

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Please cite this publication as:

OECD (2017), *Making Dispute Resolution More Effective - MAP Peer Review Report, Belgium (Stage 1): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

<http://dx.doi.org/10.1787/9789264282599-en>

ISBN 978-92-64-28258-2 (print)

ISBN 978-92-64-28259-9 (PDF)

Series: OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and via treaty provisions. With the negotiation for a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the MLI on 7 June 2017, paving the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

As a result, the OECD established an Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already has more than 100 members, will monitor and peer review the implementation of the minimum standards as well as complete the work on standard setting to address BEPS issues. In addition to BEPS Members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

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Abbreviations and Acronyms

APA	Advance Pricing Arrangement
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
SPF	<i>Service Public Fédéral</i> (Federal Public Service of Finance of Belgium)

Executive summary

Belgium has a large tax treaty network with over 90 tax treaties and has signed and ratified the EU Arbitration Convention. Belgium has an established Mutual Agreement Procedure (MAP) program and has extensive experience with resolving MAP cases. It has a very large MAP inventory with a substantial number of new cases submitted each year and more than 700 cases pending on 31 December 2016, of which almost 90% consist of cases relating to individuals. Overall Belgium meets almost all of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Belgium is working to address them.

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

- ∞ all but one tax treaty lack Article 25(3), second sentence, under which competent authorities may consult together for the elimination of double taxation in cases not provided for in their tax treaties;
- ∞ fewer than half of its tax treaties either provide that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), or include the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments; and
- ∞ almost 20% of its tax treaties include a time limit for the submission of MAP requests that is less than three years. The most significant deviation from this aspect of the Action 14 Minimum Standard is found in the treaty with France that only provides for a six month period for such submission. In practice, this results in a substantial number of cases for which access to MAP is denied due to the fact that these requests are not timely submitted.

In order to be fully compliant with the four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Belgium therefore needs to amend and update a significant portion of its tax treaties. In this respect, Belgium indicated that bilateral negotiations are pending to replace or amend existing tax treaties and that it recently signed, without any reservations on the MAP article, the Multilateral Instrument potentially covering almost all of Belgium's tax treaties. Furthermore, Belgium opted for the arbitration part of the Multilateral Instrument.

Belgium meets the Action 14 Minimum Standard concerning the prevention of disputes. It has recently implemented a procedure enabling taxpayers to request rollbacks of bilateral APAs.

Belgium also meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard but it needs to issue more comprehensive MAP guidance. Belgium provides access to MAP in all eligible cases. It has introduced in 2016 a notification process for those situations in which Belgium's competent authority considers

the objection raised by taxpayers in a MAP request as not justified. In addition, Belgium has published in 2016 a document addressing frequently asked questions relating to MAPs and APAs, which already provides practical information on MAP. However, this document does not establish comprehensive MAP guidance. In this respect, Belgium indicated that it will publish such MAP guidance in 2017.

Furthermore, Belgium's competent authority operates fully independently from the audit function of the tax authorities and uses a pragmatic approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. Belgium therefore meets the requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Concerning the average time needed to resolve MAP cases, the MAP statistics for the year 2016 are as follows:

2016	Opening inventory	Cases started	Cases closed	End inventory	Average time to resolve cases (in months) (*)
Attribution / allocation cases	85	22	22	85	39.67
Other cases	679	403	416	666	11.61
Total	764	425	438	751	13.02

(*) The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Belgium used as the start date the date of filing of the MAP request and as the end date, the earliest of the following dates: (i) the date when the taxpayer is informed of the outcome of the MAP, (ii) the date of the closing letter which is drafted upon taxpayer's approval of the agreement reached, or (iii) the date when Belgium's competent authority formally closed the case.

These figures point out that Belgium resolved a significant number of MAP cases during 2016, which is slightly higher than the number of MAP cases that started in that year. The number of pending cases in Belgium's inventory as per 31 December 2016 therefore slightly decreased compared to the number on 1 January 2016 but is still significantly higher than the number of cases resolved during 2016. Although the current resources for the MAP function in Belgium are in principle adequate to manage the high influx of new MAP cases, more resources may be necessary to achieve a further net reduction of its MAP inventory. In particular, while Belgium's competent authority resolves MAP cases on average within a timeframe of less than 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), the average time necessary to resolve allocation/attribution is significantly longer (39.67 months). This indicates that additional resources specifically dedicated to handling attribution / allocation MAP cases may be necessary to accelerate the resolution of these cases, for which more frequent scheduling of face-to-face meetings may also be helpful.

Lastly, Belgium also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Belgium actively monitors the implementation and no issues have surfaced throughout the peer review process.

Introduction

Available mechanisms in Belgium to resolve tax treaty-related disputes

Belgium has entered into 96 tax treaties on income (and/or capital),¹ 89 of which are in force (although some amendments to them may not be in force yet, see below). These 96 treaties apply to 100 jurisdictions.² All of these provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty.

In two treaties³ an arbitration procedure that supplements the mutual agreement procedure is currently in force. In eight other treaties⁴ Belgium has included an arbitration provision, but either the treaty or the provision itself is not yet in force. Furthermore, Belgium is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.⁵

In Belgium, the competent authority function to conduct MAP is performed by the International Relation Services, which is part of the Support and Operating Expertise division within the General Tax Administration of the Federal Public Service of Finance ('SPF') of the Ministry of Finance. Belgium's competent authority team consists of 11 people, two of them dealing with allocation/attribution cases. The organisation of this competent authority function is described in Frequently Asked Questions ('FAQs') about the MAP and APAs⁶ published by Belgium's competent authority on the website of the SPF.

Recent developments in Belgium

Belgium amended or signed a new version of some of the 89 treaties currently in force, the amendment or the new version not being in force yet. This concerns in particular the treaties signed with Japan, Malaysia, New Zealand, Norway, Poland, Russia and Switzerland. Belgium also signed new treaties with Macedonia, Moldova and Tajikistan and will cease to apply the treaty with the former Yugoslavia to Macedonia and the former USSR to Moldova and Tajikistan.

Furthermore, Belgium signed seven tax treaties with Isle of Man, Macau, Oman, Qatar, Seychelles, Uganda and Uruguay, for which the entry into force is still pending as of January 2017.

Belgium also indicated that (i) negotiations with France, Germany, the Netherlands and Ukraine are in progress with an aim to replace or review the existing tax treaty in order to bring it in line with the Action 14 minimum standard and that (ii) negotiations with Kenya are also in progress to enter into a tax treaty. Furthermore, Belgium reported that it intends to sign the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ('**Multilateral Instrument**') with no reservation on the application of Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure) and would include in the scope of the Multilateral Instrument all the tax treaties to which it is party except those for which a bilateral negotiation about to result in either a

full amended agreement or a protocol is currently in process.⁷ Consequently, Belgium expects to have all its tax treaties with jurisdictions opting for the Multilateral Instrument (and including Belgium's tax treaty in their list of treaties to be covered by the Multilateral Instrument) modified shortly, upon ratification of this instrument in Belgium.

Recently, Belgium published some FAQs about the MAP and APAs. Belgium indicated that a circular containing its MAP guidance should be published during the first semester of 2017. In particular, this circular is expected to address the formal requirements, submission deadlines and required information to submit a MAP request. Moreover, it will be clarified that MAP can be accessed in transfer pricing cases, in cases where an abuse of the tax treaty or of the domestic law is discussed as well as in cases that were dealt with through an administrative or statutory process.

Basis for the peer review process

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

For the purpose of this report and the statistics provided below, in assessing whether Belgium is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if they concerned a modification or a replacement of an existing treaty currently in force. Furthermore, the treaty analysis also takes into account the treaty with the former USSR and with the former Yugoslavia because these treaties are still being or to be applied by Belgium with respect to two and four jurisdictions respectively (see above). As it concerns tax treaties that are applicable to multiple jurisdictions, both of them are only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Belgium's tax treaties regarding the mutual agreement procedure.

The questionnaires for the peer review process were sent to Belgium and the peers on 5 December 2016. While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, Belgium wished to provide information on the period starting as from 1 January 2014 (the '**Look-back period**') and also opted for the peers to provide input relating to the Look-back period. Next to its assessment on the compliance with the Action 14 Minimum Standard, Belgium also asked for peer input on best practices.

In total 19 peers provided input: Australia, Austria, Bulgaria, Canada, Denmark, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United States. These peers represent more than 90% of post-2015 MAP cases in Belgium's inventory on 31 December 2016. Input was also received from taxpayers.

Broadly all peers indicated having good working relationships with Belgium in regard of MAP, some of them emphasising the ease of contact with Belgium's competent authority.

Belgium provided extensive answers in its questionnaire which was submitted on time. Belgium also responded timely and comprehensively to requests for additional information

and provided further clarity where necessary. In addition, Belgium provided the following information:

- ∞ MAP profile;⁸
- ∞ MAP statistics⁹ according to the MAP Statistics Reporting Framework¹⁰ (see below).

Finally, Belgium is an active member of the FTA MAP Forum and has shown good cooperation during the peer review process. Belgium provided detailed peer input on other jurisdictions in the framework of their peer review and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions. Belgium also provided peer input on best practices for a number of jurisdictions that asked for it.

Overview of MAP caseload in Belgium

The analysis of Belgium’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2016 (the ‘**Reporting Period**’). According to the statistics provided by Belgium, on 31 December 2016 its MAP inventory was 751 cases, 85 of which concern attribution/allocation cases and 666 other cases. During the Reporting Period 425 cases were initiated and 438 cases were closed.

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective¹¹ (‘**Terms of Reference**’). Apart from analysing Belgium’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Belgium. Furthermore, the report depicts the changes adopted and plans shared by Belgium to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

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

Notes

1. Tax treaties are available online at: <http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=3232bda5-33df-4fdd-b3b2-c7ada30b7da1&disableHighlighting=true&documentLanguage=en#findHighlighted> (accessed on 22 August 2017).
2. Belgium continues to apply the 1987 treaty entered into with the former USSR with (i) Kyrgyzstan, (ii) Moldova, (iii) Tajikistan and (iv) Turkmenistan and Belgium continues to apply the 1980 treaty entered into with the former Yugoslavia with (i) Bosnia and Herzegovina, (ii) Kosovo, (iii) Macedonia, (iv) Serbia and (v) Montenegro. Moreover, Belgium entered into new treaties with (i) Macedonia, (ii) Moldova and (iii) Tajikistan, which have not yet entered into force.
3. This concerns the tax treaties entered into with the United Kingdom and the United States.
4. This concerns the treaties entered into with Isle of Man, Japan, Malaysia, Moldova, Poland, Switzerland, Tajikistan and Uruguay.
5. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.
6. <http://finances.belgium.be/sites/default/files/downloads/126-procedure-amiable-apa-faq.pdf> (accessed on 22 August 2017).
7. This concerns the treaties entered into with Germany, Japan, the Netherlands and Norway.
8. Available at: <https://search.oecd.org/tax/dispute/Belgium-Dispute-Resolution-Profile.pdf> (accessed on 22 August 2017).
9. The MAP statistics of Belgium are included in Annex B and C of this report.
10. MAP Statistics Reporting Framework, in *Peer Review Documents* (OECD 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).
11. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective in *Peer Review Documents* (OECD, 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).

