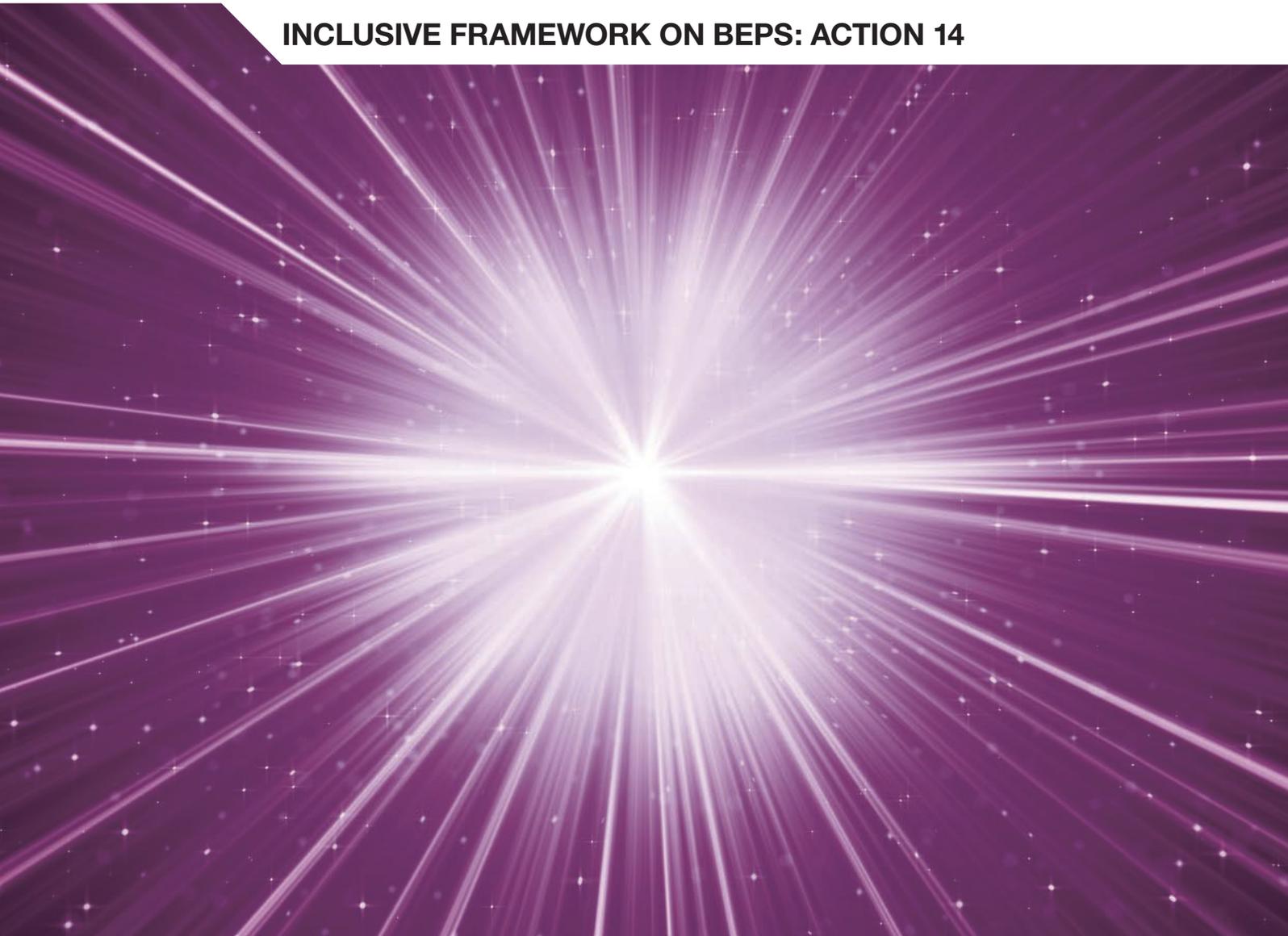


**OECD/G20 Base Erosion and Profit Shifting
Project**



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

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

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
EU	European Union
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
USSR	Union of Soviet Socialist Republics

Executive summary

Italy has an extensive tax treaty network with more than 100 treaties and has signed and ratified the EU Arbitration Convention. Italy has an established MAP programme and long-time experience with resolving MAP cases. It has a large MAP inventory, with a substantial number of new cases submitted each year and more than 400 cases pending on 31 December 2016 (see the table further below). Of these cases, 67% concern attribution/allocation cases. Overall Italy meets the majority of the elements of the Action 14 Minimum Standard, but for some of them improvements are necessary. Where it has deficiencies, Italy is working to address some of them.

All of Italy's tax treaties include a provision relating to MAP. Those treaties generally follow 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:

- More than three quarters of its tax treaties do not include the full equivalent of Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015), mainly due to a protocol provision requiring taxpayers to initiate domestic proceedings before a MAP request can be filed;
- More than two-third of its tax treaties do not include a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), or include the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments; and
- More than half of its tax treaties do not include a provision equivalent to the second sentence of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015), allowing competent authorities to consult together for the elimination of double taxation in cases not provided in the convention.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Italy needs to amend and update a substantial number of its tax treaties. In this respect, Italy signed the Multilateral Instrument, potentially covering more than 80 tax treaties. Where in relation to the mutual agreement procedure treaties will not be modified, upon entry into force of this Multilateral Instrument, Italy reported that it intends to update its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations with those states that were not part of the ad hoc group that developed the Multilateral Instrument. For the other jurisdictions, Italy believes that the implementation of the required provisions should be ensured through the Multilateral Instrument. Furthermore, Italy opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. In addition, less than 10% of Italy's tax treaties do not

include a time limit for submission of MAP requests, which, however, may be modified by the Multilateral Instrument.

Italy does not fully meet the Action 14 Minimum Standard concerning the prevention of disputes. Although it has an established bilateral APA programme, Italy does not enable taxpayers to request rollbacks of bilateral APAs and such rollbacks are also not granted in practice.

Italy meets most of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, except for the fact that access to MAP is not granted for requests only under the EU Arbitration Convention when the tax authority and the taxpayer have entered into an audit settlement. Italy should alter its practice in relation hereto. The MAP guidance should be updated accordingly and it should also include the contact details of Italy's competent authority. Apart from that Italy has clear and comprehensive guidance on inter alia the availability of MAP and on how the MAP function is construed and applied in practice. Lastly, Italy has also in place a notification and consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified.

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	161 **	139	9 **	291 **	9.31 **
Other cases	147	19	20	146	35.72
Total	308	158	29	437	27.53

* 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, Italy used as a start date the date of filing of the MAP request to the Italian competent authority or the date of receipt of the notification letter from the competent authority that received the MAP request from the taxpayer and as the end date, one of the following ones: the date when the taxpayer is informed of the outcome of the MAP process or the date of the closing letter received from the other competent authority or the date of the judgment that resolved the dispute at stake.

** As far as pre-2016 MAP cases are concerned, Italy did not include in the MAP statistics the cases that were submitted only under the EU Arbitration Convention.

These figures show that the number of cases Italy resolved is below 20% of the number of all new cases started in 2016. Its MAP inventory as per 31 December 2016 increased by approximately 40% as compared to its inventory as per 1 January 2016. Moreover, Italy's competent authority did not resolve MAP cases on average within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 27.53 months. These statistics show that Italy has not been adequately resourced in relation to the resolution of MAP cases, which particularly concern the resolution of attribution/allocation cases, as Italy resolved less than 10% of pending attribution/allocation cases in 2016. It is noted that recently, Italy reorganised its competent authority function, assigning it to the Agenzia delle Entrate, with the aim of increasing the resolution of MAP cases, thereby intensifying relationships with its MAP partners. Italy should closely monitor whether this reorganisation of the MAP function will lead to the resolution of MAP cases in a more timely, effective and efficient manner.

Nevertheless, Italy meets the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases as Italy's competent authority operates fully independently from the audit function of the tax authorities and the performance indicators used are appropriate to perform the MAP function.

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

Introduction

Available mechanisms in Italy to resolve tax treaty-related disputes

Italy has entered into 101 tax treaties on income (and/or capital)¹, 92 of which are in force (although some amendments to them may not be in force yet, see below).² These 101 treaties apply to 105 jurisdictions.³ All of these provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. Furthermore, 19 out of the 101 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure, of which 18 are in force.⁴

Italy is also 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 Italy, the competent authority function to handle all MAP cases related to individual taxpayers (both attribution/allocation cases and other cases) has been assigned to the *Agenzia delle Entrate* (“**Italy’s Revenue Agency**”) as from January 2017. The dedicated team of Italy’s Revenue Agency (“*Ufficio Accordi preventivi e controversie internazionali*”) consist, in addition to a manager and the head office, of 12 persons, which handle both MAP cases and requests for bilateral APAs. The Department of Finance of the Ministry of Economy and Finance (“*Direzione Relazioni Internazionali*”) remains the competent authority for MAP on general issues arising from interpretation or application of tax treaties with a view to avoid double taxation. Currently, a team of three persons is involved in the matter. The competent authority function is described in Italy’s MAP Guidance⁶, for which an English version is published by Italy’s competent authority on the website of the *Agenzia delle Entrate*.

Recent developments in Italy

Italy reported that it on 7 June 2017 signed 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), except for Article 16(5)(a) regarding the allowance of submitting a MAP request to the competent authorities of either contracting state.⁷ This reservation is in line with the requirements of the Action 14 Minimum Standard. With the signing of the Multilateral Instrument, Italy expects that a significant number of its tax treaties will be modified, and as a consequence thereof become in line with the requirements under the Action 14 Minimum Standard.

Furthermore, in 2016 Italy has taken steps to improve and accelerate the resolution of MAP cases. These steps ranged from increases in personnel to handle MAP cases, clearer administrative procedures for handling MAP cases, and prevention of MAP disputes by striving to enter into bilateral agreements on how to resolve recurring issues. By Decree-Law no. 50 of 24 April 2017, as converted into Law 96 of 21 June 2017 and in force since 24 June

2017, Italy also amended its domestic law allowing corresponding adjustments for transfer pricing cases to be made without having recourse to MAP, which was previously required. In addition, Italy indicated that it envisages updating its MAP guidance as soon as the legal and administrative framework is changed according to the entry into force of the Multilateral Instrument and other international developments in the area of dispute resolution.

Basis for the peer review process

The peer review process entails an evaluation of Italy'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 Italy, its peers and taxpayers. The period for evaluating Italy's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 March 2017 (“**Review Period**”). This report, however, may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Italy's implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics provided below, in assessing whether Italy 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. This also concerns the amending protocol to the treaty with India, which was signed in 2006, but has not yet entered into force. Furthermore, the treaty analysis also takes into account the treaty with former Czechoslovakia, the former USSR and with former Yugoslavia, because these treaties are continued to be applied by Italy to multiple jurisdictions. As it concerns tax treaties that are applicable to multiple jurisdictions, they are only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Italy's tax treaties regarding the mutual agreement procedure.

The questionnaires for the peer review process were sent to Italy and the peers on 7 March 2017. In total 19 peers provided input: Australia, Belgium, Canada, Denmark, France, Germany, Ireland, Japan, Latvia, the Netherlands, Portugal, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the United States. These peers represent more than 90% of post-2015 MAP cases in Italy's inventory on 31 December 2016. Input was also received from taxpayers.

A number of peers indicated that for the last years they experienced significant difficulties in resolving MAP cases to a considerable degree due to the absence of face-to-face meetings with Italy's competent authority. However, these peers noted a recent improvement in their working relationships with Italy in regard of MAP, some of them emphasising their high expectations in order to handle their current inventory of cases with Italy.

Italy provided extensive answers in its questionnaire which was submitted on time. Italy also responded timely and comprehensively to requests for additional information and provided further clarity where necessary. In addition, Italy provided the following information:

- MAP profile⁸;
- MAP statistics⁹ according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Italy

The analysis of Italy’s MAP caseload relates to the period that started on 1 January 2016 and ended on 31 December 2016 (the “**Statistics Reporting Period**”). According to the statistics provided by Italy, on 31 December 2016 its MAP inventory was 437 cases, 291 of which concern attribution/allocation cases and 146 other cases. During the Statistics Reporting Period 158 cases started and 29 cases were closed.

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective¹⁰ (“**Terms of Reference**”). Apart from analysing Italy’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Italy. Furthermore, the report depicts the changes adopted and plans shared by Italy 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 Italy continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

Notes

1. The tax treaties Italy has entered into are available at: www.finanze.gov.it/opencms/it/fiscalita-comunitaria-e-internazionale/convenzioni-e-accordi/convenzioni-per-evitare-le-doppie-imposizioni/ (accessed on 22 August 2017).
2. The nine treaties that are not yet in force concern treaties with Barbados (2015), Cuba (2000), Gabon (1999), Iran (2005), Kenya (1979), Libya (2009), Mongolia (2003), Panama (2010) and Romania (2015). As for Romania, pursuant to Law No. 78 of 16 May 2017, Italy ratified the

- new treaty signed in 2015. The current 1977 treaty with Romania is still in force, but will terminate and cease to have effect when the new treaty enters into force. Italy has also signed an amending protocol with India in 2006, by which a provision based on Article 9(2) of the OECD Model Tax Convention will be included in their tax treaty. This protocol, however, has not yet entered into force.
3. Italy continues to apply the 1981 treaty with former Czechoslovakia to the Czech Republic and the Slovak Republic, the 1985 treaty with the former USSR to Kyrgyzstan and Tajikistan, and the 1982 treaty with former Yugoslavia to Bosnia and Herzegovina, Montenegro and Serbia.
 4. This concerns the tax treaties entered into with Armenia, Canada, Chile, Congo, Croatia, Georgia, Ghana, Hong Kong, Iceland, Jordan, Kazakhstan, Lebanon, Moldova, Mongolia, San Marino, Slovenia, Uganda, the United States and Uzbekistan. The arbitration clause under the treaty with Mongolia is not yet in force.
 5. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July, 1990.
 6. <http://www1.agenziaentrate.gov.it/english/business/pdf/circularletter21.pdf>.
 7. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5) (a) of the Convention, Italy reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified.” An overview of Italy’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-italy.pdf.
 8. Available at www.oecd.org/tax/dispute/Italy-Dispute-Resolution-Profile.pdf.
 9. The MAP statistics of Italy are included in Annex B and C of this report.
 10. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).

