linked to the amount of sustained audit adjustments or maintaining tax revenue.

128. The list of performance indicators deemed appropriate in the Final Report on Action 14 is reproduced below. The elements taken into account by the staff when resolving cases are checked:

- 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); and
- 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).

***Practical application***

129. Several peers noted that the staff hired by France had a pragmatic approach to the resolution of MAPs. One peer also indicated that its experience with France did not allow it to conclude that France uses inappropriate performance indicators.

***Anticipated modifications***

130. France did not indicate that it anticipates any modifications in relation to element C.5.

***Conclusion***

	Areas for Improvement	Recommendations
[C.5]	-	As it has done thus far, France 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.

131. 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***

132. France has no domestic law limitations for including MAP arbitration in its tax treaties. France has been a participant in the sub-group on arbitration as part of the Multilateral Instrument of Action 15 of the BEPS project and it committed to include a mandatory and binding MAP arbitration provision, as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe. As pointed out in B.8, specific guidelines concerning the functioning of MAPs in cases subject to the EU Arbitration Convention are also included in the French MAP guidance.<sup>20</sup> Further guidance on the functioning of the arbitration procedure in tax treaties is also available in the MAP guidance.<sup>21</sup>

133. Furthermore, France is a signatory to the EU Arbitration Convention which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.<sup>22</sup>

***Practical application***

134. France has incorporated an arbitration clause in eight tax treaties.<sup>23</sup> In two treaties, the clause is based on Article 25(5) of the *OECD Model Tax Convention* (OECD, 2015a). Two other treaties provide for mandatory arbitration, but different from the clause of the *OECD Model Tax Convention* (OECD, 2015a) and the four remaining treaties provide for a voluntary arbitration clause.

### *Anticipated modifications*

135. France reported that it opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision. It is currently in the process of analysing which of its tax treaties, and to what extent, will be modified to incorporate this arbitration provision.

### *Conclusion*

	Areas for Improvement	Recommendations
[C.6]	-	-

## Notes

1. This includes the tax treaty entered into with the former Yugoslavia and the tax treaty entered into with the former Czechoslovakia.
2. This includes the tax treaty previously entered into with the United Kingdom and currently applied with (i) Malawi and (ii) Zambia.
3. This includes the tax treaty entered into with the former USSR.
4. BOI-INT-DG-20-30-10 No. 230.
5. [www.oecd.org/ctp/dispute/MAP%20PROGRAM%20STATISTICS%20FOR%202015%20FRANCE.pdf](http://www.oecd.org/ctp/dispute/MAP%20PROGRAM%20STATISTICS%20FOR%202015%20FRANCE.pdf).
6. [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/jtpf0142016enacstatistics2015.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0142016enacstatistics2015.pdf).
7. For post-2015 cases, if the MAP inventory was more than five at the beginning of the reporting period, Luxembourg reported its MAP caseload on a jurisdiction-by-jurisdiction basis.
8. BOI-INT-DG-20-30-10-20170201 No. 20.
9. BOI-INT-DG-20-30-10-20170201 No. 400.
10. BOI-INT-DG-20-30-10-20170201 No. 200.
11. BOI-INT-DG-20-30-10-20170201 No. 500.
12. BOI-INT-DG-20-30-10-20170201 No. 480 et 490.
13. BOI-INT-DG-20-30-10-20170201 No. 510.
14. For pre-2016 cases, France reported that the category “attribution/allocation cases” covered cases relating to transfer pricing issues as defined in the European Arbitration Convention and cases relating to the qualification of a permanent establishment. The “other cases” concern cases involving individuals and issues of withholding tax. For post-2015 cases, France follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation case.
15. [www.oecd.org/tax/dispute/France-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/France-Dispute-Resolution-Profile.pdf).
16. [http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/profiles/tpprofile-fr.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/tpprofile-fr.pdf).
17. BOI-INT-DG-20-30-10-20170201 No. 550.

18. OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
19. BOI-INT-DG-20-30-10-20170201 No. 430.
20. Available at <http://bofip.impots.gouv.fr/bofip/5353-PGP.html>.
21. Available at <http://bofip.impots.gouv.fr/bofip/5347-PGP.html>.
22. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July, 1990.
23. These are the tax treaties entered into with Canada, Germany, Kazakhstan, Quebec, Switzerland, the United Kingdom and the United States.

