

**Inclusive Framework on BEPS: Action 14  
Making Dispute Resolution More Effective  
MAP Peer Review Report Stage 2**

**BEST PRACTICES**  
**Netherlands**



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Making Dispute Resolution More Effective  
MAP Peer Review Report Stage 2

# **BEST PRACTICES**

## **The Netherlands**



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*Abbreviations and acronyms*

<b>APA</b>	Advance Pricing Arrangement
<b>CGTP</b>	Coordination Group on Transfer Pricing
<b>FTA</b>	Forum on Tax Administration
<b>MAP</b>	Mutual Agreement Procedure
<b>OECD</b>	Organisation for Economic Co-operation and Development



## Introduction

The final report of BEPS Action 14: «Making Dispute Resolution Mechanisms More Effective» identified a number of best practices related to the three general objectives of the Action 14 Minimum Standard.

Paragraph 9 of the Terms of Reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective<sup>1</sup> stipulates that:

*The best practices are not part of the minimum standard and whether or not a jurisdiction has implemented the best practices will not be peer reviewed or monitored, nor will it affect the assessment of the assessed jurisdiction. Jurisdictions are free, however, to identify best practices they have adopted.*

The Netherlands has provided information and requested feedback by peers on how it has adopted best practices. In that regard, the FTA MAP Forum agreed on an optional best practices feedback form which peers have used to provide feedback on the Netherlands' adoption of the best practices.

The peer review process on the implementation of the Action 14 Minimum Standard consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by the Netherlands. This document contains a general overview of the adoption of best practices and comments by peers on the adoption of these best practices during stage 1 (period ranging from 1 January 2016 up to 31 December 2016) and stage 2 (ranging from 1 January 2017 up to 31 August 2018).

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<sup>1</sup> Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).





## *Part A*

### Preventing Disputes

#### [BP.1] Implement bilateral APA programmes

*Jurisdictions should implement bilateral APA programmes.*

1. APAs concluded bilaterally between competent authorities provide an increased level of certainty in both jurisdictions lessen the likelihood of double taxation and may proactively prevent transfer pricing disputes.

2. The Netherlands has implemented an APA programme, under which it is allowed to enter into unilateral, bilateral and multilateral APAs. The legal basis of this programme is the Decree of the Netherlands State Secretary of Finance of June 3, 2014 (DGB2014/3098).<sup>2</sup> The assignment of competence for entering into APAs is provided by Decree of the Netherlands State Secretary of Finance of June 3, 2014 (DGB 2014/296M).<sup>3</sup>

3. The Netherlands reported it does not charge any fees to taxpayers for a bilateral APA request.

Statistics relating to bilateral APAs are published on an annual basis on the website of the EU Joint Transfer Pricing Forum.<sup>4</sup> This does not only concern bilateral APAs with other EU Member States, but APAs on a worldwide basis.

4. One peer noted that they were aware of the Netherlands having implemented a bilateral APA programme.

#### [BP.2] Publish mutual agreements of a general nature

*Jurisdictions should have appropriate procedures in place to publish agreements reached by competent authorities on difficulties or doubts arising as to the interpretation or application of their tax treaties in appropriate cases.*

5. Agreements reached by competent authorities to resolve difficulties or doubts arising as to the interpretation or application of their tax treaties in relation to issues of a general nature which concern, or may concern, a category of taxpayers reflect the competent authorities' mutual understanding of the meaning of the convention and its

<sup>2</sup> Available at: [www.rijksoverheid.nl/documenten/bsluiten/2014/06/13/bsluitdgb-2014-3098](http://www.rijksoverheid.nl/documenten/bsluiten/2014/06/13/bsluitdgb-2014-3098).

<sup>3</sup> Available at: [www.rijksoverheid.nl/documenten/bsluiten/2014/06/13/bsluitdgb-2014-296m](http://www.rijksoverheid.nl/documenten/bsluiten/2014/06/13/bsluitdgb-2014-296m).