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Part A

Preventing Disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of Belgium’s tax treaties

2. Out of Belgium’s 96 tax treaties, 79 contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.

3. Seventeen treaties¹ do not have the reference to the “interpretation” of the *OECD Model Tax Convention* (OECD, 2015) (in addition to “the application”). Such deviation may limit competent authorities’ ability to prevent disputes. Therefore, this wording is not equivalent to Article 25(3), first sentence of the *OECD Model Tax Convention* (OECD, 2015). However, Belgium indicated that even though the “interpretation” word is missing in the treaty provision, this does not obstruct Belgium to enter into interpretative MAP agreements.

Anticipated modifications

4. Belgium has indicated being currently in a negotiation process with France and Germany (which both confirmed in their peer input) to modify or replace the existing tax treaties to include a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015). Moreover, Belgium indicated that it intends to implement element A.1 for all its existing tax treaties by signing the Multilateral Instrument. In that regard, Belgium envisages not making any reservations on the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, Belgium indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Belgium

reported that it intends to update via bilateral negotiations all of its tax treaties to be compliant with element A.1. In addition, Belgium will seek to include Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

5. Several peers also reported that the provisions of their tax treaty with Belgium do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	17 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the <i>OECD Model Tax Convention</i> , OECD (2015).	<p>Where treaties do not include the equivalent of Article 25(3), first sentence, of the <i>OECD Model Tax Convention</i>, OECD (2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Belgium should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the treaty with the former Yugoslavia, Belgium should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p> <p>In addition, Belgium should maintain its stated intention to include the required provision in all future treaties.</p>

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

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

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

Belgium’s APA programme

7. Belgium is authorised to enter into unilateral, bilateral and multilateral APA’s. Apart from a summary of Chapters I to V of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017* (OECD Transfer Pricing Guidelines, OECD 2017) that can be found in Belgium’s transfer pricing circular,³ there is no published guidance on the bilateral APA programme. However the APA programme is addressed in the FAQs published by Belgium’s competent authority.⁴ In these FAQs, the process to enter into an APA is explained. In particular, the information to be included in the request is mentioned as well as the department to which the APA request should be sent (such department being Belgium’s competent authority).

8. Belgium applies APAs as from the first year covered by the request, irrespective of the date when the competent authorities reach an agreement, provided the request is submitted before the end of the first taxation year that is to be covered by the APA.

Roll-back of bilateral APAs

9. Roll-backs of bilateral APAs have been available to taxpayers in Belgium since June 2016, which was not the case previously, even when it implied an upward adjustment of the taxpayer's tax. As explained in the published FAQs, three conditions have to be met for the roll-back of bilateral APAs to be granted: (i) the facts and circumstances for the previous years to be covered by the roll-back are the same, (ii) the years to be modified by the roll-back are not barred by statute at the time when the APA is concluded by the relevant competent authorities and (iii) the other competent authority involved agrees to grant such a roll-back. Therefore, the roll-back cannot be granted if the tax assessment term for the concerned years expires before the competent authorities reach an agreement.

Practical application of roll-back of bilateral APAs

10. Since June 2016, only one roll-back request was submitted to Belgium's competent authority. This request was accepted in principle, subject to the fact that the conditions summarised previously are met in practice. In particular, at the closing of the APA, it will be examined whether the years to be covered by the roll-back are not yet barred.

11. Two peers asserted that Belgium does not allow roll-back of APAs but one mentioned that Belgium's competent authority would be ready to solve previous years under MAP. This impression may be explained by the relatively recent change in Belgium's practice. Moreover, one peer indicated that it received a bilateral APA request including a roll-back, that was dealt with by Belgium's competent authority and that no difficulty has been encountered in this framework.

Anticipated modifications

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

Conclusion

	Areas for Improvement	Recommendations
[A.2]	The roll-back of bilateral APAs has been introduced recently in Belgium and not all peers are aware of it.	<p>As the roll-back of APAs has been introduced recently in Belgium, it is suggested that Belgium notifies its treaty partners of the availability of such roll-backs.</p> <p>Belgium should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far in one case.</p> <p>To keep a record of the number of bilateral APAs where a roll-back was and was not granted, Belgium could also introduce a tracking system.</p>

Notes

1. Among which the treaty entered into with the former Yugoslavia that is now applied with (i) Bosnia and Herzegovina, (ii) Kosovo, (iii) Serbia and (iv) Montenegro.
2. This description of an APA is based on the definition of an APA in the OECD Transfer Pricing Guidelines, OECD (2017).
3. Available at:
<http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=0db834a2-c5a5-4172-bbab-a2e5a74f4d60&disableHighlighting=true&documentLanguage=fr#findHighlighted>
(accessed on 22 August 2017).
4. Available at: <http://finances.belgium.be/sites/default/files/downloads/126-procedure-amiable-apa-faq.pdf> (accessed on 22 August 2017).

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

Part B

Availability and Access to MAP

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

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

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

Current situation of Belgium's tax treaties

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

14. All tax treaties Belgium has entered into contain a provision based on Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) either as changed by the *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report* (Action 14 final report, OECD 2015b) or as it read prior to the adoption of that report, allowing taxpayers to submit a MAP request when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.

15. Belgium's tax treaties can be categorised as follows:

Provision	Number of treaties
Equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as modified by the Action 14 final report, OECD (2015b).	3
Equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the adoption of that report.	74
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b) (see below).	19

16. Nineteen tax treaties contain deviating wording from Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a). These 19 treaties can be analysed as follows:

- ∞ Eighteen treaties¹ enable taxpayers to present their cases to the competent authorities of the contracting state of which they are a resident only.
 - For three of them,² this can be explained by the fact that the treaty does not contain a non-discrimination clause available to nationals.
 - For 13 of them,³ this can also be explained by the fact that the treaty contains the former version of the non-discrimination article, which only provides benefits to residents of one of the contracting states.
 - Two treaties contain the current version of the article on non-discrimination but do not include the full sentence of Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a).
- ∞ One treaty mentions in the protocol that the part of the sentence which reads '*notwithstanding the remedies provided in the framework of the domestic legal procedures of the States or requests for refunds submitted on the basis of Article 28*', shall be interpreted so that the taxpayer may request the mutual agreement procedure only after instituting the domestic legal procedures or submitting a request for refund on the basis of such Article 28. This provision is also not equivalent to Article 25(1), first sentence of the *OECD Model Tax Convention* (OECD, 2015a).

17. Furthermore, among these 19 treaties, eight treaties further limit access to the MAP as such procedure is only available in case of '*double taxation*' or '*double taxation not in accordance with the provisions of the convention*', instead of '*taxation not in accordance with the provisions of the convention*'.

18. In practice, Belgium's competent authority may have denied access to MAP on the basis that the MAP request was submitted by a non-resident of Belgium, while this was not possible under the applicable tax treaty. This happened once in 2016 (out of 267 MAP requests submitted to Belgium's competent authority). In such a case, Belgium's competent authority informed the taxpayer to address their request to the state of residence and provided the details of such competent authority to the taxpayer. This particular measure facilitates recourse to MAP in the end.

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

19. Out of Belgium's 96 tax treaties, 78⁴ contain a provision allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification

of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

20. The remaining 18 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of treaties
Period to file a MAP request being shorter than 3 years (6 months)	1
Period to file a MAP request being shorter than 3 years (2 years)	16
Different periods to file a MAP request provided by the treaty, where one of them can be shorter than 3 years (see below)	1

21. One treaty provides the equivalent to Article 25(1) second sentence of the *OECD Model Tax Convention* (OECD, 2015a). However, the protocol to this treaty provides that “it is understood that, in the case of [...], the case must be presented to the competent authority within one year from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement. However, if such period has expired, the taxpayer may, in any case, present the case to the competent authority in [...] within a period of five years beginning on the first day of January of the calendar year next following the related taxable year. The related taxable year is the year in which the income subject to the action resulting in taxation not in accordance with the provisions of the Agreement is derived.” Therefore, another time period as well as another starting point can apply to compute the period within which a MAP request can be submitted under this tax treaty.

Anticipated modifications

22. Belgium has indicated being currently in a negotiation process with France and Germany (which both confirmed in their peer input) to modify or replace the existing tax treaties to include a provision equivalent to Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a). Moreover, Belgium indicated that it intends to implement element B.1 for all its existing tax treaties by signing the Multilateral Instrument. In that regard, Belgium envisages not making any reservations on the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, Belgium indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Belgium reported that it intends to update via bilateral negotiations all of its tax treaties to be compliant with element B.1. In addition, Belgium will seek to include Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

23. Several peers also reported that the provisions of their tax treaty with Belgium do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[B.1]	<p>19 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention, OECD (2015a).</p> <p>Of those 19 tax treaties:</p> <ul style="list-style-type: none"> ○ Nine tax treaties do not incorporate the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty (two years, except for one treaty which provides a 6-month delay); ○ One tax treaty does not incorporate the equivalent to Article 25(1), first sentence; ○ Eight tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty (two years); ○ One tax treaty provide different periods to file a MAP request provided by the treaty, where one of them can be shorter than three years and a different starting point to compute the period during which a MAP request can be submitted. 	<p>Where treaties do not include the equivalent of Article 25(1) of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Belgium should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> ○ a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention, OECD (2015a) either: <ul style="list-style-type: none"> a) As amended in the Action 14 final report, OECD (2015b); or b) As it read prior to the adoption of the Action 14 final report, OECD (2015b); and ○ a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>In addition, Belgium should maintain its stated intention to include the required provision in all future treaties.</p>

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

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

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

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

Domestic bilateral consultation or notification process in place

25. Three of Belgium's 96 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as changed by the *Action 14 final report* (OECD, 2015b) allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For the cases falling under the other 93 tax treaties, Belgium has implemented a notification process since December 2016, which consists in informing the other competent authority concerned that Belgium's competent authority received a MAP request where it does not consider the taxpayer's objection to be justified through a letter that does not provide detailed information on the case at stake.

Practical application

26. No peer indicated that it was aware of or that it had been consulted/notified of a case where Belgium's competent authority considered the objection raised in a MAP request as not justified since 1 January 2014.

27. In practice, the notification process has not yet been implemented during the Reporting Period, because Belgium's competent authority has not considered any objection raised by a taxpayer in a MAP request to be not justified after the notification process was introduced. When it occurs, the other competent authority will be notified at the same time as the taxpayer.