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## *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.

136. 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***

137. Once a MAP agreement is reached between the competent authorities, the French competent authority requests the taxpayer concerned to agree to the implementation of the MAP agreement and, where applicable, to withdraw from any administrative or judicial appeal to challenge the substance and/or the form of the taxes concerned and to waive any proceedings to challenge the MAP decision reached. If the taxpayer accepts the proposal, it is then applied by France, whatever the time limits provided for by domestic law. If the taxpayer refuses or does not reply within the time limit set by the French competent authority (nor after a reminder), the proposal for an agreement lapses and the MAP is then closed. Information on the implementation of MAP agreements is contained in the French MAP guidance.<sup>1</sup>

138. Subject to the limitations described below, France will implement all the agreements reached in MAP, both with regard to upward and downward adjustments of taxes. The agreements are implemented by the local offices of the DGFIP notwithstanding any time limits in its domestic law.<sup>2</sup> However, France clarified that tax refunds are made after verification by the tax collector in charge of the file that the tax was originally paid. In this regard, France has indicated that the implementation of a MAP agreement may have become impossible because of the retention period of the archives, which is maximum six years.

#### ***Practical application***

139. France has indicated that all MAP agreements reached since 1 January 2014 and accepted by taxpayers have been (or will be) implemented. In practice, the monitoring of the implementation of MAP agreements is done by the local offices of the DGFIP. If the implementation has become difficult or impossible because of the retention period of the documents, the French competent authority makes every reasonable effort to assist the taxpayers and ensure the implementation of the MAP agreement.

140. Peers generally indicated that they were not aware of any MAP agreements that had not been implemented by France since 1 January 2014.

### *Anticipated modifications*

141. France did not indicate that it anticipates any modifications in relation to element D.1.

### *Conclusion*

	Areas for Improvement	Recommendations
[D.1]	The system used to keep accounting documents bears the risk that certain MAP agreements will not be implemented.	As it has done thus far, France should continue to implement all MAP agreements reached.

## **[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.

142. 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*

143. France has not adopted an indicative timetable for the implementation of MAP agreements reached. In practice, the French competent authority is not itself responsible for the implementation of MAP agreements. In addition, it does not monitor and verify the implementation of the agreements by the DGFIP.

### *Practical application*

144. France has indicated that all MAP agreements reached after 1 January 2014 have been (or will be) implemented.

145. One taxpayer pointed out that if a solution had been found quickly by the French competent authority, it was only verbally notified to the taxpayer, which made implementation of this decision difficult and time-consuming in practice (one and a half years). In reply, France clarified that this delay was unusual and that the French competent authority had reminded the local office so that the solution could be implemented. In addition, France recalls that, in view of the independence of the audit functions (in charge of the implementation of MAP agreements) and the competent authority, the two services do not necessarily function in a coordinated manner. In any event, France took note of the fact that written notification of solutions to the taxpayer are more effective and will endeavour to do so in the future.

146. Peers indicated that they were not aware of any MAP agreements that had not been implemented timely by France since 1 January 2014.

### *Anticipated modifications*

147. France did not indicate that it anticipates any modifications in relation to element D.2.

### Conclusion

	Areas for Improvement	Recommendations
[D.2]		As it has done thus far, France should ensure that all future MAP agreements will be implemented on a timely basis. France's suggestion for a written notification of all agreements reached could be implemented.

### [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.

148. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) 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 France's tax treaties*

149. Out of France's 119 tax treaties, 79<sup>3</sup> contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) that provides that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. None of the 40 remaining treaties<sup>4</sup> contain the alternative provision in Article 9(1) or Article 7(2), setting a time limit for making adjustments.