<sup>4</sup> Available at: [http://ec.europa.eu/taxation\\_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum\\_en](http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en). The most recent available statistics are up to 2016.

terms. As such agreements provide information that might be useful to prevent difficulties or doubts in the interpretation or application of tax treaty provisions, publication of these agreements is valuable.

6. The Netherlands reported it publishes agreements reached by competent authorities to resolve difficulties or doubts arising as to the interpretation or application of its tax treaties in relation to issues of a general nature. Such agreements are published in the Netherlands Government Gazette.<sup>5</sup> Such publication may also include agreements that regard a category of taxpayers. However, the outcome of the MAP process for individual cases are not published.

7. Peers did not provide input relating to this particular best practice.

### [BP3] Provide guidance on APAs

*Jurisdictions' published MAP guidance should provide guidance on APAs.*

8. Guidance on a jurisdiction's APA programme facilitates the use of that programme and creates awareness for taxpayers on how the APA process functions. As APAs may also prevent future disputes from arising, including information on APAs in a jurisdiction's MAP guidance is relevant.

9. As previously discussed under BP.1, the Netherlands has implemented an APA programme. The Netherlands has issued specific APA guidance in the Decree of the Netherlands State Secretary of Finance of June 3, 2014 (DGB2014/3098), which includes rules, guidelines and procedures how taxpayers can request for (unilateral, bilateral and multilateral) APAs and how the process of the request up until the conclusion of an APA is conducted. This also includes the specific information and documentation that taxpayers should include in an APA request.<sup>6</sup>

10. Peers did not provide input relating to this particular best practice.

### [BP.4] Develop "global awareness" of the audit/examination functions

*Jurisdictions should develop the "global awareness" of the audit/examination functions involved in international matters through the delivery of the Forum on Tax Administration's "Global Awareness Training Module" to appropriate personnel.*

11. Making audit/examination function of tax administrations that are involved in international matters aware of: (i) the potential for creating double taxation, (ii) the impact of a proposed adjustment on the tax base of one or more jurisdictions and (iii) the process and principles by which competing juridical claims are reconciled by competent authorities, may be useful to prevent disputes from arising. Using the Global Awareness Training Module developed by the Forum on Tax Administration (FTA) can be helpful in this respect.

<sup>5</sup> Available in Dutch at: <https://zoek.officielebekendmakingen.nl/zoeken/staatscourant>.

<sup>6</sup> Available at: [www.rijksoverheid.nl/documenten/besluiten/2014/06/13/besluitdgb-2014-3098](http://www.rijksoverheid.nl/documenten/besluiten/2014/06/13/besluitdgb-2014-3098).

12. The Netherlands reported that tax inspectors can request training at the tax academy of the Netherlands tax administration. Parts of the curriculum are issues related to interpretation and application of tax treaties. The Netherlands' tax administration also provides for training on the job, through the Coordination Group on Transfer Pricing (CGTP) or through its Knowledge Centre for International and European Tax Law.

13. One peer provided input and noted that the Netherlands' competent authority is a committed partner within the FTA MAP Forum and FTA Large Business Programme to raise awareness of the principles of the Global Awareness Training Module within its examination and competent authority functions.



## *Part B*

### Availability and access to MAP

#### [BP.5] Implement appropriate administrative measures to facilitate recourse to MAP

*Jurisdictions should implement appropriate administrative measures to facilitate recourse to the MAP to resolve treaty-related disputes, recognising the general principle that the choice of remedies should remain with the taxpayer.*

14. Under Article 25(1) of the OECD Model Tax Convention, the mutual agreement procedure is a dispute settlement procedure in annex to domestic available remedies and not a substitute for such remedies. Reference is made to paragraph 7 of the Commentary to Article 25 of the OECD Model Tax Convention, which specifies that the right to submit a MAP request is available to taxpayers *without depriving them of the ordinary legal remedies available*. Facilitating recourse to the MAP through appropriate administrative measures, under the general principle that the choice of remedies remains with taxpayers enables them to effectively resort to such dispute settlement procedure.

