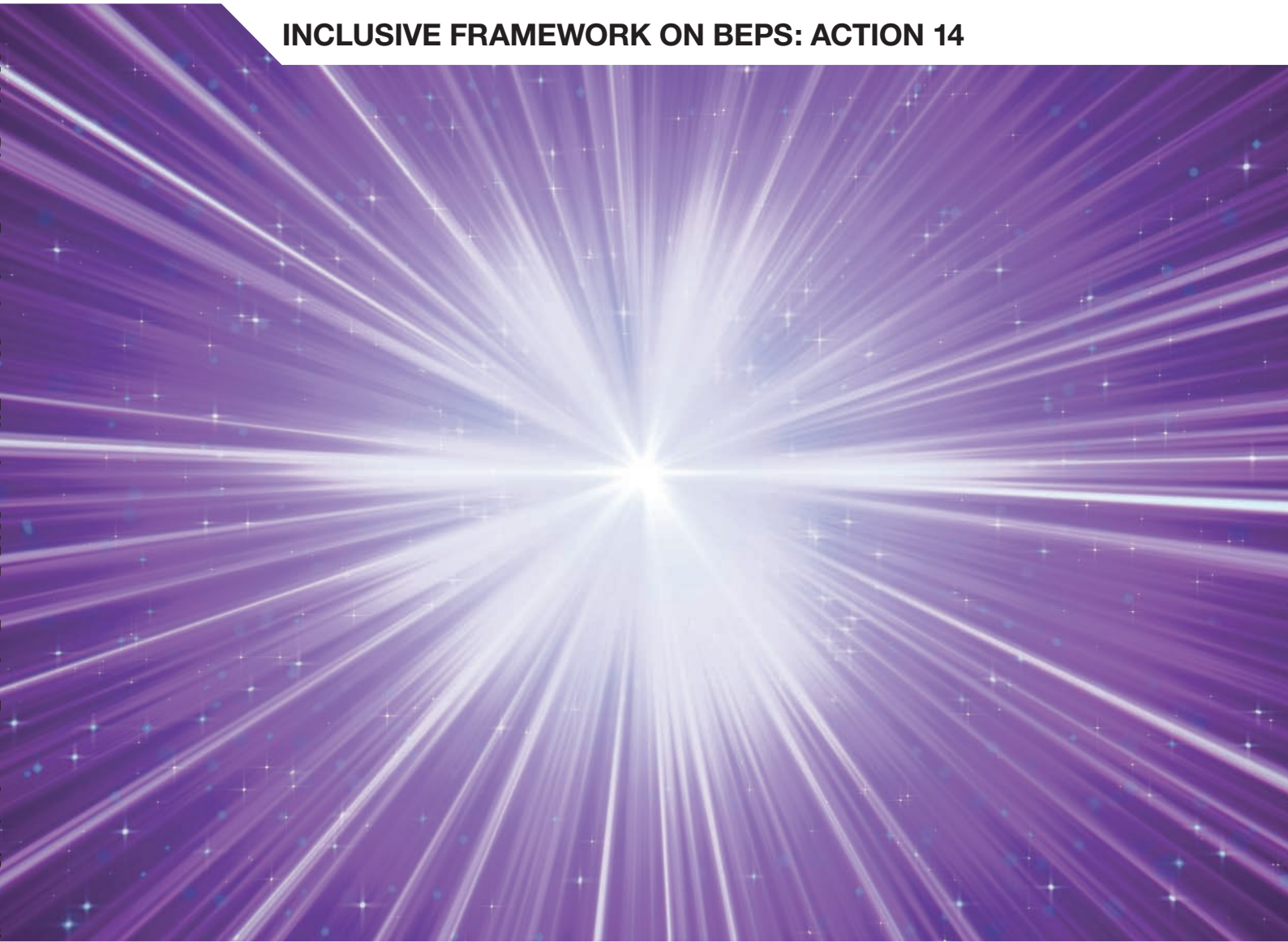


**OECD/G20 Base Erosion and Profit Shifting
Project**



Making Dispute Resolution More Effective – MAP Peer Review Report, Aruba (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 90 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

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

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

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

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Abbreviations and acronyms

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

Executive summary

Aruba has a small tax treaty network with six tax treaties. Aruba has limited experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and three cases pending on 31 December 2019, all of which are other cases. Overall Aruba meets the majority of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Aruba is working to address some of them.

All of Aruba's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention. Its treaty network is partly consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that approximately 65% of its tax treaties do not contain the equivalent of Article 25(3), first sentence of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Aruba needs to amend and update four tax treaties. Aruba reported that it has no plans to amend the tax treaties bilaterally with its treaty partners as the treaties that need to be modified to comply with the Action 14 Minimum Standard have a limited scope and very little practical effect.

As Aruba has no bilateral APA programme in place, there are no further elements to assess regarding the prevention of disputes.

Aruba meets some of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2018 not received any MAP request concerning transfer pricing cases, cases where anti-abuse provisions are applied or cases where there has been an audit settlement. Furthermore, Aruba does not have in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. In addition, Aruba has not yet issued MAP guidance but it submitted its MAP profile.

