使争议解决机制更有效
第14项行动计划

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EXECUTIVE SUMMARY

Eliminating opportunities for cross-border tax avoidance and evasion and the effective and efficient prevention of double taxation are critical to building an international tax system that supports economic growth and a resilient global economy. Countries agree that the introduction of the measures developed to address base erosion and profit shifting pursuant to the BEPS Action Plan should not lead to unnecessary uncertainty for compliant taxpayers and to unintended double taxation. Improving dispute resolution mechanisms is therefore an integral component of the work on BEPS issues.

Article 25 of the OECD Model Tax Convention provides a mechanism, independent from the ordinary legal remedies available under domestic law, through which the competent authorities of the Contracting States may resolve differences or difficulties regarding the interpretation or application of the Convention on a mutually-agreed basis. This mechanism — the mutual agreement procedure (MAP) — is of fundamental importance to the proper application and interpretation of tax treaties, notably to ensure that taxpayers entitled to the benefits of the treaty are not subject to taxation by either of the Contracting States which is not in accordance with the terms of the treaty.

The measures developed under Action 14 of the BEPS Action Plan aim to strengthen the effectiveness and efficiency of the MAP process. They aim to minimize the risks of uncertainty and unintended double taxation by ensuring the consistent and proper implementation of tax treaties, including the effective and timely resolution of disputes regarding their interpretation or application through the mutual agreement procedure. These measures are underpinned by a strong political commitment to the effective and timely resolution of disputes through the mutual agreement procedure and to further progress to rapidly resolve disputes.

Through the adoption of this Report, countries have agreed to important changes in their approach to dispute resolution, in particular by having developed a minimum standard with respect to the resolution of treaty-related disputes, committed to its rapid implementation and agreed to ensure its effective implementation through the establishment of a robust peer-based monitoring mechanism that will report regularly through the Committee on Fiscal Affairs to the G20. The minimum standard will:

- Ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner;
- Ensure the implementation of administrative processes that promote the prevention and timely resolution of treaty-related disputes; and
- Ensure that taxpayers can access the MAP when eligible.

The minimum standard is complemented by a set of best practices. The monitoring of the implementation of the minimum standard will be carried out pursuant to detailed terms of reference and an assessment methodology to be developed in the context of the OECD/G20 BEPS Project in 2016.

In addition to the commitment to implement the minimum standard by all countries adhering to the outcomes of the BEPS Project, the following countries have declared their commitment to provide for mandatory binding MAP arbitration in their bilateral tax treaties as a mechanism to guarantee that treaty-
摘要

消除跨境逃税或避税的机会以及有效防止双重征税，对构建国际税收体系以一个支持经济
增长和发展保持全球经济的活力的国际税收体系至关重要。各国同意，在根据 BEPS 行动计划
引人有关措施以应对税基侵蚀和利润转移的同时，这些措施的运用应当综合考虑成带来不必要
的不确定性，或者导致双重征税。因此，创建更有效争议解决争议机制的 BEPS 相关工作不可分
割的一部分。

在各国国内法规定的一般性法律救济以外，OECD 税收协定范本第 25 条提供了另一种机
制，通过该机制缔约国主管机关可以在协商解决基础上解决有关相关解释与适用的分歧和困
难。这项机制（即相互协商程序，mutual agreement procedure，简称 MAP）对于税收协定的适
当应用和解释具有基础性的重要意义，它尤其能够保障有资格享受协定待遇的纳税人免于被缔
结协定的任何一方错误与协定条款不符的税收。

BEPS 第 14 项行动计划目的在于加强 MAP 的效力与效率。这些措施通过保证税收协定一
致且适当的执行，包括通过 MAP 及时有效地解决与协定解释或应用相关的争议，从而尽可能
地减少不确定性以及双重征税的风险。这些措施由强有力的政策承诺所支持，从而使通过相互协商
程序来保证实现税收协定一致且适当的执行，并且进一步推动争议的迅速解决。

本报告的采纳意味着各国已同意对其解决争议的方式做出重大改变，尤其是通过对落实解
决争议有关争议的最低标准的推行，各国承诺将致力于标准的快速迅速实施，并同意依托
构建强有力的各国相互监督体系，定期通过财政事务委员会将监督结果向 G20 进行报告，以
确保标准的有效实施。上述最低标准包括：

- 确保与 MAP 相关的协定义务被全面而善意地履行，且 MAP 案件得到及时解决；
- 确保行政程序的执行促进协定相关争议的预防和及时解决；
- 确保纳税人符合条件时可申请启动 MAP。

最低标准将会确保一系列的最佳实践。对实施最低标准的监督将会依据 2016 年
OECD/G20 在 BEPS 项目下开发的评估标准和评估方法进行。

参加 BEPS 项目的所有国家都表示将致力于落实最低标准。此外，以下国家还声明他们将
在双边税收协定中设置具有强制约束力的 MAP 仲裁条款，以保证协定争议在一定时限内予以
related disputes will be resolved within a specified timeframe: Australia, Austria, Belgium, Canada, France, Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the United States. This represents a major step forward as together these countries were involved in more than 90 percent of outstanding MAP cases at the end of 2013, as reported to the OECD.5

1. The Leaders' Declaration issued following the 7-8 June 2015 G7 Summit (available at https://www.g7germany.de/Content/DE_Anlagen/G8_G20/2015-06-08-g7-abschluss-eng.pdf?_blob=publicationFile) contained the following statement regarding MAP arbitration:

Moreover, we will strive to improve existing international information networks and cross-border cooperation on tax matters, including through a commitment to establish binding mandatory arbitration in order to ensure that the risk of double taxation does not act as a barrier to cross-border trade and investment. We support work done on binding arbitration as part of the BEPS project and we encourage others to join us in this important endeavour.

解决：澳大利亚、奥地利、比利时、加拿大、法国、德国、爱尔兰、意大利、日本、卢森堡、荷兰、新西兰、挪威、波兰、斯洛文尼亚、西班牙、瑞典、瑞士、英国和美国。这标志着有关工作向前迈进了重要的一步，因为根据 OECD 的报告，截至 2013 年底，这些国家涉及 90% 以上的尚未解决的 MAP 案例。

1. 2015 年 6 月 7-8 日 G7 峰会之后发布的领导人声明（参见 https://www.g7germany.de/Content/DE/_Anlagen/G8_C20/2015-06-08-g7-briefhun- en.pdf?__blob=publicationFile）包括以下有关 MAP 仲裁的内容：

另外，我们承诺提高现行信息网络和税务问题的跨境合作，包括承诺建立强制性仲裁体系以保证双方征税规则符合国际跨境贸易和投资。我们支持在强制性仲裁方面已完成的工作，这是 BEPS 项目的一部分，我们鼓励各方加入我们为此项重要的努力。

MAKING DISPUTE RESOLUTION MECHANISMS MORE EFFECTIVE

1. At the request of the G20, the OECD published its Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan)\(^1\) in July 2013. The BEPS Action Plan includes 15 actions to address BEPS in a comprehensive manner and sets deadlines to implement these actions.

2. The BEPS Action Plan recognises that the actions to counter BEPS must be complemented with actions that ensure certainty and predictability for business. The work on Action 14, which seeks to improve the effectiveness of the mutual agreement procedure (MAP) in resolving treaty-related disputes, is thus an integral component of the work on BEPS issues and reflects the comprehensive and holistic approach of the BEPS Action Plan. The relevant part of the Action Plan reads as follows:

   **The actions to counter BEPS must be complemented with actions that ensure certainty and predictability for business.** Work to improve the effectiveness of the mutual agreement procedure (MAP) will be an important complement to the work on BEPS issues. The interpretation and application of novel rules resulting from the work described above could introduce elements of uncertainty that should be minimised as much as possible. Work will therefore be undertaken in order to examine and address obstacles that prevent countries from resolving treaty-related disputes under the MAP. Consideration will also be given to supplementing the existing MAP provisions in tax treaties with a mandatory and binding arbitration provision.

   **ACTION 14**

   **Make dispute resolution mechanisms more effective**

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

3. This Report is the result of the work carried out on Action 14. The Report reflects a commitment by countries to implement a minimum standard on dispute resolution, consisting of specific measures to remove obstacles to an effective and efficient mutual agreement procedure. The Report also reflects agreement by countries to establish a monitoring mechanism to ensure that the commitments contained in the minimum standard are effectively satisfied. The minimum standard, complementary best practices and resulting changes to the OECD Model Tax Convention are set out in detail in Sections I.A and I.B of this Report. The framework for a peer-based monitoring mechanism is set out in Section I.C of this Report.

4. The minimum standard is constituted by specific measures that countries will take to ensure that they resolve treaty-related disputes in a timely, effective and efficient manner. The elements of the minimum standard are set out below in relation to the following three general objectives:

   - Countries should ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner;

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使争议解决机制更有效

1.  在 G20 的要求下，OECD 在 2013 年 7 月发布了税基侵蚀和利润转移 (BEPS) 行动计划。BEPS 行动计划包含 15 项行动计划以全面应对 BEPS 问题，并设定了实施这些行动计划的截止期限。

2.  BEPS 行动计划认为，限制税基侵蚀和利润转移的行动必须以确保商业活动确定性和可预见性的行为为补充。第 14 项行动计划的目的是提高相互协商程序 (MAP) 在解决协定相关争议方面的有效性，因此是 BEPS 工作不可分割的一部分，反映出 BEPS 行动计划的全面性和整体性。该项行动计划相关章节摘要如下：

遇到税基侵蚀和利润转移的行动必须以确保商业活动确定性和可预见性的行为为补充。
提高相互协商程序 (MAP) 有效性的行为将成为 BEPS 工作的重要补充。应尽量减少在上述 BEPS 工作中普遍的规则的解释和应用上可能带来的不确定性因素。因此，应将开展相关工作来寻找和应对各国在 MAP 下解决协定相关争议的障碍。在税收协定现行 MAP 条款的基础上，还应考虑另行补充具有强制约束力的仲裁规定。

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使争议解决机制更有效

为应对各国利用 MAP 解决协定争议中存在的障碍寻求解决方案之道，这些障碍包括大多数协定中未包括仲裁条款，以及在某些情况下纳税人无法提出 MAP 或仲裁。

3.  本报告是第 14 项行动计划的成果。它反映了各国对实施争议解决争议的最低标准的承诺。该最低标准包含了为消除 MAP 中遇到的障碍而采取的具体措施。报告还反映了各国同意建立监督体系确保有效落实最低标准。报告的 I A 和 I B 部分具体描述最低标准、补充性的最佳实践，以及 OECD 协定范本的相应变化。LC 部分将介绍带有同级审议性质的监督体系。

4.  最低标准由若干具体措施组成，各国将落实这些措施，以确保协定相关争议得到及时和有效的解决。最低标准有以下三项总体目标：

- 各国应确保与 MAP 相关的协定案和被全面而善意地履行。MAP 案例得到及时解决：

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\[\text{http://www.oecd.org/cpfs/BEPSArmonPlan.pdf} \]
Countries should ensure that administrative processes promote the prevention and timely resolution of treaty-related disputes; and

Countries should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 can access the mutual agreement procedure.

5. The specific measures that are part of the minimum standard are accompanied by explanations and, in some cases, changes to the OECD Model Tax Convention (changes to the existing text of the OECD Model Tax Convention appear in **bold italics** for additions and strikethrough for deletions). Other changes to the Commentary of the OECD Model Tax Convention will be drafted as part of the next update to the OECD Model Tax Convention in order to reflect the conclusions of this Report.

6. The elements of the minimum standard (which are included in boxes in this Report) have been formulated to reflect clear, objective criteria that will be susceptible to assessment and review in the monitoring process. As indicated in Section I.C, future work to develop the monitoring mechanism will include elaboration of (i) the Terms of Reference that will be used by peers to evaluate implementation of the minimum standard and (ii) the Assessment Methodology that will be used for the purposes of such monitoring.

7. The conclusions of the work on Action 14 also reflect the agreement that certain responses to the obstacles that prevent the resolution of treaty-related disputes through the mutual agreement procedure are more appropriately presented as best practices, in general because, unlike the elements of the minimum standard, these best practices have a subjective or qualitative character that could not readily be monitored or evaluated or because not all OECD and G20 countries are willing to commit to them at this stage. These best practices are therefore not part of the minimum standard. The best practices are accompanied by explanations and, in some cases, changes to the OECD Model Tax Convention.

8. Finally, the agreement to a minimum standard that will make tax treaty dispute resolution mechanisms more effective is complemented by the commitment, by a number of countries, to adopt mandatory binding arbitration. Whilst there is currently no consensus among all OECD and G20 countries on the adoption of mandatory binding arbitration as a mechanism to ensure the timely resolution of MAP cases, a significant group of countries has committed to adopt and implement mandatory binding arbitration. This commitment to MAP arbitration is set out in Section II of this Report.

I. MINIMUM STANDARD, BEST PRACTICES AND MONITORING PROCESS

A. Elements of a minimum standard to ensure the timely, effective and efficient resolution of treaty-related disputes

1. Countries should ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner

9. The dispute resolution mechanism provided by Article 25 (Mutual Agreement Procedure) of the OECD Model Tax Convention forms an integral and essential part of the obligations assumed by a Contracting State in entering in to a tax treaty; the provisions of Article 25 must be fully implemented in good faith, in accordance with its terms and in the light of the object and purpose of tax treaties. The elements of the minimum standard set out in Section I.A.1 are intended to ensure the full implementation of treaty obligations related to the mutual agreement procedure and the timely resolution of MAP cases.
各国应确保征管程序能够促进协定相关争议的预防和及时解决；

各国应确保符合第 25 条第 1 款要求的纳税人可申请启动相互协商程序。

5. 作为最低标准组成部分的具体措施附有解释，而且在部分情况下附有 OECD 协定范本的修改（对现行 OECD 协定范本的文字添加以粗体字显示，文字删除以中线字显示）。在 OECD 协定范本的下一次更新中将规定对 OECD 协定范本注释进行的其他修改以体现本报告的结论。

6. 作为最低标准措施（包含在报告第 1 条中的）的制定体现了清晰和客观的标准，从而将便于在监督过程中被加以评估和复核。如第 4.1 项所述，为建立完善监督体系而需要开展的下一步工作包括对两部分内容的细化：（a）各国相互评估最低标准执行情况时将使用的评估标准和（b）实施监督时将使用的评估方法。

7. 第 14 项行动报告的结论也体现出，各国同意一些针对 MAP 解决协定相关争议之障碍的特定条款更适合列示为最佳实践。因为总体来看，与最低标准的措施不同，这些最佳实践具有主观性或非定量的特征。不适合被监督或评估，或者因为在这个阶段并非所有 OECD 和 G20 成员国都愿意对此模式作出实施承诺。因此最佳实践并不是最低标准的组成部分。最佳实践附有解释，而且在部分情况下附有 OECD 协定范本的修改。

8. 最后，各国同意实施最低标准以使税收协定的争议解决机制更为有效以外，作为补充，部分国家承诺将采用强制性仲裁体系。尽管目前 OECD 和 G20 国家对是否采用强制性仲裁来确保 MAP 案例的及时解决还没有达成一致，但是很多国家已经承诺将采用并实施强制性仲裁。相关内容位于本报告的第 II 部分。

I. 最低标准，最佳实践和监督程序

A. 确保协定相关争议得到及时有效解决的最低标准的要素

1. 各国应确保与 MAP 相关的协定义务被全面而有效地履行，且 MAP 相关的案例被及时解决。

9. OECD 税收协定范本第 25 条（相互协商程序）规定的争议解决机制是税收协定缔约国应承担义务的重要部分；第 25 条的规定必须在符合税收协定精神和目的的基础上得到全面而善意的实施。1A1 章节中最低标准的措施即在确保 MAP 相关的协定义务得到全面履行，且 MAP 案例被及时解决。
1.1 Countries should include paragraphs 1 through 3 of Article 25 in their tax treaties, as interpreted in the Commentary and subject to the variations in these paragraphs provided for under elements 3.1 and 3.3 of the minimum standard; they should provide access to MAP in transfer pricing cases and should implement the resulting mutual agreements (e.g. by making appropriate adjustments to the tax assessed).

10. Paragraphs 1 through 3 of Article 25 provide a mechanism, independent from the ordinary legal remedies available under domestic law, through which the competent authorities of the Contracting States may resolve differences or difficulties regarding the interpretation or application of the Convention on a mutually-agreed basis. This mechanism—the mutual agreement procedure—is of fundamental importance to the proper application and interpretation of the Convention, notably to ensure that taxpayers entitled to the benefits of the Convention are not subject to taxation by either of the Contracting States which is not in accordance with the terms of the Convention. Countries should accordingly include in all of their tax treaties paragraphs 1 through 3 of Article 25, as interpreted in the Commentary (in particular paragraph 55 of the Commentary on Article 25, which refers to the situation of States whose domestic law prevent the Convention from being complemented on points which are not explicitly or at least implicitly dealt with in the Convention) and subject to the variations in these paragraphs provided for under elements 3.1 and 3.3 of the minimum standard.