150. In any event, the French practice is such that the agreement between the competent authorities, if accepted by the taxpayer, is implemented notwithstanding any time limits in its domestic law.<sup>5</sup> Thus, irrespective of the years or taxation years concerned, exemptions are granted in respect of those years notwithstanding the statute of limitations in the domestic law.<sup>6</sup>

#### *Anticipated modifications*

151. France indicated that it is conducting bilateral negotiations with Belgium, Ireland, Luxembourg, Malawi and Zambia, in order, inter alia, for these tax treaties to contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015). In addition, France indicated that it intends to implement element D.3 by signing the Multilateral Instrument. In this regard, France indicated it signed the Multilateral Instrument and did not make any reservations on the amendments introduced by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all the treaties to be covered by this instrument. In addition, France has indicated that it will ratify the Multilateral Instrument as soon as possible. France clarified that it wishes the Multilateral Instrument to cover all the treaties with the other States or jurisdictions that are members of the ad hoc group. In doing so, 26 treaties could be amended by the Multilateral Instrument according to France. If a treaty is not amended by the Multilateral

Instrument, France has indicated that it will propose the inclusion of Article 25(2), second sentence in current or future negotiations on existing tax treaties. Furthermore, France has indicated that it will propose the inclusion of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all future tax treaties.

### Conclusion

	Areas for Improvement	Recommendations
[D.3]	40 out of 119 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor include the alternative provisions in both Article 9(1) and Article 7(2).	<p>Where treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015) or the alternatives provided in Article 9(1) and Article 7(2) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, France should request the inclusion of the required provision or the alternatives via bilateral negotiations.</p> <p>Specifically with respect to the treaty with the former Czechoslovakia, the former USSR and the former Yugoslavia France should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision or its alternatives.</p> <p>In addition, France should maintain its stated intention to include the required provision or its alternatives in all future treaties.</p>

### Notes

1. BOI-INT-DG-20-30-10-20170201 No. 570.
2. BOI-INT-DG-20-30-10-20170201 No. 600.
3. The tax treaty entered into with Turkey provides that the implementation of MAP agreements is subject to the taxpayer making a request within one year after the agreement is reached.
4. This includes the tax treaty entered into with the former USSR, the tax treaty entered into with the former Yugoslavia, the tax treaty previously entered into with the United Kingdom and the tax treaty entered into with the former Czechoslovakia.
5. BOI-INT-DG-20-30-10 No. 570.
6. BOI-INT-DG-20-30-10 No. 600.

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## Summary

	Areas for Improvement	Recommendations
<b>Part A: Preventing disputes</b>		
[A.1]	55 tax treaties out of 119 do not contain a provision equivalent to Article 25 (3), first sentence of the OECD Model Tax Convention, OECD (2015).	<p>Where treaties do not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, France should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the treaty with the former USSR, Yugoslavia and Czechoslovakia, France should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p> <p>In addition, France should maintain its stated intention to include the required provision in all future treaties.</p>
[A.2]	No roll-back of APAs will be granted, except in cases where an adjustment is made and for which the opening of a mutual agreement procedure can be requested.	In the future, France must ensure that it provides for roll-back of bilateral APAs (subject to the applicable time limits) in appropriate cases.
<b>Part B: Availability and access to MAP</b>		
[B.1]	<p>38 out of 119 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention, OECD (2015a).</p> <p>Of those 38 tax treaties:</p> <ul style="list-style-type: none"> <li>• two treaties do not contain a provision based on Article 25(1) of the OECD Model Tax Convention, OECD (2015a);</li> <li>• four treaties do not incorporate the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty (2 years for two of them and 6 months for two other);</li> <li>• 19 treaties do not incorporate the equivalent to Article 25(1), first sentence; and</li> </ul> <p>13 treaties provide that the timeline to file a MAP request is shorter than three years.</p>	<p>Where treaties do not include the equivalent of Article 25(1) of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, France should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> <li>• a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention, OECD (2015a) either: <ul style="list-style-type: none"> <li>a. As amended in the final report of Action 14; or</li> <li>b. As it read prior to the adoption of final report of Action 14; and</li> </ul> </li> <li>• a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>Specifically with respect to the treaty with the former Yugoslavia, France should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p> <p>In addition, France should maintain its stated intention to include the required provision in all future treaties.</p>