Concerning the average time needed to close MAP cases, the MAP statistics for Aruba for the period 2018-19 are as follows:

2018-19	Opening Inventory 1/1/2018	Cases started	Cases closed	End inventory 31/12/2019	Average time to close cases (in months)
Attribution/allocation cases	0	0	0	0	n.a.
Other cases	0	3	0	3	n.a.
Total	0	3	0	3	n.a.

Aruba did not close any MAP cases in the period 2018-19. Its MAP inventory as on 31 December 2019 increased as compared to its inventory as on 1 January 2018.

Furthermore, Aruba meets almost all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Aruba's competent authority operates fully independently from the audit function of the tax authorities. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

Lastly, as there was no MAP agreement reached that required implementation in Aruba in 2018 or 2019, it was not yet possible to assess whether Aruba meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Aruba does not monitor the implementation of MAP agreements. In addition, Aruba has a domestic statute of limitation for implementation of MAP agreements, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Nevertheless, no problems have surfaced throughout the peer review process, which can be clarified by the fact that there was no MAP agreement reached by Aruba.

Introduction

Available mechanisms in Aruba to resolve tax treaty-related disputes

Aruba has entered into six tax treaties on income (and/or capital), which are all in force.¹ These six treaties are being applied to nine jurisdictions.² All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. Five of Aruba’s six treaties have a limited scope of application.

In Aruba, the competent authority function to conduct mutual agreement procedure (“**MAP**”) is delegated to the Tax Matters Coordination Board (TMCB). The competent authority of Aruba currently has no employees as Aruba has only received a few MAP requests.

Aruba intends to issue a guidance on the governance and administration of MAP soon after the review period, which will be available on the website of the Aruba Tax Authorities at: www.impuesto.aw.³

Recent developments in Aruba

Aruba reported it is not conducting any tax treaty negotiations currently while negotiations are coming up for a new tax arrangement between Aruba and the Netherlands. Aruba also reported that it has no plans to amend the tax treaties bilaterally with its treaty partners as the treaties that need to be modified to comply with the Action 14 Minimum Standard have a limited scope and very little practical effect.

Basis for the peer review process

The peer review process entails an evaluation of Aruba’s implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Aruba, its peers and taxpayers. The questionnaires for the peer review process were sent to Aruba and the peers on 20 December 2019.

The period for evaluating Aruba’s implementation of the Action 14 Minimum Standard ranges from 1 January 2018 to 31 December 2019 (“**Review Period**”). In general, developments following the Review Period, including the subsequent introduction of MAP Guidance, have not been taken into account for the analysis in this report. However, the report may depict some recent developments that have occurred after the Review Period,

which at this stage will not impact the assessment of Aruba’s implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether Aruba is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the treaties as modified by a protocol were taken into account, even if it concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the former internal regulation for the Kingdom of the Netherlands to the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius, being special municipalities of the Netherlands), Curaçao, the Netherlands and St. Maarten. Reference is made to Annex A for the overview of Aruba’s tax treaties regarding the mutual agreement procedure.

No peers have provided input on Aruba’s implementation of the Action 14 Minimum Standard.

Aruba provided extensive answers in its questionnaire. Aruba was responsive in the course of the drafting of the peer review report by responding to requests for additional information, and provided further clarity where necessary. In addition, Aruba has provided the following information:

- MAP profile⁴
- MAP statistics⁵ for 2019 according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Aruba

The analysis of Aruba’s MAP caseload relates to the period starting on 1 January 2018 and ending on 31 December 2019 (“**Statistics Reporting Period**”). According to the statistics provided by Aruba, its MAP caseload during this period was as follows:

2018-19	Opening Inventory 01/01/2018	Cases started	Cases closed	End inventory 31/12/2019
Attribution/allocation cases	0	0	0	0
Other cases	0	3	0	3
Total	0	3	0	3

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁶ Furthermore, the report depicts the changes adopted and plans shared by Aruba to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that Aruba 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 Aruba has entered into are available at: <https://verdragenbank.overheid.nl/en>. Reference is made to Annex A for the overview of Aruba’s tax treaties.
2. One of the six treaties concerns an internal regulation within the Kingdom of the Netherlands, which is called “Belastingregeling voor het Koninkrijk” (Internal tax regulation for the Kingdom of the Netherlands) and which applied between Aruba and the Netherlands Antilles Islands. On 10 October 2010 the Netherlands Antilles were dissolved, whereby some of the islands became municipalities of the Netherlands, while others enjoy internal self-government within the Kingdom of the Netherlands. Aruba continues to apply the internal tax regulation for the Kingdom of the Netherlands in relation to the Caribbean part of the Netherlands (Bonaire, Saba and St. Eustatius), Curaçao, the Netherlands and St. Maarten. Both regulations are considered reciprocal legislation which is applied between these jurisdictions instead of a tax treaty. Tax treaties can namely only be concluded by the Kingdom of the Netherlands, because only the Kingdom of the Netherlands is a subject of international law. The reciprocal legislation functions in practice as a treaty and also includes a provision regarding the mutual agreement procedure similar to Article 25 of the OECD Model Tax Convention.
3. This guidance was published in May 2020 and is available at (in Dutch and English): <https://www.impuesto.aw/map>.
4. Available at <https://www.oecd.org/tax/dispute/aruba-dispute-resolution-profile.pdf>.
5. The MAP statistics of Barbados are included in Annex B and C of this report.
6. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

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

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

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

Current situation of Aruba’s tax treaties

2. Out of Aruba’s six tax treaties, two contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.¹ Of the remaining four tax treaties, three do not contain the term “doubts” and one does not contain the term “interpretation” and its scope is limited to transfer pricing cases. For this reason, four treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. In that regard, Aruba reported that it considers itself able to enter into general MAP agreements in the absence of the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.