11. In general, the economic double taxation that may result from the inclusion of profits of associated enterprises under paragraph 1 of Article 9 (Associated Enterprises) is not in accordance with the object and purpose of the Convention to eliminate double taxation. In particular, the failure to grant MAP access with respect to a treaty partner's transfer pricing adjustments, with a view to eliminating the economic double taxation that may follow from such an adjustment, will likely frustrate a primary objective of tax treaties. Countries should thus provide access to MAP in transfer pricing cases, in particular where, in particular, treaty provisions such as paragraph 2 of Article 9 or, in the absence of paragraph 2 of Article 9, provisions of domestic law enable Contracting States to consult to determine the appropriate amount of double taxation in accordance with treaty provisions such as paragraph 2 of Article 9 or, in the absence of paragraph 2 of Article 9, with provisions of domestic law and, countries should provide access to MAP. Countries should also implement any mutual agreement resulting from such these and other MAP cases.

12. It is intended to make amendments to the Commentary on Article 25 of the OECD Model Tax Convention as part of the next update of the OECD Model Tax Convention in order to clarify the treaty obligation to undertake to resolve by mutual agreement cases of taxation not in accordance with the Convention.

1.2 Countries should provide MAP access 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.

13. As provided in paragraph 26 of the Commentary on Article 25, in the absence of a special provision, there is no blanket rule denying MAP access in cases of perceived abuse. Paragraphs 9.1 to 9.5 of the Commentary on Article 1 are also relevant to the question of whether there is an obligation to provide MAP access in cases of abuse; paragraph 9.5 provides in particular that treaty benefits may be
1.1 如协定范本注释所述，同时根据最低标准的第 3.1 和 3.3 项措施对注释相关段落的修改建议，各国应在税收协定中纳入第 25 条的第 1 至 3 款；各国应在转让定价案例中提供 MAP 适用通道，并且应执行双边在 MAP 中达成的协议（例如对转让定价进行合理的调整）。

10. 独立于国内法下的一般性法律救济，第 25 条第 1 至第 3 款建立了一项机制，通过该机制缔约国主管机关可以在相互协商同意的基础上解决有关协定适用和解释的差异和困难。这项机制（即相互协商程序）对于税收协定的适当应用和解释具有基础性的重要意义，尤其能够确保享受协定待遇的纳税人免于被协定任何一方强迫与协定条款不符的税收。各国应相应在其所有的税收协定中纳入第 25 条的第 1 至第 3 款。这一做法的意义如第 25 条注释的第 55 段所描述，当缔约国双方的国内法不能对协定条款予以明确规定或至少仅模幅规定的问题做出补充规定时，同时应体现最低标准第 3.1 和 3.3 项措施对注释相关段落的修改建议。

11. 一般来说，如果缔约国一方根据协定第 9 条（特别条款）第 1 款将联属企业的利润纳入征税范围，可能会导致经济意义上的双重征税。这不符合协定避免双重征税的宗旨和目的。尤其，如果针对协定缔约方作出的转让定价调整不提供 MAP 通道以避免可能由此调整引起的双重征税，则有可能会阻碍税收协定主要宗旨的实现。因此各国应在转让定价案例中提供 MAP 通道，尤其在当协定的规定（如第 9 条第 2 款）下，或许在没有协定的规定（如或在没有协定第 9 条第 2 款的情下按照国内法的规定）允许缔约国可提供相应的调整，且发生当双方主管当局有必要通过协商确定合理的调整数额，且按照协定的规定第 9 条第 2 款（或在没有第 9 条第 2 款的情形下按照国内法的规定）来避免双重征税的情形下，各国应提供 MAP 通道。并且各国应执行在这些 MAP 其他 MAP 案例中达成的协议。

12. 计划在 OECD 协定范本的下一次更新中对第 25 条的注释进行修订，以明确各方在通过双边协商解决不符合协定规定的转让定价案例中应承担的协定义务。

1.2 当纳税人与进行纳税调整的税务机关针对协定的反滥用规定适用条件是否已满足，或者国内法下的反滥用规定是否和协定规定相冲突持有不同观点时，各国应提供 MAP 通道。

13. 如第 25 条的注释第 26 段所规定，在缺乏特别规定的前提下，对于协定滥用的情形并不存在拒绝提供 MAP 通道的一般性规定。协定范本第 1 条的注释第 9.b 至 9.d 段也有滥用情形下是否有关提供 MAP 通道这个问题相关；第 9.段特别规定，如果根据协定获得更为优惠的待遇与协定相关条款的宗旨和目的相违背，则可适用反滥用条款拒绝授予协定待遇。第 9.段
denied through the application of an anti-abuse provision where obtaining a more favourable treatment based on the applicable treaty would be contrary to the object and purpose of the relevant treaty provisions. The guiding principle in paragraph 9.5 will be incorporated into tax treaties through the general anti-abuse rule based on the principal purposes of transactions or arrangements (the principal purposes test or “PPT” rule) developed in the work on Action 6 of the BEPS Action Plan, according to which the benefits of a tax treaty should not be available where one of the principal purposes of arrangements or transactions is to secure a benefit under a tax treaty and obtaining that benefit in those circumstances would be contrary to the object and purpose of the relevant provisions of the tax treaty. The interpretation and/or application of that rule would clearly fall within the scope of the MAP.

14. In this regard, it should be emphasised that the obligation to provide access to the mutual agreement procedure pursuant to paragraph 1 of Article 25 is distinct from the obligation to endeavour to resolve the case pursuant to paragraph 2 of Article 25 and from any obligation to submit an issue to arbitration that may arise under treaties that contain an arbitration provision. The provisions of paragraph 1 give the taxpayer concerned the right to present a case to the competent authority where the taxpayer considers that there is or will be taxation not in accordance with the provisions of the Convention. To be admissible, a case presented under paragraph 1 must be presented within three years from the first notification of the action which gives rise to taxation not in accordance with the Convention. Once a case that meets the requirements of paragraph 1 has been accepted, the competent authority to which the case was presented must determine whether the taxpayer’s objection appears to be justified. If that is the case, that competent authority may be able to resolve the case unilaterally, e.g. where the taxation contrary to the provisions of the Convention is due in whole or in part to a measure taken in the State to which the taxpayer has presented its MAP case. A MAP case that has been accepted will only move to the second, bilateral stage of the mutual agreement procedure where it meets the two requirements provided by paragraph 2 of Article 25: (i) the taxpayer’s objection appears to be justified to the competent authority to which it has been presented and (ii) that competent authority is not itself able to arrive at a satisfactory unilateral solution. Finally, arbitration will only be available if the relevant treaty allows arbitration of the issue that the two competent authorities are subsequently unable to resolve under the bilateral stage of the procedure paragraph 2 of Article 25.

15. With regard to the threshold issue of the acceptance of a MAP case for consideration (i.e. MAP access), where there is a disagreement between the taxpayer and the competent authority to which its MAP case is presented as to whether the conditions for the application of a treaty anti-abuse rule (e.g. a treaty-based rule such as the PPT rule) have been met or whether the application of a domestic anti-abuse rule conflicts with the provisions of a treaty, taxpayers should be provided access to the mutual agreement procedure where they meet the requirements of paragraph 1 of Article 25. If a country would seek to limit or deny MAP access in all or certain of these cases, it should specifically and expressly agree on such limitations with its treaty partners, which should include a requirement to notify treaty partner competent authorities about such cases and the facts and circumstances involved.

16. The commitment under 1.2 of the minimum standard deals only with access to MAP, which, as explained in paragraph 14, is distinct from any obligation to endeavour to resolve the case pursuant to paragraph 2 of Article 25 and from any obligation to submit an issue to arbitration that may arise under treaties that contain an arbitration provision, whether mandatory or not. That commitment should therefore not be interpreted as including any implicit commitment with respect to these other obligations. Also, States whose practices may not currently conform to that element of the minimum standard agree to make that commitment with respect to new MAP requests.

17. It is intended to make amendments to the Commentary on Article 25 as part of the next update of the OECD Model Tax Convention in order to clarify the circumstances in which a Contracting State may deny access to the mutual agreement procedure.
的指导原则将一般反避税条款的形式纳入税收协定中。该条款系基于 BEPS 第 6 项行动计划的工作中与交易或安排主要目的的相关内容（即主要目的测试，也简称 PPT 规则）：根据 PPT 规则，如果获取协定优惠是安排或交易的主要目的之一，且取得该优惠与协定相关条款的宗旨和目的相违背，则该项优惠不能被授予。PPT 规则的解释和/或应用显然将涵盖在 MAP 的适用范围之中。

14. 在此应强调对三项义务加以区分：按照第 25 条第 1 款提供 MAP 通道的义务、按照第 25 条第 2 款尽力解决争议的义务，以及在有仲裁条款的协定下将相关案件提交仲裁的义务。第 1 款的规定赋予纳税人与其认为其符合协定规定的税收的情况下，将案件提交给主管当局的权利。为使这条权利，该项案件必须在不满足协定规定的争议解决的第一次通知之日任三年内提出。一旦符合第 1 款要求的该项案件被受理，主管当局即应决定纳税人异议是否合理。如不成立，主管当局将可以单边方式处理该项案件，例如，纳税人向主管当局提交案件，而不符合协定规定的全部或部分是由于被主管当局的措施而导致。已受理的 MAP 案件只有在满足第 25 条第 2 款的两个条件时才会提交至双边的相互协商阶段：(i) 接收纳税人的提交案件的主管当局审查纳税人的异议合理；(ii) 主管当局不能自行决定是否可以自行解决该案件。最后，只有当相应的协定规定了仲裁条款且在被主管当局无法按照第 25 条第 2 款下的程序在双边协商阶段解决争议的情况下，才可以启动仲裁方式解决争议。

15. 有关 MAP 案件的受理门槛（即 MAP 通道），当纳税人在被提交案件的主管当局针对协定的反避税条款（例如 PPT 规则）适用条件是否已满足，或者国内法下的反避税条款是否和协定规定相冲突持有不同观点时，如果纳税人符合第 25 条第 1 款情形的，纳税入应被提供 MAP 通道。如果一方国家希望在全部或部分的此类案件中限制或拒绝 MAP 的适用，其应与协定对方国家对某些限制作出具体且清晰的约定，应该包括通知协定对方国家主管当局有关此类案件和案件所涉及的事实情况的义务。

16. 低标准措施 1.2 项下的承诺仅针对 MAP 通道的提供，如之前第 14 段所述，这一义务不与按照第 25 条第 2 款尽力解决争议的义务，以及在有仲裁条款的协定下将相关案件提交仲裁的义务相区分，不论是否被法律所强制履行，因此，这项承诺不应被扩大解释成对其他义务的隐含性承诺。对于相关方可能尚未符合上述低标准措施的国家，其同意所作承诺系关于其未来所收到的新的 MAP 请求。

17. 计划在 OECD 约定范围的下一次更新中对第 25 条的注释进行修订，以明确在何种情形下约束国一方可拒绝提供 MAP 通道。
1.3 Countries should commit to a timely resolution of MAP cases: Countries commit to seek to resolve MAP cases within an average timeframe of 24 months. Countries' progress toward meeting that target will be periodically reviewed on the basis of the statistics prepared in accordance with the agreed reporting framework referred to in element 1.5.

18. Whilst the time taken to resolve a MAP case may vary according to its complexity, most competent authorities endeavour to reach bilateral agreement for the resolution of a MAP case within 24 months. Countries should thus commit to seek to resolve MAP cases within an average timeframe of 24 months. Countries' progress toward meeting that target will be periodically reviewed on the basis of the statistics prepared in accordance with the agreed reporting framework referred to below in element 1.5. This reporting framework will include agreed milestones for the initiation and conclusion/closing of a MAP case, as well as for other relevant stages of the MAP process. It is also contemplated that the work to develop the reporting framework will seek to establish agreed target timeframes for these different stages of the MAP process.

1.4 Countries should enhance their competent authority relationships and work collectively to improve the effectiveness of the MAP by becoming members of the Forum on Tax Administration MAP Forum (FTA MAP Forum).

19. The Forum on Tax Administration (FTA) is a subsidiary body of the OECD Committee on Fiscal Affairs and brings together Commissioners from 46 countries to develop on an equal footing a global response to tax administration issues in a collaborative fashion. The Forum on Tax Administration MAP Forum (FTA MAP Forum) is a forum of FTA participant country competent authorities created to deliberate on general matters affecting all participants' MAP programmes that has developed a multilateral strategic plan to collectively improve the effectiveness of the mutual agreement procedure in order to meet the needs of both governments and taxpayers and so assure the critical role of the MAP in the global tax environment. In light of the objectives of the FTA MAP Forum – and, in particular, in view of the role of the FTA MAP Forum in monitoring the implementation of the minimum standard set out in this Report (see element 1.6 below) – countries should become members of the FTA MAP Forum and participate fully in its work.

1.5 Countries should provide timely and complete reporting of MAP statistics, pursuant to an agreed reporting framework to be developed in co-ordination with the FTA MAP Forum.

20. Since 2006, the OECD has collected and published MAP statistics from OECD member countries and from non-OECD economies that agree to provide these statistics. These statistics provide transparency with respect to each reporting country's MAP programme as well as a comprehensive picture of the overall state of the MAP in all of the countries reporting statistics. In the context of the work on Action 14, MAP statistics should be expected to provide a tangible measure to evaluate the effects of the implementation of the minimum standard set out in this Report and will be an important component of the monitoring mechanism described in Section 1.6 of this Report. Countries should accordingly provide a timely and complete reporting of MAP statistics, pursuant to an agreed reporting framework that will be developed in

2. In addition to all OECD and G20 countries, FTA participating countries/jurisdictions include Colombia, Hong Kong China, Malaysia and Singapore.

1.3 各国应承诺及时解决 MAP 案例。各国承诺力求在平均 24 个月内解决 MAP 案例，各国为达成该目标取得的进展将被定期评估，该评估是基于按照第 1.5 项措施所确定的报告框架中的统计数据进行的。

18. 尽管一项 MAP 案件的解决时间可能因为复杂程度而不同，但是大多数主管当局都力求在 24 个月内就 MAP 案件的解决达成双边协议。各国因此应承诺其会尽力在平均 24 个月内解决 MAP 案件。各国为达成该目标取得的进展将被定期复核，该复核系基于按照以下第 1.5 项措施所确定的报告框架编制的统计数据。报告框架将会对各方认同的 MAP 案件启动、结束、以及其他有关阶段的时间节点做出明确。另计划在开发报告模板的工作中力求对这些不同环节设定各方认同的对应时间节点。

1.4 各国加入税收征管论坛下设的 MAP 论坛，以加强各国主管当局之间的联系，共同提高 MAP 的效力。

19. 税务征管论坛（FTA）是 OECD 财政事务委员会的下属部门，集合了 46 个国家的代表，以平等协作的方式对税务行政等项共同制定全球性的措施。MAP 论坛是税务征管论坛成员国主管当局创设的一项论坛，讨论对所有成员 MAP 安排的一般影响事象，并制定了一个多边战略计划，以共同提高 MAP 的有效性，满足政府和纳税人的需求，确保 MAP 在国际税收环境中的关键地位。根据 MAP 论坛的宗旨——尤其考虑到 MAP 论坛对本报告中最低标准执行的监督职能（参照后文第 1.5 项措施）——各国应成为 MAP 论坛的成员并全面参与论坛工作。

1.5 各国应按照 OECD 与 MAP 论坛协作开发的报告框架，及时、完整地报告 MAP 统计数据。

20. 自 2006 年起，OECD 收集并发布 MAP 统计数据，这些数据来自 OECD 成员国以及愿意向 OECD 提供数据的非 OECD 成员国。这些数据不仅清楚地反映了各国 MAP 安排的情况，也提供了所有这些国家有关 MAP 的整体概览。对于第 14 项行动计划的工作而言，MAP 的统计数据应被寄望于提供切实的工具以评估本报告中最低标准的执行情况，亦将是本报告第 1.5 部分涉及的监督体系的重要组成部分。各国应及时提交全面的 MAP 统计数据报告，该报告应

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*1. 除了所有 OECD 和 G20 成员国，税务征管论坛（FTA）参与国家和地区包括哥伦比亚、中国香港、马来西亚以及新加坡。

co-ordination with the FTA MAP Forum. As noted above, this reporting framework will include agreed milestones for the initiation and conclusion/closing of a MAP case, as well as for other relevant stages of the MAP process.