	Areas for Improvement	Recommendations
[B.2]	France has not introduced a notification or bilateral consultation process prior to the expiration of the Review Period (whereas it introduced such procedure thereafter).	France should ensure that it will actually use the notification process recently introduced to notify the other competent authority in cases where it considers that the objection raised in the MAP request is not justified where the tax treaty does not permit the MAP request to be submitted to the competent authority of either contracting state.
[B.3]	-	As France has thus far granted access to the MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]		As France has thus far granted access to the MAP in eligible 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, it should continue granting access for these cases.
[B.5]	-	As France has thus far granted access to the MAP in eligible cases, even if there was an audit settlement between the tax authority and a taxpayer, it should continue granting access for these cases.
[B.6]		As France has thus far not limited access to the MAP in eligible cases when taxpayers have complied with France's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Nine out of 119 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a).	Where treaties do not include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, France should request the inclusion of the required provision via bilateral negotiations.  In addition, France should maintain its stated intention to include the required provision in all future treaties.
[B.8]	MAP guidance is comprehensive and available, but some further clarity could be provided. In particular, the guidance could lead to confusion for cases involving tax years earlier than six years from the date of the request since the guidance indicates that such requests "will not be taken into consideration", while France accepts to analyse these cases and starts discussions under the condition that it will be possible to implement the MAP agreement likely to result from these discussions.	Although not required by the Action 14 Minimum Standard, in order to further improve the level of clarity of its MAP guidance France could consider including in its MAP guidance specific information on: <ul style="list-style-type: none"> <li>• the availability of MAP in cases involving (i) the application of anti-abuse provisions, (ii) tax years earlier than six years from the date of the request, under the condition that it will be possible to implement the MAP agreement, and (iii) multilateral disputes;</li> <li>• the possibility to resolve recurring issues through MAP, even where no tax audit has yet been carried out on these tax years; and</li> <li>• an indicative timetable for the implementation of the MAP agreements.</li> </ul>
[B.9]	-	As the French MAP guidance has been easily accessible and its MAP profile has been published, France should ensure that future updates of its MAP guidance are made publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.
[B.10]	-	-

	Areas for Improvement	Recommendations
<b>Part C: Resolution of MAP cases</b>		
[C.1]	18 out of 119 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a).	Where treaties do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, France should request the inclusion of the required provision via bilateral negotiations.  Specifically with respect to the treaty with the former USSR, France should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.  In addition, France should maintain its stated intention to include the required provision in all future treaties.
[C.2]	France submitted timely comprehensive MAP statistics and indicated they have been matched with almost all of its MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether France's MAP statistics match those of its treaty partners as reported by the latter.	
	Within the context of the state of play outlined above and in relation to the MAP statistics provided by France it resolved during the Statistics Reporting Period 28.3% (83 out of 293 cases) of its post-2015 cases in 2.18 months on average. In that regard, France is recommended to seek to resolve the remaining 71.7% of the post-2015 cases pending on 31 December 2016 (210 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	-	France should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.  Furthermore, as France resolved attribution/allocation cases in 29.53 months on average during the Statistics Reporting Period, it could consider devoting additional resources to the competent authority for the resolution of these cases.
[C.4]	-	As it has done thus far, France 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 adjustments at issue, or being influenced by considerations of the policy that France would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, France should continue to use appropriate performance indicators.
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	The system used to keep accounting documents bears the risk that certain MAP agreements will not be implemented.	As it has done thus far, France should continue to implement all MAP agreements reached.
[D.2]		As it has done thus far, France should ensure that all future MAP agreements will be implemented on a timely basis.  France's suggestion for a written notification of all agreements reached could be implemented.



	Areas for Improvement	Recommendations
[D.3]	40 out of 119 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor include the alternative provisions in both Article 9(1) and Article 7(2).	<p>Where treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015) or the alternatives provided in Article 9(1) and Article 7(2) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, France should request the inclusion of the required provision or the alternatives via bilateral negotiations.</p> <p>Specifically with respect to the treaty with the former Czechoslovakia, the former USSR and the former Yugoslavia France should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision or its alternatives.</p> <p>In addition, France should maintain its stated intention to include the required provision or its alternatives in all future treaties.</p>