Anticipated modifications

Bilateral modifications

3. For those treaties, which do not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, Aruba reported it has no plans to update them via bilateral negotiations to be compliant with element A.1 as those treaties have a limited scope and very little practical effect. In addition, Aruba reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

4. No peer input was provided.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	Four out of six tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.	Where treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax, Aruba should request the inclusion of the required provision via bilateral negotiations. To this end, Aruba should put a plan in place on how it envisages updating these four treaties to include the required provision. In addition, Aruba should maintain its stated intention to include the required provision in all future tax treaties.

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

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

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

Aruba’s APA programme

6. Aruba does not have an APA programme, by which there is no possibility for providing roll-back of bilateral APAs to previous years.
7. No peer input was provided.

Anticipated modifications

8. Aruba indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for Improvement	Recommendations
[A.2]	-	-

Notes

1. These two treaties include the internal tax regulation of the Kingdom of the Netherlands that Aruba applies to the Caribbean part of the Netherlands, Curaçao, the Netherlands and St. Maarten.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).

References

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

Part B

Availability and access to MAP

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

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

9. 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 Aruba's tax treaties

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

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

11. The six treaties can in this respect be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	5
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request for transfer pricing adjustments, whereas the scope of the treaty also covers certain items of income concerning individuals.	1

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

- The relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the states (four treaties).
- The treaty concerns a treaty with a jurisdiction that is part of the Kingdom of the Netherlands, whereby residents of both jurisdictions hold the Dutch nationality (one treaty).

13. The treaty in the second row of the table concerns an “agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments”. The scope of MAP is limited to cases concerning transfer pricing adjustments not in accordance with the arm’s length principle. However, as the scope of application of the treaty is broader than just transfer pricing cases, it is considered not to be equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention.

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

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

15. The remaining tax treaty includes a three-year filing period for MAP requests, but MAP is only open to transfer pricing cases whereas the scope of the treaty is broader. The limitation of the filing period to the date of a transfer pricing adjustment is therefore considered not to be in line with this element.

Practical application

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

16. In all of Aruba’s tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Aruba reported that taxpayers are allowed to request MAP assistance and simultaneously seek to resolve the same dispute via domestically available judicial and administrative remedies. In addition, Aruba’s competent authority

is able to derogate in MAP from decisions of domestic courts. Conclusively, Aruba's competent authority can still enter into MAP agreements even if the issue under dispute has already been decided via domestic judicial and administrative remedies and where the agreement deviates from such court decisions. The finalisation of court proceedings thus has no influence on the ability of Aruba's competent authority to resolve MAP cases. Aruba's to-be-published MAP guidance clarifies that point. In addition, Aruba's MAP profile clearly states that the competent authority is not legally bound to follow a domestic court decision in the MAP and can deviate from a court decision. In this respect, Aruba reported that the same would be the case regarding an administrative appeal.

Anticipated modifications

Bilateral modifications

17. Aruba reported that for the tax treaty that does not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, it has no plan to update it via bilateral negotiations with a view to be compliant with element B.1 as the treaty has a limited scope and very little practical effect. In addition, Aruba reported it will seek to include Article 25(1) of the OECD Model Tax Convention, as it read after the adoption of the Action 14 final report, in all of its future tax treaties.

Peer input

18. No peer input was provided.

Conclusion

	Areas for Improvement	Recommendations
[B.1]	One out of six tax treaties does not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention.	<p>For the treaty that does not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, Aruba should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ul style="list-style-type: none"> a. as amended in the Action 14 final report, or b. as it read prior to the adoption of Action 14 final report • 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. <p>To this end, Aruba should put a plan in place on how it envisages updating the one treaty to include the required provision.</p> <p>In addition, Aruba should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.</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).

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

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

Domestic bilateral consultation or notification process in place

20. As discussed under element B.1, out of Aruba's six treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

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

Practical application

22. Aruba reported that since 1 January 2018 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified.

23. No peer input was provided.

Anticipated modifications

24. Aruba indicated that it will introduce a bilateral notification process for those situations where its competent authority considers an objection raised in a MAP request as being not justified.

Conclusion

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

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

26. None of Aruba's six tax treaties contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, five do not contain Article 9 at all. The remaining treaty does not contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention.²

27. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Aruba's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Aruba indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in its tax treaties.

Application of legal and administrative framework in practice

28. Aruba reported that since 1 January 2018, it has not received MAP requests concerning a transfer pricing case and therefore has not denied access to MAP in transfer pricing cases.