1.6 Countries should commit to have their compliance with the minimum standard reviewed by their peers in the context of the FTA MAP Forum.

21. As provided above in element 1.4 of the minimum standard, countries should become members of the FTA MAP Forum and participate fully in its work. Countries should further commit to have their compliance with the minimum standard reviewed by their peers (i.e. the other members of the FTA MAP Forum) through an agreed monitoring mechanism that will be developed in co-ordination with the FTA MAP Forum. A framework describing the general features of the monitoring mechanism is provided in Section 1.6 of this Report. Such monitoring is essential to ensure the meaningful implementation of the minimum standard provided in Section 1.4 of this Report.

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

22. Mandatory binding MAP arbitration has been included in a number of bilateral treaties following its introduction in paragraph 5 of Article 25 of the OECD Model Tax Convention in 2008. A footnote to paragraph 5 notes that national law, policy or administrative considerations may not allow or justify this type of dispute resolution and that States should only include the provision in the Convention where they conclude that it would be appropriate to do so, based on the factors described in paragraph 65 of the Commentary on Article 25. Based on the footnote and paragraph 65 of the Commentary on Article 25, it is unnecessary for countries to enter reservations (in the case of OECD member countries) or positions (in the case of non-OECD economies) on the provision. As a consequence, however, there is a lack of transparency as to countries’ positions with respect to MAP arbitration.

23. In order to provide transparency with respect to country positions on MAP arbitration, the footnote to paragraph 5 of Article 25 will be deleted and paragraph 65 of the Commentary on Article 25 will be appropriately amended when the OECD Model Tax Convention is next updated. Consequential changes to the Commentary on Article 25 would also be made at the same time as these amendments. These changes to the Commentary on Article 25 will include in particular suitable alternative provisions for those countries that prefer to limit the scope of MAP arbitration to an appropriately defined subset of MAP cases.

2. Countries should ensure that administrative processes promote the prevention and timely resolution of treaty-related disputes

24. Appropriate administrative processes and practices are important to ensure an environment in which competent authorities are able to fully and effectively carry out their mandate to take an objective view of treaty provisions and apply them in a fair and consistent manner to the facts and circumstances of each taxpayer’s specific case. The elements of the minimum standard set out in Section I.A.2 are intended to address a number of different obstacles to the prevention and timely resolution of disputes through the mutual agreement procedure that are related to the internal operations of a tax administration and the

4. See paragraph 31 of the Introduction to the OECD Model Tax Convention.

5. See paragraph 5 of the Introduction to the Non-OECD Economies’ Positions on the OECD Model Tax Convention.
根据 MAP 税务行政论坛协作开发的约定报告框架进行编制。正如以上所述，该报告框架将会对各方认同的 MAP 案件启动、终结，以及其他有关阶段的关键时点作出明确。

### 1.6 各国应承诺在 MAP 论坛下允许其他国家依照最低标准检查其遵从程度。

21. 如最低标准的第 1.4 项措施所规定，各国应成为 MAP 论坛的成员并全面参与论坛的工作。各国应进一步承诺允许其他国家（即 MAP 论坛的其他成员国）对其境最低标准的遵从程度进行检查，该检查将通过和 MAP 论坛协作开发的约定监督机制进行。本报告的 I.C. 部分里描述了该监督机制的一般特征。此监督机制是确保本报告 I.A 部分的最低标准得到实质性履行的基本要素。

### 1.7 各国应表明其对 MAP 仲裁的立场。

22. 具有强制约束力的 MAP 仲裁条款自 2008 年被纳入 OECD 协定框架第 25 条第 5 款以后，已由多个双边协议加入了该条款。第 5 款的条款表明，相关国家因国内法、政策或是行政规章可能并不允许这种类型的争端解决方式。所以在考虑这一条第 25 条的第 65 段注释所述影响因素的基础上，各国应在其认为合适的情况下在协定中设置该条款。根据上述条款以及第 25 条第 65 段注释，各国不必就此签署保留意见（如果该国系 OECD 成员国），或表明立场（如果该国系非 OECD 经济体）。然而，这导致了各国在 MAP 仲裁方面所持立场的透明度缺失。

23. 为了提高各国在 MAP 仲裁方面的立场透明度，在下次 OECD 协定框架的更新中将会删除第 25 条第 5 款的注释，同时相应修改第 25 条的第 65 段注释。第 25 条的其他注释也将同时被修订。对第 25 条的注释修订将特别包括适当的替代性可选条款，以回应某些国家希望能将仲裁制度的适用限定在一定范围内的 MAP 案例的需求。

### 2. 各国应确保其征管程序能够促进协定相关争议的预防和及时解决

24. 适当的征管程序与实践对于确保主管当局全面有效地履行职责至关重要。唯有才能使其客观地看待协定条款，并以公平一致的方式将协定规定应用于每位纳税人的情情况下。I.A.2 章节中最低标准的措施以应对在通过 MAP 来预防和及时解决争议的过程中存在的一系列障碍。

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1. 参见 OECD 协定范本导言部分的第 31 篇；
2. 参见非 OECD 经济体对 OECD 协定范本的立场介绍部分第 8 篇。
competent authority function, as well as to the transparency of procedures to use the MAP and to the approaches used by competent authorities to address proactively potential disputes.

2.1 **Countries should publish rules, guidelines and procedures to access and use the MAP and take appropriate measures to make such information available to taxpayers. Countries should ensure that their MAP guidance is clear and easily accessible to the public.**

25. Countries should develop and publish rules, guidelines and procedures for their MAP programmes, which should include guidance on how taxpayers may make requests for competent authority assistance. Such guidance should be drafted in clear and plain language and should be readily accessible to the public (e.g. made available on the websites of the tax administration and/or ministry of finance). Since such information may be of particular relevance where an adjustment may potentially involve issues within the scope of a tax treaty (e.g. where a transfer pricing adjustment is made with respect to a controlled transaction with an associated enterprise in a treaty jurisdiction), countries should take appropriate measures to ensure that their MAP programme published guidance is available to taxpayers in such cases.

2.2 **Countries should publish their country MAP profiles on a shared public platform (pursuant to an agreed template to be developed in co-ordination with the FTA MAP Forum).**

26. In order to promote the transparency and dissemination of MAP programme published guidance, countries should publish their country MAP profiles on a shared public platform (e.g. dedicated website). For these purposes, a “country MAP profile” should be understood as a document providing competent authority contact details, links to domestic MAP guidelines and other useful country-specific information regarding the MAP process. A template for the content of the country MAP profiles will be developed in co-ordination with the FTA MAP Forum. The development of this template will take into account the need for transparency with respect to country positions in relation to the best practices contained in this Report.

2.3 **Countries 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 direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy that the country would like to see reflected in future amendments to the treaty.**

27. Countries’ internal guidance and procedures for the operation of their MAP programmes should clearly establish that their staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty, based on the objective and consistent application of treaty provisions to the specific facts and circumstances of a taxpayer’s case, with a view to eliminating taxation not in accordance with the treaty. Such internal guidance and procedures should, in particular, provide that the competent authority does not require the approval or direction of the tax administration personnel who made the adjustments at issue to resolve a MAP case and that, in resolving a MAP case, the competent authority should not be influenced by considerations of the policy that the country would like to see adopted and reflected in future amendments to the treaty (or, more broadly, to the country’s preferred negotiating position with respect to all of its future treaties). The commitment to ensure that the staff in charge of MAP cases have the authority to resolve MAP cases pursuant to element 2.3 of the minimum standard must be understood to include a commitment to ensure the timely implementation of the agreements that are reached by competent authorities through the MAP process.
这些障碍有关税务行政工作的内部运行和主管机关职能，运用 MAP 流程的透明度，以及主管机关主动处理潜在争议所采取的方式。

2.1 各国应就 MAP 的申请启动和使用发布规则、指引及程序，并应采取适当措施使纳税人可以获取这些信息。各国应确保其 MAP 指引表达清晰且易于被公众获取。

25. 各国应制定和发布其 MAP 安排的规则、指引和程序，其中应包括纳税人如何向主管当局提出申请的指引，指引应使用清晰且通俗易懂的表述，并易于公众获取（例如在税务局/财政部网站上发布）。由于该类信息可能涉及税务协定范围内事项的调整（例如对与协定缔约国的关联企业之间的受控交易进行转让定价调整）尤为重要，各国应采取适当的措施以保证在这种情况下纳税人可以获取所有 MAP 安排所发布的指引。

2.2 各国应当在公开的和平台公开其 MAP 国家概况（按照与 MAP 论坛协定开发的约定模板编制）。

26. 为了普及 MAP 安排指引并提升其透明度，各国应当在公开的共享平台（如专属网站）公布其 MAP 国家概况。出于上述目的，“MAP 国家概况”文档应包括主管当局联系方式、国内 MAP 指引的获取途径以及其与 MAP 流程相关的国家的有关信息。MAP 国家概况的内容模板将由 MAP 论坛协作开发。模板的开发创建将考虑各国对本报告中最佳实践模式所持相关立场的透明度需要。

2.3 各国应确保负责 MAP 流程的工作人员具备按照所适用的税收协定条款规定解决 MAP 案件的权限，尤其是不需要获得做出调整的税务征管人员的批准或指导，也不应被国家对未来协定修订的政策预期所影响。

27. 各国对其 MAP 安排的内部指引及操作规程应明确规定，MAP 流程的主管人员有权按照所适用的税收协定条款规定，将协定规定客观、一致地应用于纳税人的真实情况来解决 MAP 案件，以期达到消除不符合协定规定的纳税措施的目的。该内部指引和操作规程应明确规定，主管当局不需要获得作出调整的税务征管人员的批准或指导来解决 MAP 案件，且在解决 MAP 案件过程中，主管当局不应被国家对未来协定修订的政策预期（或更宽泛的角度而言，国家在今后所有税收协定的磋商中所持立场）所影响。对确保 MAP 案件主管人员有权按照最低标准第 2.3 项措施解决 MAP 案件的承诺必须包含对确保及时实施主管当局通过 MAP 流程所达成协议的承诺。
2.4 **Countries 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.**

28. Countries' internal procedures for the operation of their MAP programmes should clearly establish that the performance of their competent authority functions and staff in charge of MAP processes shall not be evaluated based on criteria such as the amount of sustained audit adjustments or the maintenance of tax revenue. These internal procedures should instead provide that competent authority functions and staff in charge of MAP processes will be evaluated based on appropriate performance indicators, which could include—

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

2.5 **Countries should ensure that adequate resources are provided to the MAP function.**

29. Countries should ensure that adequate resources – including personnel, funding, training and other programme needs – are provided to the MAP function, in order to enable competent authorities to carry out their mandate to resolve cases of taxation not in accordance with the provisions of the Convention in a timely and effective manner.

2.6 **Countries should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If countries 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, countries may limit access to the MAP with respect to the matters resolved through that process. Countries 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.**

30. Countries' MAP programme guidance should make clear that audit settlements between the tax authorities and taxpayers do not preclude access to the mutual agreement procedure. In such cases, after the mutual agreement procedure has been initiated, the competent authority should independently consider whether the audit settlement would result for the taxpayer in taxation not in accordance with the provisions of the Convention, recognising the fundamental role of the competent authority in ensuring the proper application and interpretation of a country's tax treaties. Even where the competent authority would not consider the taxpayer's objection to be justified, it should provide appropriate notification of the case to the

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6. Element 2.6 of the minimum standard does not address transfer pricing safe harbours provided under a country's domestic law and no inference should accordingly be drawn with respect to such safe harbours.
2.4 各国不应以最终的税审调整额或者税收入额作为负责 MAP 的主管当局及人员的绩效指标。

28. 各国 MAP 安排的内部操作规程应明确规定，不得以最终的税收审查调整额或者税收入额作为负责 MAP 的主管当局及人员的绩效指标。内部操作规程应规定，按照合适的绩效指标对负责 MAP 的主管当局及人员进行考核，这些指标包括——

- MAP 案件的解决数量；
- —一致性（即所 MAP 案件中如果涉及相同的事实和相似情况的纳税人，协定的应用应保持公平一致）；
- 解决一例 MAP 案件所耗时间（同时应认识到解决一例 MAP 案件所需的时间可能会因其复杂程而有所不同，且不受主管当局控制的事项对所需时间也可能存在显著影响）。

2.5 各国应确保负责 MAP 工作的部门拥有足够的资源。

29. 为使主管当局能够履行职责，以及时有效地解决不符合协定规定的征税案件，各国应确保为 MAP 部门提供充足的资源——包括人员、资金、培训及其他所需项目。

2.6 各国应在其 MAP 指引中阐明税务机关与纳税人的审议和解不妨碍纳税人申请启动 MAP。若一国存在独立于审议或检查职能的行政或法定的争议和解解决程序，且该程序只在纳税人申请启动，国家可能会对经由该程序解决的事项适用 MAP 进行限制。各国应向协定缔约方国家通报其国内的行政或法定程序，并且应在其行政或法定程序的公开指引中明确说明该程序对 MAP 的影响。

30. 各国应在其 MAP 指引中阐明税务机关与纳税人的审议和解不妨碍纳税人申请启动 MAP。在此情况下，当 MAP 被启动后，主管当局应认识到其在保证税收协定的适当运用和解决方面的作用，并应独立判断审议和解是否会给纳税人带来不符合协定规定的征税结果。即使主管当局认为纳税人提出的异议不合理，其仍应向协定缔约方国主管当局进行适当的案情通知。

注：最低标准措施 2.6 并不针对一个国家国内法下的信托安排或保密规则，不针对安全港规则作相应调整。
competent authority of its treaty partner. It must be understood that the question of providing access to MAP in a case in which a taxpayer has reached an audit settlement with the tax authorities is distinct from the question of whether MAP arbitration is available (where the relevant treaty contains an arbitration provision); MAP arbitration will only be available with respect to a case that has been provided access to the mutual agreement procedure where the case satisfies the requirements of paragraph 2 of Article 25 (i.e. the competent authority to which the case is presented considers the taxpayer's objection to be justified), as well as those of the applicable arbitration provision.

31. Where, however, a country has in place an administrative or statutory dispute settlement or resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, that country may limit access to the mutual agreement procedure with respect to the matters resolved through that administrative or statutory process. This would include, for example, a settlement process that clearly provides for a voluntary request by the taxpayer for a final audit settlement and clearly ensures that this request is made to and decided upon by a body consisting of persons that have neither directly nor indirectly been involved in the audit itself and that have the authority to independently decide on the settlement in a way that ensures that the settlement is in line with the applicable legislation including any applicable treaty. Countries should in all cases notify their treaty partners of such administrative or statutory processes. Countries should in addition expressly address the effects of such administrative or statutory processes with respect to the MAP in their public guidance on these processes and in their public MAP programme guidance, in order to ensure that taxpayers who choose to make use of these processes are fully informed of the consequences as far as their access to the MAP is concerned.

32. It is expected that the issue of MAP access for cases in which there has been an audit settlement will be addressed in amendments to the Commentary on Article 25 when the OECD Model Tax Convention is next updated. These amendments would address in particular the policy considerations that support the provision of MAP access in such cases, notably the double taxation that may result where a taxpayer is required to give up the right to have questions related to the interpretation and application of a treaty resolved bilaterally through the mutual agreement procedure.

2.7 Countries 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 the 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.