28. Apart from cases where Belgium's competent authority does not consider the objection to be justified, it can happen that Belgium's competent authority denies access to MAP on the basis that the MAP request was submitted by a non-resident of Belgium. This happened once in 2016. In such a case, Belgium's competent authority informed the taxpayer to address their request to the state of residence and provided the details of the competent authority of that state to the taxpayer.

Anticipated modifications

29. For those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as amended by the final report on Action 14, Belgium indicated that it intends modifying its existing tax treaties by signing the Multilateral Instrument and by doing so allowing for the submission of MAP requests to the competent authority of either contracting state. Where a tax treaty will not be modified by the Multilateral Instrument, Belgium also intends to amend its treaties via bilateral negotiations with its treaty partners.

30. In the meantime, Belgium will continue to apply its notification process described previously.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	Since December 2016, Belgium has had in place a process to notify the other competent authority in cases where it considered the objection raised in the MAP request as not justified. However, it was not possible to assess whether the notifications process is applied in practice because no such cases have occurred since that date.	

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

32. Out of Belgium's 96 tax treaties, 54 contain a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is made by the other treaty partner.

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

34. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is included in Belgium's tax treaties and irrespective of whether its domestic legislation enables it to do corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Belgium indicated it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments. Transfer pricing cases are also included in the typical requests examples provided by the FAQs.

Practical application

35. According to Belgium, it provides access to MAP in all transfer pricing cases. Since 1 January 2014, Belgium's competent authority has not denied access to MAP on the basis that the case concerned a transfer pricing case.

36. No peer indicated that it was aware of or that it had been notified of a case that would have been denied access to the MAP in Belgium on the grounds that it was a transfer pricing case since 1 January 2014.

Anticipated modifications

37. From a general perspective, Belgium indicated that a circular containing its MAP guidance will be published in 2017, and that it would expressly provide that the MAP is available for transfer pricing cases. Furthermore, for those treaties that do not contain a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a), Belgium indicated that it intends signing the Multilateral Instrument and by doing so incorporate, where necessary, in all covered tax treaties the equivalent of Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a). In that regard, Belgium envisages not making any reservations on the modifications made by Article 17 of the Multilateral Instrument. In addition, Belgium will seek to include Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

Conclusion

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

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

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

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

Legal and administrative framework

39. None of Belgium's 96 tax treaties allows competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

40. Belgium indicated that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of the MAP. In addition, the domestic law and administrative processes of Belgium do not include a provision that allows their competent authority to limit access to the MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision comes into conflict with the provisions of a tax treaty. In any case, Belgium indicated that treaty provisions would override domestic law and access to MAP is granted were a domestic anti-abuse rule is in conflict with a provision of the treaty. However, this is not addressed in Belgium's FAQs.

Practical application

41. Belgium reported that since 1 January 2014 it has not denied access to MAP in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

42. One taxpayer and one peer provided input on the same case where they indicated that access to MAP was denied in 2016. Two reasons were identified:

- (i) the Belgian company was in a loss making position and hence no double taxation arose. According to the peer, Belgium's competent authority considers that the starting point for the filing period had not been reached yet even though an assessment notice was sent to the Belgian company.
- (ii) it was a case of fraud although the assessment did not mention fraud and the details of the case did not reveal fraud.

The peer considers that:

- (i) the company should be able to request the opening of the MAP, in accordance with the Commentary on Article 25 of the *OECD Model Tax Convention* (OECD, 2015a), upon reception of all notices from which a double taxation will result, although the company is in a loss-making position;
- (ii) the initiation of the MAP may be suspended under the EU arbitration convention, in case of serious penalties, provided that proceedings are pending.

43. According to Belgium, this case was not denied access to MAP. On the contrary, MAP access was granted by Belgium's competent authority. Belgium indicated also that (i) no assessment notice was sent to the taxpayer but only a notice of modification, which is not final, and (ii) Belgium's competent authority informed the taxpayer that their case could not be analysed before a final decision on the fraudulent character of the case was made. On the first point, this also means that the assessment notice can be different from the notice of modification and will not necessarily result in double taxation (while double taxation is required to submit a MAP request as provided in the treaty between Belgium and the peer providing input). In practice, the (final) assessment notice would be sent to the taxpayer if and when losses are recovered. In any case, according to Belgium, the fact that no (final) assessment notice has been sent to the taxpayer yet does not lead Belgium's competent authority to deny access to the MAP in Belgium. On the second point, in the case at stake, the (final) assessment notice is nevertheless needed to lodge a domestic appeal and obtain a final decision on the fraudulent character of the case. Therefore, as Belgium's competent authority postpones the discussion on the case until a final decision is made with respect to the fraudulent character of the case, the discussions are in practice deferred until the taxpayer has recovered losses and lodged an appeal against the (final) assessment notice.

Anticipated modifications

44. From a general perspective, Belgium indicated that a circular containing its MAP guidance should be published during the first semester of 2017. In particular, this circular is expected to address that the MAP is available for cases where an abuse of the tax treaty or of the domestic law is discussed.

Conclusion

	Areas for Improvement	Recommendations
[B.4]	-	As Belgium has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.

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

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

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

Legal and administrative framework

46. Audit settlements are available in Belgium but Belgium will always provide access to the MAP in case of an audit settlement. As discussed below, this is not addressed in the FAQs publicly available (see element B.10).

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

Practical application

48. Belgium reported that since 1 January 2014, Belgium's competent authority has not denied access to MAP requests where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities. Taxpayer input also confirmed that MAP access is not denied in cases of audit settlements.

49. Peers indicated not being aware of denial of access to MAP by Belgium where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities.

Anticipated modifications

50. Belgium indicated that a circular containing its MAP guidance is expected to be published in 2017. In particular, this circular will address that the MAP is available in cases where an administrative or statutory process to solve the dispute is pending or completed.

Conclusion

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

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

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

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

Legal framework on access to MAP and information to be submitted

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

Practical application

53. Belgium has limited access to MAP for three cases in 2016 on the grounds that insufficient information was provided. The other competent authority involved has not been informed of such cases. Belgium reported that the taxpayers were given several opportunities to provide the required information and access to MAP was denied only after the taxpayer was unwilling to provide such information. Indeed, the taxpayer is invited to provide missing information or documents via letter or email. Upon first request to provide such missing information, a two-month delay is granted to the taxpayer. If the taxpayer does not provide missing information, an extra one-month delay is granted. Upon such second deadline, Belgium's competent authority contacts the taxpayer by phone or by email to know what he/she intends to do. If the competent authority still does not receive any information, it denies access to MAP for the case.

54. Peers indicated not being aware of denial of access to MAP by Belgium in situations where taxpayers complied with information and documentation requirements set out in the FAQs.

Anticipated modifications

55. Belgium indicated that a circular containing its MAP guidance will be published in 2017. In particular, this circular should address that the formal requirements, submission deadlines and required information to submit a MAP request.

Conclusion

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

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

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

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

Current situation of Belgium’s tax treaties

57. 95 of Belgium’s 96 tax treaties do not contain a provision allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties. Moreover, Belgium’s Model Tax Convention does not include such provision. Only one tax treaty signed in 2016 includes such a provision.

Anticipated modifications

58. Belgium has indicated being currently in a negotiation process with France, Germany and the Netherlands (which confirmed in their peer input) as well as with Ukraine to modify or replace the existing tax treaties to include a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a). Moreover, Belgium indicated that it intends to implement element B.7 for all its existing tax treaties by signing the Multilateral Instrument. In that regard, Belgium envisages not making any reservations on the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, Belgium indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Belgium reported that it intends to update via bilateral negotiations all of its tax treaties to be compliant with element B.7. In addition, Belgium will seek to include Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

59. Several peers also reported that the provisions of their tax treaty with Belgium do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[B.7]	95 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a).	<p>Where treaties do not include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Belgium should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the treaties with the former USSR and the former Yugoslavia, Belgium should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p> <p>In addition, Belgium should maintain its stated intention to include the required provision in all future treaties.</p>

[B.8] Publish clear and comprehensive MAP guidance

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

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

Belgium's MAP guidance

61. Belgium's rules, guidelines and procedures are included in the FAQs and are available at:

<http://finances.belgium.be/sites/default/files/downloads/126-procedure-amiable-apa-faq.pdf>

62. This contains information on:

- (a) Contact information of the competent authority or the office in charge of MAP cases;
- (b) The manner and form in which the taxpayer should submit its MAP request;
- (c) The specific information and documentation that should be included in a MAP request (see also below);
- (d) Information on availability of arbitration (including the EU Arbitration Convention);
- (e) Relationship with domestic available remedies;
- (f) Implementation of MAP agreements;

- (g) Suspension of tax collection; and
- (h) Interest and penalties.

63. Guidance on arbitration available under the EU Arbitration Convention is found in circular AAF/Intern.ISR/98-0170 dated 7 July 2000. This guidance is also comprehensive and provides the specific details of access to MAP and arbitration under the convention.

64. The above-described FAQs of Belgium includes detailed information on the availability and the use of the MAP and how its competent authority conducts the process in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.⁵

65. As regards the contact information of the competent authority, a recent change has to be noted. Until recently, taxpayers could submit their MAP request to one of the following contacts: (i) the competent authority (being the International Relations Service), or (ii) the director of the local tax office, (as he/she is also the one who should receive internal administrative claims), or (iii) the Minister of Finance. The published FAQs now make it clear that the MAP request should only be sent to the International Relations Service. It is noted that the circular on the EU Arbitration Convention (paragraph VI-B.3.)⁶ still refers to various points of contacts. In this respect, Belgium indicated that if the taxpayer submits its MAP request to the director of the local tax office, the latter provides the taxpayer with the contact details of the International Relation Service and forwards such potential requests to them.

66. One taxpayer expressed concerns about the fact that it was not clear in the past in which language the MAP request should be drafted, while this is now addressed in the FAQs, which mention that the MAP request can be submitted in French, Dutch or in German and that supporting documents could also be provided in English. The same taxpayer mentioned that there was no clarity on the contact details of the competent authority. Another taxpayer indicated that the contact details of the competent authority mentioned in the circular applicable to the EU Arbitration Convention were not up-to-date. In response, Belgium indicated that a comprehensive MAP Guidance will be published.

67. One of these taxpayers encountered difficulties to find relevant information on the MAP because information relating to international procedures are not gathered under the same website and as "fisconet" may not be known by all relevant stakeholders. Still, there is already a dedicated web-page for international matters⁷ with in particular links to (i) tax treaties, (ii) the *OECD Transfer Pricing Guidelines* (OECD, 2017) and (iii) FAQs on MAPs and APAs.