29. No peer input was provided.

Anticipated modifications

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

Conclusion

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

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

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

31. 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

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

Practical application

33. Aruba reported that since 1 January 2018 it has not received any MAP requests for cases concerning the application of anti-abuse provisions and therefore has not denied access to MAP in any cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

34. No peer input was provided.

Anticipated modifications

35. Aruba indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

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

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

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

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

*Legal and administrative framework**Audit settlements*

37. Aruba reported that under its domestic legislation it is possible that taxpayers and the tax administration enter into an audit settlement during the course of or after an audit has been finalised. Aruba further reported that in case of uncertainties in the application of its tax laws (which may arise in result of a tax audit), taxpayers and the tax authorities may enter into a settlement agreement. In this respect, Aruba reported that entering in such settlement agreements does not restrict MAP access and/or resolution of MAP cases, and that its competent authority can deviate from the decision taken in an audit settlement.

38. The guidance that explains the relationship between access to MAP and audit settlements can be found in paragraph 3 in the to-be-published Aruba's MAP guidance and is discussed in element B.10.

Administrative or statutory dispute settlement/resolution process

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

Practical application

40. Aruba reported that since 1 January 2018 it has not received any MAP requests for cases where the issue presented by the taxpayer had already been resolved through an audit settlement between the taxpayer and the tax administration.
41. No peer input was provided.

Anticipated modifications

42. Aruba indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

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

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

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

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

Legal framework on access to MAP and information to be submitted

44. The information and documentation Aruba requires taxpayers to include in a request for MAP assistance are discussed under element B.8.
45. Aruba reported that taxpayers must comply with requests for information within a reasonable period set by the TMCB while no specific timelines is applicable. In this respect, the to-be-published MAP guidance describes that taxpayers will be notified about the missing information within two months after the request from the taxpayer and need to submit within a period set by the TMCB. It further reported that a MAP request may be denied if the taxpayer does not comply with the request for information.

Practical application

46. Aruba reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that since 1 January 2018 it has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.
47. No peer input was provided.

Anticipated modifications

48. Aruba indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

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

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

Current situation of Aruba's tax treaties

50. Out of Aruba's six tax treaties, one contains a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.³ The remaining five tax treaties do not contain a provision that is based on or the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

51. For those five treaties this can be clarified by the fact that they have limited scope of application. This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention are not followed. As these treaties were intentionally negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, therefore, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention for those five treaties with a limited scope of application.

Anticipated modifications

Bilateral modifications

52. Aruba reported that it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties, unless the treaties concerned are limited in scope, such that there is justification for them not to contain Article 25(3), second sentence, of the OECD Model Tax Convention.

Peer input

53. No peer input was provided.

Conclusion

	Areas for Improvement	Recommendations
[B.7]	-	Aruba should maintain its stated intention to include the required provision in all future comprehensive tax treaties.

[B.8] Publish clear and comprehensive MAP guidance

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

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.

Aruba's MAP guidance

55. Since Aruba has not yet published MAP guidance, the information that the FTA MAP Forum agreed should be included in such guidance is not available. This concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayers should submit its MAP request.

Information and documentation to be included in a MAP request

56. 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.⁴ Aruba reported that the items that must be included in a request for MAP assistance are checked in the following list:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request

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

57. Due to the fact that Aruba has not issued MAP guidance, there is also no guidance on any of the above in Aruba.

Anticipated modifications

58. Aruba indicated currently being in the process of drafting its MAP guidance, and that such guidance would *inter alia* address the following items:

- contact information of the competent authority
- manner and form in which the taxpayer should submit its MAP request
- the specific information and documentation that should be included in a MAP request
- how the MAP functions in terms of timing and the role of the competent authorities
- information on availability of arbitration
- relationship with domestic available remedies
- access to MAP in transfer pricing cases, audit settlements, anti-abuse provisions, multilateral disputes, bona fide foreign-initiated self-adjustments and for multi-year resolution of cases
- implementation of MAP agreements
- rights and role of taxpayers in the process
- suspension of tax collection
- interest charges, refunds and penalties.

59. In addition, Aruba reported that it is also preparing an English translation of its MAP guidance.

Conclusion

	Areas for Improvement	Recommendations
[B.8]	There is no published MAP guidance.	Aruba should follow up on its stated intention to introduce and publish guidance on access to and use of MAP, and in particular include the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation and information that should be included in such a request. Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Aruba could follow its stated intention to include the items identified above.

[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.

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

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

61. As discussed under element B.8, Aruba has not yet published MAP guidance.

MAP profile

62. The MAP profile of Aruba is published on the website of the OECD. This MAP profile is complete and with detailed information as it already contains some information that is expected to be in the MAP guidance of Aruba.

Anticipated modifications

63. Aruba indicated that it does not anticipate any modifications in relation to element B.9.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	The MAP guidance is not publicly available.	Aruba should make its MAP guidance publicly available and easily accessible once it has been introduced. Furthermore, the MAP profile should be updated once Aruba's MAP guidance has been introduced.

[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.

64. 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

65. As previously discussed under element B.5, it is under Aruba's domestic law possible that taxpayers and the tax administration enter into audit settlements. As further discussed under element B.5, in case of uncertainties in the application of Aruba's tax laws (which may arise in result of a tax audit), taxpayers and the tax authorities may enter into a settlement agreement, and settlement agreements do not restrict MAP access and/or resolution of MAP cases. The relationship between access to MAP and audit settlements is described in paragraph 3 of Aruba's draft MAP guidance. Paragraph 3 describes that a MAP request will not be prevented by any pre-existing settlement agreement such as a settlement agreement that was entered into following an audit.