15. The Netherlands reported that taxpayers are in the Netherlands allowed to request MAP assistance and simultaneously seek to resolve the same dispute via domestically available judicial and administrative remedies. They are also offered the opportunity to request the Netherlands' competent authority to initiate early consultations with treaty partners under the MAP article, by which taxpayers are able to access MAP before they initiate remedies available under its domestic law or before such remedies are finalized. The Netherlands will generally discuss the case in MAP even when domestic proceedings are still pending. Where, however, a MAP agreement will be reached prior to the resolution of the case under these domestic available remedies, the Netherlands' competent authority requests taxpayers to end domestic proceedings as a prerequisite for implementing the MAP agreement reached.

16. The Netherlands further reported its competent authority is not bound by decisions of its domestic courts. Conclusively, the Netherlands' 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 such agreement deviates from such court decisions. In relation hereto, Article 7(3) of the EU Arbitration Convention<sup>7</sup> allows EU Member States not to apply the arbitration procedure as a supplement to the mutual agreement procedure, if they are pursuant to their domestic legislation not allowed to derogate from decisions of its judicial bodies. The provision shall, however, not apply if

<sup>7</sup> Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41990A0436:en:HTML>.

the taxpayer resident in that particular Member State has allowed the time provided to lodge an appeal to expire, or has withdrawn any such appeal before a decision has been delivered. As the Netherlands is not bound to decisions by its domestic courts, it has not made a unilateral declaration that it will apply this provision.

17. Two peers provided input in relation to this best practice. Both peers indicated that they are aware that although the formal initiation of the MAP in the Netherlands, with certain exceptions, is dependent on the finalisation of domestic judicial/administrative proceedings, it in practice initiates the MAP simultaneously with pending domestic remedies. One peer also noted that the Netherlands is allowed to deviate from decisions of its domestic courts.

### **[BP.6] Provide access to MAP for bona fide taxpayer-initiated foreign adjustments**

*Jurisdictions' published MAP guidance should provide that taxpayers will be allowed access to the MAP so that the competent authorities may resolve through consultation the double taxation that can arise in the case of bona fide taxpayer-initiated foreign adjustments.*

18. A taxpayer-initiated foreign adjustment is considered bona fide where it reflects the good faith effort of the taxpayer to report correctly, timely and properly the adjusted taxable income from a controlled transaction or the profits attributable to a permanent establishment with a view to reflect an arm's length result, and where the taxpayer has otherwise timely and properly fulfilled all of its obligations related to such taxable income or profits under the laws of the treaty partners. As such taxpayer-initiated foreign adjustments may lead to cases of double taxation, it is relevant that there is access to MAP for resolving these cases. Furthermore, specifying whether there is access to the MAP for these adjustments in a jurisdiction's MAP guidance also provides additional clarity.

19. The Netherlands reported it grants access to MAP in the case of double taxation resulting from bona fide taxpayer-initiated foreign adjustments. Its MAP guidance, however, does not include information relating hereto.

20. One peer provided input and mentioned that the Netherlands' competent authority has been amenable to considering cases involving bona fide taxpayer-initiated foreign adjustments in MAP on a case-by-case basis.

### **[BP.7] Provide guidance on multilateral MAPs**

*Jurisdictions' published MAP guidance should provide guidance on multilateral MAPs.*

21. In recent years, globalisation has created unique challenges for existing tax treaty dispute resolution mechanisms. Whilst the mutual agreement procedure provided for in Article 25 of the OECD Model Tax Convention has traditionally focused on the resolution of bilateral disputes, phenomena such as the adoption of regional and global value chains as well as the accelerated integration of national economies and markets have emphasised the need for effective mechanisms to resolve multi-jurisdictional tax disputes. In that

regard, it is for clarity purposes relevant that jurisdiction's MAP guidance includes information on availability and of access to multilateral MAPs.

22. The Netherlands' MAP guidance does not contain information on multilateral MAPs.

23. One peer indicated that in their experience the Netherlands' competent authority has been amenable to considering multilateral MAPs on a case-by-case basis.