68. Finally, some subjects are not specifically discussed in Belgium's FAQs. This concerns whether MAP is available in cases of: (i) transfer pricing disputes, (ii) the application of anti-abuse provisions, (iii) audit settlements between the tax authority and a taxpayer, (iv) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments, (v) whether taxpayers can request for the multi-year resolution of recurring issues through MAP, (vi) the conditions for suspension of tax collection during the course of a MAP (vii) the consideration of interest and penalties in the MAP, and (viii) the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

Information and documentation to be included in a MAP request

69. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.⁸ This agreed guidance is shown below. Belgium's FAQs enumerates the items that must be included in a request for MAP assistance (if available), which are checked below:

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

70. With respect to the availability of arbitration under the tax treaty entered into with the United States, Belgium published a list of information that are required to become eligible for arbitration⁹ and that include, in particular, whether the taxpayer also sought for domestically available judicial or administrative remedies for the issue at stake and the decision that was rendered by the court as the case may be.

Anticipated modifications

71. Belgium indicated that a circular containing its MAP guidance is expected to be published in 2017.

Conclusion

	Areas for Improvement	Recommendations
[B.8]	The contact details of Belgium's competent authority are not fully clear.	<p>Belgium should include in the MAP guidance currently under preparation the contact information of Belgium's competent authority.</p> <p>Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance (compared to the FAQs), Belgium could consider including information on:</p> <ul style="list-style-type: none"> ○ Whether MAP is available in cases of: (i) transfer pricing disputes, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments; ○ Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; ○ The conditions for suspension of tax collection during the course of a MAP; ○ The consideration of interest and penalties in the MAP; and ○ The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any). <p>Recommendations on guidance in relation to audit settlements and access to the MAP are discussed in element B.10.</p>

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

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

72. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform¹⁰ further promotes the transparency and dissemination of the MAP programme.

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

73. The FAQs about Belgium MAP and APAs are published and can be found at:

<http://finances.belgium.be/sites/default/files/downloads/126-procedure-amiable-apa-faq.pdf>

74. This document is accessible by clicking on the link provided in the MAP profile (see below), and can be found easily from search engine websites as well as on the SPF website under the "international" section.

MAP Profile

75. The MAP profile of Belgium is published on the website of the OECD. This MAP profile is complete, often with detailed information. This profile includes external links to websites of the Belgian government which provide additional information and guidance.

Anticipated modifications

76. Belgium indicated that a circular containing its MAP guidance is expected to be published in 2017.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	The comprehensive MAP guidance is not published yet.	Belgium should ensure its future MAP guidance is publicly available and easily accessible. In addition, Belgium should ensure its FAQs remain available and easily accessible and that its MAP profile, published on the shared public platform, is updated if needed.

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

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

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

MAP and audit settlements in the MAP guidance

78. As previously mentioned in B.5, Belgium's FAQs do not detail the relationship between access to the MAP and audit settlements.

79. One taxpayer mentioned that the MAP guidance did not address access to MAP in cases of audit settlements, while they knew from their own experience that MAP access is granted in case of audit settlements.

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

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

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

81. There is no need for notification of treaty partners as Belgium does not have an internal administrative or statutory dispute settlement or resolution process available.

Anticipated modifications

82. Belgium indicated that a circular containing its MAP guidance should be published during the first semester of 2017 and that it will clarify that audit settlements do not preclude access to the MAP.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	Belgium's FAQs do not include information on the relationship between MAP and audit settlements.	Belgium's MAP guidance should clarify that audit settlements do not preclude access to the MAP.

Notes

1. Among which the treaty entered into with the former Yugoslavia that is now applied with (i) Bosnia and Herzegovina, (ii) Kosovo, (iii) Serbia and (iv) Montenegro.
2. Among which the treaty entered into with the former USSR that is now applied with (i) Kyrgyzstan and (ii) Turkmenistan.
3. Among which the treaty entered into with the former Yugoslavia that is now applied with (i) Bosnia and Herzegovina, (ii) Kosovo, (iii) Serbia and (iv) Montenegro and the treaty entered into with the former USSR that is now applied with (i) Kyrgyzstan and (ii) Turkmenistan.
4. Among which the treaty entered into with the former Yugoslavia that is now applied with (i) Bosnia and Herzegovina, (ii) Kosovo, (iii) Serbia and (iv) Montenegro and the treaty entered into with the former USSR that is now applied with (i) Kyrgyzstan and (ii) Turkmenistan.
5. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
6. Available at: <http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=998ea3ed-2924-47a9-a96c-90e1366683bd&disableHighlighting=true&documentLanguage=fr#findHighlighted> (accessed on 22 August 2017).
7. Available at: http://finances.belgium.be/fr/entreprises/international/accords_internationaux (accessed on 22 August 2017).

9. Available at:
<http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=5f0da04a-229f-4fe6-a22b-7de4f6d68e3c%20&disableHighlighting=true#findHighlighted> (accessed on 22 August 2017).
10. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en>.
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Part C

Resolution of MAP Cases

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

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

83. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the first sentence of Article 25(2) of the *OECD Model Tax Convention* (OECD, 2015a), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Belgium's tax treaties

84. Out of Belgium's 96 tax treaties, 88¹ contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

85. The remaining eight treaties contain a provision requiring or advising their competent authorities to consult each other with a view to the avoidance of double taxation instead of taxation which is not in accordance with the tax treaty, which can be explained by the fact that these treaties enable taxpayers to submit a MAP request only in case of double taxation and not in case of taxation that is not in accordance with the tax treaty. In one of the 8 tax treaties, however, the reference to the potential unilateral solution that the competent authority may be able to arrive at is also missing.

Anticipated modifications

86. Belgium has indicated being currently in a negotiation process with France and Germany (which both confirmed in their peer input) to modify or replace the existing tax treaties to include a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a). Moreover, Belgium indicated that it intends to implement element C.1 for all its existing tax treaties by signing the Multilateral

Instrument. In that regard, Belgium envisages not making any reservations on the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, Belgium indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Belgium reported that it intends to update via bilateral negotiations all of its tax treaties to be compliant with element C.1. In addition, Belgium will seek to include Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

87. Several peers also reported that the provisions of their tax treaty with Belgium do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[C.1]	8 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a).	Where treaties do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Belgium should request the inclusion of the required provision via bilateral negotiations. In addition, Belgium should maintain its stated intention to include the required provision in all future treaties.

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

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

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

Reporting of MAP statistics

89. Statistics regarding all tax treaty related disputes are published on the website of the OECD² as of 2007 and as regards transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.³

90. The FTA MAP Forum has agreed on rules for the reporting of MAP statistics ('**MAP Statistics Reporting Framework**') for MAP requests submitted on or after 1 January 2016 ('**post-2015 cases**'). Also, for MAP requests submitted prior to that date ('**pre-2016 cases**') the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Belgium provided their MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Belgium and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively,⁴ and should be considered jointly for an understanding of the MAP

caseload of Belgium. With respect to post-2015 cases, Belgium reported having reached out to all its MAP partners with a view to have their MAP statistics matching. Belgium indicated that it could match its statistics with almost all of its MAP partners except for one with which there are ongoing discussions regarding the year in which some MAP cases are to be reported.

Monitoring of MAP statistics

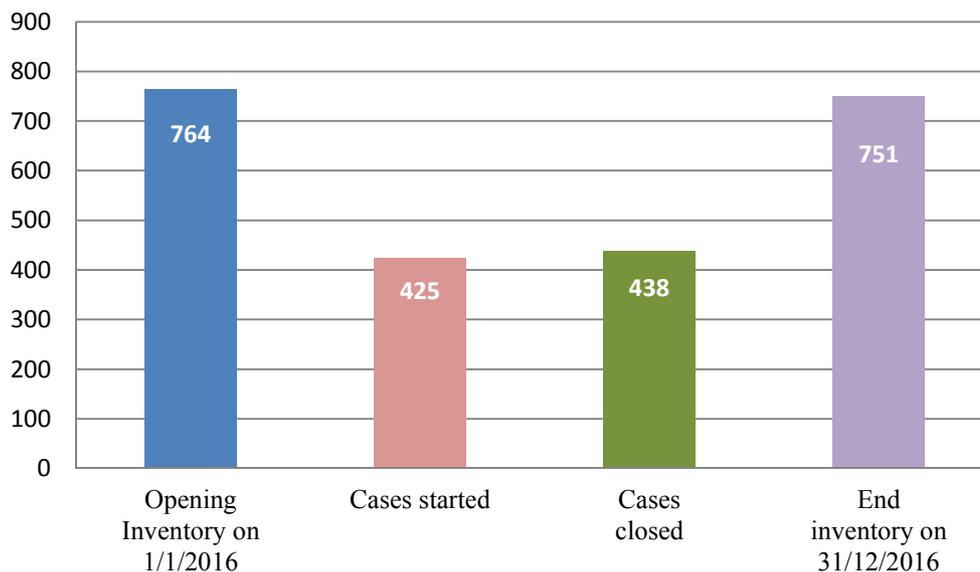
91. Belgium reported that it uses the model timeframe based on the Manual on Effective Mutual Agreement Procedures (MEMAP, OECD 2007)⁵ and has an internal management tracking system (the “MAP sheet”) showing a target to close a MAP case in 24 months through the following stages:

- ∞ Confirm receipt of the MAP request and ask for additional information within one month
- ∞ Draft an opening letter to the other competent authority within one or two months upon receipt of a MAP request
- ∞ Send the position paper within four to six months after sending the opening letter
- ∞ Liaise with the other competent authority and the taxpayer
 - If an agreement is reached, inform the taxpayer and inform the other competent authority of the taxpayer’s acceptance or rejection of the agreement within one month, inform the local tax service if needed;
 - If no agreement is reached yet, respond or agree to the position paper received, and inform the taxpayer once an agreement is reached by requiring the taxpayer to inform the competent authority within one month subsequently inform the other competent authority and inform the local tax service.
- ∞ When there is no answer from the other competent authority, Belgium’s competent authority sends a reminder mentioning the target of 24 months.