## Annex A

### Tax treaty network of France

		Action 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.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)?  If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence?  If no, please state reasons		Inclusion Art. 9(2)?  If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?  If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
	Y = yes N = signed pending ratification	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period if ii, specify period iii = no, starting point for computing the 3 year period is different iv = no, others reasons	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art 7 equivalent ii = no, but have Art 9 equivalent iii = no, but have both Art 7 & 9 equivalent N = no and no equivalent of Art 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no  if yes: i-Art. 25(5) ii-mandatory other iii – voluntary	
Albania	Y	O	Y		Y	i	Y	Y	Y	Y	N	
Algeria	Y	O	Y		Y	i	Y	Y	Y	Y	N	
Andorra	Y	O	Y		Y	i	Y	Y	Y	Y	N	
Argentina	Y	O	Y		i	i	Y	Y	N	Y	N	
Armenia	Y	O	Y		Y	i	Y	Y	Y	Y	N	

		Action 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.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)?  If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence?  If no, please state reasons	Inclusion Art. 9(2)?  If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?  If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?		
Australia	Y	O	Y		i	i	Y	Y	Y	Y	N	
Austria	Y	O	Y		Y	i	Y	Y	N	Y	N	
Azerbaijan	Y	O	ii	2 years	Y	i	Y	Y	Y	Y	N	
Bahrain	Y	O	ii	2 years	i	i	Y	Y	Y	Y	N	
Bangladesh	Y	O	Y		i	i	Y	Y	N	Y	N	
Belarus	Y	E	i		i	i	N	N	N	Y	N	
Belgium	Y	N	ii	6 months	i	i	N	N	N	N	N	
Benin	Y	N	i		i	i	N	N	N	Y	N	
Bolivia	Y	O	Y		i	i	Y	N	Y	Y	N	
Bosnia and Herzegovina	Y	N	i		i	i	Y	N	N	Y	N	
Botswana	Y	O	Y		Y	i	Y	Y	Y	Y	N	
Brazil	Y	O	i		i	i	Y	N	N	Y	N	
Bulgaria	Y	O	Y		i	i	Y	Y	N	Y	N	
Burkina Faso	Y	N	i		i	i	N	N	N	Y	N	
Cameroon	Y	N	Y		i	i	Y	Y	Y	Y	N	
Canada	Y	N	ii	2 years	i	i	Y	N	N	N	Y	iii
Central African Republic	Y	N	i		i	i	N	N	N	Y	N	
Chile	Y	O	Y		Y	i	Y	N	Y	N	N	
China (People's Republic of)	Y	O	Y		Y	i	Y	Y	Y	Y	N	
Chinese Taipei	Y	O	Y		Y	i	Y	Y	Y	Y	N	

		Action 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.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)?  If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence?  If no, please state reasons	Inclusion Art. 9(2)?  If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?  If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Colombia	N	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Congo	Y	O	Y	i	i	Y	Y	N	Y	N	
Côte d'Ivoire	Y	N	i	i	i	N	N	N	Y	N	
Croatia	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Cyprus*	Y	O	Y	i	i	Y	Y	N	Y	N	
Czech Republic	Y	O	Y	i	i	Y	Y	Y	Y	N	
Ecuador	Y	N	i	i	i	N	N	Y	N	N	
Egypt	Y	O	Y	i	i	Y	Y	N	Y	N	
Estonia	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Ethiopia	Y	O	Y	Y	i	Y	N	Y	Y	N	
Finland	Y	O	i	i	i	Y	N	N	Y	N	
Former Yugoslav Republic of Macedonia	Y	O	Y	Y	i	Y	Y	Y	Y	N	
French Polynesia	Y	N	i	i	i	N	N	Y	Y	N	
Gabon	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Georgia	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Germany	Y	O	Y	i	i	Y	Y	Y	Y	Y	i
Ghana	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Greece	Y	O	i	i	i	Y	N	Y	Y	N	
Guinea	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Hong Kong (China)	Y	O	Y	Y	i	Y	Y	Y	Y	N	