#### [BP.8] Provide for suspension of collection procedures for pending MAP cases

*Jurisdictions should take appropriate measures to provide for a suspension of collections procedures during the period a MAP case is pending. Such a suspension of collections should be available, at a minimum, under the same conditions as apply to a person pursuing a domestic administrative or judicial remedy.*

24. If, following an adjustment, taxpayers immediately have to pay the tax due, whereas the same amount was already paid to the tax administration of the other jurisdiction involved, double taxation will in fact occur. As taxpayers may then face significant cash-flow issues, at least for the period the MAP case is pending, it is relevant that jurisdictions provide for suspension of collection procedure for this period under at least the same conditions as available for domestic remedies.

25. The Netherlands reported it provides for the suspension of collection procedures during the period a MAP case is pending. Information relating to this can be found in paragraph 25.2.4 of the general guidance on collection of taxes and in paragraph 8.1 of its MAP guidance. Paragraph 8.1 stipulates that upon request by the taxpayer a suspension of tax collection will be granted from the moment of submission of the MAP request up to the date the MAP process (and possibly arbitration procedure) has been completed. The suspension is thereby granted under the same conditions as apply to a person pursuing domestic administrative or judicial remedies. However, such suspension will only be granted if it is the Netherlands that caused the potential double taxation.

26. Specifically with respect to the EU Arbitration Convention, the Netherlands specified in Annex 3 of the final report on improving the functioning of the Arbitration Convention that taxpayers are allowed to request for a suspension of tax collection when filing a MAP request under this convention.<sup>8</sup>

27. Furthermore, the Netherlands has entered into a competent authority agreement with France and the United States, inter alia dealing with the suspension of tax collection during the period a MAP case is pending. Under the agreement with France, it is agreed that if a MAP request is submitted before tax authorities have collected the tax that is due, the competent authorities of the Netherlands and France are committed to suspend collection procedures during the course of the MAP. This, however, insofar as such suspension does not generate a risk that the underlying tax due may not be recovered. Pursuant to the agreement with the United States, collection of taxes is suspended until the MAP has been completed.

<sup>8</sup>[http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/final\\_report\\_ac\\_jtpf\\_002\\_2015\\_en\\_final\\_clean.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/final_report_ac_jtpf_002_2015_en_final_clean.pdf).



28. Peers did not provide input relating to this particular best practice.

## *Part C*

### Resolution of MAP cases

#### **[BP.9] Permit taxpayers to request multi-year resolution of recurring issues through the MAP**

*Jurisdictions should implement appropriate procedures to permit, in certain cases and after an initial tax assessment, requests made by taxpayer which are within the time period provided for in the tax treaty for the multi-year resolution through the MAP of recurring issues with respect to filed tax years, where the relevant facts and circumstances are the same and subject to the verification of such facts and circumstances on audit.*

29. In certain cases, a MAP request with respect to a specific adjustment to income may present recurring issues that may be relevant in previous or subsequent tax years. Allowing taxpayers to submit requests for multi-year resolution through MAP with respect to such recurring issues, where the relevant facts and circumstances are the same, may help avoid duplicative MAP requests and facilitate a more efficient use of competent authority resources.

30. The Netherlands reported that it has implemented procedures to permit taxpayers to request multi-year resolution of recurring issues through the MAP. Paragraph 2.5 of its MAP guidance defines what information and documentation taxpayers need to include in a MAP request, which specifically mentions that such request may concern multiple tax years.

31. Peers did not provide input relating to this particular best practice.

#### **[BP.10] Publish explanation of the relationship between the MAP and domestic remedies**

*Jurisdictions should publish an explanation of the relationship between the MAP and domestic law administrative and judicial remedies.*

32. As mentioned under BP.5, pursuant to Article 25(1) of the OECD Model Tax Convention taxpayers are allowed to submit a MAP request irrespective of available domestic remedies. This, however, does not further specify how to proceed if both available remedies are initiated and the case is dealt with in the bilateral phase of the MAP. Publicly available guidance on the relationship between the MAP and domestic remedies provides clarity to taxpayers as well as treaty partners.