Bibliography

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).

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 Italy's tax treaties

2. Out of Italy's 101 tax treaties, 97 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. For three of the four remaining treaties a provision based on Article 25(3), first sentence is included, but this provision only relates to difficulties or doubts arising as to the *application* of the treaty and not as to the *interpretation* of the treaty.¹ These three treaties are therefore considered not having the full equivalent of Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015). The fourth treaty includes a provision that has similarities with Article 25(3), first sentence, but also only relates to difficulties or doubts arising as to the *application* of the treaty, by which it is also considered not being a full equivalent of that provision.

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

Anticipated modifications

4. Italy reported it has recently signed the Multilateral Instrument with a view to *inter alia* update – on the basis of Article 16(4)(c)(i) of that instrument – those four tax treaties that do not contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015). Italy is currently in the process of analysing which

of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where the four above-mentioned tax treaties will not be modified by the Multilateral Instrument, Italy reported that, in order to be compliant with element A.1, it intends to update them via bilateral negotiation with jurisdictions that have not participated in the ad hoc group on the Multilateral Instrument. As for the other jurisdictions that did participate, Italy subsequently reported it believes that the implementation of the requirements of element A.1 should be ensured through the Multilateral Instrument, thereby taking into account that the jurisdictions which have been part of the ad hoc group have signed or expected to sign the Multilateral Instrument as soon as possible. In addition, Italy reported it 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 reported that the provisions of their tax treaty with Italy meet the requirement under element A.1. One peer, however, mentioned that its treaty with Italy is not in line with this element, as it only obliges competent authority to endeavour to resolve by mutual agreement any difficulties or doubts as to the *application* of the convention. This peer mentioned that its treaty with Italy will be updated via the Multilateral Instrument so as to be in line with element A.1.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	4 out of 101 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015).	Where treaties do not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Italy should request the inclusion of the required provision via bilateral negotiations. Specifically with respect to the treaty with former Czechoslovakia, Italy should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision. In addition, Italy should maintain its stated intention to include the required provision in all future treaties.

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

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

6. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.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.

Italy's APA programme

7. Italy is authorised to enter into bilateral APAs. The APA programme is outlined in a webpage published by the Italian competent authority.³ On this website, the process to enter into an APA is explained, which in particular concerns the information to be included in the request for a bilateral APA as well as the department to which such request should be submitted (such department being the Italian competent authority).

8. As provided in Article 31-ter (*Advance Agreements for Companies Operating Internationally*) of Presidential Decree No 600 of 29 September 1973, Italy applies APAs as from the first year covered by the request and the following four years, provided the request is submitted before the end of the first fiscal year that is to be covered by the APA.

Roll-back of bilateral APAs

9. Italy does not allow for roll-backs of bilateral APAs. Italy allows including in the APA fiscal years that are not included in the original APA request, but this concerns only the fiscal year in which the APA request was submitted. In other words, a roll-back of a bilateral APA is not granted for those fiscal years preceding the fiscal year in which the APA request was submitted, even though such years are still open (under the Italian domestic statute of limitation) at the moment an APA is entered into.

Practical application of roll-back of bilateral APAs

10. Although Italy does not allow for the roll-back of bilateral APAs, it indicated that previous fiscal years, which are still open under the Italian domestic statute of limitation, could fall in the scope of a MAP. In addition, Italy indicated that the Italian competent authority would be ready to apply the same methods and criteria as agreed with the other competent authority in a bilateral APA with regard to the resolution of a MAP case, provided that the facts and circumstances are similar.

11. Peers indicated that they have little to none experience with Italy regarding bilateral APAs in general and roll-back of such APAs in particular. In that regard, peers have generally not received any requests for roll-back of bilateral APAs with Italy during the Review Period. One peer mentioned that according to their understanding, roll-back of bilateral APAs is not provided for by Italy. One peer, however, reported that it received one request for a roll-back of a bilateral APA to which Italy is a party and which is still under discussion. This peer remarked that it has not found any difficulty in the implementation of roll-backs of bilateral APAs entered into with Italy. Lastly, one peer shared recent experience with Italy. This peer mentioned that it received in 2016 two request for a roll-back of a bilateral APA to which Italy is a party and whereby the case under discussion includes a roll-back request for a period that is also under a tax audit. As these cases are still pending, the peer has no relevant experience to share as regards whether Italy is willing to grant roll-back for bilateral APAs. Italy reiterated that, although it does not provide for roll-back of bilateral APAs, such APAs may cover the years starting from year of submission of a request for a bilateral APA.

Anticipated modifications

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

Conclusion

	Areas for Improvement	Recommendations
[A.2]	Bilateral APAs can only be applied up to the year of the submission of the APA request (if not already in the scope of such request), but roll-back of bilateral APAs are not provided for in appropriate cases.	Italy should allow and in practice provide for roll-back of bilateral APAs in appropriate cases.

Notes

1. These four treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines.
3. Available at http://www.agenziaentrate.gov.it/english/invest_italy/advance_tax_agreements.htm.

Bibliography

- 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>.
- 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 Italy's tax treaties

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

14. All of Italy's 101 tax treaties contain a provision based on Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report, OECD 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty. However, 73 of Italy's 101 tax treaties do not incorporate all elements of Article 25(1), first sentence as it read prior to the *Action 14 final report* (OECD, 2015b), or include additional requirements that are not in line with the requirements under element B.1.

15. The above-mentioned 73 treaties can be categorised as follows:

Provision	Number of treaties
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b), whereby the taxpayer can only submit a MAP request to the competent authority of the contracting state in which it is a resident.	9
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b), whereby (i) the taxpayer can only submit a MAP request to the competent authority of the contracting state in which it is a resident and (ii) taxation results or will result in double taxation prohibited by the convention.	1
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	53 ¹
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b), whereby (i) the taxpayer can only submit a MAP request to the competent authority of the contracting state in which it is a resident and (ii) the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	10 ²

16. With respect to the nine treaties mentioned in the first row of the table above, these treaties are for the following reasons considered to be in line with this part of element B.1.

- The relevant tax treaty does not include a non-discrimination provision and only applies to residents of one of the states (one treaty); and
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (eight treaties).

17. Regarding the one treaty mentioned in the second row of the table above, as the treaty requires double taxation instead of taxation not in accordance with the provisions of the convention, the treaty is considered not having the full equivalent of Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a).

18. Furthermore, with respect to the 53 and the 10 treaties mentioned in the third and fourth row above, the provision generally incorporated in the protocol to these treaties reads:

“[...] the expression ‘irrespective of the remedies provided by the domestic law’ means that mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, preventively initiated, when the claim is related with an assessment of the taxes not in accordance with this Convention.”

19. The background for inclusion of such provision is clarified in paragraph 4.2.5 and 7.1 of Italy’s MAP Guidance, which stipulates that this system was chosen to avoid that during the period a MAP is pending the tax assessment that includes the taxation that is subject of MAP becomes final, by which a potential MAP agreement cannot be implemented in Italy. Under Italian legislation taxpayers have a relatively short deadline (60 days) to lodge a domestic appeal if it considers the (content of the) tax assessment to be unjustified. However, the Italian competent authority is under Italian law not allowed to deviate in a MAP agreement from court decisions. In order to avoid that due to a court ruling a

potential MAP agreement cannot be implemented, the taxpayer is allowed to ask the court to suspend an appeals procedure for the time a MAP relating to the case under review is pending. The taxpayer is subsequently entitled to reactivate the appeal procedure should the case under review not be resolved through MAP.

20. As pursuant to this provision a domestic procedure has to be initiated, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though the provision included in the MAP article is equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as it read prior to the adoption of the *Action 14 final report* (OECD, 2015b). These 63 treaties are therefore considered not in line with this part of element B.1.

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

21. Out of Italy's 101 tax treaties, 25 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.

22. The remaining 76 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of treaties
No filing period for a MAP request	6
Period to file a MAP request being less than 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty (2 years) ³	68
Period to file a MAP request being less than 3 years and whereby the starting period for filing of a MAP request is different (2 years respectively 6 months)	2

23. Paragraph 4.2.3 of Italy's MAP Guidance outlines the application of a filing period under the tax treaties it entered into. It thereby distinguishes two situations, namely the situation in which the taxation not in accordance with the treaty arises from (i) the application of a domestic tax or a withholding tax or (ii) adjustments carried out by the tax administration. With respect to situation (i), paragraph 4.2.3 of Italy's MAP Guidance specifies that the period for filing a MAP request starts either from the date of notification by the tax administration of the denial for a request for a refund of withholding taxes or from the 90th day following the submission of such refund request without a decision by the Revenue Agency. As regards situation (ii), the period commences on the date of the notification of the formal assessment that includes the (possible) taxation not in accordance with the treaty.

24. Italy reported that where the applicable tax treaty does not include a time limit for submission of a MAP request, Italy takes into account such request when it has been filed in compliance with the domestic statute of limitation (Article 43 of the Presidential Decree No. 600 of 29 September 1973), which provides for a six-year time limit as from the end of the tax year concerned. There is a risk that such six year period is less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. In that regard, Italy also reported that it in practice had never experienced difficulties with this period.

25. Italy further reported that since 1 January 2016 it denied access to MAP in three cases (two in 2016 and one in 2017) because the taxpayer did not submit the MAP request within the deadline included in the tax treaty. This concerned one of the tax treaties mentioned in the third row in the table above, whereby the filing period for a MAP request

is six months as from the date of notification of (possible) taxation not in accordance with the tax treaty or the date of collection at source of taxes. However, Italy pointed out that for the three cases at issue, it has granted access to the mutual agreement procedure under the EU Arbitration Convention.

Anticipated modifications

26. Italy reported it has recently signed the Multilateral Instrument. Italy thereby reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to allow taxpayers to submit a MAP request to the competent authority of either contracting state.⁴ In this reservation, Italy declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), as it read prior to the adoption of the *Action 14 final report* (OECD, 2015b). It subsequently declared to implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. Italy has introduced such notification process, which will be further discussed under element B.2.

27. With respect to the period of filing of a MAP request, as reflected in Article 25(1), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a), Italy additionally reported that it intends – pursuant to Article 16(4)(a)(ii) of the Multilateral Instrument – to modify its tax treaties if these do not allow taxpayers to present a MAP request within a period of at least three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty.

28. Italy is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where the aforementioned tax treaties that do not contain a provision equivalent to Article 25(1), first and/or second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) and which will not be modified by the Multilateral Instrument, Italy reported that, in order to be compliant with element B.1, it intends to update them via bilateral negotiation with jurisdictions that have not participated in the ad hoc group on the Multilateral Instrument. As for the other jurisdictions that did participate, Italy subsequently reported it believes that the implementation of the requirements of element B.1 should be ensured through the Multilateral Instrument, thereby taking into account that the jurisdictions which have been part of the ad hoc group have signed or expected to sign the Multilateral Instrument as soon as possible. In addition, Italy reported it will seek to include Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a), as it read prior to the adoption of the *Action 14 final report* (OECD, 2015b), in all of its future treaties.

29. Several peers reported that the provisions of their tax treaty with Italy do not meet all of the requirements of element B.1. One peer noted that under its treaty with Italy the occurrence of *double taxation* is a prerequisite for submission of a MAP request, and that this is not in line with element B.1. Another peer noted that its treaty with Italy lacks the possibility for non-residing nationals to submit a MAP request if the cases concerns the application of the non-discrimination article. With respect to the second sentence, nine peers mentioned that under their treaty with Italy, the filing period for a MAP request is two instead of three years, which is not in line with element B.1. Another peer noted that the filing period is only six months. All peers that provided input indicated that they envisage amending their treaty with Italy via the Multilateral Instrument so as to be in

line with element B.1. One peer in particular noted that it envisages making a reservation to Article 16(1) of the Multilateral Instrument, as it envisages introducing the equivalent 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) and not allowing the submission of a MAP request to either contracting state.

Conclusion

	Areas for Improvement	Recommendations
[B.1]	<p>85 out of 101 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention, OECD (2015a). Of those 85 tax treaties:</p> <ul style="list-style-type: none"> • 49 tax treaties incorporate the full equivalent to Article 25(1), first sentence, but also provide restrictions thereto 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 (generally two years, except for one treaty whereby the starting period is different and one treaty whereby the filing period is six months); • 15 tax treaties do not incorporate the full equivalent to Article 25(1), first sentence and/or provide restrictions thereto; and • 21 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). 	<p>Where treaties do not include the equivalent of Article 25(1) of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Italy 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>Specifically with respect to those treaties that do include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a), but which treaties are supplemented with a protocol provision restricting the submission of a MAP request irrespective of domestic available remedies, Italy should seek to request amending its treaties by no longer including such protocol provision so as to ensure that taxpayers can both in theory and in practice request MAP assistance without first having recourse to domestic appeals.</p> <p>Furthermore, with respect to the treaties with former Czechoslovakia, the former USSR and former Yugoslavia, Italy should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p> <p>In addition, Italy should maintain its stated intention to include the required provision in all future treaties.</p>
	<p>Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>	<p>Italy should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</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).