33. Where a country has implemented a bilateral advance pricing arrangement (APA) programme (see best practice 4 below), situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The “roll-back” of the APA to these previous years may be helpful to prevent or resolve potential transfer pricing disputes. Countries with bilateral APA programmes should accordingly provide for the roll-back of APAs in appropriate cases 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. The roll-back of an APA will remain subject to the applicable time limits: those provided by Article 25 where a MAP request has been or will be made with respect to the earlier tax years; or those provided by the relevant domestic law (such as statutes of limitation for assessment) where no MAP request has been or will be made with respect to the earlier tax years. Downward adjustments should only be made after notification to or consultation with the other competent authority, in order to prevent an outcome that leads to non-taxation of all or part of the adjusted profits.
必须说明的是，在纳税人与税务机关达成审计和解的情形下是否提供 MAP 适用与 MAP 仲裁是否适用（在相关协定包括仲裁条款的情况下）是两个截然不同的问题。一案件只有在满足协定范本第 25 条第 2 款（即案件所涉的主管当局认为纳税人提出的要求是合理的）的前提下才适用 MAP 程序，并且符合所适用的仲裁条款条件的情况下，才能适用 MAP 仲裁机制。

31. 然而，一国在存在独立于审计或检查职能的行政或法定的争议和解解决程序，且该程序仅能由纳税人申请启动，国家可对由该行政或法定程序解决的争议在相互协商程序进行限制。例如，一项和解程序可能规定纳税人可自愿申请争议和解，但政府批准并主持和解的机构或人员未直接或间接参与争议审查，且该机构有权独立决定和解结果的确定和解结果的确定（包括税收协定的规定），则该争议和解程序将被排除在上述程序中。不论何种情况，各国都应向利益相关方国家通告其国内的此类程序，并且应在该程序的公开指引，以及 MAP 安排的公开指引中明确说明该程序对 MAP 的影响，以确保选择适用该程序的纳税人完全知晓其作出的选择对 MAP 适用性的影响结果。

32. 预期在 OECD 协定范本的下次更新中，将对协定范本第 25 条的注释进行修订，以评论有关已经审计和解的案件如何适用 MAP。相关修订将会特别指出在这些案例中选择适用 MAP 的政策考虑，尤其是双重征税方面的考虑，因为当税务机关被要求放弃通过双边相互协商程序解决争议和解和其他相关要求的权利时，可能会由此产生双重征税的问题。

### 2.7 提供双边预约定价安排（advance pricing arrangement, 简称 APA）的国家应规定，在遵循时间限制规定（如协定的法定时效）的前提下，如果以前税务年度中相关事实情况相同且真实性或可靠性可以被审计核实，可允许在适当的情形下将 APA 追溯适用于以前年度。

33. 当一国适用双边预约定价安排（APA）时（参照后文第 4 条最佳实践模式），可能会出现 AP 案件的事项与已审案的以前税务年度相关，但这些年度并不包括 APA 初始适用时间之内的情形。将 APA 追溯适用于上述以前税务年度可能有助于预防与解决潜在的转让定价争议。如果以前税务年度中相关事实情况相同且真实性或可靠性可以被审计核实，则提供双边预约定价安排（APA）的国家应允许在适当的情形下将 APA 追溯适用于以前年度。APA 的追溯适用仍应遵循相关的法定时效规定：协定范本第 25 条有关以前税务年度已经提出或将要提出 MAP 申请的相关规定，或有关以前年度没有提出或将要提出 MAP 申请的情况下，相关国内法的规定（如水平的法定时效）。
3. Countries should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 can access the mutual agreement procedure.

34. Certain of the main obstacles to the resolution of treaty-related disputes through the mutual agreement procedure are issues regarding the extent of the treaty obligation to provide MAP access. Such issues are likely to become more significant as a result of the work on BEPS, as more stringent rules are implemented and tax administrations are required to develop both practical experience and common interpretations in relation to new tax treaty and transfer pricing rules. The elements of the minimum standard set out in Section I.A.3 are intended to ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 have access to the mutual agreement procedure.

3.1 Both competent authorities should be made aware of MAP requests being submitted and should be able to give their views on whether the request is accepted or rejected. In order to achieve this, countries should either:

- amend paragraph 1 of Article 25 to permit a request for MAP assistance to be made to the competent authority of either Contracting State, or
- where a treaty does not permit a MAP request to be made to either Contracting State, implement a bilateral notification or consultation process for cases in which the competent authority to which the MAP case was presented does not consider the taxpayer's objection to be justified (such consultation shall not be interpreted as consultation as to how to resolve the case).

35. The competent authorities of both Contracting States should be made aware of the MAP requests that are submitted pursuant to paragraph 1 of Article 25 and have the opportunity to provide their views on whether the MAP request should be accepted or rejected and on whether the taxpayer's objection is considered to be justified. To achieve this objective, countries should take one of two alternative approaches: (i) amend paragraph 1 of Article 25 to permit a request for MAP assistance to be made to the competent authority of either Contracting State; or (ii) implement a bilateral notification or consultation process for cases with respect to which the competent authority to which the case is presented does not consider the taxpayer's objection to be justified (making clear that such notification or consultation should not be interpreted as consultation as to how to resolve the case).

36. The following changes will be made to paragraph 1 of Article 25 and the Commentary thereon to reflect these conclusions:

Replace paragraph 1 of Article 25 by the following:

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

Replace paragraph 7 of the Commentary on Article 25 by the following:

7. The rules laid down in paragraphs 1 and 2 provide for the elimination in a particular case of taxation which does not accord with the Convention. As is known, in such cases it is normally
3. 各国应确保第 25 条第 1 款要求的纳税人可申请启动相互协商程序

34. 通过相互协商程序解决协定有关争议的一些主要障碍是有关各国提供 MAP 通道的协定义务范围问题。由于在 REPS 工作中要求执行更严格的规则且税收征管部门被要求提供有关新税收协定及转让定价规则的实施经验，这些问题可能会变得更为显著。第 1A.3 章节中所述的最低标准措施旨在确保符合第 25 条第 1 款要求的纳税人能够申请启动相互协商程序。

3.1 双方主管当局都应明知会提交的 MAP 申请且应能够对是否受理或拒绝该请求提供意见。为了实现此目标，各国应以以下方式之一予以实现：

- 修订第 25 条第 1 款以允许 MAP 请求向任一协定缔约国的主管当局提出，或者
- 当协定不向任一协定缔约国提出 MAP 申请时，若收到 MAP 案情提交的主管当局不认为纳税人的异议是合理的，应向双边通知或磋商程序告知对方（此处的磋商不应用于对如何解决案件的磋商）。

35. 协定缔约国双方的主管当局都应明知会纳税人根据协定第 25 条第 1 款提交的 MAP 请求，并且应有权就该请求是否受理或拒绝，以及纳税人的异议是否合理发表意见。为实现此目标，各国应采取以下方式之一：(i) 修订第 25 条第 1 款以允许 MAP 请求向任一协定缔约国的主管当局提出，或者 (ii) 收到 MAP 案情提交的主管当局认为纳税人的异议是合理的，应实施一项双边通知或协商程序（明确认该通知或协商不应被理解为对如何解决案件的协商）。

36. 协定范本第 25 款第 1 款在其注释将会进行如下修改以反映上述结论：

替换第 25 条第 1 款如下：

1. 当一个认为，缔约国一方或者双方所采取的措施，导致或可能导致对其不符合本协定规定的规定时，可以考虑各缔约国内法所规定的救济方法，将其情况提交给任何一方。如果其为任一缔约国主管当局，或者如果其案件属于第 24 条第 1 款规定的财行，可以提交给本国的缔约国主管当局。该文件必须在不符合本协定规定的征税措施第一次通知之日起 3 年内提出。

替换第 25 条的第 7 段注释如下：

7. 第 1 款和第 2 款规定了因不提供具体案情中的不符合税收协定规定的规定，众所周知，在这种情况下，通常纳税人可以向税务法庭提出诉讼，他可以立即提出，或者
open to taxpayers to litigate in the tax court, either immediately or upon the dismissal of their objections by the taxation authorities. When taxation not in accordance with the Convention arises from an incorrect application of the Convention in both States, taxpayers are then obliged to litigate in each State, with all the disadvantages and uncertainties that such a situation entails. So paragraph 1 makes available to taxpayers affected, without depriving them of the ordinary legal remedies available, a procedure which is called the mutual agreement procedure because it is aimed, in its second stage, at resolving the dispute on an agreed basis, i.e. by agreement between competent authorities, the first stage being conducted exclusively in one of the Contracting States the State of residence (except where the procedure for the application of paragraph 1 of Article 24 is set in motion by the taxpayer in the State of which he is a national) from the presentation of the objection up to the decision taken regarding it by the competent authority on the matter.

Replace paragraphs 16 to 19 of the Commentary on Article 25 by the following:

16. To be admissible objections presented under paragraph 1 must first meet a twofold requirement expressly formulated in that paragraph: in principle, they must be presented to the competent authority of one of the Contracting States the taxpayer’s State of residence (except where the procedure for the application of paragraph 1 of Article 24 is set in motion by the taxpayer in the State of which he is a national); and they must be so presented within three years of the first notification of the action which gives rise to taxation which is not in accordance with the Convention. The Convention does not lay down any special rule as to the form of the objections. The competent authorities may prescribe special procedures which they feel to be appropriate. If no special procedure has been specified, the objections may be presented in the same way as objections regarding taxes are presented to the tax authorities of the State concerned.

17. The requirement laid on the taxpayer to present his case to the competent authority of one of the Contracting States is intended to reinforce the general principle that access to the mutual agreement procedure should be as widely available as possible and to provide flexibility. This clause is also intended to ensure that the decision as to whether a case should proceed to the second stage of the mutual agreement procedure (i.e. be discussed by the competent authorities of both Contracting States) is open to consideration by both competent authorities. Paragraph 1 permits a person to present his case to the competent authority of either Contracting State; it does not preclude a person from presenting his case to the competent authorities of both Contracting States at the same time (see paragraph 75 below). Where a person presents his case to the competent authorities of both Contracting States, he should appropriately inform both competent authorities, in order to facilitate a co-ordinated approach to the case of which he is a resident (except where the procedure for the application of paragraph 1 of Article 24 is set in motion by the taxpayer in the State of which he is a national) or of general application, regardless of whether the taxation objected to has been charged in that State or whether it has given rise to double taxation or not. If the taxpayer should have transferred his residence to the other Contracting State subsequently to the measure of taxation objected to, he must nevertheless still present his objection to the competent authority of the State in which he was a resident during the year in respect of which such taxation has been or is going to be charged.

18. However, in the case already alluded to where a person who is a national of one State but a resident of the other complains of having been subjected in that other State to an action or taxation which is discriminatory under paragraph 1 of Article 24, it appears more appropriate for obvious reasons to allow him, by way of exception to the general rule set forth above, to present his objection to the competent authority of the Contracting State of which he is a national. Finally, it is to the same competent authority that an objection has to be presented by a person who, while not being a
可以在税务当局驳回其异议后提出。如果在缔约国双方发生由于未正确执行而导致不符合协定规定的征税时，纳税人要分别在两个国家提出诉讼，这样纳税人在不利于自己的地位且结果难以预料。所以，第1款在不通知纳税人可利用的通常救济措施的情况下，使纳税人得以诉诸相互协商程序。该程序如此称呼，是由其目标是在程序的第二阶段，在双方同意的基础上即通过主管当局之间协商解决争议。第一阶段是指完全在缔约国一方税务机关内部进行的处理程序（除非纳税人在其国籍国要求适用协定第24条第1款程序），即自纳税人提出异议始至主管当局对其作出处理决定止。

替换第25条的第16至19段注释如下。

16. 为使按照第1款提出的异议得到受理，必须首先满足该款明确规定的要求：即异议主告必须提交任何一方缔约国纳税人向缔约国税务主管当局提出（除非纳税人在其本国国民的缔约国提出执行第24条第1款程序外），同时，必须在不符合协定规定的征税行为第一次通知后起3年内提出。关于所提异议的形式，协定并未列出特别规定，主管当局还可规定他们认为合适的特别程序。如果没有其他特别程序，该异议可以以关于税收的异议同样的方式提出有国家税务主管当局的。

17. 要求向纳税人提供将案情提交任何一方本人为该国的缔约国税务主管当局的权利是意在强化相互协商程序应用于尽可能广泛的范围这一措施，并提供灵活性。该权利的提供也会在确保双方税务主管当局可参与有关是否应将案情进行至第二阶段（即案情由双方缔约国主管当局协商的阶段）的决策。第1款允许一个人将案情提交给任何一方缔约国主管当局；这一规定不阻碍一个人将案情在不同时间提交给双方缔约国主管当局（参见后文第75段）。当一个人将案情提交给双方缔约国主管当局时，他应以适当的方式通知双方主管当局，以便利双方协商处理案情。（除非纳税人在其本国国民的缔约国提出执行第24条第1款程序外）是普遍使用的，无论有争议的税收是否在该国或另一国已被收税，及争议是否会引起双重收税问题。假设纳税人在提出异议的措施或征税实施后，将其损失转到缔约国另一方。他仍然要将案情提交给其税收已被或将在被征收所在年度时居住的国家的税务主管当局。

18. 然而，即发生面前已经提及情形，即当一个人是缔约国一方国民，但同时又是另一国居民，当其企图缔约国另一方采取的措施或征税按照第24条第1款规定属于歧视性待遇时，由于明显的原因，采取不同于一般处理方式的例外处理似乎是合适的。即应将异议提交该国的税务主管当局。最后，如果一个人不是缔约国任何一方居民，
resident of a Contracting State, is a national of a Contracting State, and whose case comes under paragraph 1 of Article 24.

49. On the other hand, Contracting States may, if they consider it preferable, give that taxpayers should not have the option of presenting their cases to the competent authority of either State, but should, in the first instance, be required to present their cases to the competent authority of the State of which they are resident. However, where a person who is a national of one State but a resident of the other complain of having been subjected in that other State to taxation (or any requirement connected therewith) which is discriminatory under paragraph 1 of Article 24, it appears more appropriate for obvious reasons to allow him, by way of exception to the alternative rule which obliges the taxpayer to present his case to the competent authority of his State of residence, to present his objection to the competent authority of the Contracting State of which he is a national. Similarly, it appears more appropriate that finally, it should be to the same competent authority that an objection has to be presented by a person who, while not being a resident of a Contracting State, is a national of a Contracting State, and whose case comes under paragraph 1 of Article 24. To accommodate the alternative rule and the exception for cases coming under paragraph 1 of Article 24, paragraph 1 would have to be modified as follows:

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident, or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

Contracting States that prefer this alternative rule should take appropriate measures to ensure broad access to the mutual agreement procedure and that the decision as to whether a case should proceed to the second stage of the mutual agreement procedure is appropriately considered by both competent authorities.

19. It may be noted that if the taxpayer becomes a resident of the other Contracting State subsequently to the taxation he considers not in accordance with the Convention, he must, under the alternative rule in paragraph 18 above, nevertheless still present his objection to the competent authority of the State of which he was a resident during the period in respect of which such taxation has been or will be charged.

Replace paragraphs 31 to 35 of the Commentary on Article 25 by the following:

31. In the first stage, which opens with the presentation of the taxpayer's objections, the procedure takes place exclusively at the level of dealings between him and the competent authorities of the State to which the case was presented of residence (except where the procedure for the application of paragraph 1 of Article 24 is set in motion by the taxpayer in the State of which he is a national). The provisions of paragraph 1 give the taxpayer concerned the right to apply to the competent authority of the State of which he is a resident, whether or not he has exhausted all the remedies available to him under the domestic law of each of the two States. On the other hand, the competent authority is under an obligation to consider whether the objection is justified and, if it appears to be justified, take action on it in one of the two forms provided for in paragraph 2.

31.1 The determination whether the objection "appears ... to be justified" requires the competent authority to which the case was presented to make a preliminary assessment of the
是缔约国一方的国民，并且其案情属于第24条第1款规定，也不将异议提交相同税收主管当局。

19. 另一方面，如果缔约国可以认为更合适，也可以赋予纳税人不应享有选择的权利，将其案情提交给缔约国任何一方的主管当局，而应该首先需要将其案情提交给纳税人为其居民的缔约国主管当局。但是，当一个人是缔约国一方的居民，但同时又是另一国的居民，当其拒绝对国另一方采取的征税（或对该个人提出的任何其他与征税相关的要求）按照第24条第1款规定属于歧视性待遇时，出于明显的原因，采取不同于上述要求纳税人将案情提交给其居民国主管当局的例外做法似乎更为合适，即异议提交给本国的税收主管当局。与之类似，如果一个人不是缔约国任何一方的居民，但是缔约国一方的国民，并且案情属于第24条第1款规定，应将异议提交相同税收主管当局的做法似乎更为合适。在这种情况下，为了满足适用本段替代性规定及其第24条第1款中例外做法的情形，第1款规定应改写如下：

1. 当一个人认为缔约国一方或双方的措施，导致或可能导致其不符合本协定规定的征税时，可以考虑缔约国内法律所规定的补救办法。将案情提交给本人为其居民的缔约国任何一方的税收主管当局，或者其案情属于第24条第1款规定的其他情形，应将其案情提交给本人为其居民国的税收主管当局。该项案情必须在不符合本协定规定的征税措施第一次通知之日3年内提出。

偏好使用这一替代性规定的缔约国应采取适当的措施以确保相互协商程序得到广泛的应用，并且各国应将案情进行至相互协商程序的第二阶段由双方主管当局以适当方式进行决策。

19. 可能需要注意的是，如果纳税人在其提出异议的征税实施后成为缔约国另一方的居民，在上述第18段中的替代性规定下，他必须将其案情提交给其税收已被征收或应被征收期间的他的居民国主管当局。

首段第25条的第31至35段注释如下：

31. 在第一阶段，以纳税人提交异议开始。程序仅要求在纳税人与被提交案情的其居民国家的税收主管当局之间的谈判中进行（除非纳税人在其国籍国要求实施第24条第1款程序外），第1款规定赋予有关纳税人权利，即无论其是否根据缔约国内法律规定的补救办法，都可以向任何一方国家的其居民国税收主管当局提出异议申请。另一方面，税收主管当局有义务考虑所提异议是否合理，如果认为异议有理，可以以第2款所规定的两种方式中的一种采取行动。

31.1 判断异议是否“看似”合理，需要被提交案情的主管当局对纳税人的异议进行初步评估，以确定缔约国双方的征税是否符合协定规定。如果在缔约国任何一方存
taxpayer's objection in order to determine whether the taxation in both Contracting States is consistent with the terms of the Convention. It is appropriate to consider that the objection is justified where there is, or it is reasonable to believe that there will be, in either of the Contracting States, taxation not in accordance with the Convention.