		Action 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.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)?  If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence?  If no, please state reasons	Inclusion Art. 9(2)?  If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?  If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Hungary	Y	O	Y	i	i	Y	Y	N	Y	N	
Iceland	Y	O	Y	i	i	Y	Y	Y	Y	N	
India	Y	N	Y	i	i	Y	Y	Y	Y	N	
Indonesia	Y	O	Y	i	i	Y	N	N	Y	N	
Iran	Y	O	i	i	i	Y	N	N	Y	N	
Ireland	Y	O	i	i	i	Y	N	N	Y	N	
Israel	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Italy	Y	N	ii	6 months	i	N	N	N	N	N	
Jamaica	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Japan	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Jordan	Y	O	Y	i	i	Y	Y	N	Y	N	
Kazakhstan	Y	O	Y	Y	i	Y	Y	Y	Y	Y	iii
Kenya	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Korea	Y	O	Y	i	i	Y	N	N	Y	N	
Kosovo	Y	N	i	i	i	Y	N	N	Y	N	
Kuwait	Y	O	ii	2 years	i	Y	Y	Y	Y	N	
Kyrgyzstan	Y	E	i	i	i	N	N	N	Y	N	
Latvia	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Lebanon	Y	O	i	i	i	Y	N	Y	Y	N	
Libya	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Lithuania	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Luxembourg	Y	N	i	i	i	N	N	Y	Y	N	

		Action 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.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)?  If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence?  If no, please state reasons	Inclusion Art. 9(2)?  If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?  If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
Madagascar	Y	O	Y	i	i	Y	Y	N	Y	N
Malawi	Y	N	i	i	i	N	N	N	N	N
Malaysia	Y	O	i	i	i	Y	N	N	Y	N
Mali	Y	N	i	i	i	N	N	N	Y	N
Malta	Y	O	Y	i	i	Y	Y	N	Y	N
Mauritania	Y	N	i	i	i	N	N	N	Y	N
Mauritius	Y	O	Y	i	i	Y	Y	N	Y	N
Mexico	Y	O	ii	2 years	i	Y	N	N	N	N
Monaco	Y	N	i	i	i	N	N	Y	Y	N
Mongolia	Y	O	Y	Y	i	Y	Y	Y	Y	N
Montenegro	Y	N	i	i	i	Y	N	N	Y	N
Morocco	Y	N	i	i	i	N	N	N	Y	N
Namibia	Y	O	Y	Y	i	Y	Y	Y	Y	N
Netherlands	Y	N	Y	i	i	Y	Y	N	Y	N
New Caledonia	Y	O	ii	2 years	i	Y	Y	N	Y	N
New Zealand	Y	O	Y	i	i	Y	Y	N	Y	N
Niger	Y	N	i	i	i	N	N	N	Y	N
Nigeria	Y	O	Y	i	i	Y	Y	N	N	N
Norway	Y	N	Y	i	i	Y	Y	N	Y	N
Oman	Y	O	ii	2 years	i	Y	Y	Y	Y	N
Pakistan	Y	O	ii	2 years	i	Y	Y	Y	Y	N
Panama	Y	O	Y	Y	i	Y	Y	Y	Y	N

		Action 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.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)?  If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence?  If no, please state reasons		Inclusion Art. 9(2)?  If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?		Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?  If no, alternative provision in Art. 7 & 9 OECD MTC?		Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?		Inclusion arbitration provision?			
Philippines	Y	O	ii	2 years	i	i	Y	N	N	Y	N						
Poland	Y	O	Y		i	i	Y	Y	N	Y	N						
Portugal	Y	O	ii	2 years	i	i	Y	N	N	Y	N						
Qatar	Y	O	Y		i	i	Y	Y	Y	Y	N						
Quebec	Y	O	ii	2 years	i	i	Y	N	N	N	Y	iii					
Romania	Y	N	i		i	i	Y	Y	N	Y	N						
Russia	Y	O	Y		Y	i	Y	Y	Y	Y	N						
Saint Martin	Y	O	Y		Y	i	Y	Y	Y	Y	N						
Saint Pierre and Miquelon	Y	O	ii	2 years	i	i	Y	Y	N	Y	N						
Saudi Arabia	Y	O	ii	2 years	i	i	Y	Y	Y	Y	N						
Senegal	Y	N	i		i	i	N	N	N	Y	N						
Serbia	Y	N	i		i	i	Y	N	N	Y	N						
Singapore	Y	O	Y		Y	i	Y	Y	N	Y	N						
Slovak Republic	Y	O	i		i	i	Y	N	N	Y	N						
Slovenia	Y	O	Y		Y	i	Y	Y	Y	Y	N						
South Africa	Y	O	Y		Y	i	Y	Y	Y	Y	N						
Spain	Y	O	Y		Y	i	Y	Y	Y	Y	N						
Sri Lanka	Y	O	Y		i	i	Y	Y	N	Y	N						
Sweden	Y	O	Y		Y	i	Y	Y	Y	Y	N						
Switzerland	Y	O	Y		i	i	Y	N	N	Y	Y	ii					
Syrian Arab Republic	Y	O	Y		Y	i	Y	Y	Y	Y	N						