33. The Netherlands included in paragraph 3 of its MAP guidance a general explanation of the availability of MAP before domestic law administrative and judicial remedies become available. There, however, is no specific guidance setting out the relationship between MAP and domestic available remedies, when both remedies are invoked or how the Netherlands will pursue the MAP if its domestic courts have already rendered a decision.

34. Peers did not provide input relating to this particular best practice.

### [BP.11] Provide guidance on consideration of interest and penalties in MAP

*Jurisdictions' published MAP guidance should provide guidance on the consideration of interest and penalties in the mutual agreement procedure.*

35. As interests and penalties may concern substantial amounts, providing clarity in a jurisdiction's MAP guidance on whether interest and penalties are in the scope of the MAP is relevant to ensure that a taxpayer is well-informed on this issue.

36. The Netherlands reported that its competent authority is by law allowed to deviate from its domestic legislation regarding interest charges and refunds in case of a mutual agreement procedure. Upon request it will grant taxpayers a deferral of such interest charges until the date on which both domestic and international procedures have been completed. The rules for deferral are similar to the rules for deferral when filing an objection against a tax assessment. As a matter of policy, the Netherlands will also seek to ensure that the assessment and collection of interest charged and paid by the other state match each other in relation to MAP.<sup>9</sup> Furthermore, the Netherlands aims at including a provision in its tax treaties dealing with interest charges and refunds in relation to MAP. So far it has in 10 tax treaties a phrase that reads:<sup>10</sup>

*“The competent authorities of the States may also agree, with respect to any agreement reached as a result of a mutual agreement procedure as meant in Article 27, if necessary contrary to their respective national legislation, that the State in which there is an additional tax charge as a result of the aforementioned agreement shall not impose any increases, surcharges, interest and costs with respect to this additional tax charge, if the other State, in which there is a corresponding reduction of tax as a result of the agreement refrains from the payment of any interest due with respect to such a reduction of tax.”*

37. In the case of penalties, the Netherlands reported that it will lower these if the amount of the tax adjustment is mitigated as a consequence of the MAP agreement.

38. As discussed under element BP.8 the Netherlands has entered into a competent authority agreement with France and the United States, which also deals with interest charges and refunds as part of the MAP process. The agreement with France stipulates that their competent authorities may also agree that with respect to any MAP agreement

<sup>9</sup> Available at:

[http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/profiles/tpprofile-nl.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/tpprofile-nl.pdf).

<sup>10</sup> This concerns treaties with: Albania, Bahrain, Barbados, Ethiopia, Ghana, Poland, Slovenia, Sint Maarten, Switzerland, Uganda, and the United Arab Emirates.

reached, and if necessary contrary to their respective national legislation, that the state in which there is an additional tax charge as a result of the MAP agreement shall not impose any surcharges, interest and costs with respect to this additional tax charge if the other state in which there is a corresponding reduction of tax as a result of the agreement refrains from the payment of any interest due with respect to such a reduction of tax. Concerning the agreement with the United States, it is stipulated that any tax that is due upon the completion of the MAP process shall not be subject to interest charges, and, if appropriate, surcharges or penalties to the extent of their applicable national law.

39. Peers did not provide input relating to this particular best practice.

### [BP.12] Include Article 9(2) of the OECD Model Tax Convention in tax treaties

*Jurisdictions should include paragraph 2 of Article 9 of the OECD Model Tax Convention in their tax treaties.*

40. Article 9(2) of the OECD Model Tax Convention allows competent authorities to make a corresponding adjustment to unilaterally eliminate double taxation arising from primary adjustments. Including this provision in tax treaties provides taxpayers the possibility to obtain the elimination of such double taxation via a unilateral corresponding adjustment.