66. No peer input was provided.

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

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

68. No peer input was provided.

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

69. As Aruba does not have an internal administrative or statutory dispute settlement/resolution process in place, there is no need for notifying treaty partners of such process.

Anticipated modifications

70. Aruba indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	There is no published MAP guidance and access to MAP in cases where the outcome of an audit reflects an understanding between the auditors and the taxpayer is not described in any publicly available information.	Aruba should follow its stated intention to clarify in its MAP guidance to be published that taxpayers have access to MAP in cases of audit settlements.

Notes

1. These five treaties include the internal tax regulation of the Kingdom of the Netherlands that Aruba applies to the Caribbean part of the Netherlands, Curaçao, the Netherlands and St. Maarten.
2. The one treaty concerns the internal tax regulation of the Kingdom of the Netherlands that Aruba applies to the Caribbean part of the Netherlands, Curaçao, the Netherlands and St. Maarten.
3. The one treaty concerns the internal tax regulation of the Kingdom of the Netherlands that Aruba applies to the Caribbean part of the Netherlands, Curaçao, the Netherlands and St. Maarten.
4. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
5. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

References

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

Part C

Resolution of MAP cases

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

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

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

Current situation of Aruba's tax treaties

72. Out of Aruba's six tax treaties, five contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.¹ The remaining treaty does not contain such equivalent at all.

Anticipated modifications

Bilateral modifications

73. For the treaty that does not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, Aruba reported it has no plan to update it via bilateral negotiations to be compliant with element C.1 as the treaty has a limited scope and very little practical effect. In addition, Aruba reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

74. No peer input was provided.

Conclusion

	Areas for Improvement	Recommendations
[C.1]	One out of six tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.	For the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax, Aruba should request the inclusion of the required provision via bilateral negotiations. To this end, Aruba should put a plan in place on how it envisages updating the one treaty to include the required provision. In addition, Aruba should maintain its stated intention to include the required provision in all future tax treaties.

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

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

75. 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

76. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-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. Aruba joined in the Inclusive Framework in 2018. For this reason the statistics referred to are pre-2018 cases for cases that were pending on 31 December 2017, and post-2017 cases for cases that started on or after 1 January 2018. Aruba provided its MAP statistics for 2019 but not for 2018 pursuant to the MAP Statistics Reporting Framework within the given deadline. The statistics discussed below include both pre-2018 and post-2017 cases and they are attached to this report as Annex B and Annex C respectively² and should be considered jointly for an understanding of the MAP caseload of Aruba. With respect to post-2017 cases, Aruba reported having reached out to its MAP partner with a view to have their MAP statistics matching and that it could match its post-2017 MAP statistics with its MAP partner. In that regard, based on the information provided by Aruba’s MAP partner, its post-2017 MAP statistics actually match those of its treaty partner as reported by the latter.

Monitoring of MAP statistics

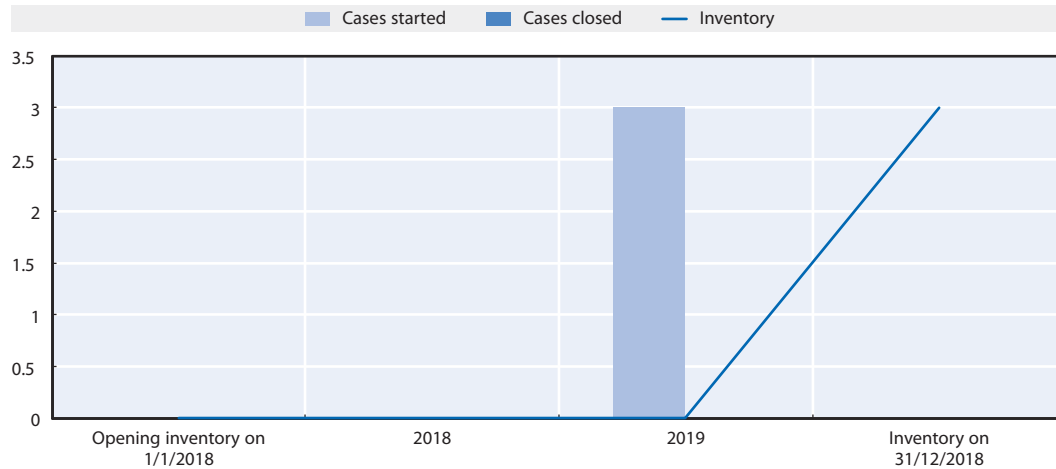
77. Aruba does not have a system in place with its treaty partners that communicates, monitors and manages the MAP caseload.

Analysis of Aruba's MAP caseload

Global overview

78. Figure C.1 shows Aruba's MAP caseload over the Statistics Reporting Period.

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



79. As of 1 January 2018 Aruba had no pending MAP cases in its inventory. At the end of the Statistics Reporting Period, Aruba had three MAP cases in its inventory, which are “other” MAP cases.