30. 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

31. None of Italy's 101 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.

32. Italy reported it has implemented a notification process in place when its competent authority considers that the objection raised in a MAP is not justified. This process applies both to MAP requests being submitted under a double tax convention and the EU Arbitration Convention. When the Italian competent authority receives a MAP request, it will notify the other competent authority(ies) concerned of this request without delay. If from a preliminary assessment of the request it follows that for the case for which a MAP request is submitted some critical aspects are found and that a more in-depth analysis is required, then the Italian competent authority usually will inform the other competent authority(ies) concerned about the admissibility of the request the moment this in-depth analysis is finalised. Should this analysis lead to the conclusion that the objection raised in the MAP request is not justified, then the Italian competent authority will notify the other competent authority(ies) concerned thereof.

Practical application

33. Italy reported that as from 1 January 2016 it considered in one case the objection raised by the taxpayer in its MAP request under a tax treaty as being not justified. For this case, Italy mentioned that in this situation the objection raised was considered not justified, because the adjustment did not result from an action by one of the contracting states, but following a taxpayer-initiated adjustment. Italy reported that its competent authority informed the other competent authority concerned on this decision.

34. Peers generally indicated that they were not aware of or that they had not been consulted/notified of a case where the Italy’s competent authority considered the objection raised in a MAP request as not justified since 1 January 2016. This can be clarified by the fact that the jurisdiction which it concerned did not provide peer input. In a response, Italy confirmed that it notified the competent authority of the other jurisdictions concerned, thereby specifying the date when such notification was made.

Anticipated modifications

35. As previously discussed under element B.1, Italy has recently signed the Multilateral Instrument. Specifically regarding element B.2, Italy reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to allow taxpayers to submit a MAP request to the competent authority of either contracting state.⁵ As it has, as is required under the Action 14 Minimum Standard a bilateral notification process in place, it does not anticipated any modifications in relation to element B.2.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	-	As Italy has done thus far, it should continue to apply its notification process for future cases in which its competent authority considers the objection raised in a MAP request as not being justified.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

36. 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

37. Out of Italy’s 101 tax treaties, one treaty contains 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. Furthermore, in 41 treaties a provision that is based on Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) is included, but lacks the second sentence of that provision and is replaced by a sentence that stipulates that a corresponding adjustment can only be made through MAP. In addition, 11 of Italy’s 101 tax treaties include a provision that has similarities with Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a), but from a material perspective deviates at multiple points from Article 9(2) and also do not include the last sentence of that article. Lastly, one treaty includes not a provision that is based on or has similarities with Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a), but only mentions that the competent authorities shall endeavour to resolve by mutual

agreement the problem of economic double taxation relating to Article 9 in accordance with the mutual agreement procedure.⁶

38. Italy 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.

39. The above-discussed replacing of the last sentence of Article 9(2) in Italy's tax treaties follows from a reservation by Italy to Article 9 of the *OECD Model Tax Convention* (OECD, 2015a). This reservation is included in paragraph 17.1 of the Commentary to Article 9 and reads as follows:

“Italy reserves the right to insert in its treaties a provision according to which it will make adjustments under paragraph 2 of Article 9 only in accordance with the procedure provided for by the mutual agreement article of the relevant treaty.”

40. This reservation originated from Article 110(7) of the Consolidated Law on Income Tax implemented by Presidential Decree No. 917 of 22 December 1987, which determines that corresponding adjustments can only be made through the mutual agreement procedure. In this respect, Italy recently implemented Article 59 of the Decree-Law No. 50 of 24 April 2017, as converted into Law No. 96 of 21 June 2017, which is in force since 24 June 2017.⁷ This law amended Article 110(7) and pursuant to which Article 31-quarter is inserted in the Presidential Decree No. 600 of 29 September 1973.⁸ As a result, the Italian tax authorities or the Italian competent authority is allowed to make corresponding adjustments without having recourse to the mutual agreement procedure.

41. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is included in Italy's tax treaties and irrespective of whether its domestic legislation enables it to do corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Italy states it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments. In relation hereto, the introduction and paragraph 4.2.2 of Italy's MAP Guidance mentions disputes on the correct application of the arm's length principle between associated enterprises and the proper attribution of profits to permanent establishments as an example of cases for which a MAP can be requested. Paragraph 4.2.8 of Italy's MAP Guidance further specifies that when double taxation results from an assessment notice issued by the Italian Revenue Agency or by a foreign tax administration, the Italian Revenue Agency would consider whether a unilateral relief is possible.

Practical application

42. Italy reported that since 1 January 2016, its competent authority has not denied access to MAP on the basis that the case concerned a transfer pricing case.

43. Peers have indicated not being aware of a denial of access to MAP by Italy for transfer pricing cases since 1 January 2016. One taxpayer provided input and mentioned that the requirement of having recourse to MAP to be granted a corresponding adjustment in Italy can be burdensome. As discussed above, Italy recently amended its domestic law to allow corresponding adjustments to be made without having recourse to MAP.

Anticipated modifications

44. Italy reported that it is in favour of including Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in its tax treaties where possible. In that regard, Italy recently signed the Multilateral Instrument to incorporate – on the basis of Article 17(2) of that instrument – Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in those tax treaties that do not contain the equivalent of that provision. In addition, Italy reported it 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 Italy 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.

45. 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

46. None of Italy's tax treaties allows competent authorities to restrict access to MAP for cases whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and administrative process of Italy do not include a provision that allows their competent authority to limit access to MAP for cases in which a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the conditions of the domestic law anti-abuse provision is into conflict with the provisions of a tax treaty. Italy stated that both the application of a treaty anti-abuse provision and of a domestic anti-abuse provision are within the scope of MAP and further mentioned that it considered that under the MAP article there is a legal obligation to initiate the procedure whenever a violation of the treaty has occurred or is likely to occur due to application of treaty anti-abuse provisions.

Practical application

47. Italy reported that since 1 January 2016 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.

48. Peers indicated not being aware of a case that would have been denied access to the MAP in Italy on the grounds that it was about an anti-abuse provision since 1 January 2016.

Anticipated modifications

49. Italy did not indicate it anticipates any modification relating to element B.4.

Conclusion

	Areas for Improvement	Recommendations
[B.4]	-	As Italy 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.

50. 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

51. Audit settlements (“*accertamento con adesione*”) are available in Italy for which the possibility was created pursuant to Legislative Decree No. 218 of 19 June 1997. Furthermore, two other processes are available in Italy, which are mediation (“*mediazione tributaria*”) and judiciary conciliation (“*conciliazione giudiziale*”) and provided for by Article 17-bis respectively 48 of the Legislative Decree No. 546 of 1992.⁹ The outcome of these two processes can be a final settlement reached before or in the course of judicial proceedings and they have the same consequences on access and resolution of MAP cases as audit settlements, as will be outlined below.

52. Italy indicated that it will always provide access to MAP requests submitted under a tax treaty in cases where taxpayers have entered into an audit settlement with the Italian Revenue Agency. However, entering into an audit settlement causes that the tax covered and agreed becomes final in Italy. In this respect, paragraph 7.1 of Italy's MAP Guidance specifies (see also element B.10) that if the taxpayer settles its case with Italy's Revenue Agency, the Italian competent authority will only present such a case to the other competent authority to seek correlative relief. The reason hereof is that Article 2(3) of Legislative Decree No. 218 of 19 June 1997 stipulates that any settlement entered into cannot be appealed, modified or amended by the Italian Revenue Agency, unless this results in a higher taxable amount. In other words, the case can be dealt with in MAP, but proceedings cannot be aimed at revising the tax settled through these processes. Paragraph 7.1 of Italy's MAP Guidance notes that the underlying rationale of both process is twofold, namely (i) reducing the number of domestic litigations and (ii) the possibility to reduce any applicable penalties. Furthermore, paragraph 7.1 stresses that the restriction must be considered against the background of the legal instruments and resources deployed by the tax administration in achieving a settlement with taxpayers.

53. Specifically with respect to cases submitted under the EU Arbitration convention, paragraph 7.2. of Italy's MAP Guidance states that access to MAP will not be granted for those cases where a settlement agreement was already entered into between the taxpayer and the Italian Revenue Agency. Italy reported that this approach aims at preventing a potential conflict between the audit settlement and the arbitration procedure. In that regard, paragraph 7.2 of Italy's MAP Guidance reiterates that this restriction must be considered against the background of the legal instruments and resources deployed by the tax administration in achieving a settlement with taxpayers. Therefore, unless the taxpayer has also submitted a MAP request under the applicable tax treaty, no correlative relief from the other competent authority will be sought. When such cases arise, Italy reported that its competent authority encourages the taxpayers to submit MAP requests under the applicable tax treaty.

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

Practical application

55. Italy reported that since 1 January 2016, Italy's competent authority has not denied access to MAP requests submitted under tax treaties where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities. However, as reflected in Italy's MAP statistics, its competent authority has denied access to one MAP request submitted under the EU Arbitration Convention where the issue presented by the taxpayer had already been dealt with in an audit settlement between the taxpayer and the tax authorities.

56. The majority of peers indicated not being aware of denial of access to the MAP by Italy during the Review Period where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities. Other peers also specified being aware of the fact that, while Italy grants access to the MAP in case of audit settlement, it cannot deviate from the settlement entered into by the Italian Revenue Agency and that only the treaty partner can provide for relief of double taxation. One peer learnt Italy's practice of audit settlements from Italy's MAP guidance for which a link is available in Italy's MAP profile. This peer questioned whether such an approach was, if not denying access to MAP, at least limiting access to MAP, because it could act as a deterrent for taxpayers to request MAP assistance. In this respect, Italy responded that, in case of

audit settlements, there is no experience that this approach has acted deterrent for taxpayers to seek MAP assistance.

57. Specifically with respect to mediation (“*mediazione tributaria*”) and judiciary conciliation (“*conciliazione giudiziale*”), one peer mentioned being aware of the existence of such processes and their limitation on the resolution of MAP cases.

58. Further to the above, a peer indicated that it has learnt from taxpayers that access to the MAP may be denied in such cases. Another peer noted that it is its impression that the Italian tax administration requires the taxpayers to accept a given transfer pricing adjustment under the condition that they abstain from submitting a MAP request in order to avoid penalties. Two peers specifically referred to their practical experience with Italy. They mentioned cases for which Italy denied access to the MAP where the tax authority and taxpayers entered into an audit settlement. Both peers mentioned that they contacted Italy’s competent authority in this respect, as their position is that this is not compliant with the requirements under the applicable tax treaty and not in line with element B.5. In addition, one of these peers expressed concerns about the fact that Italy decided to close the cases three respectively one year after the MAP requests were submitted, while these audit settlements were reached at an earlier stage.

59. In response to the peer input discussed in the paragraph above, as for the fact that one peer indicated that it has learnt from taxpayers that access to MAP may be denied in audit settlement cases, Italy indicated that this input seems to refer to a period prior to the publication of its MAP Guidance of 5 June 2012. In respect to the cases specifically mentioned by two peers, it should be noted that in two of the three cases at stake, the MAP requests have been submitted to the other competent authority, by which it was not the Italian competent authority that had to decide on access to MAP. Furthermore, it should be noted that for the one request submitted under both the EU Arbitration Convention and the bilateral tax treaty, the Italian competent authority has properly informed its treaty partner that the case was considered closed, unless the other competent authority grants the corresponding adjustments within the framework of the MAP requested under the bilateral tax treaty. Concerning the third case, Italy specified that the MAP request was submitted to both competent authorities and only under the EU Arbitration Convention.

Anticipated modifications

60. Italy reported that with respect to access to MAP under the EU Arbitration Convention in case of audit settlements, it envisages updating its legal and administrative framework following the developments at the European Union level.

Conclusion

	Areas for Improvement	Recommendations
[B.5]	Access to MAP is not granted for MAP requests submitted only under the EU Arbitration Convention, when the tax authority and the taxpayer entered into an audit settlement for the case under review.	Italy should continue to grant access to MAP in all eligible cases under bilateral tax treaties, even if there was an audit settlement between the tax authority and the taxpayer. In addition, Italy should grant access to MAP also for cases submitted under the EU Arbitration Convention, even if the tax authority and the taxpayer entered into an audit settlement in the case under review.

[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.

61. 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

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

Practical application

63. Italy reported that it has not limited access to MAP since 1 January 2016 in any cases on the grounds that insufficient information was provided. In practice, the Italian competent authority will, within two months upon receipt of the request, examine the MAP request and check whether all required information is available. It will revert back to the taxpayer to require additional information if necessary. At this stage, no specific timeframe is set and the taxpayer should provide the additional information as soon as possible. Italy reported that it invited the taxpayer to supplement their MAP request with additional information in several cases.

64. Peers indicated not being aware of denial of access to MAP by Italy in situations where taxpayers complied with information and documentation requirements set out in Italy's MAP Guidance.

Anticipated modifications

65. Italy did not indicate that it anticipates any modifications relating to element B.6.

Conclusion

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

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

Current situation of Italy's tax treaties

67. Out of Italy's 101 tax treaties 57 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.¹⁰

Anticipated modifications

68. Italy reported it has recently signed the Multilateral Instrument with a view to inter alia update – on the basis of Article 16(4)(c)(ii) of that instrument – those tax treaties that do not contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a). Italy is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where tax treaties, which do not contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a), will not be modified by the Multilateral Instrument, Italy reported that, in order to be compliant with element B.7, it intends to update them via bilateral negotiation with jurisdictions that have not participated in the ad hoc group on the Multilateral Instrument. As for the other jurisdictions that did participate, Italy reported it believes that the implementation of the requirements of element B.7 should be ensured through the Multilateral Instrument, thereby taking into account that the jurisdictions which have been part of the ad hoc group have signed or expected to sign the Multilateral Instrument as soon as possible. In addition, Italy reported it will seek to include Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

69. Several peers reported that the provisions of their tax treaty with Italy meet the requirement of element B.7. Six peers, however, noted that under their treaty with Italy the required provision is absent. All these peers indicated that they envisage amending their treaty with Italy via the Multilateral Instrument so as to be in line with element B.7.