32. If the competent authority duly approached recognises that the complaint is justified and considers that the taxation complained of is due wholly or in part to a measure taken in that the taxpayer's State of residence, it must give the complainant satisfaction as speedily as possible by making such adjustments or allowing such reliefs as appear to be justified. In this situation, the issue can be resolved without moving beyond the first (unilateral) stage of resort to the mutual agreement procedure. On the other hand, it may be found useful to exchange views and information with the competent authority of the other Contracting State, in order, for example, to confirm a given interpretation of the Convention.

33. If, however, it appears to that competent authority that the taxation complained of is due wholly or in part to a measure taken in the other State, it will be incumbent on it, indeed, it will be its duty – as clearly appears by the terms of paragraph 2 – to set in motion the second (bilateral) stage of the mutual agreement procedure – preparatory to proceeding. It is important that the competent authority in question carry out this duty as quickly as possible, especially in cases where the profits of associated enterprises have been adjusted as a result of transfer pricing adjustments.

34. A taxpayer is entitled to present his case under paragraph 1 to the competent authority of either the State of which he is a resident (whether or not he may have made a claim or commenced litigation under the domestic law of one (or both) of the States). If litigation is pending in the State to which the claim is presented, the competent authority of that State of residence should not wait for the final adjudication, but should say whether it considers the case to be eligible for the mutual agreement procedure. If it so decides, it has to determine whether it is itself able to arrive at a satisfactory solution or whether the case has to be submitted to the competent authority of the other Contracting State. An application by a taxpayer to set the mutual agreement procedure in motion should not be rejected without good reason.

35. If a claim has been finally adjudicated by a court in either the State of residence, a taxpayer may wish even so to present or pursue a claim under the mutual agreement procedure. In some States, the competent authority may be able to arrive at a satisfactory solution which departs from the court decision. In other States, the competent authority is bound by the court decision. It may nevertheless present the case to the competent authority of the other Contracting State and ask the latter to take measures for avoiding double taxation.

3.2 Countries' published MAP guidance should identify the specific information and documentation that a taxpayer is required to submit with a request for MAP assistance. Countries should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information.

37. Element 2.1 of the minimum standard provides that countries should develop and publish rules, guidelines and procedures for their MAP programmes, which should include guidance on how taxpayers may make requests for competent authority assistance. This published MAP guidance should in particular identify the specific information and documentation that a taxpayer is required to submit with a request for MAP assistance. Where a taxpayer has provided the required information and documentation consistent with such guidance, a competent authority should not deny the taxpayer MAP access based on the argument that the taxpayer has provided insufficient information. The FTA MAP Forum will develop
在，或有合理理由相信将要存在，与协定不符的征税，则认为异议合理且适当的做法。

32. 如果按决定受理案件的税务主管当局认为申诉人申诉有理，并认为按所提出的税收问题，全部或部分是由于纳税人的居住国采取措施所致，纳税人应通过调整税收或给予适当的税收减免，给申诉人以满意的处理。在这种情况下，完全可以在不通过相互协商程序的第一（单边）阶段解决问题。另一方面，与缔约国对方税务主管当局交流观点是有效的，例如可以对协定规定作出明确解释。

33. 但是，如果税务主管当局认为，所申诉的税收问题全部或部分是由于另一国采取措施所致，便有责任适当启动相互协商程序的第二（双边）阶段。这一责任已在第2款中明确规定。重要的是，有关主管当局应尽快履行这一责任，特别是处理由于调整转让定价使相关企业的利润已被调整的情况。

34. 无论纳税人是否可以依照《税务协定一方（或多方）居民在法律上提出申诉或开始诉讼，仍然有权按照第1款规定将其案情提交《税务协定一方》税务主管当局。如果诉讼在提起申诉的一方国家尚未了结，税务主管当局也不应该等待最终裁决，而是要表态说明案件是否有理由诉诸相互协商程序。如果认为是有理由的，则要确定是否其本身便会作出令人满意的处理结果，还是要将案件提交缔约国另一方税务主管当局。不能在没有适当理由的情况下将纳税人要求启动相互协商程序的申请拒之门外。

35. 如果申诉在《税务协定一方国税》被法院最终裁决，纳税人可能仍然希望按相互协商程序提出或申诉案。在一些国家，税务主管当局可能作出与法庭判决不同的满意解决方案。在另外一些国家，税务主管当局要按照法院判决。然而，该税务主管当局可将案件提交缔约国另一方税务主管当局，请求采取措施避免双重征税。

### 3.2 各国发布的MAP指引应列明纳税人自提议MAP辅助申请时需要随同提交的具体信息和文件。若纳税人已提议所列信息，各国不应以信息不充分为由拒绝MAP申请。

36. 最高标准的第2.1.1项措施规定，各国应制定和发布其MAP安排的规则、指引和程序，其中应包括纳税人如何向主管当局请求援助的指引。上述所发布的MAP指引应列明纳税人应随同提交的辅助信息和文件，如果纳税人已按指引提交所列信息和文件，主管当局不应以信息不充分为由拒绝申请。MAP论坛将针对提交MAP辅助申请时应随同提交的具体信息和文件制定相关指南。
guidance on the specific information and documentation required to be submitted with a request for MAP assistance.

3.3 **Countries should include in their tax treaties the second sentence of paragraph 2 of Article 25 ("Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States"). Countries that cannot include the second sentence of paragraph 2 of Article 25 in their tax treaties should be willing to accept alternative treaty provisions that limit the time during which a Contracting State 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.**

38. The second sentence of paragraph 2 of Article 25 provides that any mutual agreement reached by the competent authorities pursuant to that paragraph "shall be implemented notwithstanding the time limits in the domestic law of the Contracting States". Paragraph 29 of the Commentary on Article 25 recognises that this sentence unequivocally states the obligation to implement such agreements and notes that impediments to implementation that exist at the time a tax treaty is entered into should generally be built into the terms of the agreement itself. Countries should accordingly include the second sentence of paragraph 2 of Article 25 in their tax treaties to ensure that domestic law time limits do not prevent the implementation of competent authority mutual agreements and thereby frustrate the objective of resolving cases of taxation not in accordance with the Convention.

39. Where a country cannot include the second sentence of paragraph 2 of Article 25 in its tax treaties (i.e. where a country has a reservation or position with respect to the second sentence of paragraph 2 of Article 25), it should be willing to accept the following alternative treaty provisions that limit the time during which a Contracting State 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. It is understood that such a country would satisfy this element of the minimum standard where these alternative treaty provisions are drafted to reflect the time limits for adjustments provided for in that country's domestic law; it is also understood that a country that prefers to include the second sentence of paragraph 2 of Article 25 would not be obliged to accept such alternative provisions.

**[In Article 7]:**

A Contracting State shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States after [bilaterally agreed period] from the end of the taxable year in which the profits would have been attributable to the permanent establishment. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default.

**[In Article 9]:**

3. A Contracting State shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but for reason of the conditions referred to in paragraph 1 have not so accrued after [bilateral agreed period] from the end of the taxable year in which the profits would have accrued to the enterprise. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default.
3.3 各国应在其税收协定中纳入协定范本第25条第2款的第2句（“达成的任何协议应予以执行，而不受各缔约国内法的任何时间限制”）。无法在税收协定中纳入协定范本第25条第2款的第2句的国家应接受替代条款。规定缔约国根据协定第9(1)条或第7(2)条可以进行调整的时间期限，以避免出现由于调整不及时而导致的不能通过MAP规避双重征税的情况。

38. 第25条第2款的第2句规定，任何由主管当局根据该条款达成的协议“应予以执行，而不受各缔约国内法的时间限制”。第25条的第29段注释认为，这句话毫无疑问地明确了执行协议的义务。在税收协定达成时就已存在的执行障碍一般应在协议条款中予以考虑。因此，各国应将第25条第2款的第2句纳入税收协定中，确保国内法下的时间限制不会妨碍主管当局达成之协议的执行，从而导致解决未按协定规定征税这一目标的无法实现。

39. 如果一国无法在税收协定中纳入协定范本第25条第2款的第2句，该国应接受替代条款，规定缔约国根据协定第9(1)条或第7(2)条可以进行调整的时间期限，以避免出现由于调整不及时而导致的不能通过MAP规避双重征税的情况。如果上述协定替代条款反映了该国国内法对调整的时间限制，应视为该国满足了最低标准；同时，选择将协定范本第25条第2款的第2句纳入协定的国家不负有接受上述替代条款的义务。

[第7条]:
在税务年度结束的[双方约定期间]之后，缔约国一方不得将归属于缔约国企业的常设机构的利润进行调整，即使利润原本应于该税务年度归属于该常设机构。本段的此条规定不适用于欺诈、重大过失或故意违法的情形。

[第9条]:
3. 在税务年度结束的[双方约定期间]之后，缔约国一方不得将企业应取得，但由于第1款所述原因未取得的利润计入该企业的所得，并据以征税，即使该利润本应由该企业在上述税务年度取得。本段的此条规定不适用于欺诈、重大过失或故意违法的情形。
40. The following changes to the Commentaries on Article 7 and Article 9 will provide the possibility of using such alternative provisions:

Replace paragraph 62 of the Commentary on Article 7 by the following:

62. Like paragraph 2 of Article 9, paragraph 3 leaves open the question whether there should be a period of time after the expiration of which a State would not be obliged to make an appropriate adjustment to the profits attributable to a permanent establishment following an upward revision of these profits in the other State. Some States consider that the commitment should be open-ended — in other words, that however many years the State making the initial adjustment has gone back, the enterprise should in equity be assured of an appropriate adjustment in the other State. Other States consider that an open-ended commitment of this sort is unreasonable as a matter of practical administration. This problem has not been dealt with in the text of either paragraph 2 of Article 9 or paragraph 3 but Contracting States are left free in bilateral conventions to include, if they wish, provisions dealing with the length of time during which a State should be obliged to make an appropriate adjustment (see on this point paragraphs 39, 40 and 41 of the Commentary on Article 25). Contracting States may also wish to address this issue through a provision limiting the length of time during which an adjustment may be made pursuant to paragraph 2 of Article 7; such a solution avoids the double taxation that may otherwise result where there is no adjustment in the other State pursuant to paragraph 3 of Article 7 following the first State’s adjustment pursuant to paragraph 2 of Article 7. Contracting States that wish to achieve that result may agree bilaterally to add the following paragraph after paragraph 4:

5. A Contracting State shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States after [bilaterally agreed period] from the end of the taxable year in which the profits would have been attributable to the permanent establishment. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default.

Replace paragraph 10 of the Commentary on Article 9 by the following:

10. The paragraph also leaves open the question whether there should be a period of time after the expiration of which State B would not be obliged to make an appropriate adjustment to the profits of enterprise Y following an upward revision of the profits of enterprise X in State A. Some States consider that State B’s commitment should be open-ended — in other words, that however many years State A goes back to revise assessments, enterprise Y should in equity be assured of an appropriate adjustment in State B. Other States consider that an open-ended commitment of this sort is unreasonable as a matter of practical administration. In the circumstances, therefore, this problem has not been dealt with in the text of the Article; but Contracting States are left free in bilateral conventions to include, if they wish, provisions dealing with the length of time during which State B is to be under obligation to make an appropriate adjustment (see on this point paragraphs 39, 40 and 41 of the Commentary on Article 25). Contracting States may also wish to address this issue through a provision limiting the length of time during which a primary adjustment may be made pursuant to paragraph 1 of Article 9; such a solution avoids the economic double taxation that may otherwise result where there is no corresponding adjustment following the primary adjustment. Contracting States that wish to achieve that result may agree bilaterally to add the following paragraph after paragraph 2:

3. A Contracting State shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but by reason of the conditions referred to in paragraph 1 have not so accrued, after [bilaterally agreed period]
40. 对协定书中第7条和第9条注释的下列修改将为替代条款的使用提供可能性：

替换第7条的第62段注释如下：

62. 与第9条第2款相似，在缔约国一方作出调整以增加归属于常设机构的利润之后，是否应该设定一段期限，该期限到期后，缔约国一方没有义务作出与上述相应的调整，第3款没有解决这一问题。一些国家认为作出相应调整的承诺不应设置时限——换而言之，不论一国作出向前追溯多少年期限的调整，从公平的角度而言，企业都应被确保可以在另一国得到相应的调整。其他国家则认为不设置时限的做法在操作上是不切实际的。这一问题在第6条第2款或第3款中都没有得到解决。但缔约国双方可以按照其意愿在双边协定中约定缔约国有义务进行相应调整的时期期限（参见第25条的第39、40及41段注释）。缔约国也可以对根据第7条第2款进行的调整设置时间期限以解决这一问题；这一做法避免了由于缔约国一方根据第7条第2款进行调整之后，缔约国另一方未根据第7条第3款作出相应调整从而可能产生的双重征税问题。希望实现此结果的缔约国双方可将如下段落添加到第4款之后：

5. 在税务年度结束的(双方约定期限)之后，缔约国一方不得对归属于缔约国企业常设机构的利润进行调整，即该利润本应在该税务年度归属于该常设机构。本段的此条规定不适用于欺诈、重大失误或故意违法的情形。

替换第9条的第10段注释如下：

10. 在A国作出调整以增加X企业的利润之后，是否应该设定一段期限，该期限到期后，B国将没有义务对Y企业的利润作出与上述相应的调整，该条款同样没有解决这一问题。一些国家认为B国作出相应调整的承诺不应设置时限——换而言之，不论A国作出向前追溯多少年期限的调整，从公平的角度而言，Y企业都应被确保可以在B国得到相应的调整。其他国家则认为不设置时限的做法在操作上是不切实际的。所以在此情况下，这一问题没有在条款中得到解决，但缔约国双方可以按照其意愿在双边协定中约定B国有义务进行相应调整的时间期限（参见第25条的第39、40及41段注释）。缔约国也可以对根据第9条第1款进行的初次调整设置时间期限以解决这一问题；这一做法避免了在初次调整后不进行相应调整可能在经济意义上产生的双重征税问题。希望实现此结果的缔约国双方可将如下段落添加到第2款之后：

3. 在税务年度结束的双方约定期限之后，缔约国一方不得将企业应取部，但由于第1款所述原因未取得的利润计入该企业的所得，并据以征税，即使该利润本应由
from the end of the taxable year in which the profits would have accrued to the enterprise. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or willful default.

41. Some countries may be willing to include the second sentence of paragraph 2 of Article 25 in their tax treaties subject to agreement to limit the time during which a Contracting State may make an adjustment pursuant to Article 9(1) or Article 7(2). This reflects the view of some countries that an open-ended commitment to make a corresponding adjustment is unreasonable as a matter of practical administration, but certainty that double taxation will be relieved is appropriate if an adjustment pursuant to Article 9(1) or Article 7(2) is made within a reasonable period. It is understood that a country would meet the minimum standard where the second sentence of paragraph 2 of Article 25 is included in its tax treaties in addition to the alternative provisions to Article 7 and Article 9 set out in paragraph 3926 of this Report.

B. Best practices

42. As noted above, the work mandated by Action 14 also identified a number of best practices related to the three general objectives of the minimum standard. These best practices, which are not part of the minimum standard, are set out below.

1. Countries should ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner

*Best practice 1:* Countries should include paragraph 2 of Article 9 in their tax treaties.

43. Most countries consider that the economic double taxation resulting from the inclusion of profits of associated enterprises under paragraph 1 of Article 9 is not in accordance with the object and purpose of tax treaties and falls within the scope of the mutual agreement procedure under Article 25. See generally paragraphs 10 to 12 of the Commentary on Article 25. Some countries, however, take the position that, in the absence of a treaty provision based on paragraph 2 of Article 9, they are not obliged to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment. Such a position frustrates a primary objective of tax treaties – the elimination of double taxation – and prevents bilateral consultation to determine appropriate transfer pricing adjustments. Element 1.1 of the minimum standard will ensure that access to MAP is provided for such transfer pricing cases. However, it would be more efficient if countries would also have the possibility to provide for corresponding adjustments unilaterally in cases in which they find the objection of the taxpayer to be justified. Countries should accordingly include paragraph 2 of Article 9 in their tax treaties, with the understanding that such a change is not intended to create any negative inference with respect to treaties that do not currently contain a provision based on paragraph 2 of Article 9.