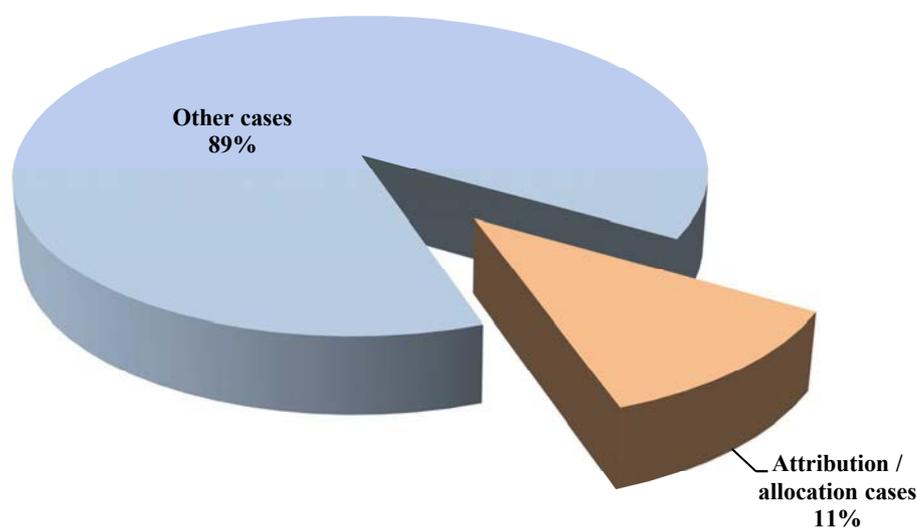
92. Belgium reported that it monitors the average timeframe for each case as well as the underlying reason when an individual case exceeds 24 months (i.e. late reaction of Belgium’s competent authority, late reaction of the other competent authority, drafting of several position papers, case suspended because pending before a court/decision made by a court, or withdrawal of the request). This monitoring is broken down on a jurisdiction-by-jurisdiction basis and by type of case (i.e. attribution/allocation or other case).

Analysis of Belgium’s MAP caseload

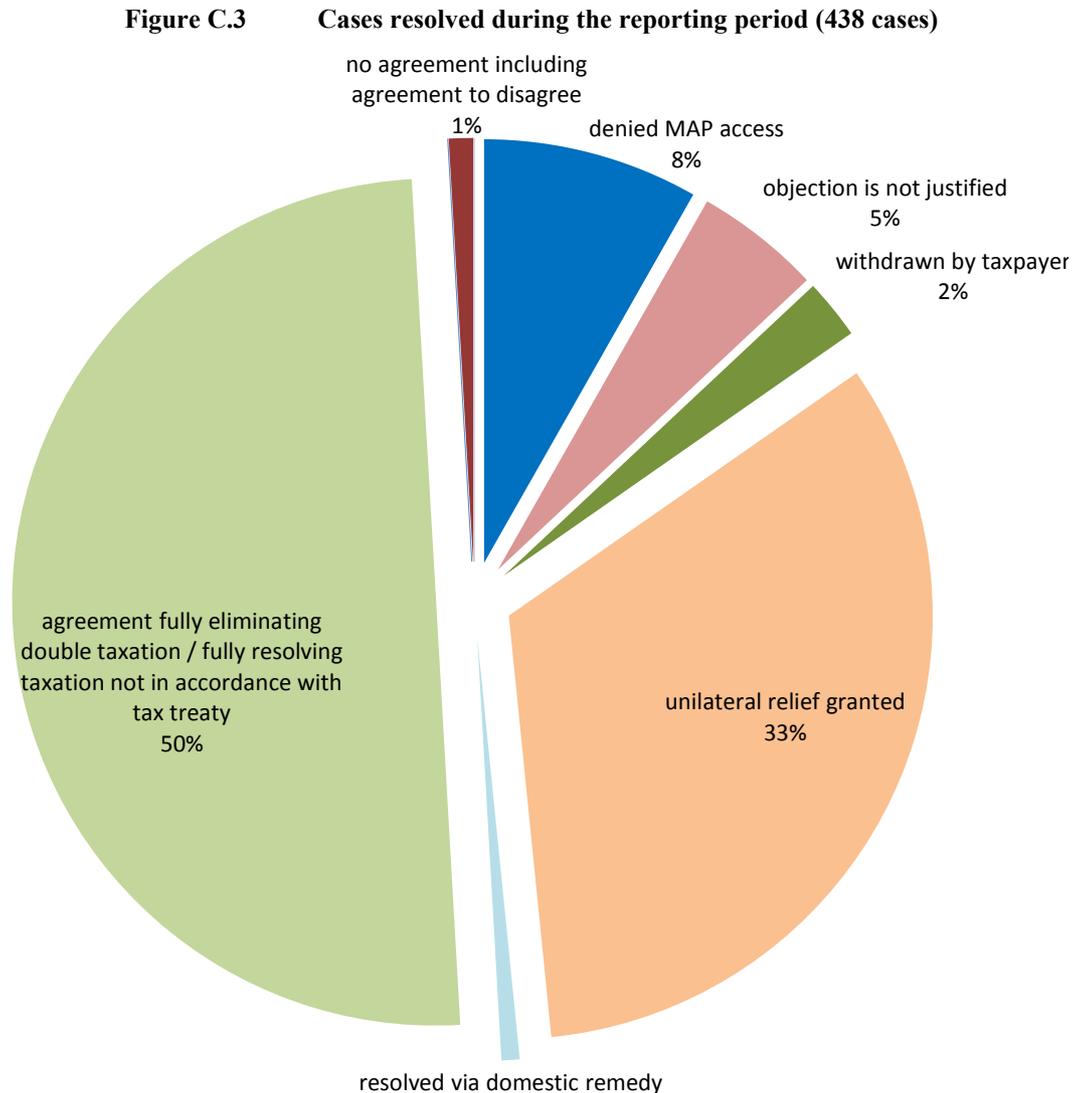
93. The following graph shows the evolution of Belgium’s MAP caseload over the Reporting Period.

Figure C.1 Belgium's MAP inventory

94. At the beginning of the Reporting Period Belgium had 764 pending MAP cases, of which 85 were attribution/allocation cases and 679 other MAP cases.⁶ At the end of the Reporting Period, Belgium had 751 MAP cases in inventory, of which 85 are attribution or allocation cases and 666 other MAP cases. The breakdown of the end inventory can be illustrated as follows:

Figure C.2 End inventory on 31 December 2016 (751 cases)

95. During the Reporting Period Belgium resolved 438 MAP cases and the following outcomes were reported:



96. This chart points out that during the Reporting Period, 219 out of 438 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Average timeframe needed to resolve MAP cases

Pre-2016 cases

97. Belgium reported that on average it needed 41.38 months to resolve attribution/allocation cases and 20.99 months to resolve other cases. This resulted in an average time needed of 22.79 months to close pre-2016 cases. For the purpose of computing the time to resolve pre-2016 cases, Belgium used:

- ∞ as the start date the date of filing of the MAP request; and

- ∞ as the end date, the earliest of the following dates: (i) the date when the taxpayer is informed of the outcome of the MAP, (ii) the date of the closing letter which is drafted upon taxpayer's approval of the agreement reached, or (iii) the date when Belgium's competent authority formally closed the case.

Post-2015 cases

98. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 12 months.

99. It is noted that Belgium closed 47.1% of post-2015 cases during the Reporting Period. During these 12 months, Belgium closed on average attribution/allocation cases within 3.78 months (only one case was closed, following a withdrawal by the taxpayer). For other MAP cases, the average time to resolve these cases was reported as 1.37 months.

All cases resolved during Reporting Period

100. The average time needed to resolve MAP cases during the Reporting Period was 13.02 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution / Allocation cases	22	39.67
Other cases	416	11.61
All cases	438	13.02

Peer input

101. Several peers mentioned that Belgium's competent authority responded quickly to their requests. However, one peer indicated that Belgium's competent authority, like their own competent authority, could sometimes be responsible for delays in the procedure but progress is being made in reasonable time and another peer expressed concerns about the fact that some cases initiated in 2014 are still pending. One peer mentioned that nearly all the cases it had with Belgium (50 cases since 2014) were closed within 24 months, another one indicated that cases (that would not concern attribution/allocation cases) were closed on average in less than 12 months.

102. One peer also mentioned that the relationship between both competent authorities has been improved by the arbitration protocol under the tax treaty of their countries, which incites them to reach principled, constructive resolution of MAP cases within 24 months.

Anticipated modifications

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

Conclusion

	Areas for Improvement	Recommendations
[C.2]	Belgium submitted timely comprehensive MAP statistics and indicated they have been matched with almost all of its MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether Belgium's MAP statistics match those of its treaty partners as reported by the latter.	
	Within the context of the state of play outlined above and in relation to the MAP statistics provided by Belgium, it resolved during the Reporting Period 47.1% (200 out of 425 cases) of its post-2015 cases in 1.39 months on average. In that regard, Belgium is recommended to seek to resolve the remaining 52.9% of the post-2015 cases pending on 31 December 2016 (225 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

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

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

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

Description of Belgium's competent authority

105. Belgium's competent authority team consists of 11 people, two of them dealing exclusively with transfer pricing cases. The head of the MAP team is also responsible for the International Relation Services, which includes also VAT and the interpretation and application of tax treaties. One person is responsible for both MAP cases and the application and interpretation of double tax treaties. The remaining seven staff members deal partly with MAP cases along with other tasks such as interpretation and application of double tax treaties, parliamentary questions, drafting of circulars and FAQs, issues of principle, providing advice, etc. MAP staff is trained on the job on a continual basis and is given specific transfer pricing trainings. There are some budget limits for travelling as a maximum of two people may travel abroad to attend the same event. However, if the budget allows it, more than two people may attend MAP negotiations abroad when necessary.

106. Belgium indicated that they inform their treaty partners each time there is a change in the contact details of their competent authority. In addition, contact information is published on the OECD (via the MAP profile⁷) and EU website (via the transfer pricing profile⁸). Finally, Belgium indicated that they provide contact details of the competent official in all correspondence. One peer confirmed that Belgium's competent authority contact details were easy to find.

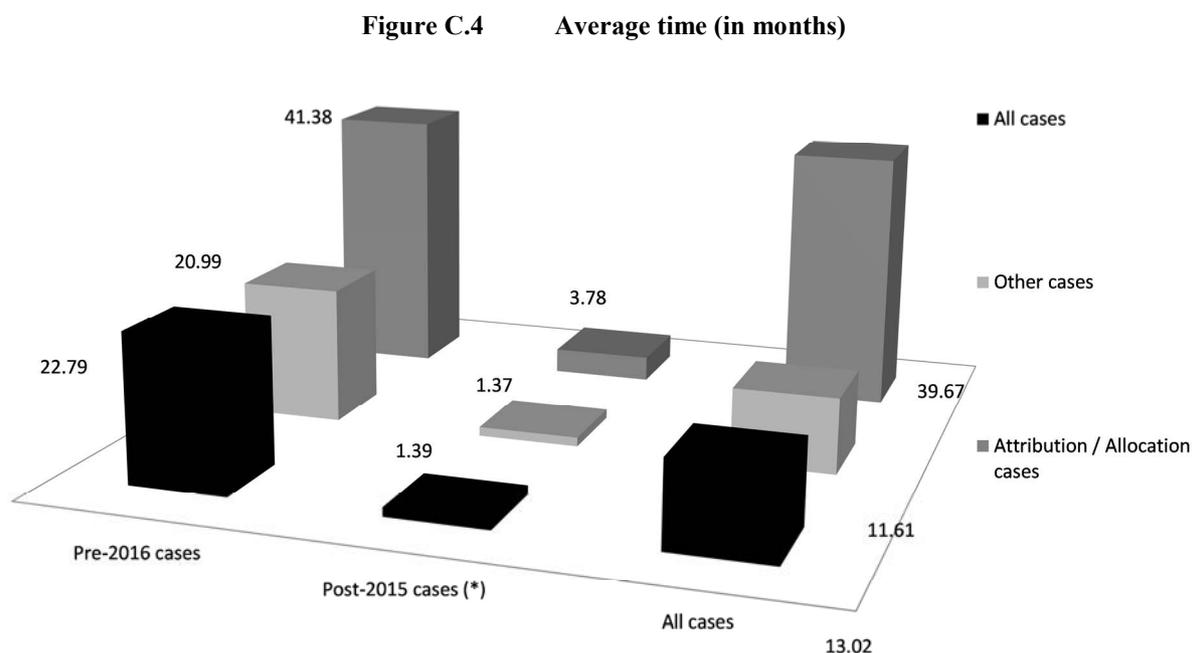
Monitoring mechanism

107. The framework for the monitoring/assessment of whether such resources are adequate consists of monitoring the time spent by the team on the files they are responsible for. Indeed, staff was required to fill in timesheet explaining on which files they spent time (per half an hour). This not only enables to monitor the time needed to perform the assigned tasks more precisely but also allows checking whether more resources are needed.