Conclusion

	Areas for Improvement	Recommendations
[B.7]	57 out of 101 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 modified by the Multilateral Instrument following its entry into force to include such equivalent, Italy should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the treaties with former Czechoslovakia, the former USSR and with former Yugoslavia, Italy 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, Italy 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.

70. 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.

Italy's MAP guidance

71. Italy's rules, guidelines and procedures in relation to MAP are included in the Circular letter No. 21/E of 5 June 2012, which is issued by the Italian Revenue Agency ("**MAP Guidance**"). This document sets out in detail how MAP functions in Italy and the various stages of that procedure, whereby a distinction is made between MAPs under tax treaties and under the EU Arbitration Convention. Italy's MAP Guidance is available (in English) at:

<http://www1.agenziaentrate.gov.it/english/business/pdf/circularletter21.pdf>.

72. This MAP guidance 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. The rights and role of taxpayers during the MAP (including the EU Arbitration Convention);
 - e. Information on availability of arbitration (including the EU Arbitration Convention);

- f. Relationship with domestic available remedies;
- g. Suspension of tax collection;
- h. Implementation of MAP agreements;
- i. Interest and penalties; and
- j. Multi-year resolution of recurring issues through MAP.

73. Furthermore, Italy's MAP Guidance contains information on the specificities of the MAP initiated under the EU Arbitration Convention. In particular, paragraph 5.3 of Italy's MAP Guidance relates to serious penalties that would prevent taxpayers from having access to the MAP under the EU Arbitration Convention.

74. The above-described guidance 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.¹¹

75. As regards the contact information of the competent authority, a recent change has to be noted. Until 31 December 2016 taxpayers had to submit their MAP request to the Directorate for International Relations – Department of Finance of the Italian Ministry of Economy and Finance. As from 1 January 2017 taxpayers have to submit their MAP requests to the *Agenzia delle Entrate* (the Italian Revenue Agency). While Italy has notified by letter its treaty partners and published the change in the organisation, the MAP Guidance (dated June 2012) still refers to the previous contact details of Italy's competent authority. These new contact details have been published in the website of both the Department of Finance and the *Agenzia delle Entrate* and have also been reflected in Italy's MAP profile.

76. Peers and taxpayers provided input in relation to Italy's MAP Guidance. One taxpayer mentioned that the new guidance published by Italy is clear and noted the Italian competent authority's efforts to be more transparent towards taxpayers as it informs them of progress made on their MAP case. Another taxpayer commented that Italy's MAP guidance does not clearly address: (i) the consequences of initiating a MAP on collection of tax and (ii) the relationship between MAP and domestic remedies. The latter comment was also specifically mentioned by a peer, which suggested that a further clarification on this point would be practical.

77. In relation to comment (i), paragraphs 4.2.7 and 5.7 of Italy's MAP Guidance already address the possibility of a suspension of tax collection during the time a MAP case is pending under the tax treaty and under the EU Arbitration Convention respectively. Specifically with respect to the EU Arbitration Convention, paragraph 5.7 of Italy's MAP guidance mentions that Article 3(2) of Law No. 99 of 1993 – concerning the ratification of that convention – allows the Italian Revenue Agency to grant such suspension of tax collection on the basis of a specific request thereto by the taxpayer.

78. In relation to comment (ii), with respect to the relationship between MAP and domestic remedies, paragraphs 4.2.5 and 5.6 of Italy's MAP Guidance already address in detail the relationship between domestic available remedies and MAP cases under the tax treaty and the EU Arbitration Convention.

79. In regard of the above, although Italy's MAP guidance is comprehensive, some items are not specifically discussed. This concerns whether MAP is available in cases

of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments, and (iv) the timing of the steps of the process 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

80. Paragraph 4.2.4 of Italy's MAP Guidance stipulates that taxpayers can submit a MAP request under tax treaties in free form and sent via a letter or hand-delivered to the Italian competent authority. Specific additional documentation can be submitted electronically. Paragraph 5.5 include equal wording in relation to the EU Arbitration Convention. As regards the information and documentation to be included in a MAP request, paragraph 4.2.4 and paragraph 5.5 lists this information in regard of tax treaties respectively the EU Arbitration Convention.

81. 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. This agreed guidance is shown below and checked with respect to Italy's MAP Guidance:

- 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.

82. In addition to these documents and information, Italy requires taxpayers to provide:

- A description of any administrative or legal proceeding undertaken in Italy, such as a request for a settlement or the submission of a legal appeal; and
- A description of the remedies, if any, activated in the other contracting state to eliminate the double taxation.

Anticipated modifications

83. Italy indicated that it anticipates updating its MAP Guidance, for which is expected to include the Italian competent authority's new organisational structure, contact details and the latest developments in the area of MAP.

Conclusion

	Areas for Improvement	Recommendations
[B.8]	The contact details of Italy's competent authority in Italy's MAP Guidance are not up-to-date.	<p>Italy should follow up its intention to update its guidance and prioritise the inclusion of the new contact information of Italy's competent authority.</p> <p>Additionally, although not required by the Action 14 Minimum Standard and in order to further improve the level of details of its MAP guidance, Italy could consider including information on:</p> <ul style="list-style-type: none"> • Whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments; and • The timing of steps of the process 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 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.

84. 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 platform¹² further promotes the transparency and dissemination of the MAP programme.

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

85. Italy's MAP Guidance can be found at:

<http://www1.agenziaentrate.gov.it/english/business/pdf/circularletter21.pdf>.

86. This document is accessible and can be found easily from search engine websites, on either Italy's Revenue Agency website¹³ by searching for "double taxation" or "mutual agreement procedure" or on the Ministry of Finance's website under the "*Fiscalità comunitaria e internazionale*" section.¹⁴

MAP Profile

87. The MAP profile of Italy 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 Italian government which provide additional information and guidance. In particular, the MAP profile contains updated information regarding Italy's competent authority and the contact details thereof.

Anticipated modifications

88. Italy did not indicate that it anticipates any modifications relating to B.9.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	-	As Italy has thus far made its MAP guidance available and easily accessible and published its MAP profile, Italy should ensure its future updates to the MAP guidance continue to be 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.

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

MAP and audit settlements in the MAP guidance

90. As previously mentioned in B.5, paragraph 7 of Italy's MAP Guidance explains the relationship between MAP and audit settlements ("*accertamento con adesione*") and mediation ("*mediazione tributaria*") and judiciary conciliation ("*conciliazione giudiziale*").

91. One peer specifically mentioned that it is aware of dispute settlement/resolution processes outside of MAP, but that it would like to have more information about the resolution process available in Italy and its effects on access to MAP and resolution of MAP cases. Specifically with respect to mediation, the peer noted that it understands that mediation is available for certain non-allocation cases, but that it would like to develop a better understanding of the extent to which MAP might be affected by this process. In this respect, Italy has pointed out that its MAP guidance clearly addresses the interrelation between audit settlements and MAP.

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

92. Italy reported that there is no other administrative or statutory dispute settlement/resolution process in Italy that impacts the access to the MAP.

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

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

94. One peer reported that based on Italy’s MAP profile, it is not aware of an administrative or statutory dispute settlement/resolution process that limit access to MAP.

Anticipated modifications

95. Italy specified that it envisages updating its MAP guidance to further address the relationship between audit settlements and MAP as soon as the legal and administrative framework is changed following the developments at an international level.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	MAP guidance includes information stating that in cases submitted only under the EU Arbitration Convention access to MAP will not be granted if the tax authority and the taxpayer entered into an audit settlement in the case under review.	In line with the recommendation under element B.5 to grant access to MAP in cases submitted only under the EU Arbitration Convention where the tax authority and the taxpayer entered into an audit settlement in case under review, Italy should no longer state in its MAP guidance that access to the MAP is restricted in such situations.

Notes

1. These 53 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic, and the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan.
2. These ten treaties include the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
3. These 68 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
4. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5) (a) of the Convention, Italy reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to

present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified." An overview of Italy's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-italy.pdf.

5. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5) (a) of the Convention, Italy reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified." An overview of Italy's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-italy.pdf.
6. None of the number of treaties discussed include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
7. This provision reads:
 1. In Article 110 of the Consolidated Law on Income Tax approved by Presidential Decree of No. 917 of 22 December 1986, paragraph 7 is replaced by the following:

"7. Income components arising from transactions with non-resident companies which directly or indirectly control the enterprise, are controlled by it or are controlled by the same company controlling the enterprise, are determined by making reference to the conditions and to the prices which would have been agreed between independent parties operating under conditions of free competition and in comparable circumstances, if it results in an increase in income. The same provision applies even if it results in a decrease in income, in accordance with the terms and conditions referred to in Article 31-quater of the Presidential Decree No. 600 of 29 September 1973. A Decree of the Minister of Economy and Finance, on the basis of best international practices, may draw up the guidelines for the application of this paragraph."
8. This provision reads:
 1. The downward adjustment of income referred to in Article 110(7)(2) of the Consolidated Law on Income Tax approved by Presidential Decree No. 917 of 22 December 1986 can be granted:
 - (a) in implementation of the agreements concluded with the competent authorities of the foreign States following the mutual agreement procedures laid down in the international conventions for the avoidance of double taxation on income or in Convention 90/436/EC of 23 July 1990;

- (b) at the conclusion of the controls carried out within the framework of international co-operation activities whose results are shared by the participating States;
- (c) following a request by the taxpayer to be submitted in accordance with the terms and conditions laid down in an order by the Director of Agenzia delle entrate (Italian Revenue Agency), with respect to a definitive upward adjustment and in accordance with the arm's length principle made by a State with which a Convention for the avoidance of double taxation on income is in force, which allows an adequate exchange of information. This is without prejudice, in any case, to the right of the taxpayer to request the initiation of the mutual agreement procedures referred to in letter (a), where the conditions are satisfied.”.
9. Italy specified that mediation is a tool of tax litigation which aims at settling disputes without going to court. In Italy, mediation is enforceable and mandatory for claims with a value not exceeding EUR 20 000 (this amount will be increased to EUR 50 000 for tax assessment notices issued as from 1 January 2018 and as provided in Article 10(1) of Decree-Law No. 50 of 24 April 2017). Judiciary conciliation allows the closure of a case while a dispute is pending before the national court. The process consists in an proposal of agreement between the taxpayer and the tax administration, subject to the approval of the court, which, if it considers the agreement proposed by the parties as appropriate, declares the closing of the dispute through a judgement binding for the parties involved.
 10. These 57 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
 11. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
 12. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
 13. www.agenziaentrate.gov.it/wps/portal/entrate/home (accessed on 22 August 2017).
 14. www.finanze.it/opencms/it/fiscalita-comunitaria-e-internazionale/procedure-amichevoli-internazionali/ (accessed on 22 August 2017).

Bibliography

- 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>.
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en>.

Part C

Resolution of MAP cases

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

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

96. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the *OECD Model Tax Convention* (OECD, 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 Italy's tax treaties

97. Out of Italy's 101 tax treaties, 100 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.¹ The remaining treaty does not include the sentence relating to the possibility to provide for a *unilateral satisfactory solution* and further the objective of the mutual agreement procedure is to *avoid double taxation* and not *taxation not in accordance with the convention*. This treaty is therefore considered not to be in line with the requirements under Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a).

98. Italy reported that the examination whether the objection raised in a MAP request is justified necessarily implies for the Italian competent authority to question its capacity to resolve the case unilaterally, such in accordance with Article 25(2) of the *OECD Model Tax Convention* (OECD, 2015a). In Italy's view, even if the treaty does not contain an indication that the competent authority must explore the possibility of a unilateral solution to a dispute, its competent authority does explore this possibility in practice

Anticipated modifications

99. Italy reported it has recently signed the Multilateral Instrument with a view to inter alia update – on the basis of Article 16(4)(b)(i) of that instrument – the tax treaty that does not contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a). Italy is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where the tax treaty, which does not contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), will not be modified by the Multilateral Instrument, Italy reported that, in order to be compliant with element C.1, it intends to update them via bilateral negotiation with jurisdictions that have not participated in the ad hoc group on the Multilateral Instrument. As for the other jurisdictions that did participate, Italy reported it believes that the implementation of the requirements of element C.1 should be ensured through the Multilateral Instrument, thereby taking into account that the jurisdictions which have been part of the ad hoc group have signed or expected to sign the Multilateral Instrument as soon as possible. In addition, Italy reported it will seek to include Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

100. Several peers reported that the provisions of their tax treaty with Italy meet the requirement of element C.1.

Conclusion

	Areas for Improvement	Recommendations
[C.1]	One out of 101 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a).	Where the treaty that does not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Italy should request the inclusion of the required provision via bilateral negotiations. In addition, Italy 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).

101. 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

102. 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

103. 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. Italy provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Italy 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 Italy. Italy specified that (i) as regards pre-2016 cases, it did not report the cases that were submitted only under the EU Arbitration Convention and that (ii) as regards post-2015 attribution/allocation cases, Italy opted for breaking down the MAP cases submitted either under a tax treaty or the EU Arbitration Convention.⁵ With respect to post-2015 cases, Italy reported having reached out to all its MAP partners with a view to have their MAP statistics matching. Italy indicated that it could match its statistics with a considerable portion of its MAP partners except for the ones that did not reply to Italy’s requests. Italy indicated that the MAP statistics that potentially would not match relate to a very limited number of MAP cases as it would concern approximately 5 MAP cases, representing 1% of Italy’s MAP inventory at the end of the Statistics Reporting period.