41. Out of the Netherlands' 93 tax treaties 70 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their competent authorities to make a correlative adjustment in case a transfer pricing adjustment is made by the treaty partner.<sup>11</sup> Furthermore, 20 treaties do not contain such a provision.<sup>12</sup> The remaining three treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but are not considered being equivalent thereof for the following reasons:

- In one treaty a corresponding adjustment can only be made through the mutual agreement procedure
- In one treaty the granting of a corresponding adjustment is only optional, as the word "shall" is replaced by "may"
- In one treaty the last sentence of Article 9(2), allowing competent authorities to consult together, is not fully contained.

42. The Netherlands signed a new treaty with one treaty partner, for which currently no treaty is in existence and which contains a provision that is equivalent to Article 9(2)

<sup>11</sup> These 70 treaties include the treaties with Curacao and Sint Maarten. These are independent jurisdictions within the Kingdom of the Netherlands. Therefore reciprocal legislation applies between the Netherlands and these islands 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 between the Netherlands and these islands function 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. Therefore these were also taken into account.

<sup>12</sup> These 20 treaties include the treaty with former Czechoslovakia that the Netherlands continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that the Netherlands continues to apply to Tajikistan and the treaty with former Yugoslavia that the Netherlands continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia. Furthermore, these 20 treaties also include the taxing arrangement within the Kingdom of the Netherlands that is continued to be applied to Aruba. For this treaty the reciprocal legislation as described in the previous footnote also applies.

second sentence, of the OECD Model Tax Convention. The effect of this new has been reflected in the analysis above where they have relevance.

43. The Netherlands signed the Multilateral Instrument and has introduced it in its parliament on 19 December 2017. After the ratification process was completed, the Netherlands deposited its instrument of ratification on 29 March 2019. The Multilateral Instrument will for the Netherlands enter into force on 1 July 2019.

44. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention).

45. The Netherlands has not reserved, pursuant to Article 17(3), the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 23 tax treaties identified in paragraph 41 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, the Netherlands listed 18 as a covered tax agreement under the Multilateral Instrument and for six of these 18 treaties did it make a notification on the basis of Article 17(4) that they do not contain a provision described in Article 17(2).

46. With regard to those six treaties, three are not a signatory to the Multilateral Instrument, whereas two have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with the Netherlands already contains the equivalent of Article 9(2). The remaining treaty partner made a notification on the basis of Article 17(4). Therefore, at this stage, one of the 23 tax treaties identified above will be replaced by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

47. With regard to the remaining 12 treaties for which the Netherlands did not make a notification on the basis of Article 17(4), two are not a signatory to the Multilateral Instrument<sup>13</sup>, whereas one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with the Netherlands already contains the

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<sup>13</sup> This includes the treaty with the former USSR that the Netherlands continue to apply to Tajikistan.

equivalent of Article 9(2).<sup>14</sup> Therefore, at this stage, the remaining nine treaties will, upon its entry into force for this treaty, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in this treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1).<sup>15</sup>

48. Peers did not provide input relating to this particular best practice.

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<sup>14</sup> With respect to the treaty with former Czechoslovakia, which the Netherlands continues to apply to the Czech Republic and the Slovak Republic, the Czech Republic is one of the treaty partners that made a reservation on the basis of Article 17(3) of the Multilateral Instrument. The treaty mentioned regards this treaty. The treaty with former Czechoslovakia will therefore not be modified concerning the Czech Republic, but only as regards the Slovak Republic and only to the extent that the provision included in this treaty is incompatible with Article 17(1).

<sup>15</sup> These nine treaties include the treaty with former Yugoslavia that the Netherlands continues to apply to Bosnia and Herzegovina, Kosovo Montenegro and Serbia, but only as regards Serbia, since Bosnia and Herzegovina, Kosovo and Montenegro are not signatories to the Multilateral Instrument.



*Part D*

**Implementation of MAP Agreements**

49. There are no best practices for Part D.





## Glossary

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>MAP Guidance</b>	Decree of the Netherlands State Secretary of Finance (IFZ2008/248M) of 29 September 2008
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
<b>Terms of Reference</b>	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective



BETTER POLICIES FOR BETTER LIVES

**For more information:**

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