Pre-2018 cases

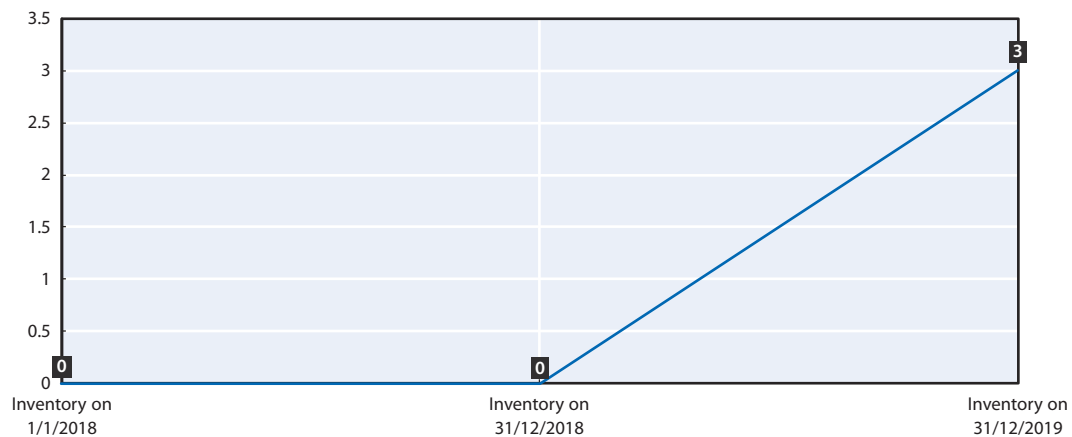
80. Aruba did not have any pre-2018 MAP cases during the Statistics Reporting Period.

Post-2017 cases

81. Figure C.2 shows the evolution of Aruba's post-2017 MAP cases over the Statistics Reporting Period.

Figure C.2. Evolution of Aruba's MAP inventory

Post-2017 cases



82. Three cases started during the Statistics Reporting Period, all of which concerned other cases. At the end of this period the total number of post-2017 cases in the inventory was three other cases. Conclusively, Aruba closed no post-2017 cases during the Statistics Reporting Period.

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

83. During the Statistics Reporting Period, Aruba closed no cases.

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

84. As mentioned above, Aruba closed no cases during the Statistics Reporting Period.

Peer input

85. No peer input was provided.

Anticipated modifications

86. Aruba indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for Improvement	Recommendations
[C.2]	MAP statistics for 2018 were not submitted.	Aruba should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.
	As Aruba closed no cases during the Statistics Reporting Period, it was at this stage not possible to evaluate whether Aruba's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	

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

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

87. 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 Aruba's competent authority

88. Under Aruba's tax treaties, the competent authority function is assigned to the Minister of Finance and Economic Affairs or an authorised representative of the Minister. This has been delegated to the TMCB. Aruba's competent authority currently has no staff. The TMCB is in the Ministry of Finance, Economic Affairs and Culture and is in charge of advising, preparing for, drafting and explaining tax and customs policies and legislation; assisting the Minister and the departments in covering the tax interests of Aruba in the Kingdom of the Netherlands in international and regional context; and participating in

collaboration with the Tax Authorities and the Import and Excise duties Authorities in multilateral consultations and development, coordination of activities.

Monitoring mechanism

89. Aruba reported that it considers the current resources available are sufficient and is willing to increase them when needed.

Practical application

MAP statistics

90. As discussed under element C.2, Aruba closed no MAP cases during the Statistics Reporting Period, by which there were no MAP statistics available to analyse the pursued 24-month average.

Peer input

91. No peer input was provided.

Anticipated modifications

92. Aruba indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for Improvement	Recommendations
[C.3]	-	Aruba should continue to monitor whether it has adequate resources in place to ensure that MAP cases are resolved in a timely, efficient and effective manner.

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

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

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

Functioning of staff in charge of MAP

94. Aruba reported that the TMCB when the TMCB receives a MAP request, it will handle the request and ask further details if necessary from the taxpayer and the staff member of the Aruba Tax Authorities that made the adjustment. Aruba further reported that the TMCB will take appropriate next steps (e.g. request further details, contact the

tax treaty partner, etc.) in accordance with the MAP guidance and provides advice to the Minister on the outcome of the MAP.

95. In addition, Aruba reported that the TMCB is not involved in tax audits as tax audits are handled by an audit team that is part of the Aruba Tax Authorities. Aruba further reported that as the TMCB is currently without staff, the tax specialists of the Aruba Tax Authorities who are not involved in tax audits are assisting the TMCB until new staff is acquired.

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

Practical application

97. No peer input was provided.

Anticipated modifications

98. Aruba indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

	Areas for Improvement	Recommendations
[C.4]	-	Aruba should continue to ensure that its competent authority continues has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Aruba 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.

99. 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 Aruba

100. As Aruba has only received a few MAP requests, it reported that at the time of review performance indicators have not yet been set for the staff in charge of MAP. Aruba however reported that it has general indicators for the staff of the Ministry of Finance, Economic Affairs and Culture that would apply to the staff of the competent authority.

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

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

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

Practical application

103. No Peer input was provided.

Anticipated modifications

104. Aruba reported that targets for evaluating work performance of MAP staff will be set in the future if necessary.

Conclusion

	Areas for Improvement	Recommendations
[C.5]	-	Aruba could consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes.

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

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

105. 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

106. Aruba's MAP profile clearly states that they have no domestic law limitations for including MAP arbitration in their tax treaties and its treaty policy allows to include MAP arbitration in its tax treaties.