Timelines for the mutual agreement procedure

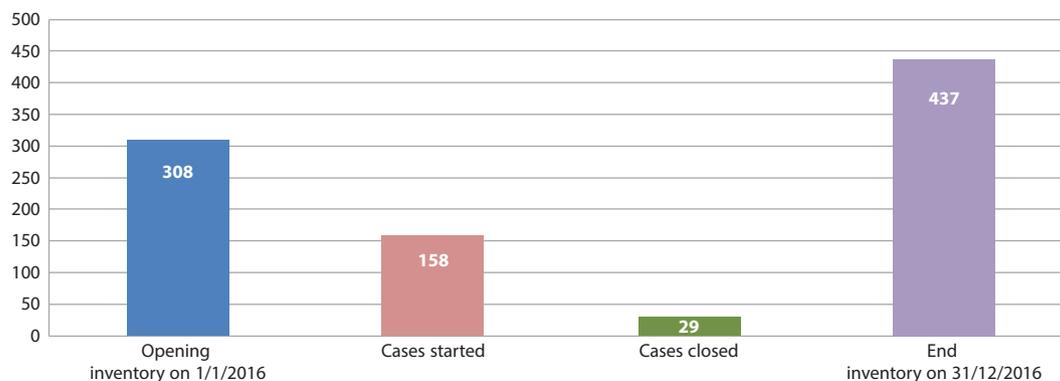
104. Italy’s MAP Guidance refers in paragraphs 4.2.8 and 5.8 to the revised “Code of conduct for the effective implementation of the Arbitration Convention”. These paragraphs mention, as confirmed by Italy, that it aims at following (as much as is possible) the timing and procedural recommendations made in that code for all MAP cases, even if submitted under a bilateral tax treaty. To this end, and specifically with respect to the EU Arbitration Convention, paragraph 5.8 provides an indicative timeline of the two-year timeframe for handling MAP cases. In order to achieve the targets set in this timeframe, Italy reported that it is now making efforts in order to plan and schedule a relevant number of face-to-face meetings with its main MAP partners, in particular to resolve in priority old MAP cases. Since late 2016, meetings have taken place with several MAP partners. Moreover, Italy reported that a number of meetings are scheduled for the second half of 2017 with these and other MAP partners.

Analysis of Italy’s MAP caseload

Global overview

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

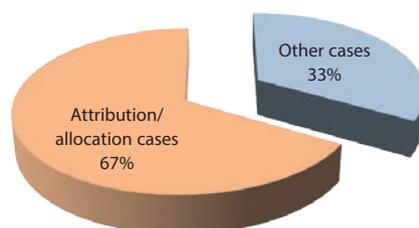
Figure C.1. **Italy’s MAP inventory**



106. At the beginning of the Statistics Reporting Period Italy had 308 pending MAP cases, of which 161 were attribution/allocation cases and 147 other MAP cases⁶. At the end of the Statistics Reporting Period, Italy had 437 MAP cases in its inventory, of which 291 are attribution or allocation cases and 146 other MAP cases. Out of the 29 cases resolved during the Statistics Reporting Period, nine cases were attribution/allocation cases and 20 cases were other cases. Consequently, the number of attribution/allocation cases in inventory almost doubled during the Statistics Reporting Period while the number of other cases in inventory remained stable over the same period.

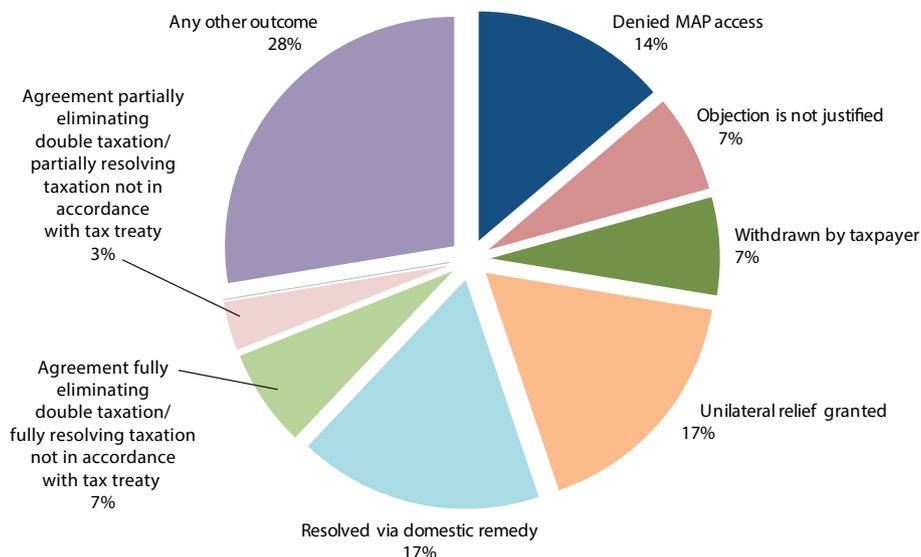
107. The breakdown of the end inventory can be illustrated as follows:

Figure C.2. End inventory on 31 December 2016 (437 cases)



108. During the Statistics Reporting Period Italy resolved 29 MAP cases and the following outcomes were reported:

Figure C.3. Cases resolved during the Statistics Reporting period (29 cases)



109. This chart shows that during the Statistics Reporting Period, 2 out of 29 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Pre-2016 cases

110. At the beginning of the Statistics Reporting Period, Italy's MAP inventory of pre-2016 cases consisted of 308 cases, of which 161 were attribution/allocation cases and 147 were other cases. At the end of the Statistics Reporting Period the total inventory had decreased to 286 cases, consisting of 157 attribution/allocation cases and 129 other cases. This decrease concerns approximately 7% of opening MAP inventory, consisting of a 2% decrease of attribution/allocation cases and a 12% decrease in other cases. In total, 4 of the 22 cases closed concerned attribution/allocation cases and 18 concerned other MAP cases.

Post-2015 cases

111. In total, 158 MAP cases were started on or after 1 January 2016, of which 139 concerned attribution/allocation cases and 19 other cases. At the end of the Statistics Reporting Period the total inventory had decreased to 151 cases, consisting of 134 attribution/allocation cases and 17 other cases. Italy in total resolved seven post-2015 cases during the Statistics Reporting Period, five of them being attribution/allocation cases and two of them being other cases. The total number of resolved cases represents 4.4% of the total number of post-2015 cases that started during the Statistics Reporting Period, which is 3.6% for attribution/allocation cases and 10.5% for other cases.

Average timeframe needed to resolve MAP cases*Pre-2016 cases*

112. Italy reported that on average it needed 14.75 months to resolve attribution/allocation cases and 39.44 months to resolve other cases. This resulted in an average time needed of 34.95 months to close pre-2016 cases. For the purpose of computing the time to resolve pre-2016 cases, Italy used:

- as the start date, the date of filing of the MAP request to the Italian competent authority or the date of receipt of the notification letter from the competent authority that received the MAP request from the taxpayer; and
- as the end date, one of the following ones: the date when the taxpayer is informed of the outcome of the MAP process or the date of the closing letter received from the other competent authority or the date of the judgment that resolved the dispute at stake.

Post-2015 cases

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

114. It is noted that Italy closed 4.4% of post-2015 cases during the Statistics Reporting Period. During these 12 months, Italy closed on average attribution/allocation cases within 4.96 months. For other MAP cases, the average time to resolve these cases was reported as 2.28 months.

All cases resolved during Statistics Reporting Period

115. The average time needed to resolve MAP cases during the Statistics Reporting Period was 27.53 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	9	9.31
Other cases	20	35.72
All cases	29	27.53

Peer input

116. Some peers reported that no cases were resolved with Italy during the Statistics Reporting Period and that in fact the last few years hardly any cases were resolved with Italy, particularly due to the fact that no responses and position papers were received nor were any meetings scheduled to resolve MAP cases. Two peers, however, also reported good working relationships with the Italian competent authority and that they had frequent communications and also received position papers in due time from Italy. This viewpoint, however, is not shared by the other peers.

117. One peer mentioned that a significant number of MAP requests are pending because of a domestic appeal that is ongoing in Italy and for which Italy's competent authority does not seek to resolve the case before the court decision is rendered. This peer expressed concerns about the fact that once the court decision is rendered, Italy's competent authority will not be able to derogate from the court decision as provided under its domestic law. Italy responded to this input by stating that a distinction should be made between those MAP requests submitted to the Italian competent authority for which also a judicial procedure is pending and those MAP requests for which a judgment was already rendered. In the first situation, in order to prevent that a court decision is rendered during the time a MAP is pending, the Italian domestic law provides taxpayers the possibility to hold the litigation proceeding in abeyance of the outcome of the discussions between the competent authorities. Should the competent authorities not be able to reach an agreement, taxpayers are entitled to reactivate the litigation. In the second situation, since Italy is among those jurisdictions that cannot derogate from a judicial decision, double taxation cannot be eliminated unless the foreign counterpart agrees with the position expressed by the Italian tax court. Finally, Italy specified that in the case the other contracting state imposed an adjustment, an initiated domestic procedure in that state does not preclude Italy from opening the MAP insofar as the foreign tax administration shares the same view.

118. Several peers expressed concerns about timeliness of responses by Italy's competent authority. This concerns not receiving responses in general and not to position papers in particular. One peer specifically asserted rarely receiving any response from Italy's competent authority and that many cases are for the moment being dormant, particularly due to the prior application of internal refund procedures and due to the fact that additional information has to be requested from the local tax offices. Another peer also reported the long time needed to obtain a response from a position paper regarding an adjustment made by its jurisdiction and also to receive a position paper on an Italian-initiated adjustment.

119. Several peers further mentioned that meeting intermediate target timeframes within 24 months, for instance for position papers, is very difficult with Italy. These peers in particular noted that that they were quickly informed of the opening of a MAP case with

basic information, being the name of the taxpayer and its associated enterprises as well as the start date of the case, while in many cases the position paper is only received more than one year and a half after this first letter in most cases. One peer thereby suggested that a brief summary of the case is provided with the first letter. These remarks were also echoed by a taxpayer. This taxpayer expressed concerns about MAP requests submitted in Italy and in another country in 2016 and 2017, for which he received an acknowledgement of receipt but no more information about the case since that date. Italy clarified that the taxpayer at issue has been informed about the admissibility of MAP requests filed in both tax years 2016 and 2017.

120. Despite the above criticism, several peers also reported that during the Statistics Reporting Period they had a face-to-face meeting with Italy for the discussion of pending MAP cases. In this respect, one peer has underlined that several MAP cases were resolved on that occasion. In particular, another peer has pointed out that, since the end of 2016, there is an effective MAP process in place with Italy regarding transfer pricing cases.

General conclusion on peer input

121. In a reaction to the peer input described above, Italy responded that most of the input was referring to years prior to the Review Period and that, within the limits of the resources available, it has always sought to provide a feedback to the requests by the other competent authorities. Italy reiterated that it has recently reorganised its competent authority function with the aim to improve the resolution of MAP cases in a timely, effective and efficient manner. Italy also stressed that, within the period November 2016-June 2017, nine face-to-face meetings were successfully held with its MAP partners, leading to the resolution of 39 attribution/allocation MAP cases with the outcome “double taxation fully eliminated”. Moreover, Italy reported that another six bilateral meetings have already been scheduled for the period July-November 2017 (for discussion of approximately 56 MAP cases). Italy therefore noted a general improvement of its working relationships with the majority of its MAP partners. In this respect, Italy also noted that, in view of the preparation of the face-to-face meetings, 71 cases have been finalised, as well as 56 cases are being analysed.

Anticipated modifications

122. Italy reported it anticipates a decrease in the time needed to resolve MAP cases as a result of several actions. First, as it will be discussed in element C.3 and C.4, the resources allocated to the MAP function have increased after the reorganisation of the Italian competent authority. Second, the process to draft position papers has been rationalised and a significant number of competent authority meetings were held or are scheduled to resolve long-time pending MAP cases. Third, as will be discussed in both C.3 and C.5, Italy will take the time necessary to resolve MAP cases is contemplated to be taken into account in assessing the performance and the needs of the MAP function, with a focus on the time elapsed between the receipt of the MAP request and the sending of the position paper.

123. Furthermore, as it will be discussed in element C.6, Italy’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]	Italy 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 Italy'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 Italy, it resolved during the Statistics Reporting Period 4.4% (seven out of 158 cases) of its post-2015 cases in 4.20 months on average. In that regard, Italy is recommended to seek to resolve the remaining 95.6% of the post-2015 cases pending on 31 December 2016 (151 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.

124. 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 Italy's competent authority

125. The legal basis for handling MAP cases by the Italian competent authority is the tax treaties entered into by Italy and the EU Arbitration Convention (see also paragraph 2 of Italy's MAP Guidance). As noted in paragraph 3 of Italy's MAP guidance, the statutory bodies involved in handling MAP cases are the Ministry of Economy and Finance – department of Finance – and the Italian Revenue Agency. In Italy, the competent authority function to handle all MAP cases (i.e. attribution/allocation cases and other cases) has on 1 January 2017 been assigned to Italy's Revenue Agency. This assignment has been confirmed in the official guidelines regarding the 2017-19 fiscal policies of the Minister of Economy and Finance, in which the Italian Revenue Agency is formally assigned competence to handle MAP cases and arbitration procedures. In relation hereto, the Department of Finance of the Ministry of Economy and Finance remains the competent authority for MAP on general issues arising from interpretation or application of tax treaties with a view to avoid double taxation.