108. Moreover, the MAP sheet filled in with all the actions undertaken for a given MAP case (see previously, confirming receipt, opening letter, etc.) enables a good follow up of the completed tasks and a general view is immediately available to anyone who would take over an open case.

Practical application

109. As discussed under element C.2 Belgium resolved its MAP cases within the pursued 24-month average. However, a discrepancy exists between the average time taken to solve attribution / allocation cases and other cases. This can be illustrated by the following graph:



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

110. Based on these figures, it follows that on average it took Belgium 13.02 months to resolve MAP cases. However, it took Belgium 39.67 months to resolve attribution / allocation cases, which might indicate that additional resources specifically dedicated to allocation/attribution cases may be necessary to accelerate the resolution of these cases.

111. Belgium provided the following clarification for this excess as regards the Reporting Period:

Cases resolved in more than 24 months during the Reporting Period	Attribution / Allocation cases	Other cases	All cases
Late reaction from Belgium			
More than 1 year	0	4	4
More than 2 years	1	18	19
More than 3 years	0	10	10
Late reaction from the other competent authority			
More than 1 year	0	8	8
More than 2 years	3	4	7
More than 3 years	5	5	10
Negotiations have taken a long time due to the drafting of several positions papers	6	13	19
Suspension of the case (pending before a court) or decision made by a court	1	1	2
Withdrawal of the taxpayer	1	1	2
TOTAL	17	64	81

112. Belgium also reported that in 2015 it resolved 102 cases in excess of 24 months, while during the Reporting Period this figure decreased to 81 cases (out of 438 resolved cases).

113. Several peers mentioned that Belgium's competent authority responded quickly to their requests and that there were several contacts and regular meetings with Belgium's competent authority and that the overall relationship was good and could help reach agreement on complex issues. One peer also mentioned that it received one notification from Belgium's competent authorities on the opening of a MAP with relevant information.

114. Several peers mentioned that discussions are carried out in an efficient manner with Belgium's competent authority, in writing or through conference calls. One peer however mentioned that on average six months elapsed between responses by both competent authorities and expressed concerns about the fact that written correspondence could sometimes not help reach an agreement. Another peer suggested that they could meet in person Belgium's competent authority to enhance the resolution of MAP cases. Several peers finally suggested that they could meet more often (e.g. twice a year) and/or develop additional channels of communication such as periodic conference calls. Finally, one peer suggested the use of secure email to exchange documents to enable turnaround times to be improved.

Anticipated modifications

115. Belgium did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for Improvement	Recommendations
[C.3]	-	<p>Belgium should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.</p> <p>Furthermore, as Belgium resolved attribution / allocation cases in 39.67 months on average, it could consider, as indicated by peers, devoting additional funding and resources to meet the competent authorities of its treaty partners more often to accelerate the resolution of these cases.</p>

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

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

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

Functioning of staff in charge of MAP

117. Belgium's competent authority is a part of the International Relation Service, which is a division of the Support and Operating Expertise division within the head office of the General Tax Administration (AGFisc) in the SPF. Belgium's audit teams belong to the same General Administration in the SPF but are independent from Belgium's competent authority as they report to heads of Administration departments being independent from the Support and Operating Expertise Division.

118. Upon receipt of a MAP case, Belgium's competent authority asks the relevant tax service for facts and supplementary information. If not all information is available, Belgium's competent authority also contacts the taxpayer. Then, Belgium's competent authority independently decides on its position on the MAP case. The capacity to act independently in transfer pricing matters has been enhanced by the recruitment in 2014 of two transfer pricing experts who are no longer affiliated to audit teams. As a consequence, Belgium's competent authority acts independently and only depends on other parts of the tax administration for information and verification of facts. Furthermore, the resolution of MAP cases by Belgium's competent authority is not influenced by policy considerations.

119. No peer expressed any concerns about Belgium's competent authority's independence. Several peers mentioned that Belgium's competent authority has always been very positive towards a final solution that reconciles in the best way the interest of both parties and that they appreciate the pragmatic orientation of Belgium's competent authority.

Anticipated modifications

120. Belgium did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for Improvement	Recommendations
[C.4]	-	As it has done thus far, Belgium should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue.

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

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

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

Performance indicators used by Belgium

122. Belgium uses performance indicators based on the meeting of deadlines for each stage of MAP cases. One of the objective goals is following up and complying with all internally fixed deadlines. These deadlines are filled in by staff in the course of the performance of their activity (see previously, the MAP sheet) and can be consulted by the management using internal software. Moreover, all positions taken by staff are verified by another person and/or the head of service, and thus ensuring the positions comply with the Commentary to the *OECD Model Tax Convention* (OECD, 2015a) and the *OECD Transfer Pricing Guidelines* (OECD, 2017). Staff is expected to follow such guidelines.

123. The Final Report on Action 14 (OECD, 2015b) includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist:

- 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).

124. In particular, there is no performance indicators based on amounts or assignments that need to be achieved by Belgium's competent authority when resolving MAP cases, nor

does Belgium’s competent authority target specified sustained audit adjustments or tax revenue amounts.

Practical application

125. Several peers mentioned that Belgium’s competent authority official with which they were dealing were very efficient and wanted to close the case in a timely manner, which was notably done through quick answers to questions raised through various means of communication.

Anticipated modifications

126. Belgium did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

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

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

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

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

Position on MAP arbitration

128. Belgium has no domestic law limitations for including MAP arbitration in its tax treaties. The inclusion of MAP arbitration is part of its tax treaty policy. In particular, Belgium’s publicly available model tax treaty⁹ contains an arbitration provision following the *OECD Model Tax Convention* (OECD, 2015a). In addition, Belgium is a signatory to the EU Arbitration Convention and has been a participant in the sub-group on arbitration as part of the Multilateral Instrument of Action 15 of the BEPS project.

Practical application

129. Belgium has incorporated an arbitration clause in ten treaties.¹⁰ In seven treaties there is a clause that is equivalent to Article 25(5) of the *OECD Model Tax Convention*, OECD (2015a); one treaty provides another mandatory and binding arbitration, while the two remaining treaties provide for a voluntary and binding arbitration procedure.

130. Furthermore, Belgium included in two treaties a most-favoured nation clause concerning the inclusion of an arbitration provision. In one treaty¹¹ this concerns the automatic inclusion of such provision, whereas in the other one¹² this concerns entering into negotiations for the inclusion of an arbitration provision, should Belgium’s treaty partner include an arbitration provision in a tax treaty with a third state.

Anticipated modifications

131. Belgium reported that it will opt for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.

Conclusion

	Areas for Improvement	Recommendations
[C.6]	-	-

Notes

1. These 88 treaties include the treaty with the former Yugoslavia that is continued to be applied to (i) Bosnia and Herzegovina, (ii) Kosovo, (iii) Serbia and (iv) Montenegro and the treaty with the former USSR that is continued to be applied to (i) Kyrgyzstan and (ii) Turkmenistan.
2. <https://search.oecd.org/ctp/dispute/MAP%20PROGRAM%20STATISTICS%20FOR%202015%20BELGIUM.pdf> (accessed on 24 August 2017).
3. https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0142016nacstatistics2015.pdf.
4. For post-2015 cases, if the number of MAP cases in Belgium’s inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five, Belgium reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution / allocation cases and other cases).
5. Manual on Effective Mutual Agreement Procedures (MEMAP), available at www.oecd.org/ctp/38061910.pdf (accessed on 24 August 2017).
6. For pre-2016 and post-2015 cases, Belgium follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention, (OECD, 2015a)); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention, (OECD, 2015a)), which is also known as a transfer pricing MAP case”.
7. <https://search.oecd.org/tax/dispute/Belgium-Dispute-Resolution-Profile.pdf>. (accessed on 24 August 2017)
8. http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/tpprofile-be.pdf (accessed on 24 August 2017).

9. <http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=67ff6923-e842-44c1-8365-0c8536237b93&disableHighlighting=true&documentLanguage=en#findHighlighted>
(accessed on 24 August 2017).
10. This concerns the treaties entered into with Isle of Man, Japan, Malaysia, Moldova, Poland, Switzerland, Tajikistan, the United Kingdom, the United States and Uruguay. Only the provisions included in the treaties entered into with the United Kingdom and with the United States are in force.
11. This concerns the treaty with Russia.
12. This concerns the treaty with Norway.

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Part D

Implementation of MAP Agreements

[D.1] Implement all MAP agreements

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

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

Legal framework to implement MAP agreements

133. Once a MAP agreement is reached, Belgium's competent authority requests the taxpayers concerned to give their approval to the agreement reached as a prerequisite for implementation. This applies both for agreements reached as the result of the MAP, as also for any agreements reached following the decision of an arbitration panel as a final stage to the MAP. Belgium's competent authority is not itself responsible for implementing MAP agreements. Once a MAP agreement is accepted by the taxpayer, it is sent to the local tax service, the latter being responsible for the implementation. Nevertheless, Belgium's competent authority asks for a copy of the implementation act to monitor that this is done in practice. This information is used in Belgium's competent authority's internal database that is used to monitor and review the implementation of MAP agreements.

134. Subject to limitations described below, Belgium will implement all agreements reached in MAP discussions and once accepted by taxpayers. Belgium, however, has a legal and administrative framework in place regarding the implementation of MAP agreements that can be different for upward and downward adjustments of taxpayers' taxable income. MAP agreements resulting in a downward adjustment of the taxpayer's taxable income will always be implemented by Belgium. On the other hand, MAP agreements resulting in an upward adjustment of the taxpayer's taxable income will be implemented if its domestic statute of limitation enables it to do so, as additional taxes can only be assessed for up to three years as from the end of a given tax year.