2. Countries should ensure that administrative processes promote the prevention and timely resolution of treaty-related disputes

*Best practice 2:* Countries should have appropriate procedures in place to publish agreements reached pursuant to the authority provided by the first sentence of paragraph 3 of Article 25 “to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention” that affect the application of a treaty to all taxpayers or to a category of taxpayers (rather than to a specific taxpayer’s MAP case) where such agreements provide guidance that would be useful to prevent future disputes and where
该企业在上述税基年度取得。本段的此条款不适用于欺诈、重大过失或故意违法的情形。

41. 一些国家可能会愿意将第25条第2款的第2句纳入税收协定中，但须同时根据第9（1）条款和第7第（2）条款作出的调整所设定的时间限制。这反映了一些国家的观点，即对相应调整不设定时限的做法在操作上是不切实际的，但如果在合理的期限内根据第9（1）条款或第7第（2）条款进行调整，那么不产生双重征税的效果是可以适当确定的。一国将本报告第39段列出的协定第7条第9条的替代性规定，逗留第25条第2款的第2句同时纳入税收协定，应被视为达到最低标准。

B. 最佳实践

42. 如上所述，第14项行动计划的工作也提出了一系列与最低标准三项总体目标相关的最佳实践模式，其内容如下所示。最佳实践模式并不是最低标准的一部分。

1. 各国应确定与相互协商程序相关的协定条款是否被全面而善意地履行，且相互协商程序相关的案例被及时解决

第1项最佳实践：各国应将协定范本第9条第2款纳入税收协定。

43. 大部分国家认为，根据第8条第1款的调整更符合企业所得导致的经济性双重征税，违背了税收协定的宗旨和目的，属于第25条相互协商程序所涵盖的范围。大致内容请参考协定范本第25条的第10至12段注释。但有的国家认为，在税收协定中产生不适当协定范本第9条第2款的相关规定的情况下，这些国家并没有义务针对转让定价所设置的经济性双重征税作出相应调整或者提供相互协商程序的救济。这种立场有悖于税收协定产生双重征税的基本目标，并妨碍了通过双边磋商确定合理的转让定价调整。最低标准的第1.1项措施将确保此类转让定价案件提供MAP救济通道。但在某些情况下，如果国家认为纳税人的异议合理，并且有可能单边提供相应调整的，这将使企业的解决更有效率。各国应相应地将协定范本第9条第2款纳入其税收协定之中，但需意识到该建议并不希望此等改变会对那些目前尚未包含协定范本第9条第2款相关内容的税收协定造成负面影响。

2. 各国应确保其征管程序促进协定相关争议的预防和及时解决

第2项最佳实践：各国应当根据协定范本第25条第3款的第1句话“通过相互协商以解决在解释或实施协定时所产生的任何法律或行政”所达成的协议，如果该协议将影响所有纳税人工厂纳税人的（而非MAP案件中的某一特定纳税人）的协定适用，各国应当制定适当程序以公布上述协议，前提是
the competent authorities agree that such publication is consistent with principles of sound tax administration.

44. The authority provided by the first sentence of paragraph 3 of Article 25 "to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention" may be an effective tool to reinforce the consistent bilateral application of tax treaties. Competent authorities should accordingly be encouraged to make active use of that authority. Moreover, countries should have appropriate procedures in place to publish Article 25(3) mutual agreements which relate to general matters that affect the application of a treaty to all taxpayers or to a category of taxpayers (rather than to a specific taxpayer's MAP case), where these agreements provide guidance that would be useful to prevent future disputes and where the competent authorities agree that such publication is consistent with principles of sound tax administration. It should be understood that procedures for the publication of Article 25(3) mutual agreements must include appropriate provisions to protect the confidentiality of taxpayer information.

45. It is intended to make amendments to the Commentary on Articles 3 and 25 of the OECD Model Tax Convention as part of the next update of the OECD Model Tax Convention in order to clarify the legal status of a mutual agreement entered into under Article 25(3).

**Best practice 3:** Countries 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.

46. The FTA MAP Forum's Strategic Plan identifies a number of specific initiatives to address particular challenges faced by competent authorities with respect to resources, empowerment, relationships and posture, process improvements, relationship with the audit function, and responsibility and accountability. A country's participation in the FTA MAP Forum reflects a commitment by participating competent authorities to advance through these initiatives the goals reflected in the Strategic Plan and to be accountable for these efforts to their FTA MAP Forum colleagues.

47. The Strategic Plan notes that increasing the "global awareness" of the audit and examination functions involved in international matters is of central importance in preventing dysfunctional tax administration behaviours (e.g., unprincipled adjustments to non-resident companies) and avoiding the disputes that these behaviours can create. In this regard, the Strategic Plan provides: "All audit functions involved in adjusting taxpayer positions on international matters must be aware of (1) the potential for creating double taxation, (2) the impact of proposed adjustments on the tax base of one or more other jurisdictions, and (3) the processes and principles by which competing jurisdictional claims are reconciled by competent authorities." One of the several initiatives pursued by the FTA MAP Forum is thus to encourage the delivery of training on these matters, and the FTA has prepared and approved a "Global Awareness Training Module" that may be used for that purpose. Countries should seek to develop the global awareness of the audit and examination functions of their tax administrations, making appropriate use of the FTA's Global Awareness Training Module.

**Best practice 4:** Countries should implement bilateral APA programmes.

48. An advance pricing arrangement (APA) is an "arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g., method, comparables and appropriate adjustments thereon, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time". See paragraph 4.123 of the OECD Transfer Pricing

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该协议将为预防未来争议提供有益的指引，并且主管当局认可公开协议与健全税收管理的诸项原则相一致。

44. 协定范本第25条第3款的第1句话“通过相互协商以解决在解释或实施本协定时所发生的任何困难或疑义”，可能在强化税收协定双边实施的一致性方面是一项有效的工具。主管当局应相应地效仿积极运用这项规定。另外，如果根据第25（3）条款达成的协议有关于影响所有纳税人或一类纳税人（非MAP案件中的一类特定纳税人）协定适用的一般性事项，各国应当任命适当程序以公布上述协议，前提是该协议将为防止未来争议提供有益的指引，并且主管机关当局认可公开协议与健全税务管理的诸项原则相一致。在根据第25（3）条款达成的协议的公布程序中，必须包括保护纳税人信息机密性的适当规定。

45. 对OECD税收协定范本的下一次更新，将包括对第3条和25条的注释内容的修改，上述修改旨在澄清根据第25（3）条款所达成协议的法律地位。

第4项最佳实践：各国应向相关人员普及税务管辖论坛的“全球意识培训课程”，以提高其参与国际税务的审计/检查操作者的“全球意识”。

46. MAP论坛的战略计划”提出了一系列具体的措施以应对主管当局所面临的挑战，包括资源、技术、关系、立场、程序优化、与审计职能机关的关系，以及职责和责任。一方面对MAP论坛的参与是其承诺的体现，这体现在该国主管当局参与这些措施，促进战略计划中的目标的实现，通过其努力表达对MAP论坛同仁的责任。

47. 战略计划指出，增强审计以及检查机关在国际问题中的“全球意识”，在防止不合理税务管理部门在国际问题中的“全球意识”，在防止不合理税务管理行为（比如非居民企业有悖原则的税务调整）以及避免由此产生争议方面意义重大。针对这种情况，战略计划提出：“所有参与纳税人国际税收争议的审计部门都必须清楚（1）产生双重征税的可能性。（2）建议调整方案对一个或多个国家或地区的税收的影响，以及（3）主管当局协调冲突性诉求的流程与原则。”因此，作为MAP论坛推行的众多措施之一，论坛鼓励就这些问题提供培训。同时为了实现这一目的，税务征管论坛等在并批准了一项“全球意识培训课程”。各国应增加利用税收征管论坛的全球意识培训课程，努力提升其税务征管部门的审计及检查职能人员的全球意识。

48. 预约定价安排是指一项“在受控交易之前即达成的安排，这项安排在一段固定期间内，对上述交易的转让定价设置了一系列适当的标准（例如方法、可比对象及其适当调整、对未来事件的重要假设）。”相关内容请参考OECD的跨国企业及税务管理机关转让定价指南的第4.123

Guidelines for Multinational Enterprises and Tax Administrations. APAs concluded bilaterally between treaty partner competent authorities provide an increased level of certainty in both jurisdictions, lessen the likelihood of double taxation and may proactively prevent transfer pricing disputes. Countries should accordingly seek to implement bilateral APA programmes as soon as they have the capacity to do so.

Best practice 5: Countries should implement appropriate procedures to permit, in certain cases and after an initial tax assessment, taxpayer requests 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. Such procedures would remain subject to the requirements of paragraph 1 of Article 25: a request to resolve an issue with respect to a particular taxable year would only be allowed where the case has been presented within three years of the first notification of the action resulting in taxation not in accordance with the Convention with respect to that taxable year.

49. In certain cases, a request for competent authority assistance in respect of a specific adjustment to income may present recurring issues which will also be relevant in previous or subsequent filed tax years. MAP procedures that allow a taxpayer also to request MAP assistance with respect to such recurring issues for these other filed tax years – generally subject to the requirement that the relevant facts and circumstances are the same and subject to the verification of such facts and circumstances – may help to avoid duplicative MAP requests and permit a more efficient use of competent authority resources. Countries should accordingly seek to implement appropriate procedures to permit, in certain cases and after an initial tax assessment, taxpayer requests 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. Such procedures would remain subject to the requirements of paragraph 1 of Article 25: a MAP request to resolve an issue with respect to a particular taxable year would only be allowed where the case has been presented within three years of the first notification of the action resulting in taxation not in accordance with the Convention with respect to that taxable year (i.e. such procedures would not allow MAP requests that would be time-barred under paragraph 1 of Article 25).

3. Countries should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 can access the mutual agreement procedure

Best practice 6: Countries 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.

50. Where the payment of tax is a requirement for MAP access, the taxpayer concerned may face significant financial difficulties: if both Contracting States collect the disputed taxes, double taxation will in fact occur and the resulting cash flow problems may have a substantial impact on a taxpayer’s business, at least for as long as it takes to resolve the MAP case. A competent authority may also find it more difficult to enter into good faith MAP discussions when it considers that it may likely have to refund taxes already collected. Countries should accordingly 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. When the OECD Model Tax Convention is next updated, it is expected that amendments related to this best practice will be made to the Commentary on Article 25, in particular to expand on existing Commentary describing the policy considerations that support a suspension of collection procedures during the period a MAP case is pending.
段落。缔约国主管当局双边达成的预约定价安排增加了两国的税收确定性，降低了双重征税的可能性，可积极引导转让定价争议。因此各国应尽其所能地实施双边预约定价安排项目。

第5项最佳实践：在某些案例中，并且在首次评估之后，各国应执行适当的程序，以允许纳税人通过MAP就和已申报年度有关的重复性事务申请取得涉及多个年度的解决方案。前题是相关事实清楚且真实性可以被审计核实。这类程序仍应遵从第25条第1款的要求。对于某个特定纳税年度事务的申诉请求，该案会须在不符合协定规定的征税措施第一次通知之日起的三年内提出。

49. 在某些情况下，向主管当局提交的与某项特定所得调整相关的援助请求中，可能出现与之前或之后的已申报年度有关的重复性事务。通常在相关事实相同且真实性可以被审计核实的前提下，MAP程序允许纳税人亦就此类涉及其他已申报年度的重复性事务寻求解决协助。这将有助于避免MAP请求的重复提交，并能更高效地利用主管当局的资源。与之相应，在某些案例中，并且在首次评估之后，各国应执行适当的程序，以允许纳税人通过MAP就和已申报年度有关的重复性事务申请取得涉及多个年度的解决方案。前题是相关事实清楚且真实性可以被审计核实。这类程序仍应遵从第25条第1款的要求。对于某个特定纳税年度事务的申诉请求，该案会须在不符合协定规定的征税措施第一次通知之日起的三年内提出（即这类程序并不接受根据第25条第1款已过时的MAP请求）。

3. 各国应确保符合第25条第1款要求的纳税人可申请启动协商程序

第6项最佳实践：各国应采取适当措施，以规定在MAP案件进行期间暂停税款征收程序。启动这类暂停税款征收程序的条件，应至少与个人在寻求国内行政或司法救济时的条件相同。

50. 如果缴纳税款是启动MAP的要求之一，则相关纳税人可能会面临严重的财务困境；如果缔约国双方因争议税款，双重征税就会产生交涉，所导致的现金流问题会对纳税人的商誉产生严重影响。这类问题可能会被代表纳税人商业活动的解决。当主管当局认为其有可能将返还已被征收的税款时，该主管当局也应很以适当方式进行MAP的讨论。各国应采取适当措施，以规定在MAP案件进行期间暂停税款征收程序。启动这类暂停税款征收程序的条件，应至少与个人在寻求国内行政或司法救济时的条件相同。在OECD税收协定范本下所更新时，与这项最佳实践模式项目的修改预备将被加入到第25条的注释中，其针对不支持在MAP案件进行期间暂停税款征收的政策考量将在这有基础上作内容扩充。
Best practice 7: Countries 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.

51. The mutual agreement procedure provided for by Article 25 is available to taxpayers irrespective of the judicial and administrative remedies provided by the domestic law of the Contracting States. Because the constitutions and/or domestic law of many countries provide that no person can be deprived of the judicial remedies available under domestic law, a taxpayer’s choice of recourse is generally only constrained by applicable time limits (such as those provided by a domestic law statute or limitation or by paragraph 1 of Article 25) and by the circumstance that most tax administrations will not deal with a taxpayer’s case through both the MAP and a domestic court or administrative proceeding at the same time (i.e. one process will typically take precedence over the other). Recognising, however, that an agreement reached through the MAP will typically provide a comprehensive bilateral resolution of a case – and thereby ensure relief from double taxation – countries should implement appropriate administrative measures to facilitate recourse to the MAP to resolve treaty-related disputes whilst observing the general principle that the choice of remedies should remain with the taxpayer.

Best practice 8: Countries should include in their published MAP guidance an explanation of the relationship between the MAP and domestic law administrative and judicial remedies. Such public guidance should address, in particular, whether the competent authority considers itself to be legally bound to follow a domestic court decision in the MAP or whether the competent authority will not deviate from a domestic court decision as a matter of administrative policy or practice.

52. The complex interaction between domestic law remedies and the MAP is generally governed by a Contracting State’s domestic law and/or administrative procedures (i.e. a tax treaty will generally not itself contain any provisions on this point) and may thus give rise to uncertainty, particularly in light of the different approaches adopted in different jurisdictions. Such uncertainty may concern, for example, the continued availability of other remedies where a taxpayer has chosen first to pursue the MAP and the extent to which a competent authority may depart from a decision by a domestic court. Countries should thus include in their published MAP guidance (see element 2.1 above) an explanation of the relationship between the MAP and domestic law administrative and judicial remedies, including guidance on the processes involved and the conditions, rules and deadlines associated with these processes. This public guidance should specifically address whether the competent authority considers itself to be legally bound to follow a domestic court decision in the MAP or whether the competent authority will not deviate from a domestic court decision as a matter of administrative policy or practice.