126. Italy reported that it has given special attention to this reorganisation internally, and has recently sent its treaty partners a letter informing them of it as well as the subsequent change in the contact details of their competent authority. In addition, the new contact information is included in the update MAP profile of Italy that is published on the websites of the OECD⁷ and the EU (via the transfer pricing profile⁸). In this regard, Italy mentioned that, in addition, taxpayers are informed of the reorganisation when submitting a MAP request. If such a request is made to the Ministry of Economy and Finance, it will forward the request to the new competent authority. The same applies when a MAP request is submitted with the competent authority of the treaty partner. One peer, however, expressed concerns about the uncertainty regarding Italy's competent authority contact details. Italy responded that the contact details of their competent authority have been shared with all treaty partners and that the relevant websites were updated in relation thereto.

127. The department within the Italian Revenue Agency responsible for handling MAP cases, as also handling request for bilateral APAs is the Office for Advance Rulings and International Disputes (“*Ufficio accordi preventive e controversie internazionali*”) of the Central Directorate for Tax Assessment (“*Direzione Centrale Accertamento*”). This department consists of 12 persons, in addition to a manager and the head of office (also in charge of unilateral APA programme and patent box). The team handles MAP requests concerning attribution/allocation cases, other cases as well as bilateral APAs. Four of them have joined the competent authority in March 2017 and have had a previous working experience as tax auditors, along with transfer pricing and language skills. Furthermore, Italy reported that it expects to assign two or three additional persons to the competent authority team to handle MAP cases relating to individuals. The department within the Ministry of Economy and Finance that is responsible for handling MAP cases of a general nature as well as issues regarding the interpretation of a tax treaty raised in other MAP cases consists of three persons.

Monitoring mechanism

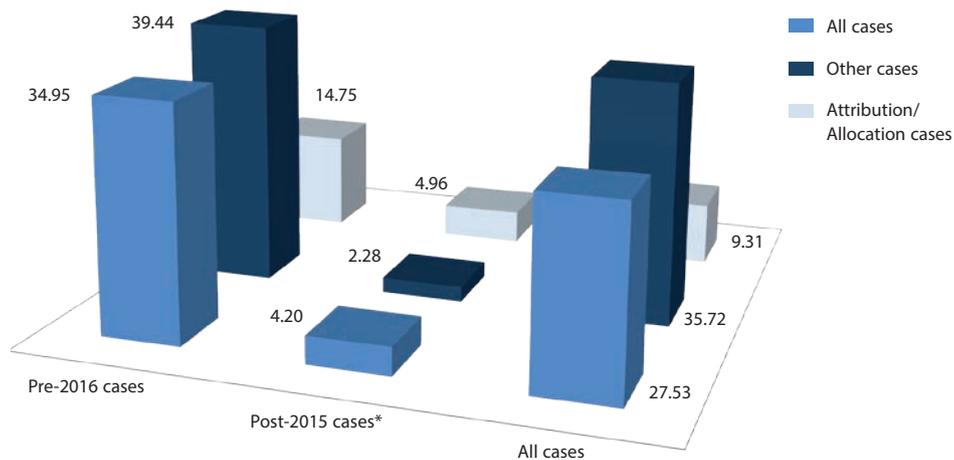
128. Italy reported it has not yet put in place a framework for monitoring/assessing whether the available resources for the MAP function are adequate, particularly due to the recent reorganisation of the competent authority function.

Practical application

MAP statistics

129. As discussed under element C.2 Italy did not resolve its MAP cases within the pursued 24-month average. A discrepancy can also be noted between the average time taken to resolve attribution/allocation cases and other cases. This can be illustrated by the following graph:

Figure C.4. Average time (in months)



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

130. Based on these figures, it follows that on average it took Italy 27.53 months to resolve MAP cases. Moreover, based on the statistics provided by Italy, it follows that Italy resolved less than 20% of the number of new cases started during the Statistics Reporting period, and less than 7% for attribution/allocation cases only (both pre-2016 and post-2015 cases). This led to an increase of Italy’s MAP inventory by approximately 40% overall, and by

80% for attribution/allocation cases only (this latter figure has to be considered along with the fact that cases that were submitted only under the EU Arbitration Convention prior to 1 January 2016 were not reported). The overview of Italy’s MAP inventory can be illustrated as follows:

2016	Opening inventory	Cases started	Cases closed	End inventory	Evolution of MAP inventory
Attribution/allocation cases	161	139	9	291	+80.7%
Other cases	147	19	20	146	-0.7%
Total	308	158	29	437	+41.9%

Peer input

131. Some peers considered that the resources of Italy’s competent authority are adequate to perform the MAP function. Taxpayers have also noted the increase in staff in charge of MAPs and welcomed the progress made by Italy. However, more peers have expressed their disappointment about the fact that Italy’s competent authority has not been ready to meet the other competent authorities for the last six to eight years. One peer mentioned that, as they were neither able to meet Italy’s competent authority nor received a position paper from them, following which no cases could be resolved. Italy responded that this input refer to years prior to the Review Period. Another peer mentioned that a joint commission was held in November 2016 and that several cases were closed during this meeting. This peer emphasised the fact that meetings have now resumed with Italy and that it anticipates that several cases will now be resolved, all the more since this peer will endeavour organising two competent authority meetings per year with Italy. Another peer reported it has scheduled a meeting with Italy in October 2017 to discuss both MAP cases and APA cases. Furthermore, one peer has also noted the improvement in the communication after the reorganisation occurred in January 2017.

132. A significant number of peers suggested that competent authority meetings should be organised more frequently, such in combination with follow-up (video) conference calls and emails so as to ensure that progress in MAP cases is made and cases can be resolved. Italy responded that some face-to-face meetings are already scheduled for the coming months (see paragraph 13 below). Another peer suggested sharing the contact details of the people that analysts and managers in their competent authority can contact with Italy’s competent authority.

133. Some issues were raised regarding the language used. One peer suggested agreeing on and using a common working language when dealing with MAP cases. Another peer reported that the resolution of MAP cases was on an overall basis correct, but they experienced delays in such a resolution because of the need to translate documentations in Italian. Some other peers also expressed concerns about the fact that the documents that the Italian competent authority provided were not in English but in the Italian language. In this regard, Italy responded that it follows the recommendations set out in the revised “Code of Conduct for the effective implementation of the Arbitration Convention” that suggests using a common working language with particular reference to the exchange of position papers. In this respect, Italy indicated that its position papers are always provided also in English language. Furthermore, Italy specified that, if the MAP case arises from an adjustment imposed by the Italian tax authority, its position paper includes, *inter alia*, a comprehensive description of the factual elements related to the case at issue as well as a full justification of the assessment so that the main contents of the supporting documents used for the tax audit are also reported. Lastly, Italy also pointed out that the

Italian competent authority, upon request of the counterpart, has in some cases asked the involved taxpayer for a courtesy translation in English of the main parts of the supporting documents (i.e tax assessment or equivalent).

134. One peer suggested more resources being attributed to the competent authority function. A second peer suggested using electronic means for communication to exchange confidential data in order to resolve cases more quickly also through more frequent and easier exchanges of relevant documentation and opinions on the case.

135. In response, in order to support the process of resolving MAP cases in a timely manner, Italy performed an internal reorganisation as already noted in the Introduction, *inter alia* aiming at providing adequate resources to the MAP function. Italy further reported that it is now engaged in the effort of planning and scheduling a relevant number of face-to-face meetings with its major MAP partners in order to solve the oldest pending cases. In this context, Italy specified that apart from the nine meetings already held in the period November 2016-June 2017, six bilateral face-to-face meeting have been scheduled for the coming months. According to Italy, this represents a clear signal of its strong effort to improve its dispute resolution mechanism.

Anticipated modifications

136. Italy indicated that it anticipates implementing a system to monitor the adequacy of its resources recently assigned to the MAP function by the end of 2017. According to Italy, such monitoring would take into account (i) the influx of new MAP cases, (ii) the number of pending MAP cases and (iii) the time necessary to draft position papers. This monitoring may, if necessary, lead to a relocation of staff from the APA/patent box team or from other departments to the MAP/APA team.

Conclusion

	Areas for Improvement	Recommendations
[C.3]	As Italy resolved MAP cases in 27.53 months on average, there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016 and which might indicate that the available resources in Italy's competent authority are not adequate.	Italy should ensure that it has adequate resources available for the competent authority function in order to resolve MAP cases in a timely, efficient and effective manner. In particular, Italy should closely monitor whether the recent reorganisation and the implementation of its contemplated monitoring system will contribute to the acceleration of the resolution of MAP cases.

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

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

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

Functioning of staff in charge of MAP

138. Italy's competent authority is a part of the International Sector, which is a division of the Tax for central assessment of the Italian Revenue Agency. The role and the responsibilities of this department has been included in the Ministerial Decree of 17 July 2014, which also refers to handling MAP cases and arbitration procedures.⁹ Paragraphs 4.2.8 and 5.8 of Italy's MAP Guidance states that when the Italian competent authority receives a MAP request, it involves the Revenue Agency for its advice on controversial issues where necessary. This role is specified in paragraph 3 of Italy's MAP Guidance. The Italian Revenue Agency provides the Italian competent authority technical support throughout the entire MAP process. This concerns the preparation of position papers and providing the factual and juridical elements underlying an individual case. Paragraph 3 emphasises that the role of the Revenue Agency is also relevant to guarantee consistency between the positions taken in MAP and those arising in other contexts, such as audits and dispute prevention.

139. Furthermore, paragraph 6 of Italy's MAP Guidance describes the role of the Revenue Agency during the MAP process in more detail. This concerns both the initial stage when Italy's competent authority is preparing its position paper on the case and resolving of the case. The Revenue Agency provides legal and technical support to the Italian competent authority to prepare its position on the case. This in particular when the MAP request follows from an assessment notice issued by the Italian Revenue Agency. In that case, the latter has all relevant information and documentation on the case at its disposal. For that reason, it will draw up a report to (i) specify the rationale of the adjustment underlying the tax assessment and (ii) the legitimacy of the arguments put forward by the taxpayer in the MAP request.¹⁰ When resolving MAP cases the Revenue Agency assist the Italian competent authority by submitting a proposal instrument to reach a potential bilateral agreement.

140. In practice, upon receipt of a MAP request, the Italian competent authority analyses the request, by taking into account the treaty provisions, the *OECD Model Tax Convention* (OECD, 2015a), the OECD Transfer Pricing Guidelines, the facts and circumstances of the case under review, as well as domestic legislation and the economic analyses. If not all information is available, Italy's competent authority will contact the taxpayer and request additional information, whereby in more complex cases a pre-filing meeting with the taxpayer may take place. If needed, Italy's competent authority might consult the audit departments to check facts or obtain more information about the case.

141. Italy reported that its competent authority independently takes a decision on its position in each individual MAP case, as also the decision on whether to accept a MAP request and whether unilateral relief is possible (see also paragraph 4.2.8 of Italy's MAP Guidance). In particular, outcomes of tax audits are not binding on the Italian competent authority and itself prepares position papers. Each case analyst prepares a position paper, which is reviewed by the team manager and ultimately approved by the head of the BAPA/MAP office. In that regard, a common database on transfer pricing cases is shared between the Italian competent authority and the APA/Patent box team.

142. In regard of the above, Italy reported that its competent authority operates fully independent from local and regional tax offices that are in charge of conducting audits and that it furthermore has the authority to resolve cases through MAP agreements. More specifically, Italy noted that its competent authority may ask other parts of the tax administration for information and verification of facts. Furthermore, Italy reported that the resolution of MAP cases by its competent authority is not influenced by policy considerations.

Practical application

143. Peers indicated not being aware of the fact that the Italian competent authority would be formally dependent on the approval or the direction of the tax administration personnel or influenced by policy considerations. One peer, however, noted that this is also caused by the fact that a limited number of cases were discussed during the last competent authority meeting. Furthermore, another peer noted a discrepancy in the time taken by Italy’s competent authority to draft a position paper in cases of Italian adjustments, on the one hand, and to react to a position paper from the other competent authority in cases of foreign adjustments on the other hand. This peer indicated that there might be an issue regarding the independence of the Italian competent authority from the audit department of the Revenue Agency. In a response, Italy mentioned that in its view there is under element C.4 no room for such issue. It specified that up to the full year 2016, Italy’s competent authority was placed in the Department of Finance of the Ministry of Economy and Finance, which was completely separated and independent from Italy’s Revenue Agency, the latter acting at that time as a technical body.

Anticipated modifications

144. Italy 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, Italy should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue, or being influenced by considerations of the policy that Italy would like to see reflected in future amendments to the treaty.

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

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

145. 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 Italy

146. The *Action 14 final report* (OECD, 2015b) includes examples for performance indicators that are considered appropriate. These indicators are shown below:

- 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).

147. In Italy there are no performance indicators set for staff in charge of MAP. In particular, there are no performance indicators that are based on amounts or assignments that need to be achieved by the Italian competent authority when resolving MAP cases, nor does its competent authority target specified sustained audit adjustments or tax revenue amounts. In fact, staff in charge of MAP is not assessed on the basis of quantitative criteria, but on other criteria, such as technical knowledge, capacity of dealing with specific issues, work accuracy, team working skills, motivation and autonomy. More specific, Italy reported that the staff in charge of MAP is obliged to endeavour to resolve MAP cases in a fair and lawful manner and in accordance with the constitutional charter and law provisions. As specifically noted in paragraph 3 of Italy's MAP Guidance, the competent authority's role is to guarantee the good faith application of a tax treaty, thereby striving at reaching a solution that adheres to the principles of equity and transparency.