		Action 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.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)? If yes, submission to either competent authority	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2)? If no, will your CA provide access to MAP in TP cases?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Thailand	Y	O	i	i	i	Y	N	N	Y	N	
Togo	Y	N	i	i	i	N	N	N	Y	N	
Trinidad and Tobago	Y	O	Y	i	i	Y	Y	Y	Y	N	
Tunisia	Y	O	i	i	i	Y	N	N	Y	N	
Turkey	Y	O	i	Y	i	Y	Y	Y	Y	N	
Turkmenistan	Y	E	i	i	i	N	N	N	Y	N	
Ukraine	Y	O	Y	Y	i	Y	Y	Y	Y	N	
United Arab emirates	Y	N	ii	2 years	Y	Y	Y	Y	Y	N	
United Kingdom	Y	O	Y	Y	i	Y	Y	Y	Y	Y	i
United States	Y	O	Y	i	i	Y	Y	Y	Y	Y	ii
Uzbekistan	Y	O	Y	Y	i	Y	Y	Y	Y	N	
Venezuela	Y	O	ii	2 years	i	Y	Y	Y	Y	N	
Viet Nam	Y	O	Y	Y	i	Y	Y	N	Y	N	
Zambia	Y	N	i	i	i	N	N	N	N	N	
Zimbabwe	Y	O	Y	i	i	Y	Y	N	Y	N	

\* Footnote by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the “Cyprus” issue.

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

## Annex B

### MAP statistics: Pre-2016 cases

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/ partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	519	3	1	11	22	1	81	1	0	2	0	397	38.52
Others	325	1	9	2	8	6	58	0	0	3	10	228	30.92
Total*	844	4	10	13	30	7	139	1	0	5	10	625	35.15

*Note:* A relevant indicator to compare with the average time taken for closing pre-2016 cases (Column 14) would be the median time taken, adjusted to eliminate a few exceptional cases which were difficult to settle because of external factors. This median is 28 months.

## Annex C

### MAP statistics: Post-2015 cases

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/ partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	130	5	0	0	2	0	32	0	0	0	0	91	1.41
Others	0	163	13	11	2	6	3	9	0	0	0	0	119	2.86
Total	0	293	18	11	2	8	3	41	0	0	0	0	210	2.18



## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>Administrative guidelines</b>	Administrative guidelines BOI-INT-DG-20-30-20 on the mutual agreement procedures to eliminate double taxation
<b>FTA MAP Forum</b>	Forum on Mutual Agreement Procedure in the Forum on Tax Administration
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 15 July 2014
<b>OECD Transfer Pricing Guidelines</b>	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
<b>Pre-2016 cases</b>	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
<b>Post-2015 cases</b>	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
<b>Review Period</b>	Period for the peer review process that started on 1 January 2016 and ended on 31 March 2017
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2016
<b>Terms of Reference</b>	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective



## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

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## OECD/G20 Base Erosion and Profit Shifting Project

# Making Dispute Resolution More Effective – MAP Peer Review Report, France (Stage 1)

### INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Addressing base erosion and profit shifting is a key priority of governments around the globe. In 2013, OECD and G20 countries, working together on an equal footing, adopted a 15-point Action Plan to address BEPS. Beyond securing revenues by realigning taxation with economic activities and value creation, the OECD/G20 BEPS Project aims to create a single set of consensus-based international tax rules to address BEPS, and hence to protect tax bases while offering increased certainty and predictability to taxpayers. In 2016, the OECD and G20 established an Inclusive Framework on BEPS to allow interested countries and jurisdictions to work with OECD and G20 members to develop standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package. Over 100 countries and jurisdictions have joined the Inclusive Framework.

Under Action 14, jurisdictions 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 jurisdictions 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 France.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264285774-en>.

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