Practical application

107. Aruba has not incorporated an arbitration clause in any of its six tax treaties as a final stage to the MAP.

Anticipated modifications

108. Aruba indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for Improvement	Recommendations
[C.6]	-	-

Notes

1. The five treaties include the internal tax regulation of the Kingdom of the Netherlands that Aruba applies to the Caribbean part of the Netherlands, Curaçao, the Netherlands and Saint Maarten.
2. For post-2017 cases, if the number of MAP cases in Aruba’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Aruba reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).

References

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

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

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

109. 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

110. Aruba reported that upward adjustments resulting from MAP can be taken into consideration without limitations if tax assessments have yet to be imposed, while it can be formalised only by means of an additional tax assessment if tax assessments have been imposed already. In that regard, Article 13(3) and 16(1) of the General Tax Code stipulates that such assessment can generally only be imposed within five years from the end of the year unless the taxpayer agrees to waive that period. However, Article 13(4) and 13(5) of the General Tax Code stipulates that for taxes levied by assessment, this period is extended to 10 years if the taxpayer failed to file a tax return or if he acted in bad faith and it is extended to 12 years with respect to foreign income items. In addition, Article 16(2) of the General Tax Code stipulates that for taxes levied by self-assessment, the Aruba Tax Authorities can impose additional tax assessments within 10 years from the end of the year (instead of general five years) if the taxpayer acted in bad faith. Aruba reported that if necessary, the Aruba Tax Authorities will rely on this extended period for purposes of implementing MAP agreements.

111. On downward adjustments resulting from MAP, Aruba reported that the Aruba Tax Authorities can take into consideration it without limitation if either the tax assessments have yet to be imposed or if objections or appeals are still pending, while any adjustments resulting from the MAP must be made ex officio (“ambtshalve”) if no objections or appeals are pending (i.e. the assessment is final). Aruba further reported that the general rule is that a request for lowering tax assessments ex officio must be filed within 5 years from the end of the year (article 32(3) General Tax Code), however the domestic statute of limitation of downward adjustments does not apply when the tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

112. Aruba’s to-be-published MAP guidance contains a section on outcome and implementation of the mutual consultation procedure. It describes that the taxpayer will be informed in writing as soon as possible about the outcome of the mutual consultation procedure, and if the mutual consultation procedure has led to an agreement between the competent authorities involved, then the taxpayer concerned in principle has the option of accepting or rejecting the result entirely.

Practical application

113. As Aruba closed no MAP cases during the Review Period, it was not possible to assess the implementation of MAP agreements by Aruba.

114. Aruba reported that it does not have a tracking mechanism in place to ensure that MAP agreements are implemented.

115. No peer input was provided.

Anticipated modifications

116. Aruba indicated that it intends to introduce a tracking mechanism when it receives MAP requests.

Conclusion

	Areas for Improvement	Recommendations
	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Aruba would have implemented all MAP agreements thus far.	
[D.1]	As will be discussed under element D.3 not all of Aruba's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to time limits in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in an Aruba's relevant tax treaty, prevent the implementation of a MAP agreement, Aruba should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Aruba should for clarity and transparency purposes notify the treaty partner thereof without delay.

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

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

117. 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

118. As discussed under element D.1, Aruba reported that there is no theoretical timeframe for implementation of mutual agreements reached but Aruba's tax authorities will generally follow up within two months.

Practical application

119. As Aruba closed no MAP cases during the Review Period, it was not possible to assess the timely implementation of MAP agreements by Aruba.

120. No peer input was provided.

Anticipated modifications

121. Aruba indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for Improvement	Recommendations
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented in Aruba, it was not yet possible to assess whether Aruba would have implemented all MAP agreements on a timely basis thus far.	

[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.

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

Legal framework and current situation of Aruba’s tax treaties

123. As discussed under element D.1, Aruba’s domestic legislation includes a statute of limitations of five years that may be extended if necessary for implementing MAP agreements, unless overridden by tax treaties.

124. Out of Aruba’s six tax treaties, five contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.¹ Furthermore, none of tax treaties contain such equivalent and also the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments. Additionally, one does not contain such equivalent or the alternative provisions.

*Anticipated modifications**Bilateral modifications*

125. For the treaty that does not contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, or both alternative provisions in Articles 9(1) and 7(2), Aruba reported it has no plan to update it via bilateral negotiations to be compliant with element D.3 as the treaty has a limited scope and very little practical effect. In addition, Aruba reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives in all of its future tax treaties.

Peer input

126. No peer input was provided.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	One out of six tax treaties contains neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2).	<p>For the treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax or both alternative provisions, Aruba should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, Aruba should put a plan in place on how it envisages updating the one treaty to include the required provision or its alternative.</p> <p>In addition, Aruba should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p>

Note

1. The five treaties include the internal tax regulation of the Kingdom of the Netherlands that Aruba applies to the Caribbean part of the Netherlands, Curaçao, the Netherlands and St. Maarten.