135. On 1 January 2017, a new provision has entered into force into Belgium's domestic law. This provision stipulates that the assessment period will be extended by 12 months as from the date when a MAP is closed. Accordingly, taxes that would not be assessed under current circumstances could be levied (and corresponding agreement implemented) under the new legislation. In this respect, Belgium indicated that the MAP guidance to be published would specify at which date a MAP is to be considered closed, as this is not clearly defined in the law.

Practical application

136. Belgium reported that all MAP agreements reached since 1 January 2014, once accepted by taxpayers, have been (or will be) implemented.

137. Peers have not indicated experiencing any issues with Belgium regarding the implementation of MAP agreements that were reached on or after 1 January 2014. One peer mentioned that it is their impression that MAP agreements have been implemented by Belgium both timely and correctly. Another peer mentioned that double taxation was nearly always eliminated in their MAP agreements with Belgium, and that the exceptions concerned taxpayers who did not accept the MAP agreement that was proposed to them. Another peer echoed this input and specified that, according to them, only when taxpayers did not accept the MAP agreement these agreements were not implemented.

Anticipated modifications

138. Belgium indicated that the process to implement MAP agreements will be addressed in the MAP guidance to be published.

Conclusion

	Areas for Improvement	Recommendations
[D.1]	-	As it has done thus far, Belgium should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.

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

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

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

Theoretical timeframe for implementing mutual agreements

140. Belgium has in its domestic legislation and/or administrative framework no timeframe for implementation of MAP agreements reached. As mentioned previously, the Belgian Competent Authority is not itself responsible for implementing MAP agreements. Upon written acceptance by taxpayers, MAP agreements are implemented by the local tax service and the Belgian Competent Authority asks for a copy of the implementation act to monitor that this is done in practice. On average, the implementation of mutual agreements takes two months upon receipt of the order to implement a MAP agreement.

Practical application

141. Belgium reported that all MAP agreements that were reached on or after 1 January 2014 and once accepted by taxpayers have been (or will be) implemented on a timely basis.

142. Peers have not indicated experiencing any problems with Belgium regarding the implementation of MAP agreements that were reached on or after 1 January 2014 in general or on a timely basis. One peer mentioned that it believes that MAP agreements have been implemented both timely and correctly.

Anticipated modifications

143. Belgium indicated that the process to implement MAP agreements would be addressed in the MAP guidance to be published.

Conclusion

	Areas for Improvement	Recommendations
[D.2]	-	As it has done thus far, Belgium should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.

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

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

144. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

Legal framework and current situation of Belgium's tax treaties

145. As discussed under element D.1, Belgium's domestic legislation does not enable it to implement MAP agreements resulting in upward adjustments if the domestic time limits have passed. On the other hand, Belgium always implements MAP agreements resulting in a downward adjustment of the taxpayer's taxable income.

146. Out of Belgium's 96 tax treaties, 44 contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. For the remaining 52 treaties, the following analysis is made:

- ∞ One treaty includes the alternative provision setting a time limit for making adjustments in Article 9(1) only; and
- ∞ 51 treaties do not include either of the alternative provisions found in Article 9(1) or in Article 7(2) that set a time limit in for making adjustments.¹

Anticipated modifications

147. Belgium has indicated that it is currently in negotiations with France and Germany (which both confirmed in their peer input) to modify or replace the existing tax treaties to include a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015). Moreover, Belgium indicated that it intends to implement element D.3 for all its existing tax treaties by signing the Multilateral Instrument. In that

regard, Belgium envisages not making any reservations on the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, Belgium indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Belgium reported that it intends to update via bilateral negotiations all of its tax treaties to be compliant with element D.3. In addition, Belgium will seek to include Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

148. Several peers also reported that the provisions of their tax treaty with Belgium do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	<p>52 out of 96 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor the alternative provisions in both Article 9(1) and Article 7(2).</p> <p>Of those 52 treaties:</p> <ul style="list-style-type: none"> ○ 51 do neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015) nor include the alternative provisions. ○ one tax treaty does not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015) and only includes the alternative provision in Article 9(1). 	<p>Where treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015) or both alternatives provided in Article 9(1) and Article 7(2) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Belgium should request the inclusion of the required provision or be willing to accept the inclusion of both alternatives via bilateral negotiations.</p> <p>Specifically with respect to the treaties with the former USSR and with the former Yugoslavia, Belgium should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or be willing to accept the inclusion of both alternatives.</p> <p>In addition, Belgium should maintain its stated intention to include the required provision or to be willing to accept the inclusion of both alternatives in all future treaties.</p>

Notes

1. These 51 treaties include the treaty with the former Yugoslavia that is continued to be applied to (i) Bosnia and Herzegovina, (ii) Kosovo, (iii) Serbia and (iv) Montenegro and the treaty with the former USSR that continued to be applied to (i) Kyrgyzstan and (ii) Turkmenistan.

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Summary

	Areas for Improvement	Recommendations
Part A: Preventing disputes		
[A.1]	17 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015).	<p>Where treaties do not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Belgium should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the treaty with the former Yugoslavia, Belgium should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p> <p>In addition, Belgium should maintain its stated intention to include the required provision in all future treaties.</p>
[A.2]	The roll-back of bilateral APAs has been introduced recently in Belgium and not all peers are aware of it.	<p>As the roll-back of APAs has been introduced recently in Belgium, it is suggested that Belgium notifies its treaty partners of the availability of such roll-backs.</p> <p>Belgium should continue to provide for roll-back of bilateral APAs in appropriate cases as it has done thus far in one case.</p> <p>To keep a record of the number of bilateral APAs where a roll-back was and was not granted, Belgium could also introduce a tracking system.</p>

	Areas for Improvement	Recommendations
Part B: Availability and access to MAP		
[B.1]	<p>19 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention, OECD (2015).</p> <p>Of those 19 tax treaties:</p> <ul style="list-style-type: none"> ○ Nine tax treaties do not incorporate the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty (2 years, except for one treaty which provides a 6-month delay); ○ One tax treaty does not incorporate the equivalent to Article 25(1), first sentence; ○ Eight tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty (two years); ○ One tax treaty provide different periods to file a MAP request provided by the treaty, where one of them can be shorter than three years and a different starting point to compute the period during which a MAP request can be submitted. 	<p>Where treaties do not include the equivalent of Article 25(1) of the OECD Model Tax Convention, OECD (2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Belgium should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> ○ a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention, OECD (2015) either: <ul style="list-style-type: none"> a) As amended in the final report of Action 14; or b) As it read prior to the adoption of final report of Action 14; and ○ a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>In addition, Belgium should maintain its stated intention to include the required provision in all future treaties.</p>
[B.2]		<p>Since December 2016, Belgium has had in place a procedure to notify the other competent authority in cases where it considered the objection raised in the MAP request as not justified. However, it was not possible to assess whether the notification procedure is applied in practice because no such cases have occurred since that date.</p>
[B.3]	-	<p>As Belgium has thus far granted access to the MAP in eligible transfer pricing cases, it should continue granting access for these cases.</p>
[B.4]	-	<p>As Belgium has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.</p>
[B.5]	-	<p>As Belgium has thus far granted access to the MAP in eligible cases, even if there was an audit settlement between the tax authority and a taxpayer, it should continue granting access for these cases.</p>
[B.6]	-	<p>As Belgium has thus far not limited access to the MAP in eligible cases when taxpayers have complied with Belgium's information and documentation requirements for MAP requests, it should continue this practice.</p>
[B.7]	<p>95 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015).</p>	<p>Where treaties do not include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Belgium should request the inclusion of the required provision via bilateral negotiations.</p>

	Areas for Improvement	Recommendations
		<p>Specifically with respect to the treaties with the former USSR and the former Yugoslavia, Belgium should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p> <p>In addition, Belgium should maintain its stated intention to include the required provision in all future treaties.</p>
[B.8]	The contact details of Belgium's competent authority are not fully clear.	<p>Belgium should include in the MAP guidance currently under preparation the contact information of Belgium's competent authority.</p> <p>Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance (compared to the FAQs), Belgium could consider including information on:</p> <ul style="list-style-type: none"> ○ Whether MAP is available in cases of: (i) transfer pricing disputes, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments; ○ Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; ○ The conditions for suspension of tax collection during the course of a MAP; ○ The consideration of interest and penalties in the MAP; and ○ The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any). <p>Recommendations on guidance in relation to audit settlements and access to the MAP are discussed in element B.10.</p>
[B.9]	The comprehensive MAP guidance is not published yet.	<p>Belgium should ensure its future MAP guidance is publicly available and easily accessible.</p> <p>In addition, Belgium should ensure its FAQs remain available and easily accessible and that its MAP profile, published on the shared public platform, is updated if needed.</p>
[B.10]	Belgium's FAQs do not include information on the relationship between MAP and audit settlements.	Belgium's MAP guidance should clarify that audit settlements do not preclude access to the MAP.

	Areas for Improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	8 out of 96 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015).	Where treaties do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Belgium should request the inclusion of the required provision via bilateral negotiations. In addition, Belgium should maintain its stated intention to include the required provision in all future treaties.
[C.2]	Belgium submitted timely comprehensive MAP statistics and indicated they have been matched with almost all of its MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether Belgium's MAP statistics match those of its treaty partners as reported by the latter.	
	Within the context of the state of play outlined above and in relation to the MAP statistics provided by Belgium, it resolved during the Reporting Period 47.1% (200 out of 425 cases) of its post-2015 cases in 1.39 months on average. In that regard, Belgium is recommended to seek to resolve the remaining 52.9% of the post-2015 cases pending on 31 December 2016 (225 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	-	Belgium should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner. Furthermore, as Belgium resolved attribution/ allocation cases in 39.67months on average, it could consider, as indicated by peers, devoting additional funding and resources to meet the competent authorities of its treaty partners more often to accelerate the resolution of these cases.
[C.4]	-	As it has done thus far, Belgium should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue.
[C.5]	-	As it has done thus far, Belgium should continue to use appropriate performance indicators.
[C.6]	-	-

	Areas for Improvement	Recommendations
Part D: Implementation of MAP agreements		
[D.1]	-	As it has done thus far, Belgium should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.
[D.2]	-	As it has done thus far, Belgium should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	<p>52 out of 96 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor the alternative provisions in both Article 9(1) and Article 7(2).</p> <p>Of those 52 treaties:</p> <ul style="list-style-type: none"> ○ 51 do neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015) nor include the alternative provisions. ○ one tax treaty does not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015) and only includes the alternative provision in Article 9(1). 	<p>Where treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015) or both alternatives provided in Article 9(1) and Article 7(2) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Belgium should request the inclusion of the required provision or be willing to accept the inclusion of both alternatives via bilateral negotiations.</p> <p>Specifically with respect to the treaties with the former USSR and with the former Yugoslavia, Belgium should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or be willing to accept the inclusion of both alternatives.</p> <p>In addition, Belgium should maintain its stated intention to include the required provision or be willing to accept the inclusion of both alternatives in all future treaties.</p>