53. The following changes will be made to the Commentary on Article 25 in order to clarify the issue:

Replace paragraph 35 of the Commentary on Article 25 by the following:

35. If a claim has been finally adjudicated by a court in the State of residence, a taxpayer may wish even so to present or pursue a claim under the mutual agreement procedure. In some States, the competent authority may be able to arrive at a satisfactory solution which departs from the court decision. In other States, the competent authority is bound by the court decision (i.e. it is obliged, as a matter of law, to follow the court decision) or will not depart from the court decision as a matter of administrative policy or practice. It may nevertheless present the case to the competent authority of the other Contracting State and ask the latter to take measures for avoiding double taxation.
第7项最佳实践：各国应当在执行适当的行政措施之前通过MAP解决协定相关争议并提供便利，并认识到纳税人有权选择受益这项措施。

51. 不论缔约国国内法提供何种司法以及行政救济途径，纳税人都可以请求根据协定第25条以及第33条适用相互协商程序。由于很多国家的宪法和/或国内法规定不得剥夺个人在本国法院的司法救济途径，纳税人对救济途径的选择通常会受到时效的限制（例如国内法院的时效限制或者其他选择性地提供某些救济途径，例如第25条第1款的账号限制），或者受到税务稽查部门有关不允许纳税人采取类似或更高效率的程序而启动MAP和国内司法程序的限制（即通常一整套程序将优先于另一整套程序）。然而，在考虑通过MAP达成的协议时，通常会对案件提供综合性、双手段解决机制，从而确保避免双重征税的基础之上，各国应当在承认纳税人拥有救济途径选择权的同时，执行适当的行政措施为纳税人解决相关争议并提供便利。

第8项最佳实践：各国应当在其已发布的MAP条文或对MAP与国内行政和司法救济之间关系的解释。该公开指引应具体指出，主管当局是否认为（国内法院的判决在MAP案件中对主管当局具有法律约束力，或者基于行政政策或实施模式，主管当局是否不会作出与国内法院判决结果不一致的决定）。

52. 国内法与MAP之间复杂的相互关系总体上受到缔约国的国内法和可能存在程序制约（即一项税收协定一般不会包含这一条有关的任何条款），并且因此引发不确定性。尤其鉴于不同国家在这一点上所采用的不同方法。这种不确定性可能带来相关问题，例如，在纳税人已选择MAE方案之后，其他救济途径是否依然有效，以及主管当局可以在多大程度上偏离国内法院的判决。因此，各国应当在其已发布的MAP指引（紫义第1条）中加入对MAP与国内行政和司法救济之间关系的解释，并包括对涉及程序及其相关条件、规则、截止期限的指南。公开指引应具体指出，主管当局是否认为（国内法院的判决在MAP案件中对主管当局具有法律约束力，或者基于行政政策或实施模式，主管当局是否不会作出与国内法院判决结果不一致的决定）。

53. 为了澄清此项，协定第25条的注释将会进行如下修改：

替换第25条第35段注释如下：

35. 如果申诉人未在法院最终裁决后，纳税人在执行适当的行政措施尝试或申诉均未提出申诉。在一些国家，税务主管当局可能作出与法院判决不同的善意解决方。在另外一些国家，税务主管当局将依据法院判决（即法院最终裁决，加上按照法律有义务执行法院判决），或者基于行政政策或实施模式，税务主管当局不会作出与法院判决结果不同的决定。然而，该税务主管当局可能将案件提交缔约国另一方税务主管当局，其采取措施避免双重征税。
Replace paragraph 42 of the Commentary on Article 25 by the following:

42. The case may arise where a mutual agreement is concluded in relation to a taxpayer who has brought a suit for the same purpose in the competent court of either Contracting State and such suit is still pending. In such a case, there would be no grounds for rejecting a request by a taxpayer that he be allowed to defer acceptance of the solution agreed upon as a result of the mutual agreement procedure until the court had delivered its judgment in that suit. Also, a view that competent authorities might reasonably take is that where the taxpayer’s suit is ongoing as to the particular issue upon which mutual agreement is sought by that same taxpayer, discussions of any depth at the competent authority level should await a court decision. If the taxpayer’s request for a mutual agreement procedure applied to different tax years than the court action, but to essentially the same factual and legal issues, so that the court outcome would in practice be expected to affect the treatment of the taxpayer in years not specifically the subject of litigation, the position might be the same, in practice, as for the cases just mentioned. In either case, awaiting a court decision or otherwise holding a mutual agreement procedure in abeyance whilst formalised domestic recourse proceedings are underway will not infringe upon, or cause time to expire from, the two year period referred to in paragraph 5 of the Article. Of course, if competent authorities consider, in either case, that the matter might be resolved notwithstanding the domestic law proceedings (because, for example, the competent authority where the court action is taken will not be legally bound or constrained by the court decision) then the mutual agreement procedure may proceed as normal. A competent authority may be precluded as a matter of law from maintaining taxation where a court has decided that such taxation is not in accordance with the provisions of a tax treaty. In contrast, in some countries a competent authority would not be legally precluded from granting relief from taxation notwithstanding a court decision that such taxation was in accordance with the provisions of a tax treaty. In such a case, nothing (e.g. administrative policy or practice) should prevent the competent authorities from reaching a mutual agreement pursuant to which a Contracting State will relieve taxation considered by the competent authorities as not in accordance with the provisions of the tax treaty, and thus depart from a decision rendered by a court of that State.

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

54. Under the laws of some States, a taxpayer may be permitted under appropriate circumstances to amend a previously filed tax return to adjust the price for a controlled transaction between associated enterprises, or to adjust the profits attributable to a permanent establishment, in order to reflect a result in accordance (in the view of the taxpayer) with the arm’s length principle. Such a taxpayer-initiated
42. 可能发生这样的情况，即关于某个纳税人申诉的相互协商协议已经形成，而该纳税人为同样的目的将案件提交至另一方主管当局，并且该案件处于终审未决状态。这时，没有理由拒绝纳税人的要求，即允许其在终审法院对最终案件作出判决之前，继续接受执行相互协商程序所提出的解决办法。同样，主管当局或许合理地认为，在纳税人就待定事项提起的相互协商程序中，如果同一纳税人就该事项提起的诉讼案正在进行中，那么主管当局层面的任何讨论都应等待法院作出判决之后进行。如果纳税人申请的相互协商程序适用于与诉讼案相同的年度，但适用于实质相同的事实和法律事实，以至于在诉讼中法院的判决结果将会影响纳税人的诉讼案以外其他年度的处理，则诉讼中主管当局或许会持有与之前情况相同的立场。在上述任何一种情况下，法院判决发出后，行政复议程序在债务人正式申请程序进行过程中暂停相互协商程序，都不会导致与本条第5款中两年时间相冲突或导致该时间到期。当然，在上述任何一种情况下，如果主管当局认为，尽管国内法律诉讼正在进行中，但问题仍然可能得到解决（例如，在启动诉讼的情况下法院判决对主管当局并无法律约束或限制），则相互协商程序可以继续进行。如果法院判决征税措施不符合税收协定规定，则主管当局可以在法律上被禁止继续实施征税；与此相反，在有些国家，即使法院判决征税措施符合税收协定规定，法律上并不禁止主管当局对征税措施作出调整。在这种情况下，如果主管机关达成相互协商协议，根据该协议缔约国一方主管当局认为征税措施不符合税收协定规定而需要实施征税，且因此导致被处理与该国法院判决不一致，此等协议的达成不应受到任何阻碍（例如，行政诉讼或实践模式）。

第9项最佳实践：各国发布的MAP指引应当允许纳税人适用MAP，从而使主管当局能够通过协商解决由纳税人发起的合理的（bona fide）境外调整所引起的双重征税。该调整是指缔约国一方国内法允许的由纳税人发起的调整，即允许纳税人有权在适当的情形下，通过MAP启动的纳税申报表，从而调整以下项目，以表现出处理结果符合纳税人所认为的独立交易原则：(i) 联属企业之间的交易价格，或者(ii) 归属于常设机构的利润。基于上述目的，当一项纳税人发起的境外调整反映了纳税人为了准确申报其在受控交易中获得的应税所得或归属于常设机构的利润而付出的营业努力，且纳税人及时、适当地履行了两国税法下与上述应税所得或利润相关的所有义务，则应认为上述调整是合理的。

54. 根据某些国家的法律，允许纳税人在适当的情形下，修改之前已申报的纳税申报表。从而调整联属企业之间的受控交易价格，或者调整归属于常设机构的利润，以反映（从纳税人角度所认为的）符合独立交易原则的结果。此类由纳税人发起的调整可能包括，例如，提交修改后
adjustment may include, for example, the filing of an amended tax return to reflect an arm’s length price of a controlled transaction or other taxpayer action to adjust the previously-reported attribution of profits to a permanent establishment to conform such attribution to the separate entity and arm’s length principles on which Article 7 is based. In order to ensure that competent authorities may resolve through consultation the double taxation that can arise in the case of a bona fide taxpayer-initiated foreign adjustment – i.e. any action permitted under the domestic laws of a treaty partner and undertaken at the initiative of the taxpayer to adjust the previously reported results of controlled transactions, or the attribution of profits to a permanent establishment, in order to reflect an arm’s length result – countries’ MAP guidance should provide that taxpayers will be allowed access to the MAP with respect to such adjustments. For such purposes, a taxpayer-initiated foreign adjustment should be considered bona fide where it reflects the good faith effort of the taxpayer to report correctly the taxable income from a controlled transaction or the profits attributable to a permanent establishment and where the taxpayer has otherwise timely and properly fulfilled all of its obligations related to such taxable income or profits under the tax laws of the two Contracting States.

55. The following changes will be made to the Commentaries on Articles 7, 9 and 25 in order to reflect this best practice:

Add the following paragraph 59.1 to the Commentary on Article 7:

59.1 Under the domestic laws of some countries, a taxpayer may be permitted under appropriate circumstances to amend a previously-filed tax return to adjust the profits attributable to a permanent establishment in order to reflect an attribution of profits that is, in the taxpayer’s opinion, in accordance with the separate entity and arm’s length principles underlying Article 7. Where they are made in good faith, such adjustments may facilitate the proper attribution of profits to a permanent establishment in conformity with paragraph 2 of Article 7. However, double taxation may occur, for example, if such a taxpayer-initiated adjustment increases the profits attributed to a permanent establishment located in one Contracting State but there is no appropriate corresponding adjustment in the other Contracting State. The elimination of such double taxation is within the scope of paragraph 3. Indeed, to the extent that taxes have been levied on the increased profits in the first-mentioned State, that State may be considered to have adjusted the profits attributable to the permanent establishment, and to have taxed, profits that have been charged to tax in the other State. In these circumstances, Article 25 enables the competent authorities of the Contracting States to consult together to eliminate the double taxation; the competent authorities may accordingly, if necessary, use the mutual agreement to determine whether the initial adjustment met the conditions of paragraph 2 and, if that is the case, to determine the amount of the appropriate adjustment to the amount of the tax charged on the profits attributable to the permanent establishment so as to relieve the double taxation.

Add the following paragraph 6.1 to the Commentary on Article 9:

6.1 Under the domestic laws of some countries, a taxpayer may be permitted under appropriate circumstances to amend a previously-filed tax return to adjust the price for a transaction between associated enterprises in order to report a price that is, in the taxpayer’s opinion, an arm’s length price. Where they are made in good faith, such adjustments may facilitate the reporting of taxable income by taxpayers in accordance with the arm’s length principle. However, economic double taxation may occur, for example, if such a taxpayer-initiated adjustment increases the profits of an enterprise of one Contracting State but there is no appropriate corresponding adjustment to the profits of the associated enterprise in the other Contracting State. The elimination of such double taxation is within the scope of paragraph 2. Indeed, to the extent that taxes have been levied on the increased profits in the first-mentioned
的纳税申报表，以反映受控交易的独立交易价格，或者其他行为以调整已申报的常设机构利润归属，从而使其遵循协定第7条中的独立实体和独立交易原则。为了确保主管当局能够通过磋商解决纳税人发起的合理的境外调整所引起的双重征税（该调整是指缔约国一方国内法允许的，由纳税人发起的任何行为；而该行为将调整之前已经申报的受控交易结果或归属于常设机构的利润，以反映独立交易原则下的结果），各国的MAP指引应当允许纳税人就上述调整适用MAP。基于上述目的，当一项纳税人发起的境外调整反映了纳税人正确申报其从受控交易中获得的应税所得或归属于常设机构的利润而付出的努力时，且纳税人及时、适当地履行了两国税法下与上述应税所得或利润相关的所有义务，则应认为上述调整是合理的。

55. 为了体现本项最佳实践模式，协定范本第7、9、25条的注释将会进行如下修改：

在第7条的注释中加入以下第59.1段落：

59.1 根据部分国家的国内法，允许纳税人在适当的情形下，修改之前已申报的纳税申报表以调整归属于常设机构的利润，从而反映从纳税人角度所认为的，符合第7条独立实体及独立交易原则的常设机构利润归属情况。如果上述调整的作出是出于善意，那么有助于使常设机构的利润归属于符合第7条第2款的规定。但是，由此可能产生双重征税，例如，一项纳税人发起的此类调整的范围，因为这涉及于缔约国一方的常设机构的利润，而缔约国一方并不存在作出适当的相应调整的情形。避免此类双重征税是第3款规定所涵盖的范围。从实质上看，如果上述缔约国一方已经对调整的利润征税，可以认为该缔约国已经调整了归属于常设机构的利润，而且已经对缔约国另一方的已征税利润的再度征税。在这些情况下，第25条使缔约国主管当局共同磋商以避免此类双重征税；如有必要，主管当局可以相应地通过相互协商确定首次调整是否符合第2款所列条件，若符合有关条件，则进一步确定对常设机构归属利润征收税款的适当调整金额，以消除双重征税。

在第9条的注释中加入以下第6.1段落：

6.1 根据部分国家的国内法，允许纳税人在适当的情形下，修改之前已申报的纳税申报表以调整附属企业之间的交易价格，从而反映从纳税人角度所认为的独立交易价格。如果上述调整的作出是出于善意，那么有助于使纳税人的应税所得申报遵循独立交易原则。但是，由此可能产生经济性的双重征税，例如，一项纳税人发起的此类调整增加了缔约国一方企业的利润，而缔约国一方并没有对因后者附属企业的利润作出适当的相应调整的情形。避免此类双重征税是第2款规定所涵盖的范围。从实质上看，如果上述缔约国一方已经对调整的利润征税，可以认为该缔约国已经把这部分利润计入了
State, that State may be considered to have included in the profits of an enterprise of that State, and to have taxed, profits on which an enterprise of the other State has been charged to tax. In these circumstances, Article 25 enables the competent authorities of the Contracting States to consult together to eliminate the double taxation; the competent authorities may accordingly, if necessary, use the mutual agreement procedure to determine whether the initial adjustment met the conditions of paragraph 1 and, if that is the case, to determine the amount of the appropriate adjustment to the amount of the tax charged in the other State on those profits so as to relieve the double taxation.

Replace paragraph 23 of the Commentary on Article 25 by the following:

23. In self assessment cases, there will usually be some notification effecting that assessment (such as a notice of a liability or of denial or adjustment of a claim for refund), and generally the time of notification, rather than the time when the taxpayer lodges the self-assessed return, would be a starting point for the three year period to run. Where a taxpayer pays additional tax in connection with the filing of an amended return reflecting a bona fide taxpayer-initiated adjustment (as described in paragraph 14 above), the starting point of the three year time limit would generally be the notice of assessment or liability resulting from the amended return, rather than the time when the additional tax was paid. There may, however, be cases where there is no notice of a liability or the like. In such cases, the relevant time of “notification” would be the time when the taxpayer would, in the normal course of events, be regarded as having been made aware of the taxation that is in fact not in accordance with the Convention. This could, for example, be when information recording the transfer of funds is first made available to a taxpayer, such as in a bank balance or statement. The time begins to run whether or not the taxpayer actually regards the taxation, at that stage, as contrary to the Convention, provided that a reasonably prudent person in the taxpayer’s position would have been able to conclude at that stage that the taxation was not in accordance with the Convention. In such cases, notification of the fact of taxation to the taxpayer is enough. Where, however, it is only the combination of the self assessment with some other circumstance that would cause a reasonably prudent person in the taxpayer’s position to conclude that the taxation was contrary to the Convention (such a judicial decision determining the imposition of tax in a case similar to the taxpayer’s to be contrary to the provisions of the Convention), the time begins to run only when the latter circumstance materialises.