Reference

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

Summary

	Areas for Improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Four out of six tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.	<p>Where treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax, Aruba should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Aruba should put a plan in place on how it envisages updating these four treaties to include the required provision.</p> <p>In addition, Aruba should maintain its stated intention to include the required provision in all future tax treaties.</p>
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	One out of six tax treaties does not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention.	<p>For the treaty that does not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, Aruba should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ul style="list-style-type: none"> a. as amended in the Action 14 final report, or b. as it read prior to the adoption of Action 14 final report • 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. <p>To this end, Aruba should put a plan in place on how it envisages updating the one treaty to include the required provision.</p> <p>In addition, Aruba should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.</p>

	Areas for Improvement	Recommendations
[B.2]	All of the six treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Aruba should without further delay follow its stated intention to introduce a documented notification and/or consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Aruba should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.
[B.3]	Aruba reported that it will provide access to MAP in transfer pricing cases. Its competent authority, however did not receive any MAP request for such cases during the Review Period. Aruba is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.4]	Aruba reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Aruba is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	Aruba reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Aruba is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.6]	-	As Aruba has thus far not limited access to MAP in eligible cases when taxpayers have complied with Aruba's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	-	Aruba should maintain its stated intention to include the required provision in all future comprehensive tax treaties.
[B.8]	There is no published MAP guidance.	Aruba should follow up on its stated intention to introduce and publish guidance on access to and use of MAP, and in particular include the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation and information that should be included in such a request. Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Aruba could follow its stated intention to include the items identified above.
[B.9]	The MAP guidance is not publicly available.	Aruba should make its MAP guidance publicly available and easily accessible once it has been introduced. Furthermore, the MAP profile should be updated once Aruba's MAP guidance has been introduced.
[B.10]	There is no published MAP guidance and access to MAP in cases where the outcome of an audit reflects an understanding between the auditors and the taxpayer is not described in any publicly available information.	Aruba should follow its stated intention to clarify in its MAP guidance to be published that taxpayers have access to MAP in cases of audit settlements.

	Areas for Improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	One out of six tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.	For the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax, Aruba should request the inclusion of the required provision via bilateral negotiations. To this end, Aruba should put a plan in place on how it envisages updating the one treaty to include the required provision. In addition, Aruba should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	MAP statistics for 2018 were not submitted. As Aruba closed no cases during the Statistics Reporting Period, it was at this stage not possible to evaluate whether Aruba's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	Aruba should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.
[C.3]	-	Aruba should continue to monitor whether it has adequate resources in place to ensure that MAP cases are resolved in a timely, efficient and effective manner.
[C.4]	-	Aruba should continue to ensure that its competent authority continues has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Aruba would like to see reflected in future amendments to the treaty.
[C.5]	-	Aruba could consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Aruba would have implemented all MAP agreements thus far. As will be discussed under element D.3 not all of Aruba's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to time limits in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in an Aruba's relevant tax treaty, prevent the implementation of a MAP agreement, Aruba should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Aruba should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	As there was no MAP agreement reached during the Review Period that needed to be implemented in Aruba, it was not yet possible to assess whether Aruba would have implemented all MAP agreements on a timely basis thus far.	

	Areas for Improvement	Recommendations
[D.3]	One out of six tax treaties contains neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2).	<p>For the treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax or both alternative provisions, Aruba should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, Aruba should put a plan in place on how it envisages updating the one treaty to include the required provision or its alternative.</p> <p>In addition, Aruba should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p>

Annex A

Tax treaty network of Aruba

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

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1)	If no, please state reasons	Inclusion Art. 9(2) of the OECD MTC (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) of the OECD MTC?	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) of the OECD MTC	Arbitration				
		B.1	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6									
Denmark	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	Y	N	N	N	N	N				
Finland	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	Y	N	N	N	N	N				
Iceland	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	Y	N	N	N	N	N				
Netherlands	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	N				
St. Maarten	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	N				
Sweden	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	Y	Y	Y	Y	N	N				

Annex B

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

2016 MAP Statistics													
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2016	Number of pre-2017 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-2017 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
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	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	0	0	0	0	0	0	0	0	0	0	0	n.a.

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

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

- The reported number of MAP cases pending on 31 December 2016 was 23, which consists of 16 attribution/allocation cases and 7 other cases.
 - The reported number of MAP cases pending on 1 January 2017 was 31, which consists of 21 attribution/allocation cases and 10 other cases.
- In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of pre-2017 cases pending on per 1 January 2016 was corrected.

2018 MAP Statistics														
Category of cases	No. of pre-2017 cases in MAP inventory on 1 January 2018	Number of pre-2017 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2017 cases during the reporting period	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including disagreement to disagree	Any other outcome			
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.

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

- The reported number of MAP cases pending on 31 December 2017 was 19, which consists of 12 attribution/allocation cases and 7 other cases.
 - The reported number of MAP cases pending on 1 January 2018 was 15, which consists of 10 attribution/allocation cases and 5 other cases.
- In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of pre-2017 cases pending on per 1 January 2016 was corrected.

Annex C

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

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

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

- The reported number of MAP cases pending on 31 December 2016 was 19, which consists of 11 attribution/allocation cases and 8 other cases.
 - The reported number of MAP cases pending on 1 January 2017 was 20, which consists of 12 attribution/allocation cases and 8 other cases.
- In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of post-2016 cases received in 2016 was corrected.

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

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

- The reported number of MAP cases pending on 31 December 2017 was 25, which consists of 15 attribution/allocation cases and 10 other cases.
 - The reported number of MAP cases pending on 1 January 2018 was 26, which consists of 16 attribution/allocation cases and 10 other cases.
- In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of post-2015 cases received in 2017 was corrected.

Glossary

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

OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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



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