Annex A

Tax Treaty Network of Belgium

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

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC?				
Algeria	Y	O	Y	Y	i	Y	N	Y	N	N	
Argentina	Y	O	Y	Y	i	Y	N	Y	N	N	
Armenia	Y	O	Y	Y	i	Y	Y	Y	N	N	
Australia	Y	O	Y	Y	i	Y	N	N	N	N	
Austria	Y	O	ii (2 years)	i	i	Y	N	N	N	N	
Azerbaijan	Y	O	Y	Y	i	Y	Y	Y	N	N	
Bahrein	Y	O	Y	Y	i	Y	Y	Y	N	N	
Bangladesh	Y	O	Y	i	i	Y	Y	Y	N	N	
Belarus	Y	O	Y	i	i	Y	N	Y	N	N	
Bosnia	Y	O	Y	i	i	Y	N	N	N	N	
Brazil	Y	O	ii (2 years)	i	i	Y	N	N	N	N	
Bulgaria	Y	O	Y	i	i	Y	N	Y	N	N	
Canada	Y	O	ii (2 years)	i	i	Y	ii	Y	N	N	
Chile	Y	O	Y	Y	i	Y	N	Y	N	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority	Is Art. 25(1), second sentence included? If no, please state reasons	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MTC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?
China	Y	O	Y	Y	i	Y	Y	Y	N	N
Chinese Taipei	Y	O	Y	Y	i	Y	Y	Y	N	N
Congo	Y	O	Y	Y	i	Y	Y	Y	N	N
Côte d'Ivoire	Y	O	Y	i	i	Y	N	Y	N	N
Croatia	Y	O	Y	Y	i	Y	Y	Y	N	N
Cyprus*	Y	O	Y	i	i	Y	N	Y	N	N
Czech Republic	Y	O	Y	i	i	Y	N	Y	N	N
Denmark	Y	N	ii (2 years)	i	i	N	N	N	N	N
Ecuador	Y	O	Y	i	i	Y	N	Y	N	N
Egypt	Y	O	Y	i	i	Y	N	Y	N	N
Estonia	Y	O	Y	Y	i	Y	Y	Y	N	N
Finland	Y	O	Y	Y	i	Y	N	N	N	N
France	Y	N	ii (6 months)	i	i	N	N	N	N	N
Gabon	Y	O	Y	i	i	Y	N	Y	N	N
Georgia	Y	O	Y	Y	i	Y	Y	Y	N	N

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC?				
Germany	Y	N	ii (2 years)	i	i	N	N	N	N	N	
Ghana	Y	O	Y	Y	i	Y	Y	Y	N	N	
Greece	Y	O	ii (2 years)	i	i	Y	N	Y	N	N	
Hong Kong, China	Y	O	Y	Y	i	Y	Y	Y	N	N	
Hungary	Y	O	Y	i	i	Y	N	Y	N	N	
Iceland	Y	O	Y	Y	i	Y	Y	Y	N	N	
India	Y	O	ii (2 years)	i	i	Y	Y	Y	N	N	
Indonesia	Y	O	Y	i	i	Y	N	Y	N	N	
Ireland	Y	N	ii (2 years)	i	i	N	N	N	N	N	
Isle of Man	N	O	Y	Y	i	Y	Y	Y	N	Y	i
Israel	Y	N	ii (2 years)	i	i	N	N	N	N	N	
Italy	Y	N	ii (2 years)	i	i	Y	N	Y	N	N	
Japan	N	E	Y	Y	i	Y	Y	Y	Y	Y	i

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority	Is Art. 25(1), second sentence included? If no, please state reasons	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MTC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Kazakhstan	Y	O	Y	i	i	Y	Y	Y	N	N	
Korea	Y	O	Y	i	i	Y	N	N	N	N	
Kosovo	Y	O	Y	i	i	Y	N	N	N	N	
Kuwait	Y	O	Y	Y	i	Y	N	Y	N	N	
Kyrgyzstan	Y	O	Y	i	i	Y	N	Y	N	N	
Latvia	Y	O	Y	Y	i	Y	Y	Y	N	N	
Lithuania	Y	O	Y	Y	i	Y	Y	Y	N	N	
Luxembourg	Y	N	ii (2 years)	i	i	N	Y	N	N	N	
Macau	N	O	Y	Y	i	Y	Y	Y	N	N	
Macedonia	N	E	Y	Y	i	Y	Y	Y	N	N	
Malaysia	Y	N	ii (2 years)	i	i	N	N	N	N	Y	iii
Malta	Y	N	Y	i	i	Y	N	N	N	N	
Mauritius	Y	O	Y	i	i	Y	N	Y	N	N	
Mexico	Y	O	Y	i	i	Y	N	Y	N	N	
Moldova	N	O	Y	Y	i	Y	Y	Y	N	Y	i

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
		If yes, submission to either competent authority	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC?				
Mongolia	Y	O	Y	i	i	Y	N	Y	N	N	
Montenegro	Y	O	Y	i	i	Y	N	N	N	N	
Morocco	Y	O	Y	Y	i	Y	Y	Y	N	N	
Netherlands	Y	O	Y	Y	i	Y	Y	Y	N	N	
New Zealand	Y	O	Y	Y	i	Y	Y	Y	N	N	
Nigeria	Y	O	Y	Y	i	Y	N	Y	N	N	
Norway	N	O	Y	Y	i	Y	Y	Y	N	N	iv
Oman	N	O	Y	Y	i	Y	Y	Y	N	N	
Pakistan	Y	O	Y	i	i	Y	N	Y	N	N	
Philippines	Y	O	ii (2 years)	Y	i	Y	N	N	N	N	
Poland	Y	O	Y	Y	i	Y	Y	Y	N	Y	i
Portugal	Y	N	ii (2 years)	i	i	N	N	N	N	N	
Qatar	N	O	Y	Y	i	Y	Y	Y	N	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority	Is Art. 25(1), second sentence included? If no, please state reasons	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MTC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
Romania	Y	O	Y	Y	i	Y	N	Y	N	N	
Russia	N	O	Y	Y	i	Y	Y	Y	N	N	iv
Rwanda	Y	O	Y	Y	i	Y	Y	Y	N	N	
San Marino	Y	O	ii (2 years)	Y	i	Y	Y	Y	N	N	
Senegal	Y	O	Y	i	i	Y	N	Y	N	N	
Serbia	Y	O	Y	i	i	Y	N	N	N	N	
Seychelles	N	O	Y	Y	i	Y	Y	Y	N	N	
Singapore	Y	O	Y	Y	i	Y	Y	Y	N	N	
Slovak Republic	Y	O	Y	i	i	Y	N	Y	N	N	
Slovenia	Y	O	Y	i	i	Y	N	Y	N	N	
South Africa	Y	O	Y	Y	i	Y	N	Y	N	N	
Spain	Y	O	Y	Y	i	Y	N	Y	N	N	
Sri Lanka	Y	O	Y	Y	i	Y	N	Y	N	N	
Sweden	Y	O	Y	i	i	Y	N	Y	N	N	
Switzerland	Y	O	Y	Y	i	Y	N	Y	N	Y	i

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
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		If yes, submission to either competent authority	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC?				
Tajikistan	N	O	Y	Y	i	Y	Y	Y	N	Y	iii
Thailand	Y	O	Y	i	i	Y	N	N	N	N	
Tunisia	Y	O	Y	Y	i	Y	Y	Y	N	N	
Turkey	Y	O	iv	Y	i	Y	N	Y	N	N	
Turkmenistan	Y	O	Y	i	i	Y	N	Y	N	N	
Uganda	N	O	Y	Y	i	Y	Y	Y	N	N	
Ukraine	Y	O	Y	Y	i	Y	Y	Y	N	N	
United Arab Emirates	Y	O	Y	i	i	Y	N	Y	N	N	
United Kingdom	Y	O	Y	i	i	Y	Y	Y	N	Y	i
United States	Y	E	Y	Y	i	Y	Y	Y	N	Y	ii
Uruguay	N	O	Y	Y	i	Y	Y	Y	N	Y	i
Uzbekistan	Y	O	Y	Y	i	Y	Y	Y	N	N	
Venezuela	Y	O	ii (2 years)	i	i	Y	N	Y	N	N	

		Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Is Art. 25(1), first sentence included?	Is Art. 25(1), second sentence included?	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?
		If yes, submission to either competent authority	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC?			
Viet Nam	Y	O	Y	Y	i	Y	N	Y	N	N

* Footnote by Turkey:

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

Footnote by all the European Union Member States of the OECD and the European Union:

The Republic of Cyprus is recognized by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Annex B
MAP Statistics pre-2016 cases

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome:										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	85	0	0	4	0	1	16	0	0	0	0	64	41.38
Others	679	13	10	2	20	1	167	0	0	4	0	462	20.99
Total	764	13	10	6	20	2	183	0	0	4	0	526	22.79

Annex C

MAP Statistics post-2015 cases

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome:										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	22	0	0	1	0	0	0	0	0	0	0	21	3.78
Others	0	403	23	11	3	125	1	36	0	0	0	0	204	1.37
Total	0	425	23	11	4	125	1	36	0	0	0	0	225	1.39

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
FAQs	Frequently Asked Questions about the Mutual Agreement Procedure and the Advance Pricing Arrangements, published by Belgium’s competent authority
Look-back period	Period starting from 1 January 2014 for which Belgium wished to provide information and requested peer input
MAP statistics reporting framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD model tax convention	OECD Model Tax Convention on Income and on Capital as it read on 15 July 2014
OECD transfer pricing guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Reporting period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2016
Terms of reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Addressing base erosion and profit shifting is a key priority of governments around the globe. In 2013, OECD and G20 countries, working together on an equal footing, adopted a 15-point Action Plan to address BEPS. Beyond securing revenues by realigning taxation with economic activities and value creation, the OECD/G20 BEPS Project aims to create a single set of consensus-based international tax rules to address BEPS, and hence to protect tax bases while offering increased certainty and predictability to taxpayers. In 2015, the OECD and G20 established an Inclusive Framework on BEPS to allow interested countries and jurisdictions to work with OECD and G20 members to develop standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package.

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

The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 1 peer review of the implementation of the Action 14 Minimum Standard by Belgium, which is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: <http://oe.cd/bepsaction14>.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264282599-en>.

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