Replace paragraph 14 of the Commentary on Article 25 by the following:

14. It should be noted that the mutual agreement procedure, unlike the disputed claims procedure under domestic law, can be set in motion by a taxpayer without waiting until the taxation considered by him to be “not in accordance with the Convention” has been charged against or notified to him. To be able to set the procedure in motion, he must, and it is sufficient if he does, establish that the “actions of one or both of the Contracting States” will result in such taxation, and that this taxation appears as a risk which is not merely possible but probable. Such actions mean all acts or decisions, whether of a legislative or a regulatory nature, and whether of general or individual application, having as their direct and necessary consequence the charging of tax against the complainant contrary to the provisions of the Convention. Thus, for example, if a change to a Contracting State’s tax law would result in a person deriving a particular type of income being subjected to taxation not in accordance with the Convention, that person could set the mutual agreement procedure in motion as soon as the law has been amended and that person has derived the relevant income or it becomes probable that the person will derive that income. Other examples include filing a return in a self assessment system or the active examination of a specific taxpayer reporting position in the course of an audit, to the extent that either event creates the probability of taxation not in accordance with the Convention (e.g. where the self assessment reporting position the
该缔约国企业的所得，而且已经对缔约国另一方企业或缔约国另一方的已征税利润再度征税。在这些情况下，第25条使缔约国主管当局可以拒绝或调整，或者将有关的调整通知缔约国另一方主管当局。这意
味着主管当局可以相应地通过相互协商程序确定是否符合第21条第1款的条件。若符合该条件，则进一步确定对缔约国另一方就这部分利润征收税款的优惠调整金额，以消除或减少该双重征税。

替换第25条的第2段注释如下：

23. 在自行评税的情况下，通常会有一些影响评税的通知（例如纳税义务通知、申请退还已缴税款的拒绝或调整通知），一般以通知之日，而不是纳税义务通知或自行评税的申报表之日，作为3年时效期间的起点。当纳税人就修改后的申报表提交纳税申报并缴纳有关的额外税款，以及相关税款调整合理时间（如前文第16段所述），3年时效期间一般以自纳税人所引起的评税或纳税义务通知之日为起点，而不是以自额外税款之日为起点。但有些情况下可能不存在纳税义务通知或者类似事件。在此类情况下，有关“通知”的时间以纳税人自行评税限制的总览税行为在事实上不符合协定规定的时间确定。例如，这一时间可以是纳税人首次获得相关纳税义务通知记录的时间，该时间应当显示在银行余额表或账户清单上。如果一个合理谨慎的人能够，在当时以纳税人的立场得出税款不符合协定规定的结果，则不应在当时有理由认为该税款不符合协定规定，时效期间自该时间开始计算。在此类情况下，纳税人知道税款的满意度已经足够。然而，在某些情况下，只有结合自我评税与一些其它特定信息相结合，才能使一个合理谨慎的人以纳税人的立场得出税款不符合协定规定的结果（例如一项针对与纳税人相似情况的司法判决对协定规定结果）。则时效期间应从该信息实现时才开始计算。

替换第25条的第14段注释如下：

14. 应当注意的是，相互协商程序与国内法规定的解决争议程序不同。纳税一方可能在其认为“不符合协定规定”的税款被征收或被调整之前，即行使相互协商程序。为了能启动该程序，纳税一方必须确定，也只要他确认“缔约国一方或双方的行为”将会导致不符合协定规定的税收，并且，该税收不是只是有发生的危险，而是十分可能的。这些措施包括但不限于立法或决定，无论其具有立法性质还是管理性质，也无论其是否适用还是个别适用，只要作为其直接和必然的后果，将导致对申请方不若协定规定的征税。因此，如果一项缔约国税法的修改导致一个人的一项特定类型的所得被征收与协定规定不符的税收，则一旦法律被修改，而且已经取得相关所得，或者十分可能取得相关所得，这个人即可启动相互协商程序。其他的例子包括在自行评税系统中办理纳税申
taxpayer is required to take under a Contracting State’s domestic law would, if proposed by that State as an assessment in a non-self assessment regime, give rise to the probability of taxation not in accordance with the Convention, or where circumstances such as a Contracting State’s published positions or its audit practice create a significant likelihood that the active examination of a specific reporting position such as the taxpayer’s will lead to proposed assessments that would give rise to the probability of taxation not in accordance with the Convention. Another example might be a case where a Contracting State’s transfer pricing law requires a taxpayer to report taxable income in an amount greater than would result from the actual prices used by the taxpayer in its transactions with a related party, in order to comply with the arm’s length principle, and where there is substantial doubt whether the taxpayer’s related party will be able to obtain a corresponding adjustment in the other Contracting State in the absence of a mutual agreement procedure. Such actions may also be understood to include the bona fide taxpayer-initiated adjustments which are authorised under the domestic laws of some countries and which permit a taxpayer, under appropriate circumstances, to amend a previously-filed tax return in order to report a price in a controlled transaction, or an attribution of profits to a permanent establishment, that is, in the taxpayer’s opinion, in accordance with the arm’s length principle (see paragraph 6.1 of the Commentary on Article 9 and paragraph 59.1 of the Commentary on Article 7). As indicated by the opening words of paragraph 1, whether or not the actions of one or both of the Contracting States will result in taxation not in accordance with the Convention must be determined from the perspective of the taxpayer. Whilst the taxpayer’s belief that there will be such taxation must be reasonable and must be based on facts that can be established, the tax authorities should not refuse to consider a request under paragraph 1 merely because they consider that it has not been proven (for example to domestic law standards of proof on the “balance of probabilities”) that such taxation will occur.

Best practice 10: Countries’ published MAP guidance should provide guidance on the consideration of interest and penalties in the mutual agreement procedure.

56. Issues related to competent authority consideration of interest and penalties in the context of a MAP cases are of significant importance, particularly in light of the potential for the work on BEPS to increase pressure on the mutual agreement procedure. Countries’ published MAP guidance should accordingly provide guidance on the consideration of interest and penalties in the mutual agreement procedure.

57. It is intended to make amendments to the Commentary on Article 25 of the OECD Model Tax Convention as part of the next update of the OECD Model Tax Convention in order to address issues related to the consideration of interest and penalties in the mutual agreement procedure.

Best practice 11: Countries’ published MAP guidance should provide guidance on multilateral MAPs and advance pricing arrangements (APAs).

58. In recent years, the substantial increase in the pace of 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 business models and the accelerated integration of national economies and markets have emphasised the need for effective mechanisms to resolve multi-jurisdictional tax disputes. Countries should accordingly develop and include in their published MAP and advance pricing arrangement programme guidance appropriate guidance on multilateral MAPs and APAs.

59. It is intended to make amendments to the Commentary on Article 25 as part of the next update of the OECD Model Tax Convention in order to address the issue of multilateral MAPs and APAs.
第10条最佳实践：各国发布的MAP指引应当提供与相互协商程序中利息和罚款的考量有关的指导意见。

56. 与主管当局在MAP案件中对利息和罚款考量相关的问题至关重要，尤其是鉴于与BEPS相关的工作会增加MAP的压力。各国发布的MAP指引应相应地为相互协商程序中利息和罚款的考量提供指导意见。

57. 计划在OECD协定范本的下一次更新中对第25条的注释进行修订，以明确与相互协商程序中利息和罚款的考量相关的事项。

第11条最佳实践：各国发布的MAP指引中应当提供关于多边MAP/APA的指导意见。

58. 近些年来，全球化速度的迅速提高为当下的税收协定争议解决机制带来了独特的挑战。OECD税收协定范本第25条中的相互协商程序传统上关注双方争议的解决，然而在跨地区和全球商业活动的增长和各国经济及市场加速融合的挑战下，突出了对处理多边税收争议的有效机制的需求。各国应在相应地为多边MAP/APA制定适当政策，并将其包括在各国开放发布的MAP和预定定价安排项目的指引中。
C. A framework for a monitoring mechanism

60. As already noted, the conclusions of the work carried out on Action 14 of the BEPS Action Plan reflect the agreement that the implementation of the minimum standard should be evaluated through a peer monitoring mechanism in order to ensure that the commitments embodied in the minimum standard are effectively satisfied. The monitoring mechanism will have the following general features:

1. All OECD and G20 countries, as well as jurisdictions that commit to the minimum standard set out in Section 1.A. of this Report, will undergo reviews of their implementation of the minimum standard. The reviews will evaluate the legal framework provided by a jurisdiction’s tax treaties and domestic law and regulations, the jurisdiction’s MAP programme guidance and the implementation of the minimum standard in practice.

2. The core output of the peer monitoring process will come in the form of a report. The report will identify and describe the strengths and any shortcomings that exist and provide recommendations as to how the shortcomings might be addressed by the reviewed jurisdiction.

3. The core documents for the peer monitoring process will be the Terms of Reference and the Assessment Methodology. The Terms of Reference will be based on the elements of the minimum standard set out in Section 1.A of this Report and will break down these elements into specific aspects against which jurisdictions’ legal frameworks, MAP programme guidance and actual implementation of the minimum standard are assessed. The Terms of Reference will provide a clear roadmap for the monitoring process and will thereby ensure that the assessment of all jurisdictions is consistent and complete. The Assessment Methodology will establish detailed procedures and guidelines for peer monitoring of OECD and G20 countries and other committed jurisdictions by the FTA MAP Forum (see element 1.6 of the minimum standard) and will include a system for assessing the implementation of the minimum standard.

4. Both the Terms of Reference and the Assessment Methodology will be developed jointly by Working Party No. 1 and the FTA MAP Forum by the end of the first quarter of 2016.

5. The peer monitoring process conducted by the FTA MAP Forum, reporting to the G20 through the OECD Committee on Fiscal Affairs, will begin in 2016, with the objective of publishing the first reports by the end of 2017.

61. A mandate for the development of the Terms of Reference and the Assessment Methodology is contained in the Annex to this Report.

II. COMMITMENT TO MANDATORY BINDING MAP ARBITRATION

62. The business community and a number of countries consider that mandatory binding arbitration is the best way of ensuring that tax treaty disputes are effectively resolved through MAP. Whilst there is no consensus among all OECD and G20 countries on the adoption of arbitration as a mechanism to ensure the resolution of MAP cases, a group of countries has committed to adopt and implement mandatory binding arbitration as a way to resolve disputes that otherwise prevent the resolution of cases through the mutual agreement procedure. The countries that have expressed interest in doing so include Australia, Austria, Belgium, Canada, France, Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the United States; this
59. 计划在OECD协定范本的下一次更新中对第25条的注释进行修订，以明确与多边MAP/APA相关的事项。

G. 监督机制的框架

60. 如之前所述，BEPS行动计划的第14项行动下所开展的工作成果体现了各国达成的一项共识，即最低标准的执行应当通过相互监督机制的评估，以确保在最低标准中的承诺被有效履行。监督机制应当具有如下一般特征：

1. 对于所有OECD与G20成员国，以及对本报告第1A部分所列最低标准作出承诺的国家或地区，其直接标准的情况将被检查。这项检查将评估该国的税收协定及国内法律法规所允许的最低标准。该国的MAP项目指引以及最低标准在实践中执行的情况。

2. 相互监督程序的主要成果将以报告的形式体现。报告将指出并描述存在的优势和任何不足，并针对如何解决不足的可能方案向被调查国家提建议。

3. 相互监督程序的核心文件是评估标准和评估方法。评估标准将基于本报告第1A部分所列最低标准的措施进行编制，并将措施分解成若干具体的方面。从而以此为依据评估相关国家或地区的法律框架、MAP项目指引以及最低标准在实践中的执行状况。评估标准将为监督程序提供清晰的路线图，由此确保对所有国家或地区的检查是一致和完整的。评估方法将为MAP论坛对所有OECD、G20成员国以及其它对最低标准作出承诺的国家或地区所进行的相互监督工作（参见最低标准的第1A项措施）提供详细的流程和指引，并将包括一套评估最低标准执行状况的系统。

4. 评估标准和评估方法将由第一工作组和MAP论坛在2016年第一个季度结束之前联合制定。

5. MAP论坛进行的相互监督程序将在2016年启动，该程序将通过OECD财政事务委员会向G20进行汇报，目标是在2017年底或公布第一份报告。

61. 制定评估标准和评估方法的指令包含在本报告的附件中。

II. 对具有强制约束力的MAP仲裁的承诺

62. 企业界和多个国家认为具有强制约束力的仲裁机制是确保与协定有关的争议能够通过MAP得到有效解决的最佳途径。虽然OECD和G20成员国并未就是否采用仲裁机制以确保MAP案件得到解决达成一致，然而一些国家已经承诺采纳并实施具有强制约束力的仲裁机制，将其
represents a major step forward as together these countries are involved in more than 90 percent of outstanding MAP cases at the end of 2013, as reported to the OECD.  

63. A mandatory binding MAP arbitration provision will be developed as part of the negotiation of the multilateral instrument envisaged by Action 15 the BEPS Action Plan. The countries in this group will, in particular, be required to consider how to reconcile their different views on the scope of the MAP arbitration provision. Whilst a number of the countries included in this group would prefer to have no limitations on the cases eligible for MAP arbitration, other countries would prefer that arbitration should be limited to an appropriately defined subset of MAP cases. The work of the group of committed countries on the arbitration provision will be informed by the previous work of the Focus Group on Dispute Resolution concerning issues that have prevented the adoption of MAP arbitration and options to address them.

作为一种方式以解决那些以前难以通过相互协商程序得到解决的案件。已经明确表示有意采取这一行动的国家包括澳大利亚、奥地利、比利时、加拿大、法国、德国、爱尔兰、意大利、日本、卢森堡、荷兰、新西兰、挪威、波兰、斯洛文尼亚、西班牙、瑞典、瑞士、英国和美国。这标志着有关工作向前迈进了一步，因为根据OECD的报告，这些国家涉及截至2013年底90%以上的MAP未决案例。

63. 作为BEPS第15项行动计划所设的多边工具的一部分，具有强制约束力的MAP仲裁条款将被纳入谈判内容。相关国家将特别需要考虑如何协调在MAP仲裁条款适用范围方面的意见分歧。虽然一些国家倾向于对MAP仲裁机制的适用案件范围不设限制，但另一些国家倾向于将仲裁机制的适用局限于某一类MAP案件。争议解决专项小组之前关于如何实施MAP仲裁的事宜及其应对选案的工作成果，将会提供给已对仲裁条款作出承诺的相关国家以充实后续的相关工作。

ANNEX

MANDATE FOR THE DEVELOPMENT OF THE
terms of Reference and the Assessment Methodology

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

Preamble

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

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

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

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

A. Objective

The OECD Committee on Fiscal Affairs through its Working Party No. 1 on Tax Conventions and Related Questions and the Forum on Tax Administration MAP Forum (the FTA MAP Forum) shall develop the core documents for the monitoring of the implementation of the Action 14 minimum standard: the Terms of Reference and the Assessment Methodology. The Terms of Reference will be based on the elements of the minimum standard and will break down these elements into specific aspects against which jurisdictions’ legal frameworks, MAP programme guidance and actual implementation of the minimum standard are assessed; they will provide a clear roadmap for the monitoring process and thereby ensure that the
附件
关于制定评估标准和评估方法的指令

根据第14项行动计划最低标准的第1.6项措施，各国承诺允许其他国家或地区（即MAP论坛的其他成员）根据最低标准的第1.4项措施，各国应当成为MAP论坛的成员并参与论坛工作。其最低标准的遵从程度进行检查。该检查将通过一项监督机制进行。本报告的第6章详细描述了该监督机制的框架。这一监督对确保最低标准的实质性履行具有重要意义，并将根据评估标准和评估方法由OECD税务事务委员会通过其负责税收协定及相关问题的第一工作组和MAP税务行政论坛进行制定。制定评估标准和评估方法的指令如下文所述。

序言

鉴于BEPS第14项行动计划的成果体现了各国达成的共识，即各国应承诺遵守最低标准，该最低标准由多个具体的措施组成，措施旨在确保与协定有关的争议得到及时、切实且高效的解决；

鉴于第14项行动计划的成果同时包含，各国同意最低标准的执行应当通过相互监督机制的评估，以确保协定在最低标准中的承诺被有效履行，并且所有OECD与G20成员国，以及承诺遵守最低标准的国家或地区，都将根据监督机制接受检查；

鉴于相互监督程序需要制定评估标准，用以评估第14项行动计划中最低标准的执行情况，同时还需制定一套评估方法以建立相互监督机制的流程和指引；

参与OECD-G20 BEPS项目的各国同意将由OECD税务事务委员会通过其负责税收协定及相关问题的第一工作组和MAP论坛根据以下指令制定评估标准和评估方法。

A. 目标

OECD税务事务委员会负责税收协定及相关问题的第一工作组和MAP税务行政论坛应当制定用于监督第14项行动计划最低标准执行情况的核心文件：评估标准和评估方法。评估标准将基于最低标准的措施进行编制，并将措施分解为若干具体方面，从而以此为依据评估相关国家或地区的法律框架。MAP项目指引以及最低标准在实践中执行情况；这些将为监督过程提供清
assessment of all jurisdictions is consistent and complete. The Assessment Methodology will establish detailed procedures and guidelines for the peer monitoring of OECD and G20 countries and other committed jurisdictions by the FTA MAP Forum, which will be open to all such countries participating on an equal footing and will include a system for assessing the implementation of the minimum standard.

B. Participation

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

C. Duration and Term

The development of the Terms of Reference and the Assessment Methodology shall start no later than November 2015. Working Party 1 and the FTA MAP Forum shall aim to conclude their work on the Terms of Reference and the Assessment Methodology by the end of the first quarter of 2016.
晰的路线图，由此确保对所有国家或地区的检查是一致和完整的。评估方法将为MAP论坛对OECD、G20成员国以及对最低标准作承诺的国家或地区所进行的相互监管工作提供详细的流程和指引。这些流程和指引将对所有参与成员平等适用，评估方法同时将包含一套评估最低标准执行状况的系统。

B. 参与

在所有国家平等参与的基础上，评估标准和评估方法应由OECD财政事务委员会通过其负责税收协定及相关问题的第一工作组和MAP论坛联合制定。

C. 期限

评估标准和评估方法的制定不应晚于2015年11月。第一工作组和MAP论坛应在2016年第一季度内完成关于评估标准和评估方法的工作。