Practical application

148. Peers indicated not being aware of the fact that Italy's competent authority would 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.

Anticipated modifications

149. Italy indicated that it envisages putting in place by the end of 2017 a framework for monitoring the time taken to resolve MAP cases, with a focus on the time elapsed between the receipt of a MAP request and sending of a position paper (see also element C.3).

Conclusion

	Areas for Improvement	Recommendations
[C.5]	-	As the criteria used by Italy to assess the performance of the staff in charge of MAP can be considered as appropriate performance indicators, Italy should follow up its stated intention to put in place the envisaged performance indicator.

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

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

150. 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

151. Italy reported it has no domestic law limitations for including MAP arbitration in its tax treaties, although the inclusion of arbitration provisions in tax treaties was not part of its

general tax treaty policy. In addition, Italy 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

152. Italy has incorporated an arbitration clause in 19 treaties as a final stage to MAP.¹¹ In two treaties the arbitration clause is modelled after Article 25(5) of the *OECD Model Tax Convention* (OECD, 2015a), but at some points deviate from that provision (e.g. the parties that can request the initiation of the arbitration procedure). Furthermore, seven treaties provide for a voluntary and binding arbitration procedure, whereby the case under review is referred to the arbitration procedure if both competent authorities and the taxpayer concerned agree. In nine treaties a voluntary and binding arbitration procedure is also provided for, but which reference is initiated if both competent authorities agree therewith. Of these nine treaties the effectiveness of the arbitration clause is subject to an exchange of notes between the contracting states, which so far have not yet been exchanged. In the remaining treaty the arbitration clause provides for a mandatory and binding arbitration procedure.

Anticipated modifications

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

Conclusion

	Areas for Improvement	Recommendations
[C.6]	-	-

Notes

1. These 100 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
2. www.oecd.org/ctp/dispute/MAP%20PROGRAM%20STATISTICS%20FOR%202015%20ITALY.pdf.
3. https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0142016nacstatistics2015.pdf (accessed on 22 August 2017).
4. For post-2015 cases, if the number of MAP cases in Italy's inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Italy 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. When MAP requests were submitted under both a tax treaty and the EU Arbitration Convention, Italy reported only one case in its MAP statistics under the EU Arbitration Convention category. Such reporting is in line with the MAP Statistics Reporting Framework.

6. For pre-2016 cases and post-2015 cases, Italy 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); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.
7. Available at: www.oecd.org/tax/dispute/Italy-Dispute-Resolution-Profile.pdf.
8. https://ec.europa.eu/taxation_customs/sites/taxation/files/italytpprofile2017.pdf (accessed on 22 August 2017).
9. Article 4, sub 5 under VIII of the Ministerial Decree of 17 July 2014. Available at: www.finanze.gov.it/export/sites/finanze/it/.content/Documenti/Varie/DECRETO_17_LUGLIO_2014.pdf (accessed on 22 August 2017).
10. When the case under review concerns a refusal of a refund of withholding taxes by the Operational Centre of Pescara, this centre that is responsible for drafting the report, which should contain the legal grounds underlying the denial and which should be accompanied by any relevant information and documentation on the case.
11. In six of these 19 treaties the arbitration provision only takes effect through an exchange of diplomatic notes. In none of these treaties such exchange has yet been performed.

Bibliography

- 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>.
- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, OECD, Paris, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en>.
- OECD (2007), *Manual on Effective Mutual Agreement Procedures*, OECD, Paris, www.oecd.org/ctp/38061910.pdf.

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.

154. 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

155. Italy reported that once a MAP agreement has been reached, its competent authority will request the taxpayer concerned to give its consent to the agreement as a prerequisite for the agreement's implementation. This is done by means of sending a letter to the taxpayer, to which it has to respond within 30 days. Upon receipt of the taxpayer's acceptance of the MAP agreement, the Italian competent authority will send an implementation letter to the local tax office and/or appeal office with content of the MAP agreement and the instructions for implementation of this agreement. In that regard, Italy reported it will implement all agreements reached in MAP, which, however, is subject to its domestic statute of limitation. This statute of limitation does not apply insofar as it is overridden by the applicable tax treaty that includes the equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015).

156. Where a MAP agreement entails a downward adjustment in Italy, Italy reported that it is implemented provided that the taxpayer concerned submits a request for a refund within two years from the date on which a MAP agreement has been reached. This rule is laid down in Article 21(2) of the Legislative Decree no. 546 of 31 December 1992. This provision stipulates that:

“The request of refund, in the absence of specific provisions, cannot be submitted if a two-years period is elapsed starting from payment date, or, whichever is the later, starting from the date on which the required condition for the refund has occurred.”

157. Where a MAP agreement confirms an upward adjustment made in Italy, Italy reported that such agreement will be implemented by Italy on the basis of Article 2 of the Decree of the Ministry of Finance no. 37 of 11 February 1997, which allows for ex officio amendments of the tax assessment. As in Italy it is required, in order to prevent a tax assessment of becoming final, to initiate domestic judicial proceedings simultaneously with requesting for MAP assistance, the situation may occur that a MAP agreement is reached before an Italian court rendered a decision. In that situation, as explained in paragraph 4.2.5 of Italy's

MAP guidance, the taxpayer has with renounce domestic proceedings as a prerequisite for implementation. As discussed under element B.1., taxpayers have the possibility to ask for a suspension of domestic proceedings in order to avoid that a final court ruling prevents the resolution of a case through MAP, as Italy is not allowed to deviate from such ruling in a MAP agreement.

158. In view of the above, paragraph 4.2.10 of Italy's MAP Guidance includes information on the implementation of MAP agreements reached under a tax treaty. This paragraph notes that if a MAP agreement has been reached, it will be communicated to the taxpayer. Such communication, however, does not impact the implementation of a MAP agreement, as the Italian Revenue Agency will implement such agreement and, if applicable, refund taxes, interest and penalties. Where a MAP agreement is reached and for the same case a court case is pending, then the taxpayer has the possibility to accept or reject the agreement. In case of rejection, the taxpayer is allowed to pursue the court case. In any case taxpayers are obliged to inform the Italian competent authority and the Italian Revenue Agency of the decision made.

159. In addition, for MAP agreements reached under the EU Arbitration Convention, paragraph 5.10 of Italy's MAP guidance specifies that the outcome under the convention's procedures is communicated to the taxpayer concerned, whether it concerns an agreement reached during the mutual agreement procedure or the final decision as a follow-up to the opinion rendered by an advisory commission. Upon request by the taxpayer, such in pursuance to Article 3(1) of Law no. 99 of 1993, the Italian Revenue Agency will formally authorise the refund or provide relief.

Practical application

160. Italy reported that all MAP agreements reached since 1 January 2016, once accepted by taxpayers, have been (or will be) implemented. In that regard it noted its competent authority keeps track of the implementation of MAP agreements by the local tax authorities through frequent contacts with these offices. This to monitor times, methods and results of such implementation.

161. Peers generally reported not being aware of MAP agreements that were reached on or after 1 January 2016 that were not implemented in Italy. Some peers, however, noted that this also followed from the fact that they were not able to resolve any MAP case with Italy over the last few years. Italy responded that the peer input relates to years prior to the Review Period. Regarding peer input on the timely implementation, see element D.2.

Anticipated modifications

162. Italy indicated that it will update its domestic legislation to ensure that MAP agreements can be implemented notwithstanding domestic time limits where treaties do not have the equivalent of Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015).

Conclusion

	Areas for Improvement	Recommendations
[D.1]	-	As it has done thus far, Italy should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled. In addition, Italy should follow up its stated intention to amend its domestic legislation to enable implementation of MAP agreements notwithstanding domestic time limits.

[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.

163. 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

164. Italy has in its domestic legislation and/or administrative framework no timeframe for implementation of MAP agreements reached. As mentioned under element D.1, the Italian competent authority is not responsible for implementing MAP agreements, but this is performed by the Italian Revenue Agency. In regard of the process, Italy reported that once a MAP agreement has been reached, its competent authority will request the taxpayer concerned to give its consent to the agreement as a prerequisite for the agreement's implementation. This is done by means of sending a letter to the taxpayer, to which it has to respond within 30 days. Upon receipt of the taxpayer's acceptance of the MAP agreement, the Italian competent authority will send an implementation letter to the local tax office and/or appeal office with content of the MAP agreement and the instructions for implementation of this agreement.

165. Further to the above, Italy reported that, as from 1 January 2017, the Italian Revenue Agency is the competent authority for all MAP cases (attribution/allocation cases and other cases) and it is also responsible for the implementation of the agreements reached. The aim of this reorganisation was, *inter alia*, to improve the implementation process and also to make it more efficient.

Practical application

166. Italy reported that all MAP agreements that were reached on or after 1 January 2016 have been implemented on a timely basis. At present, Italy reported that the timeframe for the implementation of a MAP agreement ranges from three to twelve months.

167. Peers generally reported not being aware of MAP agreements that were reached on or after 1 January 2016 that were not implemented in Italy in general or not on a timely basis. Two peers provided for specific input in this regard. One peer noted that it is aware of a small number of cases for which a MAP agreement has been reached, but which takes time to implement in Italy. The second peer mentioned that it had one case with Italy for

which a MAP agreement was reached in 2012, but which so far has not been implemented in Italy. This peer thereby remarked that in its experience it is not the Italian competent authority that is involved in the implementation of the MAP agreement, but that it is up to taxpayers to submit a request for a refund within two years from the date on which a MAP agreement has been reached. In this respect, Italy responded that the case at issue had recently been implemented.

Anticipated modifications

168. Italy did not indicate that it anticipates any modifications related to element D.2.

Conclusion

	Areas for Improvement	Recommendations
[D.2]	-	As it has done thus far, Italy should continue to implement timely all MAP agreements reached 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.

169. 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 Italy's tax treaties

170. As discussed under element D.1, Italy's domestic legislation does not enable it to implement MAP agreements if the domestic time limits have passed. Italy made a reservation to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) in paragraph 98 of the Commentary to Article 25, stipulating that:

“Chile, Greece, Italy, Mexico, Poland, Portugal and Switzerland reserve their positions on the second sentence of paragraph 2. These countries consider that the implementation of reliefs and refunds following a mutual agreement ought to remain linked to time limits prescribed by their domestic laws.”

171. Out of Italy's 101 tax treaties, 71 do not 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.¹ In 8 of these 71 treaties a provision relating to implementation of MAP agreements is included in the protocol to the treaty, or in an exchange of notes, which,

however, are also not considered providing the full equivalent. Such provision generally reads: “an adjustment of taxes pursuant to that Article may be made only prior to the final determination of such taxes.” Furthermore, none of Italy’s 101 tax treaties include the alternatives provided for in Article 9(1) and Article 7(2) setting a time limit for making primary adjustments.

Anticipated modifications

172. Italy reported it has recently signed the Multilateral Instrument with a view to *inter alia* modify – on the basis of Article 16(4)(b)(ii) of that instrument – those tax treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) stipulating that any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the contracting states. In that regard, Italy reported it has not, as is allowed pursuant to Article 16(5)(c) of the Multilateral Instrument, reserved the right not to apply the second sentence of Article 16(2) of that instrument. Italy is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where the above-discussed tax treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) and which will not be modified by the Multilateral Instrument, Italy reported that, in order to be compliant with element D.3, it intends to update them via bilateral negotiation with jurisdictions that have not participated in the ad hoc group on the Multilateral Instrument. As for the other jurisdictions that did participate, Italy reported it believes that the implementation of the requirements of element D.3 should be ensured through the Multilateral Instrument, thereby taking into account that the jurisdictions which have been part of the ad hoc group have signed or expected to sign the Multilateral Instrument as soon as possible, and envisages to amend its domestic legislation accordingly in order to be compliant with element D.3. In addition, Italy reported it will seek to include Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

173. Italy further reported it has requested the deletion of its reservation made in paragraph 98 to the Commentary to Article 25(2), second sentence of the *OECD Model Tax Convention* (OECD, 2015) concerning the implementation of MAP agreements notwithstanding domestic available remedies.

174. Several peers reported that the provisions of their tax treaty with Italy meet the requirement of element D.3. Twelve peers, however, noted that under their treaty with Italy the required provision is absent. All these peers indicated that they envisage amending their treaty with Italy via the Multilateral Instrument so as to be in line with element D.3.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	71 out of 101 tax treaties do contain neither a provision that is equivalent to Article 25(2), second sentence of the <i>OECD Model Tax Convention</i> , OECD (2015), nor the alternative provisions in Article 9(1) and Article 7(2).	Where treaties do not include the equivalent of Article 25(2), second sentence, of the <i>OECD Model Tax Convention</i> , OECD (2015), or include the alternatives provided in Article 9(1) and Article 7(2) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Italy should request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.

	Areas for Improvement	Recommendations
[D.3]		<p>Specifically with respect to the treaties with former Czechoslovakia, the former USSR and with former Yugoslavia, Italy should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision or its alternatives.</p> <p>In addition, Italy should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternative provisions, in all future treaties.</p>

Notes

1. These 71 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.

Bibliography

- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.

Summary

	Areas for Improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Four out of 101 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015).	Where treaties do not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Italy should request the inclusion of the required provision via bilateral negotiations. Specifically with respect to the treaty with former Czechoslovakia, Italy should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision. In addition, Italy should maintain its stated intention to include the required provision in all future treaties.
[A.2]	Bilateral APAs can only be applied up to the year of the submission of the APA request (if not already in the scope of such request), but roll-back of bilateral APAs are not provided for in appropriate cases.	Italy should allow and in practice provide for roll-back of bilateral APAs in appropriate cases.
Part B: Availability and access to MAP		
[B.1]	85 out of 101 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention, OECD (2015a). Of those 85 tax treaties: <ul style="list-style-type: none"> • 49 tax treaties incorporate the full equivalent to Article 25(1), first sentence, but also provide restrictions thereto 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 (generally two years, except for one treaty whereby the starting period is different and one treaty whereby the filing period is six months); • 15 tax treaties do not incorporate the full equivalent to Article 25(1), first sentence and/or provide restrictions thereto; and • 21 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). 	Where treaties do not include the equivalent of Article 25(1) of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Italy should request the inclusion of the required provision via bilateral negotiations. This concerns both: <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: <ol 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.
		Specifically with respect to those treaties that do include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a), but which treaties are supplemented with a protocol provision restricting the submission of a MAP request irrespective of domestic available remedies, Italy should seek to request amending its treaties by no longer including such protocol provision so as to ensure that taxpayers can both in theory and in practice request MAP assistance without first having recourse to domestic appeals.

	Areas for Improvement	Recommendations
[B.1] (cont.)		<p>Furthermore, with respect to the treaties with former Czechoslovakia, the former USSR and former Yugoslavia, Italy should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision.</p> <p>In addition, Italy should maintain its stated intention to include the required provision in all future treaties.</p>
	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Italy should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.
[B.2]	-	As Italy has done thus far, it should continue to apply its notification process for future cases in which its competent authority considers the objection raised in a MAP request as not being justified.
[B.3]	-	As Italy has thus far granted access to the MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	-	As Italy 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]	Access to MAP is not granted for MAP requests submitted only under the EU Arbitration Convention, when the tax authority and the taxpayer entered into an audit settlement for the case under review.	<p>Italy should continue to grant access to MAP in all eligible cases under bilateral tax treaties, even if there was an audit settlement between the tax authority and the taxpayer.</p> <p>In addition, Italy should grant access to MAP also for cases submitted under the EU Arbitration Convention, even if the tax authority and the taxpayer entered into an audit settlement in the case under review.</p>
[B.6]	-	As Italy has thus far not limited access to the MAP in eligible cases when taxpayers have complied with Italy's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	57 out of 101 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 modified by the Multilateral Instrument following its entry into force to include such equivalent, Italy should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the treaties with former Czechoslovakia, the former USSR and with former Yugoslavia, Italy 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, Italy should maintain its stated intention to include the required provision in all future treaties.</p>

	Areas for Improvement	Recommendations
[B.8]	The contact details of Italy's competent authority in Italy's MAP Guidance are not up-to-date.	Italy should follow up its intention to update its guidance and prioritise the inclusion of the new contact information of Italy's competent authority. Additionally, although not required by the Action 14 Minimum Standard and in order to further improve the level of details of its MAP guidance, Italy could consider including information on: <ul style="list-style-type: none"> • Whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments; and • The timing of steps of the process for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any). Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.
[B.9]	-	As Italy has thus far made its MAP guidance available and easily accessible and published its MAP profile, Italy should ensure its future updates to the MAP guidance continue to be available and easily accessible and that its MAP profile, published on the shared public platform, is updated if needed.
[B.10]	MAP guidance includes information stating that in cases submitted only under the EU Arbitration Convention access to MAP will not be granted if the tax authority and the taxpayer entered into an audit settlement in the case under review.	In line with the recommendation under element B.5 to grant access to MAP in cases submitted only under the EU Arbitration Convention where the tax authority and the taxpayer entered into an audit settlement in the case under review, Italy should no longer state in its MAP guidance that access to the MAP is restricted in such situations.
Part C: Resolution of MAP cases		
[C.1]	1 out of 101 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a).	Where the treaty that does not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Italy should request the inclusion of the required provision via bilateral negotiations. In addition, Italy should maintain its stated intention to include the required provision in all future treaties.
[C.2]	Italy 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 Italy'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 Italy, it resolved during the Reporting Period 4.4% (seven out of 158 cases) of its post-2015 cases in 4.20 months on average. In that regard, Italy is recommended to seek to resolve the remaining 95.6% of the post-2015 cases pending on 31 December 2016 (151 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	As Italy resolved MAP cases in 27.53 months on average, there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016 and which might indicate that the available resources in Italy's competent authority are not adequate.	Italy should ensure that it has adequate resources available for the competent authority function in order to resolve MAP cases in a timely, efficient and effective manner. In particular, Italy should closely monitor whether the recent reorganisation and the implementation of its contemplated monitoring system will contribute to the acceleration of the resolution of MAP cases.

	Areas for Improvement	Recommendations
[C.4]	-	As it has done thus far, Italy should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue, or being influenced by considerations of the policy that Italy would like to see reflected in future amendments to the treaty.
[C.5]	-	As the criteria used by Italy to assess the performance of the staff in charge of MAP can be considered as appropriate performance indicators, Italy should follow up its stated intention to put in place the envisaged performance indicator.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	As it has done thus far, Italy should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled. In addition, Italy should follow up its stated intention to amend its domestic legislation to enable implementation of MAP agreements notwithstanding domestic time limits.
[D.2]	-	As it has done thus far, Italy should continue to implement timely all MAP agreements reached if the conditions for such implementation are fulfilled.
[D.3]	71 out of 101 tax treaties do 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 Article 9(1) and Article 7(2).	Where treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015), or include the alternatives provided in Article 9(1) and Article 7(2) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Italy should request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions. Specifically with respect to the treaties with former Czechoslovakia, the former USSR and with former Yugoslavia, Italy should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision or its alternatives. In addition, Italy should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternative provisions, in all future treaties.

Annex A

Tax treaty network of Italy

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

		Action 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6		
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Austria	Y	N	Y	N/A	i	i	Y	N	Y	N	N	N/A
Azerbaijan	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Bangladesh	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Barbados	N	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Belarus	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Belgium	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Bosnia and Herzegovina	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Brazil	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Bulgaria	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Canada	Y	O	ii	2-years	i	i	Y	ii	Y	Y	Y	iii
Chile	Y	O	Y	N/A	i	i	Y	N	Y	N	Y	i
China (People’s Republic of)	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Congo	Y	O	ii	2-years	i	i	Y	Y	Y	Y	Y	iii
Côte d’Ivoire	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Croatia	Y	O	ii	2-years	i	i	Y	Y	Y	Y	Y	iii
Cuba	N	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Cyprus*	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A

		Action 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration					
		B.1		B.3		B.4		C.1		D.3		A.1		B.7		C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6		Column 7	Column 8		Column 9	Column 10		Column 11			
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?		Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?		Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?		Inclusion arbitration provision?			
Czech Republic	Y	N	ii	2-years	i	i		Y	N		N	N		N	N/A		
Denmark	Y	N	ii	2-years	i	i		Y	Y		Y	N		N	N/A		
Ecuador	Y	N	ii	2-years	i	i		Y	N		Y	N		N	N/A		
Egypt	Y	N	Y	N/A	i	i		Y	Y		Y	Y		N	N/A		
Estonia	Y	N	Y	N/A	i	i		Y	N		Y	N		N	N/A		
Ethiopia	Y	N	ii	2-years	i	i		Y	N		Y	N		N	N/A		
Finland	Y	N	ii	2-years	i	i		Y	N		Y	N		N	N/A		
Former Yugoslav Republic of Macedonia	Y	N	ii	2-years	i	i		Y	N		Y	Y		N	N/A		
France	Y	N	ii	6-months	i	i		N	N		N	N		N	N/A		
Gabon	N	O	Y	N/A	i	i		Y	Y		Y	Y		N	N/A		
Georgia	Y	O	Y	N/A	i	i		Y	Y		Y	Y		Y	iii		
Germany	Y	O	ii	2-years	i	i		Y	N		Y	N		N	N/A		
Ghana	Y	O	ii	2-years	i	i		Y	N		Y	N		Y	iii		
Greece	Y	N	ii	2-years	i	i		Y	N		Y	N		N	N/A		
Hong Kong, China	Y	O	ii	2-years	i	i		Y	N		Y	Y		Y	i		
Hungary	Y	N	Y	N/A	i	i		Y	Y		Y	Y		N	N/A		
Iceland	Y	O	ii	2-years	i	i		Y	Y		Y	Y		Y	iii		

		Action 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1	B.3		B.4	C.1	D.3	A.1	B.7	C.6		
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
India	Y	N	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Indonesia	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Iran	N	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Ireland	Y	O	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Israel	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Japan	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A
Jordan	Y	O	ii	2-years	i	i	Y	Y	Y	Y	Y	iii
Kazakhstan	Y	N	ii	2-years	i	i	Y	N	Y	N	Y	iii
Kenya	N	N	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Korea	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Kuwait	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Kyrgyzstan	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Latvia	Y	N	Y	N/A	i	i	Y	N	Y	N	N	N/A
Lebanon	Y	O	ii	2-years	i	i	Y	Y	Y	Y	Y	iii
Lybia	N	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Lithuania	Y	N	Y	N/A	i	i	Y	N	Y	N	N	N/A
Luxembourg	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Malaysia	Y	N	i	N/A	i	i	Y	N	Y	N	N	N/A
Malta	Y	N	Y	N/A	i	i	Y	Y	Y	Y	N	N/A

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

		Action 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
San Marino	Y	O	ii	2-years	i	i	Y	Y	Y	Y	Y	ii
Saudi Arabia	Y	O	ii	2-years	i	i	Y	Y	Y	Y	N	N/A
Senegal	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Serbia	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Singapore	Y	N	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Slovak Republic	Y	N	ii	2-years	i	i	Y	N	N	N	N	N/A
Slovenia	Y	O	ii	2-years	i	i	Y	Y	Y	Y	Y	iii
South Africa	Y	N	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Spain	Y	N	ii/iv	2-years	i	i	Y	N	Y	Y	N	N/A
Sri Lanka	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Sweden	Y	N	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Switzerland	Y	N	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Syria	Y	O	ii	2-years	i	i	Y	Y	Y	Y	N	N/A
Tajikistan	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Tanzania	Y	O	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Thailand	Y	O	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Trinidad and Tobago	Y	O	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Tunisia	Y	N	Y	N/A	i	i	Y	Y	Y	Y	N	N/A

		Action 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		
		B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6			
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11		
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? If no, please state reasons	Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?		
Turkey	Y	N	ii	2-years	Y	i	Y	N	Y	N	N	N/A
Uganda	Y	O	ii	2-years	i	i	Y	N	Y	N	Y	iii
Ukraine	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
United Arab Emirates	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
United Kingdom	Y	N	i	N/A	i	i	Y	N	Y	N	N	N/A
United States	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	iii
Uzbekistan	Y	N	ii	2-years	i	i	Y	N	Y	N	Y	iii
Venezuela	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Viet-Nam	Y	N	ii	2-years	i	i	Y	N	Y	N	N	N/A
Zambia	Y	O	i	N/A	i	i	Y	N	Y	N	N	N/A

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

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

Annex B

MAP statistics: Pre-2016 cases

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/ partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	161	2				2						157	14.75
Others	147		1		5	3	1				8	129	39.44
Total	308	2	1	0	5	5	1	0	0	0	8	286	34.95

- Notes:*
- The definition of MAP cases is based on the definition contained in the MAP reporting framework arising from the proposals in the Committee on Fiscal Affairs' (CFA) 2007 report "Improving the Resolution of Tax Treaty Disputes".
 - The counting method of MAP cases is based on the counting method contained in the MAP reporting framework arising from the proposals in the Committee on Fiscal Affairs' (CFA) 2007 report "Improving the Resolution of Tax Treaty Disputes".
 - The definitions of "Attribution/Allocation MAP Cases" and "Other MAP Cases" are the following:
 Attribution/Allocation MAP Cases: 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); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case.
 Other MAP Cases: Any MAP case that is not an attribution/allocation MAP case.
 - The "average cycle time for cases completed, closed or withdrawn during the reporting period" reported in Column 14 is based on the method of computing the "average cycle time" contained in the MAP reporting framework arising from the proposals in the Committee on Fiscal Affairs' (CFA) 2007 report "Improving the Resolution of Tax Treaty Disputes".

Annex C

MAP statistics: Post-2015 cases

Category of cases	No. of post-2015 cases in map inventory on January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome:										No. of post-2015 cases remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/ partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	26	0	0	0	0	0	1	1	0	0	0	24	6.51
Attribution/ Allocation MAP submitted under the European Arbitration Convention	0	113	2	0	1	0	0	0	0	0	0	0	110	3.93
Others	0	19	0	1	1	0	0	0	0	0	0	0	17	2.28
Total	0	158	2	1	2	0	0	1	1	0	0	0	151	4.20

- Notes:* 1. According to the possibility to note any specificity on MAP requests received under the EU Arbitration Convention, including providing a breakdown of the MAP statistics relating to such cases, Italy has opted for the breakdown. In this respect, the first row refers to “Attribution/Allocation MAP cases” submitted under a bilateral tax treaty only, whilst the second refers to “Attribution/Allocation of MAP cases” submitted under the EU Arbitration Convention.
2. As for Attribution/Allocation of MAP cases submitted under both the tax treaty and the EU Arbitration Convention, only one case has been reported in the MAP statistics and it appears in the second row (Attribution/Allocation cases submitted under the European Arbitration Convention). Row 1 contains the cases submitted only under a tax treaty.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
Italy’s Revenue Agency	Agenzia delle Entrate
MAP Guidance	Circular letter No. 21/E of 5 June 2012; issued by the Italian Revenue Agency
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
Review Period	Period for the peer review process that started on 1 January 2016 and ended on 31 March 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and 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

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OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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

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

Consult this publication on line at <http://dx.doi.org/10.1787/9789264285835-en>.

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